



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

## **North Carolina Domestic Violence Best Practices Guide for District Court Judges**

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North Carolina Administrative Office of the Courts

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## INTRODUCTION

The purpose of this guide is to identify best practices and to recommend procedures to improve victim safety, offender accountability and court efficiency in domestic violence cases while ensuring the due process rights of all parties. It is not designed to be an exhaustive review of domestic violence law and practice in North Carolina but instead a useful and user-friendly best practices guide for district court judges who hear civil and criminal domestic violence cases and for chief district court judges who are responsible for administrative decision-making. The North Carolina Domestic Violence Best Practices Guide for District Court Judges is based on: (1) findings from a [2007 research project](#) conducted by the North Carolina Administrative Office of the Courts (AOC) that documented current practices of North Carolina district courts in their handling of civil and criminal domestic violence cases and identified areas with the potential to increase both effectiveness and efficiency in the treatment of these cases; (2) national research and best practices that apply to North Carolina; and (3) the consensus of this project's advisory committee members. Members of the committee are listed after this introduction.

An important note to recognize is that although this guide is based on the considerable existing knowledge surrounding domestic violence relationships, including their inherent dynamics and the external factors that impact them, it does not contain the particulars of what makes a relationship an abusive one. Readers are encouraged to gain that knowledge elsewhere. One reason that domestic violence cases are so confounding for the legal system is that often the violent incident before the court is not a discrete event, but part of a pattern of abusive behavior, much of which is not criminal. Therefore, unless otherwise noted, the authors are working from the following expansive, non-legal definition of domestic violence: domestic violence is a pattern of coercive control that a current or former intimate partner exercises over another. Also, the authors rarely use the term "domestic violence court" because a standard definition has not been adopted statewide. Even among the districts that conduct special settings of court for domestic violence cases and call them "domestic violence court," uniformity lacks from district to district. Instead, the discussion is approached in terms of court practices and procedures and tailored where possible to the different demographics represented in the judicial districts across North Carolina. Finally, as in most areas of law, certain questions do not have definitive answers. Issues that would benefit from legislative attention and statutory changes to clarify procedure have been identified and referred to the state's Domestic Violence Commission.

Relevant case law is included where appropriate to support best practices and court procedures.

As new legislation is enacted, case law develops, additional research is completed and practices evolve, the best practice guide will be updated by the AOC and made available in an electronic format accessible on the AOC Intranet website.



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Part 1:

# BEST PRACTICES



**Best Practice #1**      ***Provide Enhanced Courthouse and Courtroom Security for Domestic Violence Cases***

Strong security measures not only enhance safety and deter violence but also make the court system more accessible to injured and fearful parties. Providing a degree of structure and predictability to persons who have experienced trauma can be an effective stabilizer and increase the likelihood that they will use the court system for protection and relief. Recommended procedures for safety and security in the courtroom and courthouse are described in Section 1, [Court Safety and Security](#).

**Best Practice #2**      ***Schedule Court and Calendar Cases for Maximum Effectiveness and Efficiency***

The way in which domestic violence cases are calendared can affect the amount of time judges have to spend on each case, the victim's comfort level and willingness to testify, the time to disposition and the outcome of the case. A discussion regarding scheduling and recommended procedures can be found in Section 2, [Scheduling Civil and Criminal Domestic Violence Cases](#).

Through its scheduling practices, the court can also encourage the involvement and participation of community partners. When community partners receive advance notice of domestic violence hearings (e.g. when courts publish the civil and criminal calendars on the internet), they are more likely to be able to make arrangements to be present or be available to the court during those times.

**Best Practice #3**      ***Identify and Assign Specially Trained and Dedicated Judges***

While there is no definitive research that assigning specialized judges improves the court's overall response to domestic violence cases, national best practices support the assignment of specialized judges<sup>1</sup>. Regular judicial assignment appears to be positively correlated with a higher degree of experience and expertise, making it more likely that standardized processes will be established and enforced. Further discussion regarding assignment of specialized judges can be found in Section 3, [Specialized Judges](#).

## **Best Practice #4**      **Establish Firm Continuance Policies**

Delays are particularly detrimental in domestic violence cases because they can be used by the defendant to harass, threaten or intimidate the victim or other witnesses into abandoning court action. In addition, efforts by the victim or plaintiff to pursue criminal prosecution or obtain a domestic violence protective order are highly correlated with an escalation of violence.<sup>2</sup> Moving the cases expeditiously through the system reduces the opportunity for further abuse and sends an early message that the system is responsive and will not tolerate delays without good cause. Protective orders, by their nature, are intended to provide emergency and immediate relief to plaintiffs and their children. Therefore, any continuance of a domestic violence protective order hearing should be allowed only in limited circumstances.

Limiting the number of continuances in both civil and criminal domestic violence cases is crucial to effectively managing and resolving these cases. Strategies to reduce continuances and decrease the time to disposition are discussed in Section 4, [Continuance Policies](#).

Chief district court judges are strongly encouraged to establish a continuance policy, to include the policy as part of the district's local rules, and to promote the importance of consistently enforcing this policy with the local bar and all district court judges assigned to preside over domestic violence cases.

## **Best Practice #5**      **Develop and Enforce Local Rules**

Local rules that pertain to domestic violence cases help parties, attorneys and court staff efficiently manage cases. Effective rules should create consistency and predictability in the court process, as well as enhance safety and efficiency. Chief district court judges should invite input from all court participants when creating local rules. Local rules should be applied and enforced consistently by all judges assigned to hear domestic violence cases. Discussion regarding creation of local rules is found in Section 5, [Local Rules](#).

**Best Practice #6**      **Actively Coordinate with Community Resources  
And Constitute Local Domestic Violence Advisory  
Committees**

Community resources assist courts, victims and defendants in all stages of civil domestic violence cases, from completing applications to addressing concerns regarding minor children, and in criminal cases, from assisting the victim to providing treatment for the defendant. Community partners can have a positive impact on the victim's experience, the defendant's behavior and the efficiency and overall response of the court system. Linking victims with resources as soon as possible after an incident of domestic violence is a national best practice<sup>3</sup> and requires a strong working partnership with effective communication between the court and all community partners. Convening local domestic violence advisory committees provides an ongoing forum to discuss problems and identify solutions. This best practice is addressed specifically in Section 6, [Coordinating with Community Resources and Conducting Local Domestic Violence Advisory Committee Meetings](#).

**Best Practice #7**      **Establish Standard and Consistent Court Protocol  
that Provides Judge with all Pertinent Information**

Courts need a system in place to ensure that the judge has all pertinent information when issuing ex parte orders, permanent domestic violence protective orders, pretrial release conditions and criminal sentences. Comprehensive and detailed orders that prioritize victim safety and offender accountability are not possible unless judges have all relevant information at the time they enter a ruling. Recommended procedures with regard to civil cases are found in Section 7, [Ex Parte and Permanent Order Hearings](#). Recommended procedures for judges issuing pretrial release conditions and imposing criminal sentences are found in Section 13, [Initial Appearance, Bond and Pretrial Release Conditions](#), and Section 15, [Sentencing the Domestic Violence Offender](#).

**Best Practice #8**      **Consider Safety and Well-Being of Children in  
All Domestic Violence Actions and Make  
Custody Determinations**

Courts should consider the safety and well-being of children in **all** aspects of domestic violence cases, both civil and criminal. Information about children may be revealed during trial, a civil hearing, a bond hearing or any other stage of a domestic violence proceeding. If at any point a judge has concerns about the welfare of a child, the judge should inquire into the matter further and make a report to the Department of Social Services (DSS), if

appropriate. Information on when and how to make a report is found in Section 9, [Making a Child Abuse/Neglect Report to the Department of Social Services](#). Making determinations regarding custody and tailoring specific terms of custody, visitation and the exchange of children can increase the safety of the child and the victimized parent. Custody and visitation are discussed in detail in Section 8, [Custody and Visitation](#).

**Best Practice #9      *Prepare Clear and Comprehensive Orders and Ensure Proper Service***

Effective enforcement of domestic violence protective orders and victim safety depend on precise and comprehensive terms within the order. In addition, proper service of the order is paramount because “notice” is an element of a criminal violation. Problems arise when domestic violence protective orders are unclear as to the exact behavior that is prohibited. It is especially important that any orders addressing the exchange of a child or child related contact be very specific and tailored to each family situation. Likewise, service of the order on the defendant should occur *in court* whenever possible and the completion of service should be clearly noted on the order returned to the clerk by law enforcement. Discussion of this area can be found in Section 10, [Ex Parte and Permanent Domestic Violence Protective Orders](#).

**Best Practice #10      *Encourage Victims to Access the Courts for Protection***

This practice addresses the accessibility of the court to victims and plaintiffs, particularly those who have changed their decision to proceed with their case(s). Victims of domestic violence often make repeated attempts to end an abusive relationship and may seek relief from the court throughout what might be a long process of terminating the relationship. This can cause judges and other court personnel to feel frustrated. Victims who return multiple times to court are often the ones best remembered and might be perceived to be abusing the system. However, it is important to remember that there are many factors that a victim must weigh when determining his/her safest course of action at any particular point in time. It is also important to note that many domestic violence victims use the courts for only one domestic violence incident, which is completely resolved with the assistance of the court. Therefore, it is important to establish consistent and user-friendly court procedures for victims as it increases their ability and willingness to access the court system – and return when necessary – in the event of future abuse. Discussion of plaintiffs wishing to dismiss civil cases is found in Section 11, [Plaintiff Motions to Dismiss or Set Aside Domestic Violence Protective Order](#), and discussion of reluctant victims in criminal cases is found in Section 14, [Reluctant Victims](#).

## **Best Practice #11**     *Maximize Court and Community Resources for Self-Represented Parties*

Litigants in 50B and 50C actions often appear pro se, partly due to the emergency nature of the cases. Courts should ensure that self-represented litigants are able to easily move through the court system, both for the benefit of the pro se individual and increased court efficiency. Strategies for working with self-represented litigants are found in Section 12, [Self-Represented Litigants](#). In addition, criminal defendants may also proceed pro se. Because of the serious consequences of a domestic violence conviction, it is crucial that a pro se defendant make a knowing and intelligent waiver of counsel. Discussion of waivers is found in Section 13(E), [Matters to Address at Bond Setting](#).

## **Best Practice #12**     *Prioritize Victim Safety and Offender Accountability throughout the Criminal Process*

Along with ensuring the due process rights of the defendant in a criminal case, the court should also prioritize victim safety and offender accountability from the time of the defendant's initial court appearance to the post-disposition phase. Criminal domestic violence cases need to be closely monitored by all courts because of the high rates of recidivism and the substantial risks to the victim. Judges should be actively involved in each case on the domestic violence criminal calendar to ensure that cases are being resolved timely, defendants are in compliance with all court orders and dispositions are appropriate in each case. This guide includes discussion regarding setting comprehensive conditions of pretrial release ([Section 13](#)) and imposing criminal sentences ([Section 15](#)), both of which can increase victim safety and offender accountability.

## **Best Practice #13**     *Institute Compliance Hearings in Civil and Criminal Cases to Enhance Victim Safety*

An important part of monitoring domestic violence offenders and increasing safety for victims is providing regular court supervision of the defendant during the period of probation or during the period of a protective order. Compliance hearings before the court, which can issue graduated sanctions and rewards, are a recommended way of achieving this goal. Community partners should be actively involved in compliance hearings so that the court has access to all pertinent information when determining compliance. Recommended procedures for implementing criminal compliance hearings are found in Section 16, [Compliance Hearings](#). Defendants in civil cases should also be monitored, particularly when certain risk factors are present. Discussion of compliance hearings in civil cases is found in [Section 10\(C\)](#).

**Best Practice #14**     ***Consider Federal Domestic Violence Law Requirements in all Civil and Criminal Domestic Violence Cases***

District courts should be cognizant of federal domestic violence laws, particularly those that relate to firearms. The United States Attorney’s Office is a resource for courts and victims when there is potential federal jurisdiction. Federal law requirements, including those contained in the Violence Against Women Act (VAWA), should be complied with throughout the civil and criminal process. Detailed discussion regarding federal domestic violence laws is found in Section 17, [Federal Domestic Violence Law](#).

Part 2:

# IMPLEMENTATION STRATEGIES AND RECOMMENDED COURT PROCEDURE





## Section 1 Court Safety and Security

### **Best Practice #1 Provide Enhanced Courthouse and Courtroom Security for Domestic Violence Cases**

#### **Key Points**

- Establish protocol for courtroom safety through coordination with court officers and the creation of courtroom rules.
- Choose a courtroom that is easily monitored by judge and court officers.
- Implement security measures throughout the courthouse.
- Address court security during local domestic violence advisory committee meetings.

### A. Courtroom Safety

The possibility of intimidation, disruption or violence always exists when parties in a domestic violence case are together in the same courthouse or courtroom. Violence and tension increase in the time span surrounding court dates. A “NCSC [National Center for State Courts] study confirms that abused women are especially vulnerable to physical violence after they initiate court proceedings...”<sup>4</sup> The following practices improve safety in the courtroom.

- I. **Seating Arrangements** are helpful in reducing opportunities for intimidation within the courtroom. **Options that judges might impose:**
  - A. Victims/plaintiffs (in first action if multiple actions filed) on one side of the courtroom and defendants on the other. Any family members or friends present should sit on the side of the person they are in court to support.
  - B. Men on one side of the courtroom; women on the other side. This separates opposite-sex couples but not same sex couples. Some judges might not be comfortable separating parties based on gender, especially as it is likely to require witnesses or family members present for support to sit separately.

C. Defendants sit in the first few rows, and victims/plaintiffs sit behind the defendants. By sitting in front of the victim/plaintiff, a defendant has less opportunity to stare, whisper or intimidate. Sitting in the rows behind the defendant also allows the victim/plaintiff to easily access the courtroom exit. Rows may be designated with signs or instructions from court officers.

D. Designate several rows on one side of the courtroom for victims and witnesses. This makes it easy for the prosecutor to locate witnesses/victims.

II. **Staggered Departures** increase the victim/plaintiff's safety once s/he leaves the courthouse. The judge can require the defendant to remain in the courtroom (preferably seated in the front of the courtroom for the judge or court officers to monitor) for 15 minutes after the victim leaves. If the defendant has family members or friends present, they should remain in the courtroom as well. *Be sure to allow the victim to leave first — a defendant who leaves first might use this time as an opportunity to accost the victim in the parking lot, slash victim's tires, etc.*

III. **Separate Waiting Areas and/or Separate Entrance and Exit Paths** are optimal, depending on the courthouse layout. If two separate entrances/exits are available, the judge can order the defendant and victim/plaintiff to use separate exits. Any family members or friends should be directed to use the same exit as the person they are in court to support.

In criminal cases, the law requires courts to provide, “*whenever practical, a secure waiting area during court proceedings that does not place the victim or witness in close proximity to defendants and families or friends of defendants.*” ([G.S. 15A-825\(5\)](#)). A separate waiting area is also helpful to keep children outside the courtroom and away from the defendant if there is a court order to this effect. Waiting areas should be monitored by a court officer who can notify victims when they are needed in the courtroom.

IV. **Court Officers** should be used to increase both the parties' and the public's safety. The court should work with court officers and their supervising agency regarding security in both the courthouse and the courtroom and consider the following options.

A. Assign two court officers to the courtroom so there can be one officer in the courtroom at all times. During court recess, the courtroom should remain open with one officer stationed in the courtroom and one monitoring the hallways. Parties should not be forced to encounter each other outside the supervision of an officer. While court is in session, the second officer should periodically check the hallway as cases resolve and parties leave court. If the courtroom must be closed, court officers should make certain it is cleared before locking the door and should station an officer in the hallway outside the courtroom.

B. Regularly assign the same court officers to the courtrooms that hear domestic violence cases. These officers should be specifically trained in domestic violence

safety and should participate in the local domestic violence advisory committee. Consistent assignment allows officers to identify potentially volatile situations. Also, because the same parties often return to court, a regularly assigned officer may know of any previous hostility or violence.

- C. Assign an officer to stand between counsel tables at all times when pro se parties are presenting their case before the judge. This creates a physical and symbolic barrier between the parties that can enhance safety and reduce intimidation.
  - D. Consider calling for assistance when a case is especially volatile. Court officers and judges regularly assigned to hear domestic violence cases will often have a good idea of which cases require additional safety measures.
  - E. Have an officer available to escort a victim/plaintiff to his/her car. In addition to providing an escort upon request, the judge should affirmatively offer an escort when there are safety concerns based on the facts of the case or behavior exhibited in the courtroom.
  - F. Encourage and cultivate relationships between court officers and community partners. For example, officers should become familiar with domestic violence advocates who regularly attend court. Advocates are often a good source of information and can advise court officers of any potentially volatile situations. If advocates meet with victims/plaintiffs in the courthouse (outside of the courtroom), officers should know the location of these meetings in order to plan for their safety and quickly respond to volatile situations. Depending on the seriousness of the situation, advocates or other community partners might also be in need of an escort.
  - G. Court officers should be made aware of hostilities towards service providers, such as domestic violence advocates and abuser treatment program staff, lawyers, judges and other court staff involved in domestic violence proceedings.
- V. **Courtroom Etiquette** is important as it sets the tone for a safe courtroom. Standard rules of courtroom etiquette should be announced before court by court officers and reinforced by the judge as appropriate. Sample rules include:
- A. No cell phones, pagers, or other mobile devices.
  - B. No communication between the defendant and victim/plaintiff when a no contact order or domestic violence protective order is in place (this includes any contact through third parties or non-verbal communication).
  - C. Defendants must sit apart from and stay away from the victim/plaintiff at all times when there is a stay away order in place.

- D. Baggy shirts must be tucked into pants. Be aware of heavy jackets being worn in warm weather.
- E. Judges should actively support court officers' efforts to maintain rules of etiquette and keep silence in the courtroom while court is in session.

**VI. Courtroom Announcements** about courtroom etiquette should be made by court officers before the judge enters the courtroom. Once the judge begins the court session, s/he should make announcements regarding how court will proceed and reiterate any courtroom etiquette s/he deems important. **Suggestions for judges to announce:**

- A. The court's continuance policy. See [Section 4](#) for sample policies.
- B. Clarify that criminal charges against the defendant are prosecuted by the State. Victims and witnesses are not parties to the case and therefore do not have the authority to "drop" criminal charges. Making this announcement in front of both victims and defendants may reduce potential pressure on victims to drop criminal charges.

## B. Courtroom Setup

**I. Easily Controlled Courtroom Sets Stage for a Safe Environment.** Designate a courtroom for hearing domestic violence cases that is easily controlled by court officers. Wider, shallow and more spacious courtrooms with a center aisle are generally easier for judges to observe and for officers to monitor. Consult local court officers for insight as to which courtrooms in a particular courthouse are safest and most easily monitored. **Best courtroom characteristics:**

- A. Accessible by two different routes (separate sets of stairs, etc.) that allow parties to arrive and/or leave separately.
- B. A doorway that is easily monitored or visible from inside the courtroom might reduce intimidation outside the courtroom.
- C. A separate waiting area located nearby allows victims and witnesses to wait separately from defendants. ([G.S. 15A-825\(5\)](#)).

**II. Recording Equipment.** Courtrooms with recording equipment are necessary for hearings for permanent protective orders in Chapter 50B matters. Judges should determine whether to record ex parte hearings for protective orders. See [Hensey v. Hennessey](#), 685 S.E.2d 541 (2009), for further discussion on ex parte hearings. Criminal misdemeanor domestic violence trials should be recorded whenever possible.

## C. Courthouse Security

- I. **Security Measures.** For the safety of both the public and court personnel, security measures should be implemented throughout the courthouse. **The North Carolina Rural Courts Commission recommends:**
  - A. Metal detectors at public entrances and staffed with at least one court officer. Checking for weapons at the public entrance is safer than at the courtroom entrance because it protects everyone in the courthouse, not just those in the courtroom.
  - B. Where staff resources are insufficient to cover all public entrances, install panic bars and lock all but the main entrance.
  - C. When court is held in a location other than a courthouse, the location should be equipped with metal detectors or, at minimum, wands should be used at the entrance.
  - D. Separate entrances for judges and other personnel should be determined by local officials (ideally, in well lit areas accessible to the sheriff's office).
  - E. Parking for judges, district attorneys and clerks should be secure.
  - F. Areas behind courtrooms, adjacent to holding cells and where prisoners are present should be restricted with no public access.
  - G. Courts should consider employee identification badges to easily recognize who is allowed in restricted areas.
- II. **AOC.** The North Carolina Administrative Office of the Courts is available to conduct safety and health assessments for individual courthouses, provide recommendations and assist courts in working with county officials to implement those recommendations. the judicial branch risk manager to request assistance in assessing the safety of individual courthouses.
- III. **Local Domestic Violence Advisory Committee.** Members of the local domestic violence advisory committee have unique perspectives on court security and are a good resource for designing and reinforcing safety polices and procedures. **Community concerns:**
  - A. How visible is security staff or equipment to litigants? Observable security measures reassure victims and put defendants on notice that safety is a priority.

- B.** Is the courthouse security staff trained to recognize and intervene in situations involving intimate partner violence?
- C.** Do court employees know the court's protocol when a dangerous situation develops?
- D.** Is security staff available to provide an escort within the building and/or to vehicles?
- E.** Is signage in the courthouse clear so that the public can easily find the clerk's office, courtrooms and exit(s) out of the building?
- F.** Is a separate waiting area available for plaintiffs and victims? If not, are they likely to be in close proximity to defendants in the hallways? If so, are court officers or other court staff monitoring the hallway during recesses, before and after court?
- G.** Is the space used by domestic violence advocates for meeting with victims highly visible and easily accessible to security staff and victims?



## Section 2 Scheduling Civil and Criminal Domestic Violence Cases

### **Best Practice #2 Schedule Court and Calendar Cases for Maximum Effectiveness and Efficiency**

#### **Key Points**

- Designate a criminal domestic violence docket.
- Define “domestic violence” by the relationship between the defendant and victim when assigning cases to the criminal docket.
- Organize the court session with input and commitment from attorneys, court personnel and community partners.
- Designate a civil domestic violence docket.

### **A. Scheduling Criminal Domestic Violence Cases**

- I. Designate a court session for criminal domestic violence cases so that they are segregated from general criminal cases.** *“One of the more common models for domestic violence dockets ... segregates criminal cases for specialized misdemeanor domestic violence dockets ... This structure of a domestic violence court, then, offers a strong opportunity to provide effective monitoring and demonstrate that the system takes domestic violence crime seriously.”<sup>5</sup>* Depending on volume, counties may designate a criminal domestic violence day twice per week, once per week or once every other week. Some large counties have a criminal domestic violence courtroom running every day. Smaller counties with fewer cases might prefer to designate a morning or an afternoon session every other week to hear criminal domestic violence cases. Consult with the district attorney’s (DA’s) office, defense bar, clerks and law enforcement when deciding which day/time to schedule domestic violence criminal cases as this input into the schedule will decrease conflicts and encourage court partners to prioritize these cases.

Larger courthouses with high volume will be able to accommodate civil and criminal sessions in different courtrooms on the same day. The most efficient model for smaller courthouses with lower volume and fewer courtrooms is to divide civil and criminal

domestic violence cases into separate morning and afternoon sessions. This allows the assigned specialized domestic violence judge to hear both the civil and criminal domestic violence cases. **Advantages to designating a court session for criminal domestic violence cases:**

- A. Courts are able to plan for extra safety precautions for these sessions, e.g., an additional court officer assigned to the courtroom and an enforced seating arrangement to keep victims and defendants separated.
  - B. Advocates from local domestic violence agencies and treatment providers assist victims through the criminal court process and alleviate the strain on court personnel and resources. These service providers will have more availability to the court on designated days, whereas they may not have the resources to attend court every day for a general docket.
  - C. A designated day lends itself to the assignment of a specialized judge, which provides consistency in the courtroom with regard to safety procedures, continuance policies and compliance reviews for convicted offenders.
  - D. A designated day lends itself to the assignment of other dedicated court staff that increase consistency and provide expertise (e.g., courtroom clerk, assistant district attorney and court officers).
  - E. The judge has the opportunity to give domestic violence cases individual attention without interruption from other types of cases, such as traffic tickets.
  - F. A designated day sends the message to victims, defendants and the community that the court takes these cases seriously and does not tolerate domestic violence. This stance helps support law enforcement, advocacy and treatment efforts.
  - G. Victims have a greater sense of comfort and security in a court session devoted solely to domestic violence as it might lessen the sense of embarrassment or stress.
  - H. Law enforcement domestic violence units can coordinate with the court to have one officer present for the domestic violence docket. That officer can provide reports and/or photographs and can contact officers for trial when they are on telephone standby.
- II. Case identification by relationship.** The most effective way to identify a criminal domestic violence case is to determine the relationship between the victim and defendant. The chief district court judge should define the relationships that qualify for the criminal domestic violence docket. **Examples:**



- A. Current or former spouses.
- B. Current or former dating relationship (including same sex couples).
- C. Victim and defendant have a child in common.
- D. A child and his/her parent's current or former intimate partner.
- E. A child and his/her parent/grandparent/guardian.
- F. Family members.
- G. Current or former household members.
- H. All relationships that qualify for a domestic violence protective order.

**III. Coordinate with magistrates.** Magistrates are the primary court officials who enforce the chief district court judge's policy for setting cases on a criminal domestic violence docket. They should identify domestic violence cases at the time the warrant is issued and then schedule them together on the criminal domestic violence docket. All cases meeting the district's relationship criteria should be assigned to the domestic violence docket, regardless of the type of criminal offense. For example, a breaking and entering charge between former spouses would be assigned to the domestic violence docket even though the offense itself is typically not considered a *domestic violence offense*. Clustering domestic violence cases by relationship enables the court to address domestic violence situations *before* they escalate into assaultive behavior. [Appendix F](#) contains a sample form that can be tailored to each district's needs and used by magistrates to assist in determining charges and setting bond.

**Reference Note:** [G.S. 15A-534.1](#) mandates that the bond in certain domestic violence cases be set by a judge. *It is not recommended that the criminal domestic violence calendar be limited to these cases only,* because doing so would exclude many appropriate cases. For example, most cases where the defendant and victim have dated or have a child in common but have not lived together or been married would be excluded. These cases would only be included if there was a violation of a DVPO or a domestic criminal trespass charge. Certain offenses that occur between people who have been married or lived together, such as breaking and entering, would also be excluded.

#### IV. Strategies to Increase Efficiency

- A. Designate a time of day when the court will hold bond hearings.** Coordinate with court officers, jail personnel and attorneys to determine the best time of day for bond hearings to be heard. **Advantages:**

1. Allows court officers to plan transportation of defendants from the jail to the courtroom, which is especially important in counties where the jail is in a different location from the courthouse.
2. Minimizes the time that defendants in custody remain in the courtroom, thereby reducing the additional security burden on court officers.
3. Allows the prosecutor an opportunity to prepare for bond hearings by providing time to contact the victim, obtain photos from the officer, run criminal history, etc.
4. Creates consistency for attorneys who often have to move from courtroom to courtroom, or even county to county.
5. Minimizes the interruption to court flow that occurs when defendants are sporadically brought into the courtroom. It is efficient to hear any felony first appearances at this time as well.

**B. “48 Hour Rule.”** Defendants who are subject to [G.S. 15A-534.1](#) must be brought before the judge at the first opportunity *or* according to regular court protocol. If the regular court policy is to hold bond hearings at a set time each day, it is permissible to bring the defendant before the judge at that time as long as it is still within the 48 hours.<sup>6</sup> This is a good reason to include the court’s policy for holding domestic violence bond hearings in the local rules. See Section 5, [Local Rules](#).

**C. Address attorney time conflicts.** Districts with multiple counties and courthouses might create conflicts for attorneys who need to travel between courthouses/counties to represent clients. Meet with the local bar to discuss ways to alleviate the strain on attorneys and increase court efficiency. **Options:**

1. Allow attorneys to designate whether they will handle their domestic violence cases in the morning session or the afternoon. After calendar call, inform parties with afternoon attorneys to return to court at 2 p.m. — the start of the afternoon session. Attorneys who take advantage of this option should be expected to appear promptly at the resumption of court and handle their cases in a timely manner. Law enforcement witnesses should be notified in advance when they will be needed in court.
2. Group each attorney’s cases on the same day whenever possible. Attorneys are able to handle cases more efficiently if multiple clients are scheduled for the same session. One way to do this is to have a court appointed list for domestic violence cases, similar to the juvenile appointment list. Under this model, domestic violence cases would only be assigned to attorneys who request to be on the list and are available on the scheduled domestic violence court dates. Alternately, the court can appoint the same attorney to all domestic violence cases that come in

during a week's time and schedule those cases for the same day. Magistrates would need to assign the same court date for all incoming domestic violence cases each week, pursuant to the district's policy.

3. Organizing domestic violence cases (see below) will help attorneys be prepared and efficient because they will know what to expect and when they are needed in court.

**D. Organize the domestic violence cases on the calendar/docket.** Work with the DA's office regarding the order of cases called. **Options:**

1. Hear probation violations or compliance reviews first. This allows the judge to set an example for the audience by handing down sanctions and reinforcing compliance with orders. The prosecutor can use this time to work with defense attorneys and victims to line up cases. Having a set time for probation violations and compliance review hearings gives probation officers, treatment providers and other relevant witnesses a firm time frame in which to appear in court to be heard.
2. Hear guilty pleas first (including deferred prosecution agreements) before addressing requests for continuances or orders for arrest. This allows the judge to set the tone for the seriousness of this court from the start of the session.
3. Hold cases open when the defendant and/or victim or prosecuting witnesses are not present at the beginning of court. Many judges hold cases open until 10 a.m. to give parties an opportunity to appear. Extra time also allows attorneys an opportunity to track down an absent defendant or victim.

## B. Scheduling Civil Domestic Violence Cases

- I. **Permanent Order Hearings.** Designate a court session for civil domestic violence cases so that they are separated from general civil or domestic cases. A designated session offers many advantages, such as "increased safety, educated judges, sensitivity to victims, understanding of the dynamics of abuse, access to advocacy, and more."<sup>7</sup> Depending on volume, counties may designate a civil domestic violence day once or twice per week. Some large counties have a civil domestic violence courtroom running every day. Smaller counties without enough volume to fill a day's docket may prefer to designate a morning or an afternoon session every week to civil domestic violence cases.
- II. **Ex Parte Hearings.** Where practicable, schedule ex parte hearings at a set time each day. Many districts schedule them at 2 p.m. each day. This allows advocates from local

domestic violence agencies to be present and provide safety planning assistance to plaintiffs. It often gives plaintiffs time to contact the domestic violence agency and/or Legal Aid prior to the hearing since they will receive information and referrals for these services from the clerk's office. Having a set court time also minimizes the time that a plaintiff must sit in court and wait to be heard. However, it will be necessary on occasion for the court to hear an ex parte at an unscheduled time (e.g., if a plaintiff needs immediate medical attention and cannot return to court or when protection is needed before the defendant is released from jail).

## C. Coordinating Civil and Criminal Domestic Violence Cases

**Combined Courts.** Civil and corresponding criminal domestic violence cases are difficult to coordinate because emergency civil cases are designed to move quickly to resolution while criminal cases typically move more slowly and can take months to resolve. The best practice is for civil cases to be heard as soon as practicable and not continued for the sole purpose of being heard at the same time as a related criminal case. Continuances prevent plaintiffs from obtaining a permanent domestic violence protective order and create a safety risk to the plaintiff. Some districts **combine** the civil and criminal dockets into the same courtroom and session. There is no research to indicate whether combined civil/criminal sessions increase court efficiency, reduce inconvenience to parties or reduce the time to disposition. Combining civil and criminal cases successfully into one session or one hearing is logistically difficult and presents serious concerns if done incorrectly. For these reasons, this guide recommends hearing civil and any related criminal domestic violence cases separately.

## D. Scheduling Chapter 50C Cases

**Chapter 50C** was enacted by the North Carolina Legislature to address instances of **stalking** and **sexual assault** when the parties do not have a personal relationship as defined in Chapter 50B. However, courts often schedule Chapter 50C cases on the same docket with 50B cases because they are procedurally similar. As a result, a high volume of 50C filings (which often occurs when cases are filed that are not based on stalking or sexual assault) can strain the court and reduce court time for civil domestic violence cases.

The number of filings under Chapter 50C varies considerably by county and is probably affected by local law enforcement or magistrate practices. Chapter 50C requires “unlawful conduct,” which is defined in the statute as stalking or nonconsensual sexual conduct. Therefore, when law enforcement refers an individual to the court for a 50C, a criminal investigation should also occur. Districts should review their data regularly and meet with representatives to discuss high numbers of filings and the reasons for these.

Early screening of these cases may be an effective way to identify cases that would benefit

from referrals for either pre-filing or pre-trial voluntary mediation. Screening should only occur for cases that clearly do not meet the intent of the statute, such as school fights, neighbor disputes over property, and bar fights. See [Appendix B](#) for additional information.



## Section 3 Specialized Judges

### *Best Practice #3 Identify and Assign Specially Trained and Dedicated Judges*

#### Key Point

- Assign specialized judges to hear domestic violence cases.

- I. **Specialized judges with training and interest** in domestic violence should be assigned to the domestic violence docket when possible. This may be difficult in some districts, such as those with fewer judges than courthouses. In districts that cannot assign a limited number of judges to hear domestic violence, all judges in the district should have domestic violence training. One benefit of having all judges trained in domestic violence is that judges are able to identify and respond to a domestic violence situation even when it appears in court unexpectedly. Specialized domestic violence judges should rotate as necessary to avoid burnout. **The advantages of assigning specialized judges include:**
- A. Creates continuity in the operation of the court.
  - B. Enables the judge to follow through with parties and eliminates any arguments that the parties were given conflicting information or instructions by a different judge.
  - C. Ensures that the judge is familiar with research on battering and will impose sentences that prioritize offender accountability and victim safety.
  - D. Ensures that the judge is familiar with community resources and is invested in the continuous improvement of the court process and treatment services.
  - E. Increases judicial efficiency through consistent enforcement of local rules and continuance policies.
  - F. Aids the judge's ability to explain court orders and probation conditions, forecast the sanctions that will follow any violations and follow through at compliance hearings. Defendants are more inclined to comply with court orders when they believe the judge is monitoring their compliance. See [Judicial Review Hearings: Keeping Courts on the Case](#) for more information.

## Section 4 Continuance Policies

### ***Best Practice #4 Establish Firm Continuance Policies***

#### **Key Points**

- Limit continuances.
- Enforce continuance policies for both civil and criminal cases.
- All judges assigned to hear domestic violence cases must apply the continuance policy to all cases at all times.

- I. **Limiting continuances in domestic violence cases is important** to the safety of the victim/plaintiff, as well as to the efficiency of the courts. Defendants in both criminal and civil domestic violence cases may use multiple court dates as a way to access the victim or delay the case in hopes of intimidating, wearing down or persuading the victim to abandon the court action. A defendant who is a batterer may use continuances as another means of controlling a victim. For example, a defendant may exercise financial control by compelling a victim who lacks the resources to pay for child care to attend court repeatedly. In addition, an ongoing court action might create or exacerbate tension and violence, especially in the time surrounding each court date. Therefore, it is important to victim safety that court dates are limited to no more than absolutely necessary. **Advantages:**
- A. The prosecutor is able to give victims and witnesses a reliable estimate of when their case will be heard.
  - B. Attorneys are able to give their clients a reliable estimate of when their criminal or civil case will be heard.
  - C. When the court limits continuances and handles them efficiently, it reduces backlog, creating more court time to hear cases.
  - D. Fewer court dates reduce the inconvenience and hardship to victims, witnesses, plaintiffs and defendants, all of whom may risk substantial losses, including loss of employment due to repeated absences.
  - E. Prosecutors and defense counsel are better able to line up witnesses, including

law enforcement, and prepare for court when they can reliably predict when the cases will be tried.

- F. Timely resolution of both civil and criminal cases reduces the period of instability for the parties when their case is not finalized.
- G. Prompt attention to domestic violence cases sends the message to victims, witnesses, defendants and the community that the court takes domestic violence cases seriously as demonstrated by firm, consistent and timely action.

**II. Consistency.** It is vital that all judges assigned to hear domestic violence cases confer and agree to strictly uphold the continuance policy consistently within the district. If even one judge is lenient with regard to the continuance policy, it will place pressure on the remaining judges and undermine the entire court's best practice in maintaining a consistent and timely process for these cases.

**III. Civil Domestic Violence Cases.** The best practice is for the judge to try the case on the first appropriate trial date. This ensures that there is a valid protective order in place at all times. Civil domestic violence cases should be heard as soon as practicable due to the emergency nature of the protective relief that is being sought. It is not recommended that civil cases be continued for the sole purpose of hearing it on the same day as a related criminal case. **Continuances in the following situations:**

**A. Defendant Not Served.** Ex parte orders are typically extended — and the permanent order hearing continued to a later date — when the defendant has not been properly served. [G.S. 50\(B\)-2\(c\)](#) reads: *Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later.*

**B. Defendant Served.** When the defendant has been served, the court may continue the case and extend the terms of the ex parte order even when both parties are present in court for the permanent order hearing. Under these circumstances, the court's order is technically no longer an ex parte order but an emergency order under G.S. 50B-2(b).

1. **Importance of Service when Terms of Order Extended.** If a judge grants a continuance under these circumstances, both parties should be served with the original ex parte order and an additional order extending the ex parte order ([AOC-CV-316](#)) before they leave court. Assigning two clerks to the courtroom allows the second clerk to make copies and ensure that parties are served before leaving court.

**C. Renewals.** To ensure that a valid order is continuously in place, renewal requests should be heard at the first opportunity and should not be continued. For more information on renewals, see Section 10E, [Renewal Orders](#).



**IV. Criminal Domestic Violence Cases.** Because of the nature of domestic violence cases, it is important that they be heard in a timely manner. Victims, who often provide the only evidence in the State's case, are vulnerable to intimidation, may move out of the area to escape the defendant or may eventually recant in an effort to resume a relationship with the defendant. It is important that continuances be granted for legitimate purposes only and not used as a defense strategy. It is equally important that the community sees the courts handling these cases effectively and efficiently. **Options for limiting continuances:**

- A. Option 1:** Create a practical timeframe within which cases must be resolved. For example, a reasonable goal might be that criminal domestic violence cases be disposed within 90 days. Input and commitment from both the defense bar leadership and DA's office is important when setting the court's goal for resolution. Once a case has reached the district's goal, it should be highlighted or otherwise designated on the calendar that is posted and distributed before court. Posting calendars several days in advance puts attorneys on notice of cases that must be resolved. No one in the district should be allowed to continue the identified cases outside of the judge's presence since these cases have been identified as requiring the judge's attention.
- B. Option 2:** Designate each domestic violence criminal session (or case) as either set for a pretrial hearing **or** trial. For example, if domestic violence days are set once per week, consider alternating weeks of pretrial hearings and trials. In the alternative, a case can be scheduled first for a pretrial hearing before being set for trial. **Sample practices:**
1. Schedule the defendant's first court date for a pretrial hearing only. A pretrial date is used to make plea offers, tender pleas or address matters that must be resolved prior to trial. If the matter does not resolve on the pretrial date, set the case for trial.
  2. The victim should be notified of the pretrial date but not required to appear. The victim is required to appear on the *trial* date, which gives the victim some certainty as to when s/he will be needed to testify.
  3. On the pretrial date, inquire as to whether a plea offer has been extended and address any outstanding issues that must be resolved before setting the trial date.
  4. No continuances should be granted on a trial date, except in extreme and unusual circumstances. All cases set on a trial date should be resolved in that session of court.
  5. The best practice is to develop a local pretrial form that the prosecutor and defense attorney sign stipulating that all pretrial matters have been

resolved, and the case is ready for trial. An alternative is to have them initial the shuck that the case is ready for trial.

**C. Option 3:** Designate a maximum number of continuances each side is allowed (still limited to good cause regardless). For example, treat both sides equally by allowing each side to have one continuance. Make certain that continuances are for legitimate purposes and not being used to wear the victim down as a defense strategy. Keep notes in the shuck as to who requested each continuance and the reason. **Sample practices:**

1. Require all motions to continue to be made in writing; this reduces meritless requests and provides a record of who requested the continuance and for what reason.
2. Require the defendant to contact his/her attorney within X number of days as a condition of pretrial release. This should reduce the number of defendants who have failed to consult their attorneys by the first court date.
3. Issue orders for arrest for defendants who fail to appear and set substantial bonds.

**V. Recommended procedures when a criminal domestic violence case is continued:**

- A.** Check with the victim and defendant to determine whether pretrial release conditions have been complied with and whether they need to be modified. If they need to be modified, make certain the modified order is provided to both the victim and defendant before they leave court.
- B.** Reiterate to the defendant and victim, if present, the terms of pretrial release. The victim should be given a copy of the pretrial release conditions if s/he does not already have a copy. Be sure that both people understand that the defendant can be arrested for certain violations and brought back to court for other violations. The victim should be told to call the police if conditions are violated — or the DA's office, if police cannot arrest without a warrant under [G.S. 15A-401\(b\)\(2\)\(f\)](#).
- C.** Explain the court's continuance policy so that the defendant, victim and witnesses know what to expect at the next court date. A frustrated witness or victim may be more likely to return to court knowing that the case is set for trial and is unlikely to be continued again.
- D.** Be sure the victim and any witnesses present are subpoenaed in the courtroom before leaving court. Blank subpoenas can be kept in the courtroom for easy service. This practice reduces the strain on the sheriff's office and ensures timely service. It will also remove any pressure the defendant might place on the victim

to avoid service following court. In addition, it reinforces the formality and seriousness with which the court treats domestic violence. Subpoenas can be printed in triplicate so that one is served on the victim, one is retained by the DA's office and one is placed in the shuck.



## **Section 5**      **Local Rules**

### ***Best Practice #5      Develop and Enforce Local Rules***

#### **Key Points**

- Consult with all other court partners when developing local rules.
- Make copies of local rules readily available.
- Enforce local rules consistently.

- I. Local rules are an important way to establish district-wide understanding and agreement** as to the established court protocol for effective management of cases. Every district should establish local rules, post them on its website and communicate changes as they occur to all court partners, including the defense bar, Legal Aid, domestic violence advocacy agencies and abuser treatment programs. **Sample subjects to include in local rules:**
- A.** The district's continuance policy.
  - B.** A description of civil and criminal domestic violence dockets, including whether the dockets are dedicated and the criteria used to identify domestic violence cases. Days and times civil and criminal cases are heard should also be noted, as well as when bond hearings, ex parte hearings and criminal violations are scheduled for hearings.
  - C.** Any rules regarding mediation/dispute settlement in civil and/or criminal domestic violence cases if the district uses alternate dispute resolution for the domestic violence cases. In general, mediation is not appropriate in domestic violence situations.
  - D.** A description of the district's judicial assignment of civil and criminal domestic violence cases.
  - E.** The guidelines for pretrial release, including violations of the release order in domestic violence cases and bond determinations.
  - F.** The district's use of a local domestic violence incident form, if applicable.

- G.** The use of foreign language interpreters (see [Appendix A](#)).
- H.** If the district has any limitations on the use of consent orders, document the district's policy. For example, some districts limit the use of consent orders to cases in which at least one party is represented and some districts prohibit custody and financial provisions from being included in consent orders.
- I.** Procedures for handling expiring orders when the courthouse is closed due to adverse weather conditions, including when cases will be rescheduled.
- J.** The procedures for seeking custody in a Chapter 50B action.
- K.** The duties of the clerk.

## Section 6

# Coordinating with Community Resources and Conducting Local Domestic Violence Advisory Committee Meetings

### ***Best Practice #6 Actively Coordinate with Community Resources and Constitute Local Domestic Violence Advisory Committee***

#### **Key Points**

- Learn about local services and coordinate with community partners.
- Regularly convene local domestic violence advisory committee.
- Continuously review court system response.

## **A. Community Resources**

Community resources are an important asset in any community. It is essential that courts know the availability and quality of local service organizations, such as domestic violence advocacy agencies, abuser treatment programs, drug and alcohol treatment programs, mental health providers and Legal Aid or other legal resources. Partnering with community resources improves the court process and provides resources to families in domestic violence situations.

- I. Domestic violence agencies** provide services in each county in North Carolina. Courts should refer victims/plaintiffs to local domestic violence agencies at the earliest opportunity and repeat the referral throughout the court process. These agencies facilitate assistance in a variety of areas that are shown to correlate with improved safety such as shelter, counseling and employment support. Support from domestic violence agencies can enhance the victim's and children's safety. It might also increase the likelihood that the victim will follow through with court action when an advocate explains the process, answers any questions and responds to individual fears and concerns. Referrals can be made through brochures and other materials made available in the clerk's office and other areas of the courthouse, by posting signs, and by locating advocates in the courthouse.

Courts may benefit from the services of a court advocate from the local domestic violence program in a variety of ways. Advocates are non-attorneys whose job is to

provide support and information to victims of domestic violence. Job descriptions may vary from program to program, which is why it is important to know about your local program and what it offers. Most court advocates focus on assisting victims in obtaining civil protective orders. However, some programs are also available to assist in criminal court, either upon a request by the victim or court staff or by routine presence in criminal court. Advocates are more likely to be able to be present in court when domestic violence cases are scheduled on the same day and time.

### **Examples of actions advocates can take:**

- A. Meet with and provide counseling and support to a plaintiff or witness who is reluctant to cooperate with the judicial process, especially due to threats or retaliation.
- B. Accompany a person through the civil or criminal court process in order to provide information and support.
- C. Be available to the clerk's office or regularly present in the courthouse to provide information, support and accompaniment to court.
- D. Be present and available in court to meet with plaintiffs or witnesses who may need information about support services, including shelter or counseling.
- E. Meet with a plaintiff that the court suspects either doesn't understand the court proceedings or is seemingly ineligible for civil relief (including misrepresenting their need for relief).

To locate the domestic violence agency that serves your district, go to:

<http://www.doa.state.nc.us/cfw/programslist.htm>

- II. **Abuser treatment programs** are another valuable community partner for courts dealing with domestic violence cases. Their availability differs in each county and therefore it is best to coordinate directly with the providers in the county, if there is one. Some providers are able to base a staff person in criminal court (or civil court if referrals are routinely made) to make immediate contact with defendants, schedule an assessment or conduct an assessment while the defendant is at the courthouse. Further information about abuser treatment programs, including [locations](#), can be found in [Section 18](#) of this guide.

## **B. Local Domestic Violence Advisory Committee**

- I. The chief district court judge, or a designated lead district court judge, should convene court staff and community partners on a regular basis to review and discuss how the court and community system is working to meet the unique needs arising out of

domestic violence cases. These meetings should occur annually or when significant changes are made to the local rules or to how civil or criminal domestic violence cases are handled. **Suggested Committee Members:**

- judges
- clerks
- prosecutors
- law enforcement officers, particularly from the agency that provides court security
- guardians ad litem
- custody mediators
- attorneys including private defense attorneys, public defenders, and Legal Aid
- domestic violence advocates
- abuser treatment program staff
- probation officers
- substance abuse and mental health treatment providers
- other providers involved in domestic violence cases

**II. Suggested agenda items for discussion by local Domestic Violence Advisory Committees:**

- A.** Review of local data, local rules, especially any modifications, and protocol including making reports to the local Department of Social Services.
- B.** Evaluation of safety and security in courtrooms and the courthouse (see Section 1, [Court Safety and Security](#)).
- C.** Discussion and identification of standard practices that all judges can agree to institute, such as addressing custody, visitation, ordering child support and spousal support.
- D.** Review of local domestic violence agency
  1. What functions are advocates currently performing and should anything be modified?
  2. What are the agency's confidentiality policies?
  3. Is space provided to them in the courthouse to meet privately with plaintiffs?
  4. Are the services currently provided meeting the needs of parties and court stakeholders?
- E.** Review of local abuser treatment program (ATP)
  1. Is the agency well coordinated with the court?
  2. Should anything be modified about the process?
  3. Are the services meeting the needs of parties and court stakeholders?
  4. Is information about noncompliance submitted and available to the court?



5. Is there a process in place when the ATP determines that an offender is not appropriate for referral?

**F. Review of local Legal Aid of North Carolina office**

1. How are their services currently being accessed?
2. Are services well coordinated, especially with advocacy services?
3. Are there ways to maximize the impact of services given their relative scarcity when compared to need?
4. Are plaintiffs in Chapter 50B cases adequately represented or are most plaintiffs proceeding pro se?
5. Does Legal Aid of N.C. offer a local pro se custody clinic? (See [Section 8](#) for more discussion)

**III.** Data are helpful in understanding the district's court process. Some data are available on the N.C. Courts website. Other data can be provided by community partners or by random sampling of files.

The following data can be accessed on the N.C. Courts website at:

<http://www.nccourts.org/Citizens/SRPlanning/Statistics/DVCivilCase.asp>

- Number of domestic violence protective order filings for multiple years, by county.
- Number of domestic violence protective order filings that result in an order, by county.
- Number of dismissals of domestic violence protective orders, by county.
- Case disposition and time to disposition for domestic violence protective order cases.

Referrals from civil court and from criminal court to abuser treatment programs can be accessed by going to the following website: <http://www.doa.state.nc.us/cfw/stats.htm>

Other judicial system data that are recommended for review in preparation for these discussions include the following:

- Reasons for dismissals for domestic violence protective orders.
- Number of motions to set aside orders.
- Number of Chapter 50C filings across multiple years.
- Percentage of parties represented by counsel in civil and criminal cases.
- Case disposition and time to disposition for criminal cases.
- Average number of continuances in civil and criminal domestic violence cases.

Information about the local abuser treatment program(s)' structure and outcomes that are tracked from those providers should be accessed. Information about referrals to a supervised visitation center, if one is available in the district, should be accessed.

## Section 7 Ex Parte and Permanent Order Hearings

**Best Practice #7** *Establish Standard and Consistent Court Protocol that Ensures Judge has Access to All Pertinent Information*

### Key Points

- Hold ex parte hearings in the courtroom before the judge and record hearings when possible.
- Identify existing orders and address any potential conflicts in multiple orders.
- Inquire about risk factors in domestic violence cases, such as forced sex, stalking, high degrees of jealousy and possessiveness, threats of homicide or suicide and access to firearms.
- Authorize magistrates to issue ex parte orders when possible.
- Determine risk to minor children.

### A. Ex Parte Hearings

- I. Hearings.** Judges should conduct an ex parte hearing with each plaintiff rather than only reviewing written complaints. Plaintiffs should be placed under oath before offering evidence in the ex parte hearing. [G.S. 50B-2\(c\)](#) does not provide that the trial court issue an ex parte DVPO based solely upon the allegations of the complaint. [G.S. 50B-2](#) requires that a ‘hearing’ be held prior to issuance of the ex parte DVPO. According to [Hensey v Hennessey](#): “If the ex parte DVPO could be issued based only upon the verified complaint without having the aggrieved party appear for a hearing before a judge or magistrate, there would be no need to schedule a hearing; the judge or magistrate could simply read the verified complaint and decide whether to issue the ex parte DVPO.”<sup>8</sup>
- II. Recording Hearings.** Unlike permanent order hearings, which must be recorded, clerks are not directed to record ex parte hearings according to the [Rules of Recordkeeping](#). However, the best practice is to record ex parte hearings because the recording is useful in the event of a future challenge.

**III. Inform Plaintiff.** When an ex parte order is granted, the clerk should provide a copy of the order to the plaintiff, explain that a hearing date will be set and that the defendant will have to be served with the order. The judge and other court partners should advise the plaintiff to contact the police in the event of a violation and ask whether the plaintiff has a safety plan in place so that s/he can be prepared for the defendant's reaction to being served. When requests for ex parte relief are denied, the plaintiff should be informed that s/he has the option to schedule a hearing for a permanent protective order.

## B. Address Conflicting Orders in Ex Parte and Permanent Domestic Violence Protective Orders

- I. Identify Multiple Court Orders.** Protective orders, particularly those that contain provisions regarding custody and visitation arrangements, should be consistent with all orders entered by the court. Conflicting court orders may appear in a variety of cases, including custody cases, abuse or neglect and dependency cases, conditions of release related to a criminal case, and mediation (parenting) agreements. It is very important that both parties understand which order they should follow. Judges should access this information prior to the hearing and establish protocol so that this becomes standard practice in the district. When it is not feasible for the judge to access this information prior to the hearing, the judge should solicit the parties for this information and obtain the clerk's assistance in pulling files with orders that have potential conflicts. Plaintiffs requesting temporary custody must attach an "Affidavit as to Status of Minor Child" (AOC-CV-609) to the complaint, which requires the plaintiff to list any other custody actions regarding the child. Compliance with a pre-existing order may need to be included as a term of the ex parte or permanent order.
- II. Resolve Conflicts.** If there is a conflict between or among orders, judges should include language within the domestic violence order so that parties will understand which order takes precedence. For example, use of the residence may be granted to one party for one year or until terms are altered by a Chapter 50 order.

## C. Gathering Relevant Information

- I. Lethality.** Judges who hear domestic violence cases should be familiar with the dynamics of abusive relationships, including the risk factors associated with lethality. A variety of lethality and risk assessment tools exist, as noted in [Appendix E](#) of this guide (see Centers for Disease Control, "[Measuring Intimate Partner Violence Victimization and Perpetration: A Compendium of Assessment Tools](#)" and "[Guidelines for Domestic Violence Risk Assessment](#)," Ohio Domestic Violence Network, 2006). The following are

examples of factors that are positively correlated with cases that have resulted in homicide<sup>9</sup>:

- A. Forced sex.
- B. Stalking and high degrees of jealousy and possessiveness.
- C. Threats to kill a partner or oneself.
- D. Use of (or threats to use) a weapon.
- E. Access to firearms.

**II. Firearms.** [G.S. 50B-3.1](#) requires the court to inquire about the defendant’s access to firearms during the ex parte hearing and the permanent order hearing. **Judges should ask the plaintiff in an ex parte hearing and both parties in a permanent order hearing the following questions:**

- A. How many guns do you (does the defendant) have?
- B. What type of guns are they? What do they look like?
- C. Where are they located? in a car trunk? in a closet in the house?
- D. Is anyone keeping guns for you (the defendant)?
- E. Where is the ammunition stored?
- F. Where are any gun permits located?

**III. Risk to Children.** There is considerable evidence that maltreatment of children and abuse of intimate partners often co-occur. Therefore, children are at an increased risk for abuse in cases of domestic violence. In addition, children may be harmed as a tactic of abuse (i.e. kidnapped, harmed as a way to abuse and control the victimized parent) or incidentally, as in a parent holding an infant during an assault. Court employees are under the same obligation as the public to report suspected abuse or neglect to DSS (see [Section 9](#) for information on when and how to make a DSS report).

**IV. Record Checks.** *The Domestic Violence and Civil No-Contact Procedures and Best Practices Handbook for N.C. Clerks of Superior Court* (2011) directs clerks to perform a criminal record check in ACIS and NCAWARE and a civil record check in VCAP, when the judge makes that request.

## D. Magistrates and Ex Parte Orders

**I. Authorization.** Many chief district court judges authorize some or all magistrates to grant ex parte orders. This authority is established under [G.S. 50B-2\(c1\)](#) and takes effect when “*the district court is not in session and a district court judge is not and will not be available for four or more hours.*” This option is designed to enhance a plaintiff’s access to the court when seeking emergency relief.

The chief district court judge weighs many factors when deciding to delegate the authority for magistrates to hear ex parte hearings including: how frequently the

situation will arise; the ability of magistrates to consider these motions; whether magistrates have had adequate training; and how long the emergency order is likely to be in effect before the matter goes before a district court judge. Given the diversity in the size, location and needs of district courts, practices across the state vary greatly. Some chief district court judges grant magistrates authority over certain conditions and exclude others (i.e. custody, granting of personal property). Others grant the authority to a limited number of magistrates in the district and define which ex parte requests they can hear. For example, an emergency situation may be anytime a judge is not available, such as on Tuesday mornings, during judge's conferences or on weekends and holidays.

## II. Suggested Training for Magistrates

- A. A general course on the dynamics of abusive relationships.
- B. *Magistrate Protocol for Domestic Violence Cases*, especially if they are approved to address custody. This protocol can be downloaded at <http://www.doa.state.nc.us/cfw/documents/publications/mpdv.pdf>.
- C. Courses at the [School of Government](#).
- D. *Court Advocacy Manual*, by the [NC Coalition Against Domestic Violence](#). For a copy, call (919) 956-9124 or toll-free at (888) 232-9124.
- E. *Criminal Procedure for Magistrates*, by the UNC School of Government. For a copy, go to <http://www.sog.unc.edu/pubs/electronicversions/pdfs/aojb0908.pdf>.

## **Section 8**      **Custody and Visitation**

### **Best Practice #8      Consider Safety and Well-Being of Children in All Domestic Violence Cases and Make Custody Determinations**

#### **Key Points**

- Enter custody or visitation determinations whenever possible.
- Educate parties as to how to file a Chapter 50 custody action and where to access legal representation and resources for proceeding pro se.
- Identify other court orders that might contain conflicting conditions and resolve any conflicts.
- If custody is not ordered and the parties will live separately, orders should address allowable forms of communication especially about the exchange of children and using specific and detailed language.

- I. **Temporary Custody.** The court is required to consider temporary custody when either party requests it. However, some courts are reluctant to address custody or visitation arrangements in an expedited hearing for emergency protection pursuant to Chapter 50B. According to a 2002 [North Carolina research study by the Governor's Crime Commission](#), in a representative sample of people who sought Chapter 50B relief, 88% had children in common. When custody is not addressed in the protective order, it can create serious concerns for both the plaintiff and the defendant.

Entering custody and visitation orders is never easy for a judge, even when both parties are represented by counsel and there is sufficient evidence before the court. In Chapter 50B actions, the difficulties are exacerbated because parties are often pro se and there is a limited amount of time and opportunity to obtain sufficient evidence needed to make decisions that are in the best interests of the children. Also, judges who have heard requests for protective orders that appear to be no more than attempts to obtain custody may be skeptical when parties request custody and reticent to address it. While some parties may misrepresent their claims in order to have the court address custody (especially in cases where parties are unable to afford the legal costs related to Chapter 50 actions), the best practice is for the judge to address temporary custody/visitation when parties have a child in common and there are grounds for the protective order.

The next section recommends a mechanism for addressing actions whose basis appears to be custody.

- II. Encourage Chapter 50 Custody Actions.** Increasing access to legal representation or supplying parties with enough information to proceed pro se in order to obtain permanent custody should greatly decrease the practice of parties using Chapter 50B actions to obtain custody. Families with domestic violence are often the most vulnerable and in need of the court’s direction and intervention for deciding the terms of custody between the parents. Legal Aid of North Carolina provides pro se custody clinics in certain counties and is expecting to expand this service to all counties. Courts should collaborate with local Legal Aid offices or other local resources, such as law schools and private firms committed to pro bono work, in order to establish a system where parents can access the court for orders of permanent custody.

To locate a Legal Aid office, go to: <http://www.legalaidnc.org/public/Learn/Locations/>

**III. Custody and Visitation Orders in Chapter 50B.**

**A. Multiple Orders.** The court should determine whether there are previous orders that address custody and visitation, either by asking the parties or making its own inquiry. If there are pre-existing court orders, the judge should explain to the parties which order takes precedence. Parties should also understand that custody and visitation terms in the Chapter 50B order are temporary and emergency in nature and cannot extend beyond one year, even if the protection order is renewed.

**B. Standard for Entry of Order at Ex Parte and Permanent Order hearing.** The standard for entering a temporary order for ex parte custody is that the court “finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.” At the permanent order hearing, whether or not custody was granted at the ex parte stage and according to [G.S. 50B-3\(a1\)](#), “*Upon the request of **either party**...the court **shall consider and may award temporary custody of minor children and establish temporary visitation rights.***” The statute further directs that “the court shall base its decision on the best interest of the minor child with particular consideration given to the safety of the minor child” and enumerates the following factors that the court **must** consider:

**C. Factors for court’s consideration:**

1. The minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.
2. The minor child was present during acts of domestic violence.
3. A weapon was used or threatened to be used during any act of domestic violence.

4. A party caused or attempted to cause serious bodily injury to the aggrieved party or the minor child.
5. A party placed the aggrieved party or the minor child in reasonable fear of imminent serious bodily injury.
6. A party caused an aggrieved party to engage involuntarily in sexual relations by force, threat or duress.
7. A pattern of abuse against an aggrieved party or the minor child.
8. A party has abused or endangered the minor child during visitation.
9. A party has used visitation as an opportunity to abuse or harass the aggrieved party.
10. A party has improperly concealed or detained the minor child.
11. A party has otherwise acted in a manner that is not in the best interest of the minor child.

**D. Options to consider when deciding visitation.** If the court grants temporary custody, the court may also grant visitation if it is in the best interest of the child to have contact with the other parent. Visitation orders should protect the safety of the child and the plaintiff and be specific regarding the times, dates and locations of the visits. The statute is specific as to what the court **may** consider if ordering visitation in order to provide for the safety and well-being of the minor child and the safety of the aggrieved party ([G.S. 50B-3\(a1\)\(3\)](#)):

1. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.
2. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.
3. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.
4. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.
5. Ordering the noncustodial parent to pay the costs of supervised visitation.
6. Prohibiting overnight visitation.



7. Requiring a bond from the noncustodial parent for the return and safety of the minor child.
8. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.
9. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

**E. Specific Terms for Custody and Visitation.** When temporary custody is granted, it is important to be specific and detailed in describing allowable contact, including the exchange of children or any other types of communication regarding the children. Not addressing the issue opens the door for harassment; for the children to be caught in the middle and possibly used as a means to threaten and abuse the victim; and for parties to misunderstand the behavior that is prohibited by the order. Court staff and partners are often sought out by parties after the order is entered to answer questions about the terms of the order when the terms are not clear.

A best practice is for courts to develop a visitation worksheet that is easily completed by the judge and incorporated into the protective order. A sample Visitation Worksheet can be found in [Appendix F](#).

**F. Examples of Provisions to Include on Local Forms:**

**1. Supervised Visitation**

<p>Who will supervise the visits?</p> <p><input type="checkbox"/> Supervised visitation center (name and address of center)</p> <p><input type="checkbox"/> Social worker or other professional Name: _____</p> <p><input type="checkbox"/> Friend or relative Name and relationship: _____</p> <p><input type="checkbox"/> The person named above has accepted this responsibility by</p> <p style="padding-left: 20px;"><input type="checkbox"/> Appearing in court</p> <p style="padding-left: 20px;"><input type="checkbox"/> Filing an affidavit with the court</p>
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## 2. Related Costs of Visits

Who will pay for the costs associated with the visits?

- Defendant will pay \_\_\_\_ % of costs
- Plaintiff will pay \_\_\_\_ % of costs
- Other: \_\_\_\_\_

## 3. Unsupervised Visits

	Pick Up Time and Location	Drop Off Time and Location
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		
Specific Holiday(s)		
School Break		
Other		

## 4. Transportation and Overnights

- Person(s) who will transport the child: \_\_\_\_\_
- Persons who are not allowed to be present during exchange:  
\_\_\_\_\_
- Persons who are not allowed to be present during visitations:  
\_\_\_\_\_
- Are overnight visits allowed? \_\_\_\_\_

## 5. Other Considerations for Communication and Contact

<b>Phone</b> <input type="checkbox"/> On the following days and times: _____ <input type="checkbox"/> There are no limitations on when phone calls can be made <input type="checkbox"/> Child must initiate calls <input type="checkbox"/> Number(s) to be called to reach child _____; to reach defendant _____
<b>Email</b> <input type="checkbox"/> Email address(es) defendant is allowed to use: _____
<b>Letters</b> <input type="checkbox"/> Address for letters to be sent: _____
<b>Other Conditions</b> (attend ATP, assign GAL, no use of alcohol or other substances, bond conditions) _____ _____ _____

**G. When Custody/Visitation Not Granted.** When the judge does not grant custody or visitation and chooses not to use a visitation worksheet, it is important that specific language be included in the order regarding allowable contact and communication about the children when the parties have a child in common. Prohibiting communication “except as it relates to children” is vague and difficult to enforce. Instead, describe allowable contact, i.e. “communication must occur over email...” or “Defendant may call his 14 year old daughter on plaintiff’s home phone number between 7 and 8 p.m. every evening.”

## Section 9

# Making a Child Abuse/Neglect Report to the Department of Social Services

### ***Best Practice #8 Consider Safety and Well-being of Children in All Domestic Violence Cases and Make Custody Determinations***

#### **Key Points**

- All court staff should be aware of North Carolina's mandatory reporting law.
- The N.C. Division of Social Services has a policy on domestic violence that addresses the reporting, substantiation, and managing of cases that involve domestic violence in cases of child abuse or neglect.
- Courts should develop a protocol for reporting child abuse and neglect to their local DSS office.

**I. Domestic Violence and Child Abuse.** Courts should be aware of the high correlation between various types of victimization. Child abuse, sexual assaults and intimate partner violence co-occur at high rates and occur across a person's lifespan (i.e. being victimized as a child can put a person at risk for later perpetration and victimization). All court staff should be aware of the legal obligation to report abuse, neglect or dependency under North Carolina law ([G.S. 7B-301](#)). **Supporting statistics:**

- A.** Of battered mothers, 30 to 60 percent of children are also maltreated. This does not include children who have witnessed violence in the home.<sup>10</sup>
- B.** The Georgia Domestic Violence Fatality Review Project (2006) found that children were present at the scene of the fatality in 44 percent of cases.<sup>11</sup>

**II. When to Make a Report to the Department of Social Services (DSS) when domestic violence is involved.** All adults in North Carolina are required to report suspected child abuse, neglect or dependency. The state Division of Social Services adopted a child protective services' policy on domestic violence in 2004, which lists situations in which Child Protective Services (CPS) reports should be made. Because there is an overlap of domestic violence and child abuse, it is recommended that court staff be familiar with this policy and that each judicial district develop its own reporting protocol for all court staff and judges. The DSS policy also includes tools for social

workers to use to evaluate lethality and risk to the non-offending parent and any children. To read the complete DSS policy and access the tools, go to:  
<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/CS1409.htm#TopOfPage>

**A. The DSS Policy states in part:** “A CPS report in which the only allegation is domestic violence does not in itself meet the statutory criteria for child abuse, neglect, and dependency. Reports of child maltreatment involving domestic violence shall be accepted and a CPS assessment initiated when the information gathered is consistent with any of the following:

1. The child has ever called 911, intervened or been physically harmed during violent incidents between adults.
2. The child is fearful for his or her life or the non-offending parent/adult victim’s life.
3. The child is present when the batterer inflicts injury on the battered parent/caretaker.
4. There has been repeated police involvement, and/or civil protective orders have been obtained.
5. There is a history of DV or the violence is increasing in frequency.
6. There are weapons present or weapons have been used.”

**B. Making a Report to DSS.** Some DSS offices send a social worker to the court when requested by the judge. An important part of the district’s protocol is to make certain that if a court employee or judge will be contacting DSS, the parties should be notified that the court is taking this action so that the parties cannot accuse one another of escalating tension or violence by “calling DSS on” the other parent. The information below is reprinted with permission from the Prevent Child Abuse North Carolina website at <http://www.preventchildabusenc.org/>.

North Carolina law requires **all adults** to report suspected child maltreatment. You do not need proof that maltreatment has occurred; you only need reasonable cause to suspect maltreatment. You do not need anyone’s permission to file a report. You can report anonymously; even if you give your name, it will not be revealed. Remember, it is your job as an adult to help protect children.

1. **How to Make a Report.** Call your local county Department of Social Services (DSS) and ask to speak with a social worker. Find contact information for your local DSS in the [North Carolina DSS County Directory](#). Share any information you have about the child – name, age, address and parent or caregiver name – and what makes you suspect abuse.
2. **What happens after you report?** If your report is accepted for assessment, DSS will initiate an assessment within 24 hours for abuse or 72 hours for neglect. The assessment will include a visit to the home and

interviews with the child, his or her family and others. DSS will work to protect the child while helping the family address issues that may be contributing to the abusive or neglectful behavior. Families most frequently work with DSS to receive services in the form of counseling, emergency foster care, help with basic needs, parenting classes and intensive in-home services.

**C. Local District Protocol.** It is a best practice to develop protocol for reporting abuse or neglect to the local Department of Social Services. It is important to decide who will make reports that originate in the courthouse and whether the reporter will do so anonymously.

**1. Decide Who Will Make the Report.** Depending on the volume of reports the district makes and the circumstances surrounding the disclosure of information that causes mandatory reporters concern, there are several options for deciding who will make a report. Unless the volume is very high and having one person responsible for making the reports is a necessary efficiency, or the reporter fears retaliation, it is recommended that the reporter be the person who elicited and/or received the information. The more direct the source of the information to DSS, the less likely that information will get lost, be delayed, or become inaccurate as it goes through channels. If necessary (due to volume, efficiency, or fear of retaliation), best practice is to identify one person who will be responsible for this function and serve as the point of contact for the local Department of Social Services in reporting cases of child abuse or neglect.

In some cases, more than one person may be in the position to make the report. The protocol should address these situations, i.e., the judge will make the report if the information is disclosed during a hearing or trial; the district attorney will make the report if the information is disclosed during criminal trial; the family court administrator or coordinator will make the report if the district is a Family Court district.

**2. Decide whether the report will be made anonymously.** Best practice is for court staff not to make reports anonymously. However, when a reporter fears retaliation, the report may be made anonymously or by another person identified in the protocol. For example, the protocol might direct that when reporters are concerned for their safety, they should consult with the chief district court judge who will make the report to DSS on that person's behalf, if appropriate.

## Section 10 Ex Parte and Permanent Domestic Violence Protective Orders

### **Best Practice #9 Prepare Clear and Comprehensive Orders and Ensure Proper Service**

#### **Key Points**

- Orders should be detailed, individualized and understood by both parties.
- Court orders, especially those that address custody and visitation, should be consistent and any conflicts should be resolved.
- An inquiry regarding firearms must be made of the plaintiff and the defendant, and firearms must be surrendered in certain circumstances.
- Referrals to approved abuser treatment programs can be made as part of the order. In these cases, a short-term review is recommended in order to determine compliance.
- A hearing to review compliance with the order should be scheduled, especially in high-risk cases.
- The standard for renewal of a protective order is good cause, which may or may not include a new act of domestic violence.
- Consent orders should include at least one finding of fact related to a domestic violence incident.

### **A. Behaviors Prohibited in Protective Orders**

- I. Terms of Protective Orders.** Permanent orders of protection should be specific, comprehensive and easily enforceable. Make clear to both parties the exact behaviors that are prohibited and the circumstances under which they are prohibited. In addition, the order should specify the consequences if the defendant does not follow the order.

A [2002 study of protective orders by the Governor's Crime Commission](#) determined that the relief plaintiffs most frequently requested was related to their safety and their children's safety (e.g. no contact, no interference with the minor child, temporary

custody, and treatment for defendant). However, the forms of relief most frequently granted by the court were those not originally requested. For example, court orders more frequently included other types of relief such as possession of the residence, possession of a vehicle and eviction from the home. Courts should listen carefully to the plaintiff's needs and tailor each protective order to the parties' particular needs and circumstances with the goal of addressing the cessation of violence and the safety of the victim and the parties' children. **Suggested considerations for certain types of relief:**

- A. The defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the plaintiff.** Because domestic violence most often involves a range of behaviors all designed to control the victim, this is an especially important type of relief and one that plaintiffs routinely request. Most victims want the violence to stop. However, they may be less sure that they want the relationship to end and to experience the losses that go along with it (i.e. finances, joint parenting of children). Parties should be advised that if they choose to reconcile during the life of the permanent order, they should return to the court and either request to allow contact and maintain the no abuse provisions in the order or request that the order be set aside.
- B. The defendant shall not assault, threaten, abuse, follow, harass... or interfere with the minor children residing with or in the custody of the plaintiff.** The N.C. General Assembly made significant changes to the custody and visitation provisions contained in Chapter 50B, as part of the [omnibus domestic violence legislation](#) passed in 2004. Prior to these changes and even since these changes, some courts utilize the provision to “not interfere with the minor children” as a de facto mechanism to address the placement of children. As noted earlier in this guide, the best practice is to address custody and visitation. Because research puts the overlap of domestic violence and direct maltreatment of the children in the range of between 30 and 60 percent, it is very important that judges assess the needs of children, including their safety, when entering orders of protection.

**Reference Note:** In some cases, it is appropriate for the court to report abuse or neglect to the local Department of Social Services (DSS) under North Carolina's mandatory reporting law. Sometimes the family will already have been involved with DSS prior to contact with the court for a protective order. Judges should ask whether DSS is involved or has been involved with the family when there are concerns about the welfare of the children. The court might discover a DSS order or DSS case management plan that is in conflict with the relief requested in the domestic violence action. It is recommended that the court draft and adopt a formal protocol for judges and court staff to follow when reporting child abuse and neglect that is disclosed during court proceedings. [See Section 9.](#)



**C. The defendant shall stay away from the following places: e.g. work, day care, the children’s school, the plaintiff’s school.** The judge should inquire whether there are locations that both parties routinely frequent and identify those places in the order. Common examples that are not specifically mentioned in this provision include churches, sporting events or other community groups or organizations. If the defendant is ordered to stay away from the children’s school, the sheriff’s office is required to deliver a copy of the order to the school.

**D. The defendant is ordered to make payments to the plaintiff for support of the minor children as required by law.** In addition to fear of retaliation and further abuse, economic concerns are among the primary reasons victims stay in abusive relationships. For this reason, it is important to address the need for child support in 50B cases. See [G.S. 50-13.4 Action for Support of Minor Child](#) and click here for a copy of the [North Carolina Child Support Guidelines](#). Judges can advise plaintiffs to apply for permanent child support at the county’s local Department of Social Services [Child Support Enforcement Office](#). It is recommended that child support information brochures be made available in multiple places within the courthouse, including the clerk’s office.

**Reference Note:** The Governor’s Crime Commission, in consultation with the NC Department of Health and Human Services, tested several strategies for increasing [IV-D](#) Child Support applications by 50B plaintiffs. For a discussion of the results and the challenges faced by the court in ordering support in a 50B setting, go to: <http://www.ncgccd.org/PDFs/SystemStats/summer07.pdf>

**E. The court shall inquire of the plaintiff and defendant, at the ex parte or emergency hearing the presence of, ownership of, or otherwise access to firearms by the defendant (50B-3.1(b)).** The DVPO ([AOC-CV-306](#)) outlines options that are available to the judge regarding the defendant and firearms:

- The defendant is prohibited from possessing or receiving firearms.
- The defendant is prohibited from purchasing a firearm for the effective period of the DVPO.
- The defendant’s concealed handgun permit is suspended for the effective period of the DVPO.
- The defendant is a law enforcement officer/member of the armed services and may or may not possess or use a firearm for official use.

**2012 Update:** Effective December 1, 2011, S.L. 2011-268 (HB 650, Amend Various Gun Laws/Castle Doctrine) eliminated the automatic prohibition against “ownership” of a firearm by a person subject to a Chapter 50B domestic violence protective order. It did not eliminate the prohibition against a person subject to a Chapter 50 domestic violence protective order possessing, purchasing or receiving a firearm. [G. S. 14-269.8\(a\)](#).

1. Persons subject to a DVPO are prohibited from possessing any firearms or ammunition under certain conditions. They **must surrender** any firearms, ammunition and permits to purchase to the county sheriff within 24 hours of service or immediately upon service of the order, **when any of the following factors are present:**
  - The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.
  - Threats to seriously injure or kill the aggrieved party or minor child by the defendant.
  - Threats to commit suicide by the defendant.
  - Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

In addition, the court has the discretion to order the surrender of firearms even if the mandatory conditions listed above are not present. Courts should be aware of this option in light of the serious consequences that can arise when firearms are present in a domestic violence situation.

- a) “Firearms in the household increase the odds of lethal versus nonlethal violence by a factor of 6.1 to 1.”<sup>12</sup>
- b) An Atlanta study found that assaults where a firearm was present were 12 times more likely to result in the death of the victim.<sup>13</sup>

2. **Specific Details.** Court orders should identify the specific Sheriff’s Department firearms will be surrendered to, and the date by which the firearms and ammunition must be surrendered. See [Section 17](#) for a discussion of federal domestic violence crimes that are relevant to civil domestic violence dispositions.

**Reference Note:** A [2006 US Dept of Justice report](#) on the implementation of North Carolina's firearm laws as part of Chapter 50B reads in part:

“Women who filed for domestic violence protective orders after passage of the Homicide Prevention Act were significantly more likely to receive an ex parte order that included firearms-related restrictions (94%) than women who filed before enactment of the Homicide Prevention Act (90%;  $p=.036$ ). Although there was a trend toward slightly increased inclusion of prohibitions on owning or receiving firearms (88% to 93%), and purchasing firearms (88% to 91%) pre-versus post-legislation, the only statistically significant increase was in the percentage of forms that included the condition that revoked the defendant's concealed handgun permit (8% to 28%;  $p<.001$ ).”

**F. The defendant shall attend and complete an abuser treatment program offered by [name of agency] which has been approved by the Domestic Violence Commission.** Although abuser treatment program referral is a form of relief under Chapter 50B, these civil referrals constitute a small percentage of all ATP referrals received from district courts. For example, in FY 2008-2009, 300 referrals were made to abuser treatment programs in North Carolina as part of civil protective orders. This is in contrast to the 4,000 referrals made from criminal court (Note: [G.S. 15A-1343\(b\)\(12\)](#) requires that abuser treatment programs be a regular condition of probation in convictions for domestic violence). Abuser treatment program services may also be ordered as a condition of visitation under Chapter 50B.

For information about abuser treatment programs, the criteria for their approval by the Domestic Violence Commission and for a discussion of the difference between abuser treatment programs and anger management programs, see [Section 18](#).

**G. “Other” Relief.** Chapter 50B allows an “other” category to include “any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.” These could include provisions such as ordering the defendant to give the plaintiff keys to a vehicle or residence, or ordering the defendant to maintain car insurance or utilities for the residence.

## B. Issues Judge Should Reinforce After Domestic Violence Protective Order is Entered

- I. The plaintiff is encouraged to behave in a way that is consistent with the conditions of the order; however, only the defendant may be charged with a violation of the order.
- II. The plaintiff cannot give permission to the defendant to violate the order — only the court has authority to change or set aside the order.
- III. Although the order itself is a civil action, a violation of a protective order is a criminal offense and may be prosecuted as a Class A1 Misdemeanor ([G.S. 50B-4.1\(a\)](#)) or a felony, depending on the circumstances. Violations may also be punished by contempt.
- IV. Both parties should fully understand the conditions of the order. Examples of violations should be explained. For example, no contact includes a telephone call or text message, asking a third party to call the plaintiff on the defendant's behalf or leaving a note on the plaintiff's car.
- V. If, for any reason, the plaintiff wants the conditions of the order to change, or to set the order aside, he/she must return to court. For example, if the parties reconcile, the plaintiff may want to keep some of the terms of the order in place but remove the prohibition on contact.
- VI. All conditions of the order that relate to the children, including how communication and the exchange of children will take place should be thoroughly addressed and explained. See [Appendix F](#) for a sample Visitation Worksheet.
- VII. Conditions of the order begin immediately. For example, there should be no contact following the hearing in the courtroom, hallways or parking lot.
- VIII. Remind parties of the date when the order expires and explain the plaintiff's right to request renewal for good cause. Plaintiffs should be advised to file a request to renew the order with enough time to have a hearing prior to the expiration date on the order.
- IX. Explain that custody provisions are temporary and can only last for one year. Advise parties to file a Chapter 50 lawsuit to establish permanent custody.
- X. Plaintiffs should immediately report any violations of the order to the police.
- XI. As discussed in Section 1, [Court Safety and Security](#), it is a best practice to allow the plaintiff to leave the courtroom 15 minutes prior to the defendant's departure.

## C. Compliance Review Hearings for Domestic Violence Protective Orders

- I. If appropriate, a hearing should be set to review the defendant's compliance with the protective order. A compliance review hearing is especially important in serious cases including those where the offender has not complied with court orders in the past and when there is no companion criminal case and therefore no other way to hold the offender accountable or monitor compliance. **Important terms to review in the order:**
  - A. Did the defendant comply with requirements of the abuser treatment program? (i.e. made contact, completed assessment, began attending groups)
  - B. Did the defendant surrender his/her firearms?
  - C. Has the defendant adhered to the no contact, threaten or abuse conditions?
- II. When defendants are in compliance, it is recommended that judges provide positive reinforcement with verbal praise. Also, the judge can allow the defendant to return for future compliance review hearings less frequently when there is full compliance.
- III. Plaintiffs should be notified of the date/time for compliance review hearings but not required to appear. If the court learns of a violation of the order in the course of the hearing, the court should take the appropriate action to either effect a criminal violation or hold the defendant in contempt by a proceeding. In either case, the plaintiff should be notified of the violation. Violations are punished by contempt or criminal charges, but not both.

## D. Consent Orders

The judicial districts that allow consent orders in civil domestic violence actions have wide variations in their practices. Some districts routinely utilize consent orders finding them a viable and expedient way of addressing domestic violence, particularly when a domestic violence protective order could otherwise not be entered. Some districts only allow consent orders when one or both parties are represented by counsel. Still others rarely allow consent orders and only in very limited circumstances. There is significant debate about the enforceability of consent orders entered without findings of fact and their ability to withstand a legal challenge in a criminal prosecution. If the judge allows consent orders to be entered, s/he should make at least one finding of fact that is directly related to an incident of domestic violence.<sup>14</sup>

**2012 Update:** Consent orders without findings of fact are *void ab initio*. *Kenton v. Kenton*, No. COA11-531, Feb. 7 2012.

## E. Renewal Orders

- I. **Standard for Renewal Order.** The standard for renewing a protective order is good cause; the standard does not require a new act of domestic violence. An example of good cause is that the victim remains fearful of the defendant. An order that is renewed can be in effect up to two years each time it is renewed. There is no limit on the number of renewals that can be entered ([G.S. 50B-3\(b\)](#)).
- II. **Temporary Custody.** As noted earlier in this section, when temporary custody is granted in a DVPO, the parties should be informed (and referred for assistance) about the importance of filing a Chapter 50 lawsuit for permanent custody since the DVPO custodial provisions are temporary and have an expiration date. At the renewal hearing, if a plaintiff requests that the terms of custody remain in effect, the judge can extend temporary custody, but only if the original custody award was for less than one year. For example, if the judge awarded custody for five months in the DVPO in order to give the plaintiff enough time to file a Chapter 50 action, the judge can renew the custody award in the DVPO for seven months and instruct the plaintiff to file a Chapter 50 custody action.
- III. **Denial of Renewal Request and Firearms.** If a renewal request is denied and the defendant files a motion requesting the return of weapons, the court must schedule a return hearing and provide appropriate notice to the plaintiff and the sheriff. Judges should ensure that any return of weapons is in compliance with state and federal laws. See [Section 17](#) of this guide for further information on applicable federal firearms laws.
- IV. **Continuances.** To ensure that a valid protection order is continuously in place, renewal requests should be heard at the first opportunity and should not be continued.

## F. Orders in Effect When Courthouse Closed

[G.S. 7A-39](#) addresses the cancellation of court sessions, closing of court offices, extension of statutes of limitations and other emergency orders in catastrophic conditions. In addition, all district courts have developed a continuity of operations plan (COOP) that addresses court operations in catastrophic conditions that is filed with the Chief Justice of the Supreme Court of North Carolina. In order to promote understanding about the continuation of domestic violence orders in situations when the court is closed for short periods of time,

such as adverse weather or temporary electrical outage, the chief district court judge should include language in the local rules to address that domestic violence protective orders continue in effect beyond their expiration date until the first date the court reopens in these limited circumstances.

In addition, courts should consider ways of notifying defendants and plaintiffs that the order will remain in effect beyond the expiration date in the event of an unexpected court closing. The defendant needs to be aware of outstanding orders so that s/he will know to comply. Furthermore, a defendant who violates the terms of the order cannot be successfully prosecuted unless s/he did so “knowingly.” ([G.S. 50B-4.1](#)). Law enforcement should also be notified of the court’s policy so that they will be equipped to investigate a violation of an order that appears to be expired.

## Section 11 Plaintiff Motions to Dismiss or Set Aside Domestic Violence Protective Order

### *Best Practice #10 Encourage Victims to Access the Courts for Protection*

#### Key Points

- Document, if possible, the reason for the dismissal (no show, affirmative request to voluntarily dismiss).
- Make efforts to determine the context of the behavior.
- Advise plaintiff that order can be amended or can re-file.
- Utilize the services of the local domestic violence agency to help screen cases or refer for additional support and information.
- Assess safety of children if order is dismissed or set aside.

I. **Request to Dismiss or Set Aside Order.** Prior to the permanent order hearing, a plaintiff may dismiss his/her complaint for emergency protection. Most often, parties will address their desire to dismiss their claim to the clerk who provides a [Notice of Voluntary Dismissal \(AOC-CV-405\)](#) for plaintiffs to complete. After the entry of the permanent protective order, the plaintiff must make a motion for the court to set aside the order. The [Motion To Renew or Set Aside Protective Order \(AOC-CV-313\)](#) should be filed with the clerk and set for hearing before the judge who decides whether or not to grant the plaintiff's motion to set the order aside.

II. **Reasons for Requests for Dismissals of Temporary Orders or to Set Aside DVPO.** It is not uncommon for plaintiffs seeking protection from domestic violence to be ambivalent about whether to pursue a protective order from the court. Sometimes plaintiffs believe that filing the action may be enough to stop the violence. Other times, they fear or experience direct retaliation from the defendant. After becoming more familiar with the court process and how the order will impact them and their children, such as conditions of child custody and visitation or the defendant's loss of firearms, they may begin to reconsider whether they want to proceed with the court order. **The following is best practice in these situations:**

**A. Attempt to determine the plaintiff's motivation for dismissing the order.**

Form AOC-CV-313 provides space for the plaintiff to explain why s/he wants the



protective order set aside. To the extent possible, judges should cautiously explore the plaintiff's motivation for wanting the order set aside. Judges can observe the plaintiff's demeanor and if the defendant is not present in court, ask her/him to explain the reasons. Insight into the plaintiff's motivation will likely aid the judge in assessing and providing appropriate relief if the plaintiff returns to court for another protective order.

- B. Referral to domestic violence agency.** The domestic violence advocacy agency can be extremely helpful in exploring the reasons with the plaintiff and providing appropriate support and guidance. Therefore, it is a best practice to recommend (but not require) that plaintiffs meet privately with a domestic violence advocate before the judge rules on whether to allow her/his motion to set a protective order aside.
- C. Notify the plaintiff and the defendant that the order can be changed to prohibit abuse but allow contact.** Plaintiffs often do not know that they can ask for the conditions in the protective order to be changed rather than setting it completely aside. When plaintiffs report that they have reconciled with the defendant, the judge and/or domestic violence advocate can advise them that they may ask to keep certain safety related provisions in place and remove the provision for no contact.
- D. Judges should advise the parties that dismissing or setting aside the order does not disqualify the plaintiff from asking for assistance from the court in the future.** Inform the parties that the court takes these matters seriously and is concerned that the plaintiff is not being threatened and pressured into requesting that the ex parte order be dismissed or a permanent order be set aside. If the court suspects that the parties lack an understanding of the seriousness of the court process or are willfully misusing the court's resources, the judge should refer the plaintiff to a domestic violence advocate.
- E. Remind both parties that children who are exposed to domestic violence can suffer serious and long lasting effects.**
- F. Documentation.** Best practice is for courts to develop a local form to document evidence that the district's protocol was followed when plaintiffs file a voluntary dismissal or a motion to set an order aside. Sample provisions:
1. Was the plaintiff in court when she/he filed the voluntary dismissal, or was it filed with the clerk's office outside of a court-scheduled event?
  2. Did the plaintiff meet privately with a domestic violence advocate?

3. Did the plaintiff come to court after filing a motion to set the protective order aside? What follow up was provided? Was a new hearing on the motion set?
4. List any related civil or criminal domestic violence actions related to either of the parties so that this information is easily accessible if future relief is requested.



## Section 12 Self-Represented Litigants

### ***Best Practice #11 Maximize Court and Community Resources for Self-Represented Parties***

#### **Key Points**

- Connect litigants to affordable legal representation where available.
- Determine strategies for handling domestic violence cases with unrepresented parties.
- Encourage domestic violence advocates to assist plaintiffs through the court process.

- I. **Legal Aid of North Carolina.** Although Chapter 50B was designed for pro se litigants, there are cases in which parties will benefit from legal representation. Legal Aid of North Carolina represents plaintiffs in certain circumstances. The criteria and available resources vary across the state, including the availability of pro bono attorneys, so it is important to contact the [Legal Aid of NC](#) office in your area or call the [North Carolina Coalition Against Domestic Violence](#).
- II. **Self-Represented Litigants.** Because chapter 50B actions were designed for parties to file without representation, many litigants in domestic violence cases appear in court without attorneys. This is particularly the case in areas of the state where affordable legal representation is in short supply. Self-represented parties place the judge in the position of having to conduct court hearings efficiently and gather relevant information without crossing the line into providing legal advice. The situation is further complicated in a domestic violence situation where the pattern of power, control, intimidation and violence may diminish a plaintiff's ability to advocate for him/herself. **Judges should determine in advance what role they will provide in civil cases where one or more of the parties is unrepresented, including in the following situations:**
  - A. Party or parties express a desire to enter into a consent order.
  - B. The plaintiff provides inadequate information to support the entry of a temporary or permanent protective order.
  - C. The defendant is conducting a cross-examination.

- D. When financial arrangements such as child support or entering orders related to temporary custody and visitation are considered.

**III. Make Referrals to Domestic Violence Agencies.** Having a good system for connecting plaintiffs and defendants to legal representation and coordinating with the local domestic violence advocacy agency should help litigants move successfully through the court process. While domestic violence advocates are not attorneys, they can be a helpful resource for providing information about the legal process, support and access to ancillary services. These agencies often coordinate their services with the local Legal Aid office in order to maximize these limited resources.

**IV. Amending Complaints.** There are times when a plaintiff does not provide adequate information in a domestic violence complaint about the incident of abuse, especially as it relates to how recently the event or events occurred and adequate details as to time, place and what specific actions occurred. When the judge is presented with a complaint that appears to be inadequate, the best practice is for the judge to allow the plaintiff to amend the complaint in order to provide additional details. For example, the judge can say something like, “Ms. Smith, as your complaint currently reads, it does not meet the legal standard that is required by the law. Would you like an opportunity to amend/re-do your complaint and provide more detail in the questions that you are required to answer?” Or, “Before I can consider granting you a protective order, you must provide detailed information about a recent event or set of events that made you feel afraid. Would you like to amend your complaint or have the court rule now?”

**V. Custody and Visitation Cases with Self-Represented Litigants.** [\*The Judicial Guide to Child Safety in Custody & Visitation Cases\*](#), published by the National Council for Juvenile and Family Court Judges, recommends the following in regard to custody and visitation cases when one or both parties are unrepresented. Many of the suggestions are applicable in domestic violence protective order hearings.

- A. If a parent is unrepresented, explain generally what rules of evidence and rules of the court are, and the fact that they apply in this case.
- B. If a parent is unrepresented and you suspect an imbalance of power, consider having the unrepresented party direct questions to you.
- C. If both parents are unrepresented, do not allow the abusive parent to question the at-risk parent directly.
- D. Explain the ground rules for presentation of the case (e.g., no interruptions, each side will have an opportunity to speak and rebut, time limitations).
- E. Explain that represented parties are permitted to speak if asked a question by you, or either attorney, depending upon the type of hearing.

- F.** Make suggestions about how the parent can comply with the ground rules (e.g., take notes and address issues when it is that parent’s “turn”).
- G.** Ask specific questions about allegations of abuse since the at-risk parent might be too fearful or overwhelmed to respond to open-ended questions.
- H.** Enforce the ground rules.

## Section 13 Initial Appearance: Bond and Pretrial Release Conditions

### *Best Practice #12 Prioritize Victim Safety and Offender Accountability Throughout the Criminal Process*

#### Key Points

- Monitor all domestic violence cases.
- Gather relevant information before setting pretrial release conditions.
- Create comprehensive pretrial release conditions.
- Address the defendant regarding counsel, continuance policy, next court date and interpreter.
- Counsel should be assigned or a waiver signed at first setting.

### A. Active Judicial Monitoring for All Domestic Violence Cases

**The best practice is that no domestic violence case on the calendar/docket be handled outside the presence of the judge.** A defendant charged with domestic violence may appear before the judge for the first time at a bond hearing or, if the magistrate was authorized to set the bond, on the first scheduled court date. Because of the high recidivism rate and the importance of intense monitoring in domestic violence cases, it is important that the presiding judge be actively involved in all cases on the calendar. The judge should be present at calendar call to address defendants who wish to sign a waiver of counsel, to reiterate the conditions of pretrial release, to hear from the victim in case any modifications to release conditions are appropriate and to uphold the court's continuance policy.

### B. Procedures When Setting Bond

- I. **Bond Hearings — 48 Hour Rule.** Certain domestic violence situations require the judge to set the bond within the first 48 hours the defendant is in custody. A defendant must be brought before a judge whenever a judge becomes available or according to regular court protocol. For example, if all bond settings are held at 2 p.m., it is

permissible to wait until 2 p.m. to bring the defendant before the judge as long as this is within the 48 hours. If a judge is not available in 48 hours, bond must be set by the magistrate. A defendant must not be held purposely for 48 hours before being brought before a judge.<sup>15</sup> Court partners including law enforcement officers need to be aware of the court's protocol for bond hearings so that they can accurately inform victims. Often victims are under the false impression that the defendant will be in custody for two full days (48 hours) and therefore, do not take steps to implement a safety plan within these 48 hours.

- A. Mandatory Hearings for District Court Judge.** Judges must set the bond for any defendant charged with:
1. Domestic criminal trespass;
  2. Violation of a DVPO; or
  3. Assault on, stalking, communicating a threat to, or felony (rape, sex offense, assault, kidnapping, arson) upon a spouse or former spouse or person the defendant has lived with as if married ([G.S. 15A-534.1](#)).

**B. Magistrates Setting Bond.** In all other cases, bond is set by a magistrate. Therefore, a magistrate will set bond in some cases that involve domestic violence but do not fit the requirements listed above (for example, if there has been an assault and the victim and defendant are dating but have never lived together). The chief district court judge and resident superior court judge should address domestic violence cases during their annual review of the bond schedule. This will support consistency among judges and magistrates handling initial bond sets and resetting bonds when defendants have violated conditions of pretrial release.

**C. Forms.** The court should set out release conditions for all domestic violence defendants on the AOC form [AOC-CR-630](#), titled "Conditions Of Release For Person Charged With A Crime Of Domestic Violence," in addition to the AOC form [AOC-CR-200](#), "Conditions Of Release And Release Order." The court should consider coordinating with the clerk to enter conditions and modifications in ACIS/NCAWARE (so law enforcement can view conditions and enforce [G.S. 15A-401\(b\)](#)).

**II. Dangerousness.** If the judge determines that the defendant is a danger to the victim or others or will likely intimidate the victim AND bond is not adequate to prevent danger, the judge may hold the defendant for a "reasonable" time period.<sup>16</sup> This may go beyond the initial 48 hours ([G.S.15A-534.1\(1\)](#)).

## C. Factors to Consider When Setting Bond and Pretrial Release Conditions

- I. **Importance of Adequate Information — Presence of Prosecutor.** It is important that judges have adequate information when determining release conditions for defendants charged with acts of domestic violence. For this reason, a prosecutor should always be present when a judge sets bond. This can be difficult if judges set bond in emergency situations outside of court hours.
- II. **Victim's Affidavit.** Each district has its own form that a victim completes at the magistrate's office. Judges should make certain that the form used has all of the pertinent information needed for setting bond and pretrial release conditions. A sample form can be found in [Appendix E](#). A recommended procedure is for magistrates to send the completed victim affidavits straight to the DA's office — rather than putting them in the shuck — so that the DA's staff can initiate victim contact and run criminal records early in the morning in preparation for court. When the victim does not go to the magistrate's office, the law enforcement officer that swears out the warrant should ensure that the victim completes the affidavit.
- III. **Factors the judge must consider when setting bond and pretrial release conditions in any criminal case ([G.S. 15A-534\(c\)](#)):**
  - A. Employment
  - B. Weight of evidence
  - C. Length of residence in the community
  - D. Intoxication (making it unsafe to release defendant)
  - E. Finances
  - F. Family ties
  - G. Criminal record
  - H. Mental Health
  - I. Character
  - J. History of flight or FTAs
  - K. Any other relevant evidence
- IV. **Additional information to consider in domestic violence cases:**
  - A. History of DVPOs (clerk can provide)
  - B. Was law enforcement called
  - C. Description of alleged offense
  - D. Description of injuries sustained
  - E. Involvement of children
  - F. Victim/Defendant relationship
  - G. Weapon(s) involved
  - H. Involvement of drugs/alcohol
  - I. Victim statement if present and desires to be heard



**Reference Note:** Beginning on October 1, 2010, judges setting bond pursuant to 15A-534.1 (the “48 Hour Rule”) are required to direct a law enforcement officer or district attorney to provide the judge with the defendant’s criminal record. The judge must consider the defendant’s criminal history when setting conditions of release and then return the defendant’s criminal record to the agency that provided it. The judge must not unreasonably delay determining the conditions of release for the purpose of reviewing the defendant’s criminal history.  
[S.L.2010-235 \(H 1812\)](#), (approved the 21<sup>st</sup> day of July, 2010).

## D. Bond and Pretrial Release Conditions

- I. **Bond.** [G.S. 15A-534\(b\)](#) requires the judge to impose an unsecured bond, place defendant in custody of an appropriate person or organization or release on personal recognizance **unless such a release**
  - A. will not reasonably assure the appearance of the defendant as required;
  - B. will pose a danger of injury to any person; or
  - C. is likely to result in destruction of evidence, subornation of perjury or intimidation of potential witnesses.
- II. **Secure Bond.** If any of the conditions outlined above are found, a secured bond is appropriate.
- III. **Pretrial Release Conditions.** The time when a criminal domestic violence case is pending (and especially right after the defendant is released) is known to be a dangerous time for the victim. Judges should order comprehensive and appropriate pretrial release conditions with a bond to help secure the safety of the victim and children. In addition, the judge should review the conditions of release at all future court dates and check for compliance. Pretrial release conditions, including those listed in [G.S. 15A-534.1\(a\)\(2\)](#), are listed below:
  - A. Stay away from/Have no contact with victim (or children, witnesses, whoever judge deems appropriate). This includes schools, work or other places the victim frequents. Make certain the defendant understands that contact includes text messaging, emailing, telephone calls, communication through a third party, Facebook, letters, notes, etc.

- B. Stay away from residence if victim is there and does not wish defendant to return. Inquire as to where the defendant can stay after he/she is released so that there is no conflict at the residence.
- C. No abuse of victim regardless of whether defendant and victim will continue to live together.
- D. Refrain from damaging specific property.
- E. Comply with DSS recommendations, if DSS is involved. If there is enough information provided to meet the mandatory reporting requirements, make the report to DSS and tell the defendant (and victim if present) that you are making a DSS report. Failing to notify the parties may lead them to accuse one another of “calling DSS on” the other parent, which increases tension and possibly violence as well.
- F. Comply with any outstanding DVPO (existing and future orders).
- G. No use of alcohol or drugs.
- H. No use or possession of weapons/firearms.
- I. Comply with existing custody/visitation order, if any (or future order, if imminent). See [Section 8](#) for entering specific information regarding the children.
- J. Mental health evaluation; compliance with treatment.
- K. Restrictions on travel. Seize the defendant’s passport if s/he is a potential flight risk, especially if the defendant has threatened to take the children.
- L. Contact defense attorney within specified number of days. This ensures that defendant has met with his/her attorney prior to the first court date.

**IV. Release Conditions Should be Clear and Enforceable.** The court should not use abbreviations or short-hand to indicate release conditions (e.g., write out *no contact with victim* rather than noting it with *NCWV*).

**V. Written Copy of Release Conditions.** The court should provide the defendant with written documentation of the release conditions, penalties applicable to a violation and verbally advise defendant that arrest will be ordered upon violation. See [G.S. 15A-534\(d\)](#). A copy of the release conditions should also be provided to the victim.

**VI. Enforcement of Release Conditions.** [G.S. 15A-401\(b\)\(2\)\(f\)](#) grants law enforcement the authority to arrest *without a warrant* a defendant who violates *any* condition of pretrial release, such as a stay away order.

**2012 Update:** Effective for violations of pretrial release conditions occurring on or after December 1, 2011, S.L. 2011-245 (SB 311, Pretrial Release Violation/Arrest) amends G.S. 15A-401, Arrest by law-enforcement officer. Specifically, the bill amends G.S. 15A-401(b)(2)(f), which provided that an officer may arrest a defendant without a warrant when the defendant has violated a pretrial release order “entered under G.S. 15A-534.1(a)(2),” concerning pretrial release only for defendants charged with certain domestic violence offenses. The amended G.S. 15A-401 allows a warrantless arrest for violation of *any* condition of release contained in a release order to which the defendant currently is subject.

**VII. Revocations and Modifications of Pretrial Release.** The judge may, for good cause shown, revoke an order of pretrial release at any time. ([G.S. 15A-534\(f\)](#)). The judge may also modify the defendant’s bond and pretrial release conditions at any time prior to disposition or notice of appeal. ([G.S. 15A-534\(e\)](#)). The court should inquire at each court date whether the defendant is complying with the conditions of release and whether a modification of those terms is appropriate. Modifications of release conditions should be provided in writing to both the defendant and the victim.

## E. Matters to Address at Bond Setting

For the sake of court efficiency and the convenience and safety of the victim, the court should address the following at the first opportunity (see next page):

- I. **Counsel.** Assign court appointed counsel or explain waiver of counsel. Be sure the defendant understands that s/he must contact the appointed attorney or hire an attorney before the next court date. A best practice is to include this requirement as a condition of release. When the court appoints counsel, the defendant should be given the attorney’s contact information in writing before s/he leaves court. **When the defendant wishes to waive counsel, the judge must make a thorough inquiry and satisfy him/herself that the defendant:**
  - A. has been advised of the right to counsel, including the right to court appointed counsel when indigent;
  - B. understands and appreciates the consequences of this decision; **and**

C. comprehends the nature of the charges and the permissible punishments.  
([G.S. 15A-1242](#)).

- II. Thorough Inquiry.** The defendant may not waive counsel until **after** the judge has made a thorough inquiry into the three areas outlined above. While this requirement applies to all defendants, it is especially important in domestic violence cases where a conviction can affect a defendant in many areas including immigration, employment, custody, public housing, and firearms. Failure to comply with this requirement entitles the defendant to a new trial (see [State v. Stanback](#), 529 S.E.2d 229 (2000)). In addition, in order to be subject to certain federal domestic violence laws, the defendant must either have been represented by counsel or knowingly and intelligently waived counsel. See Section 17, [Federal Law and Domestic Violence](#).
- III. Defendant Not Eligible for Court Appointed Counsel.** When defendants are not eligible for court appointed counsel, the judge should advise them that they must bring privately retained counsel to the next court date or be prepared to represent themselves.
- IV. Continuance Policy.** Explain the court’s continuance policy so that the defendant and victim (if present) will know what to expect at the next court date. This will increase the court’s ability to enforce the continuance policy at future court dates and reduce unnecessary continuances. If more than one judge is assigned to hear domestic violence cases, it is important that each judge follows the same procedure. See Section 4, [Continuance Policies](#).
- V. Next Court Date.** If the magistrate does not routinely set court dates on intake, the judge must do so at the bond hearing. The victim must also be notified of the date. Typically, the DA’s office or magistrate (if the magistrate sets the date) notifies the victim. However, if the victim is in the courtroom, s/he should be served with a subpoena before leaving court.
- VI. Importance of Returning To Court.** The judge should make it clear to the defendant that s/he is required to return to court for every court date. Attorneys cannot give defendants “permission” to fail to appear for court — only the judge may excuse the defendant’s appearance. Failures to appear should be treated seriously.

**Reference Note:** The case notes for G.S. 15A-531 include the following:  
**Defendant Must Appear Until Discharged.** – An appearance bond by its terms and under the uniform ruling of the court requires that the defendant appear term after term until he is discharged on a verdict of acquittal or by order of the court.<sup>17</sup>

**VII. Interpreter.** If the defendant is not requesting a court appointed attorney and is not an English speaker, ask the defendant to complete an affidavit of indigence to determine whether s/he is eligible for a court appointed interpreter. If the defendant is not indigent (or does not wish to complete the indigence form), s/he must provide his/her own interpreter at next court date, preferably an interpreter that is on the AOC registry as this ensures proficiency of the interpreter. See [Appendix A](#) for more on Interpreting Services.

## Section 14 Reluctant Victims

### **Best Practice #10 Encourage Victims to Access the Courts for Protection**

#### **Key Points**

- Record misdemeanor domestic violence trials to preserve victim testimony where practicable.
- Create a policy for handling reluctant or uncooperative victims that does not involve sanctions.
- Prepare for issues that frequently arise when victims are uncooperative or unavailable.

- I. Preserve victim testimony with recording.** It is not unusual for victims of domestic violence to feel ambivalent or averse to proceeding in a criminal case against the defendant. Even when a victim offers testimony in a district court trial, s/he may not cooperate with prosecution in the event of appeal and a trial in the superior court. Recording domestic violence trials in district court is an effective way to preserve victim testimony and is recommended when possible.
- II. Establish district procedures.** When the prosecutor is unable to proceed without the victim (through evidence-based prosecution), the court is in the uncomfortable position of forcing a victim to proceed, imposing sanctions against the victim or allowing the victim to, in effect, dismiss a criminal case. A district-wide policy should be established for dealing with these situations. If multiple judges are assigned to domestic violence cases, every judge needs to agree on the district's policy and consistently enforce the policy.
- III. Imposing sanctions against reluctant victims.** The best practice is that judges **not** issue sanctions against reluctant victims of domestic violence. Sanctions may prevent a victim from calling law enforcement in the event of future violence — even violence against the children. Imposing sanctions can also increase the defendant's sense of power and control over the victim. It is important to understand that there are numerous reasons why a domestic violence victim might hesitate to pursue a criminal action. While the list of possibilities is endless, a few examples include (see next page):

- A. Victims may not be able to afford food or shelter for themselves or their children without the defendant's income.
- B. Families and friends may pressure the victim to abandon court action, especially if the victim lives in a culture or religion that encourages women to remain with their partners, regardless of violence.
- C. Victims who are mothers may prefer to risk potential future violence rather than deprive their children of their father (if the defendant receives an active punishment or threatens to abandon the family if the victim pursues the case). Victims may be responding to their children's distress at the prospect of their father leaving. Or, conversely, may be afraid of losing custody of their children to the defendant, especially if the defendant has previously made this threat.
- D. The victim may be worn down by extensive court proceedings or pressure from the defendant, or may simply be hopeful that the defendant has changed and that the abuse will end.
- E. Victims may be afraid that the justice system will not be able to stop the violence, and that cooperating will only increase the danger to the victim and/or children.
- F. The victim is basing his/her decision on a cost benefit analysis, and may be in the untenable position of being dependent (financially or otherwise) on an abusive partner.
- G. There is also the rare instance where a recanting "victim" did indeed fabricate the offense. Where a judge believes that the situation warrants court intervention, the judge should consider ways to educate victims and connect them to community resources as an alternative to fines or jail time. For example, a judge might have a victim attend a class or series of classes, or view a video offered by the local domestic violence agency before dismissing the action or as an alternative to other sanctions. Keep the courthouse door open to the victim so that the victim feels free to return for help in the future, even when the case is being dismissed.

**Consider implementing the following procedures:**

1. When possible and only without unduly pressuring the victim, inquire whether the victim is acting under duress and the root cause for the victim's concerns.
2. Refer a hesitant victim to a domestic violence advocate, who might be able to help the victim access additional resources. Address the case again after the victim has met privately with the advocate.
3. Allow the DA's office time to meet with the victim, as the victim may have inaccurate ideas about what the disposition and sentencing might be. For

example, the defendant might have misinformed the victim that a conviction will result in a lengthy prison sentence. If the victim is not present, give the DA's office (or the domestic violence advocate) time to try to locate the victim. The clerk should not be responsible for contacting victims in criminal cases.

4. Require the victim to present identification when requesting a dismissal in court.
5. Be sure that the victim has worked with an advocate and has a safety plan in place before allowing the case to be dismissed.
6. Solicit victim input as to sentencing and/or services that are appropriate for defendant (e.g., alcohol, mental health, etc.).
7. Consider a deferred prosecution with supervised probation and appropriate treatment or programs in cases that meet the eligibility requirements set in the district's protocol.
8. Reinforce the message that domestic violence cases are treated seriously. A request for a dismissal is treated seriously and will be addressed on a case by case basis.
9. Be sure all present understand the limitations of claimed privileges and that North Carolina law does not provide for a privilege when a defendant abuses or threatens his/her spouse. Spousal abuse is a crime and not protected by law (see below).

**IV. Proceeding with uncooperative or unavailable victims.** Certain issues arise during domestic violence trials, particularly when prosecutors attempt to try a case without the victim's testimony. Below is a list of issues judges commonly face and references to additional resources.

- A. [Crawford v. Washington, Davis v. Washington/Hammon v. Indiana](#). Where the victim has made statements incriminating the defendant to the police (or others) but does not testify at trial, prosecutors may attempt to introduce those statements under a hearsay exception. This will likely raise a Confrontation Clause issue. This scenario is more common in the domestic violence context because of victim reluctance to testify. Please refer to the School of Government publication, "[Understanding the New Confrontation Clause Analysis: Crawford, Davis, and Melendez-Diaz](#)," April 2010, for further information on how courts have addressed this issue.
- B. **Forfeiture by Wrongdoing.** Where there is evidence that the defendant acted to procure the victim's unavailability, consider arguments regarding forfeiture by



wrongdoing. If appropriate, allow DA's office time to investigate. The potential for an intimidation of witness felony charge also exists. Domestic violence is characterized by the power and control that a defendant exercises over his/her partner. This pattern of behavior makes the victim especially vulnerable to being threatened or intimidated by the defendant into refusing to testify, evading service, or otherwise forestalling prosecution.

To address this situation, the Federal Rules of Evidence contain an exception to the hearsay rule for forfeiture by wrongdoing. This exception applies to a "statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness." ([FRE Rule 804\(b\)\(6\)](#)). This exception does not violate the Confrontation Clause and applies even where the statements sought to be admitted are testimonial.<sup>18</sup> While North Carolina law does not include a hearsay exception for forfeiture by wrongdoing, the courts have referred to this equitable doctrine without having to reach a decision on it.<sup>19</sup> If forfeiture by wrongdoing is argued, a hearing must be held to determine whether the doctrine applies and the statements should be admitted. Please refer to the School of Government publication, "[Understanding the New Confrontation Clause Analysis: Crawford, Davis, and Melendez-Diaz](#)," April 2010, beginning on page 20 for further discussion of this doctrine.

**2012 Update:** The NC Court of Appeals ruled on the first forfeiture by wrongdoing case in *State v. Weathers* (No. COA11-1132, March 20, 2012).

In *Weathers*, the key prosecution witness became visibly upset and shaken during the second day of testimony and ultimately indicated that he did not wish to make any further statements. When asked if he had been threatened, the witness responded, "I don't even want to answer that question" and the court then excused him from further testimony. The prosecution requested a forfeiture hearing so the witness's testimony could remain on the record. During the forfeiture hearing, much evidence was presented that *Weathers* had threatened the witness, so the court directed that the testimony remain on the record. *Weathers* appealed claiming that per *Giles v. California*, 554 U.S. 353 (2008), application of the doctrine of forfeiture by wrongdoing was improper because the witness did not testify that he chose to remain silent *because he was afraid of the defendant*.

The Appellate Court found that the trial court properly determined that the defendant had forfeited his right to confront the witness by his wrongdoing.

## C. Privileges and Self Incrimination

- 1. Marital Privilege.** A victim may attempt to invoke the marital privilege in a domestic violence trial. However, there is **no marital privilege** in North Carolina for assaulting or communicating a threat to the spouse, for trespassing on the spouse's property when living apart (by agreement or by court order), or for committing any criminal offense against the children. In those scenarios, the spouse of the defendant is both competent and compellable to testify. ([G.S. 8-57](#)).
- 2. Domestic Violence Programs and Rape Crisis Centers.** Communications between victims and agents of domestic violence programs or rape crisis centers are privileged (this privilege covers information necessary to allow the agent to render services to the victim). The standards for a court to compel disclosure of this information are contained in the statute. ([G.S. 8-53.12](#)).
- 3. Self Incrimination.** In order to invoke the privilege against self incrimination, there must be a "real danger of prosecution, not mere speculative possibilities."<sup>20</sup> The judge must decide whether a victim claiming this privilege may properly invoke it and avoid testifying.

## D. Defense

- 1. Self-defense.** A defendant may argue that s/he assaulted the victim only to protect him/herself. In this case, the judge must determine whether the defendant or the victim was the predominant aggressor. This is especially important in cross warrant situations. The person who initiated the first blow is not necessarily the predominant aggressor – this is a question of fact for the judge to decide. Additionally, consider whether reasonable force was used when hearing a self-defense argument. A Massachusetts study found that 37.3 percent of victims fought back; 50.1 percent said it made the abuser more violent.<sup>21</sup>
- 2. Mutual combat.** While attempts to argue mutual combat may be made in the context of domestic violence, mutual combat is **not** a defense under North Carolina law.<sup>22</sup> However, it may be relevant in a defense argument against premeditation in a first degree murder case.<sup>23</sup>

**Reference Note:** During a domestic violence trial, consider whether:

- A DSS report is appropriate (see [Section 9](#)).
- There is evidence that a federal crime has been committed.

## Section 15 Sentencing the Domestic Violence Offender

### **Best Practice #12** *Prioritize Victim Safety and Offender Accountability Throughout the Criminal Process*

#### **Key Points**

- Gather relevant information before sentencing.
- Direct the clerk to flag the conviction as domestic violence.
- Supervised probation or active sentence.
- Impose comprehensive conditions of probation.

- I. **Importance of Sentencing.** Sentencing is an important function of the judge in a domestic violence case. “The research is fairly consistent. Simply prosecuting offenders without regard to the specific risk they pose ... does not deter further criminal abuse. The minority of abusers arrested who are low risk are unlikely to reabuse in the short run, whether prosecuted or not. Alternatively, without the imposition of significant sanctions including incarceration, the majority of arrested abusers who are high risk will reabuse regardless of prosecution – many while the case against them is pending.”<sup>24</sup> **Therefore, it is crucial that judges impose significant sanctions in order to deter high risk offenders from reabusing.**
- II. **Necessary Information.** The following information can generally be obtained from the prosecutor, clerk, police report, medical record, victim, defense counsel and/or witnesses:
  - A. Prior criminal history (typically provided by the DA’s office).
  - B. History of DVPOs and whether there is a current DVPO (may be provided by clerk).
  - C. Past compliance with probation and DVPOs, if applicable.
  - D. Past compliance with abuser treatment programs, if applicable.
  - E. Victim impact statement.
  - F. Description of alleged offense (if case resolved by plea).
  - G. Whether alcohol/drugs were involved.
  - H. Whether weapon involved.

- I. Whether children were present when the offense occurred.
- J. Whether the Department of Social Services is involved in the family.
- K. Mental health issues that may have contributed to the criminal behavior.
- L. Whether there were injuries to victim (if so, whether medical attention was sought).
- M. Amount of restitution, if any, for medical bills or property damage.
- N. Whether other elements of battering are present, for example:
  1. Controlling behaviors, such as extreme jealousy, not allowing the victim access to family finances, using threats and intimidation, etc.
  2. Isolating the victim from friends and family, not allowing the victim to work, requiring the victim to get “permission” to leave the home, etc.
  3. Lethality and risk indicators, including threats of homicide or suicide, any instances of strangulation.
  4. See [Appendix E](#) for additional risk assessment tools.

**III. Dispositions for a Domestic Violence Offender.** Convicted offenders in domestic violence cases should generally be sentenced to a period of supervised probation including intensive probation and electronic monitoring or an active sentence (including work release). Longer and more intense periods of supervised probation are recommended for domestic violence offenders. This includes those who enter deferred prosecution agreements when used in the district. The length of probation may be increased or reduced depending on the probationer’s compliance (see Section 16, [Compliance Hearings](#)). Probationary terms that may be imposed depend on the defendant’s prior record level.

**A. Active Sentences.** Defendants may be sentenced up to 150 days of active punishment upon conviction of a misdemeanor, depending on the offense and the defendant’s prior record level. See [G.S. 15A-1340.23](#) and [15A-1340.17](#) for structured sentencing guidelines for misdemeanors and felonies.

**B. Terms and Conditions of Probation.** The terms of probation are based on the facts of the case and the situation of each individual defendant. **Options to consider:**

1. **Abuser Treatment Programs** (also known as Batterer’s Intervention Programs). If the judge finds that a defendant “is responsible for acts of domestic violence” and there is an approved treatment program reasonably available, by statute s/he **must** order the offender to attend and complete the program, unless the court finds that it would not be in the best interests of justice. ([G.S. 15A-1343\(b\)\(12\)](#)). Only refer defendants

to certified abuser treatment programs, which have met all state certification requirements. **Anger management, mental health counseling, or couples counseling are usually not appropriate for a domestic violence offender.**

- a) See Section 18 of this guide, [Abuser Treatment Programs](#).
- b) Click to find abuser treatment programs in your district.  
<http://www.nccfwdvc.com/programs/pdfs/AbuserTreatmentPrograms.pdf>
- c) There is little reliable research on the effectiveness of abuser treatment programs. One study found that on their own, abuser treatment programs do not affect rates of reabuse and must be supplemented with other measures to assure victim safety.<sup>25</sup>
- d) The length of the abuser treatment program may have greater impact on its effectiveness than the type of program.<sup>26</sup>
- e) Approximately a quarter of court-referred batterers are “high-level” abusers and are unlikely to respond to treatment.<sup>27</sup>
- f) Among low risk batterers, enforcement of abuser treatment compliance is a major factor correlated with reduced reabuse.<sup>28</sup>

**2. Regularly Scheduled Compliance Hearings.** Compliance hearings allow the court to better enforce compliance and provide intensive monitoring to domestic violence offenders (see Section 16, [Compliance Hearings](#)).

- a) A multistate study found that nearly half of defendants who reoffended did so within three months of batterer program intake; two thirds within six months.<sup>29</sup>
- b) Doing nothing about noncompliance increases abuse.<sup>30</sup>

**3. A Lengthy Term of Probation** – 18 to 24 months.

- a) While the type of abuser treatment program may not affect reabuse rates, the length of the program may.<sup>31</sup> Therefore, monitoring should also occur over a longer period of time.
- b) Even if the victim is completely removed from the defendant’s life, monitoring is still appropriate. One study found that of defendants who violated civil restraining orders, nearly half had two or more victims over a six year period.<sup>32</sup>

**4. No Abuse of the Victim** (and anyone else deemed appropriate – children, family members, witnesses, etc.).

**5. Stay Away from Victim, No Contact with or Harassment of the Victim** (and anyone else deemed appropriate). This will depend on the current relationship between the parties; inquire of the victim or prosecutor.

6. **Specific Orders of Visitation.** Where the defendant is ordered not to contact the victim, but shares a child in common with the victim, it is important for the court to specify when and what contact is allowed. An order that prohibits contact except regarding the children is ambiguous and leaves the victim open to harassment under the pretext of contact about the child. See Section 8, [Custody and Visitation](#).
7. **Comply with any Outstanding Domestic Violence Protection Orders.** This requirement is useful in the event that the victim alters the contact or visitation provisions in the DVPO.
8. **Mandatory Employment.** Unemployment is associated with increased risk of reabuse.<sup>33</sup>
9. **Mental Health Treatment.** Battering behavior is not in itself a mental health illness. As in other crimes, committing a domestic violence offense is a choice. However, like the rest of the population, some abusers have mental health problems that should be addressed for their wellbeing and that of the victim and family.
10. **Restrictions on Weapons.** Prohibiting the defendant from possessing firearms is important to victim safety. In addition, domestic violence offenses committed by an intimate partner may be subject to federal firearms laws (see [Section 17](#)). Courts in North Carolina are required to notify defendants convicted of domestic violence offenses of potential federal firearms restrictions. AOC form [AOC-CR-617](#), titled “Firearm Prohibition Notice,” should be given to defendants at the time of conviction to satisfy this requirement.
  - a) “Firearms in the household increase the odds of lethal versus nonlethal violence by a factor of 6.1 to1.”<sup>34</sup>
  - b) An Atlanta study found that assaults where a firearm was present were 12 times more likely to result in the death of the victim.<sup>35</sup>
11. **Drug and Alcohol Conditions.** Inquire as to whether alcohol or drugs were involved in the abuse. If drug and alcohol conditions are ordered, be sure to indicate on the judgment the basis for that condition (must be “reasonably related to his rehabilitation”). ([G.S. 15A-1343\(b1\)\(10\)](#)).
  - a) In a North Carolina study, 72 percent of victims were in relationships with men who were high or binge drinking at the time of the abuse.<sup>36</sup>

- b) In a study of 272 men entering treatment for battering or alcoholism, the odds of abuse were 8 to 11 times higher on days when the men drank.<sup>37</sup>
- c) Alcohol and drug abuse makes continued offending more likely.<sup>38</sup>
- d) One study shows batterers who complete batterer intervention are three times more likely to reabuse if intoxicated when tested at three-month intervals.<sup>39</sup>

**12. Restitution.** If there are any medical bills or injuries to personal property, the defendant should be ordered to pay (through probation) the victim's out-of-pocket expenses. Inquire whether the victim is on the defendant's health insurance policy and whether s/he will remain on the policy during the period of medical treatment.

**13. Interpreting Services.** Assess Interpreter fee for indigent defendant, if applicable. Fee may be \$10 or cost of actual services.

**Reference Note:**

- Defendants who fail to appear in court are higher risk for reabusing.<sup>40</sup>
- Defendants who left the scene of abuse before the police arrived are twice as likely to reabuse.<sup>41</sup>
- Regarding the length of the relationship – Of 31 men in prison who murdered their intimate partners, half had relationships of no more than three months (nearly one third were only one month).<sup>42</sup>
- In areas with specialized law enforcement (DV Units), victims left their abusers on average within four months as opposed to 14 months, and refused to prosecute at a rate of 8 percent as opposed to 30 percent.<sup>43</sup>
- A defendant who has ANY prior record at all (especially prior drug/alcohol related offenses) has a high risk for reabusing.<sup>44</sup>
- A Georgia DV Fatality Review Project found that in 44 percent of cases there were children present at the scene of the fatality.<sup>45</sup>

**C. Use of Deferred Prosecution with a Domestic Violence Offense.** Districts vary as to whether they will offer deferred prosecution to domestic violence offenders, and there is disagreement as to whether this option is appropriate in domestic violence cases. Districts that offer (or are considering offering) deferred prosecution agreements to domestic violence offenders should do so only in limited circumstances and according to the guidelines listed below.

**1. Statutory Deferred Prosecution Agreements.** While courts may enter into non-statutory deferred prosecution agreements, it is recommended

that they follow the statutory requirements in domestic violence cases. The statute that governs deferred prosecution agreements ([G.S. 15A-1341\(a1\)](#)) permits deferred prosecution agreements in cases where the defendant has been charged with a misdemeanor or a Class H or I felony, **and** where the court makes each of the following findings:

- a) Prosecution has been deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.
- b) Each known victim has been notified of the motion for probation by subpoena or certified mail and been given an opportunity to be heard.
- c) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.
- d) The defendant has not previously been placed on probation and so states under oath.
- e) The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

**2. Eligibility Requirements.** Districts should impose their own eligibility requirements for deferred prosecution, in addition to those outlined by the statute. For example, a district may require that:

- a) The victim understand and agree to the arrangement.
- b) The defendant have no prior history of abuse (including no prior DVPOs).
- c) The defendant have no prior criminal record of any kind (including prior domestic violence charges that were dismissed).
- d) There was no serious injury and no weapons involved.
- e) No children were present during the offense.
- f) The defendant pay court appointed attorney fees and any restitution owed to the victim.
- g) The defendant pay all costs, fees and restitution upfront.

**3. Admission.** The defendant must sign an admission in order to enter into a statutory deferred prosecution agreement. The AOC form used in statutory



deferred prosecution agreements ([AOC-CR-610](#)) includes the following language: “The admission of responsibility given by me and any stipulation of facts shall be used against me and admitted into evidence without objection in the State’s prosecution against me for this offense should prosecution become necessary as a result of these terms and conditions of deferred prosecution.” An admission is especially important in a domestic violence case where the victim may be unreachable or unwilling to testify if the agreement is terminated and the case is reset for trial. An admission reduces the need for future trials should the deferral agreement fail.

- 4. Supervised Probation.** It is important to monitor domestic violence offenders because of the risk they pose to the victim. Recent legislation authorizes probation officers to supervise defendants who have entered statutory deferred prosecution agreements. ([G.S. 15A-1342\(a1\)](#)). Abuser treatment programs should be ordered where appropriate and required by law. ([G.S. 15A-1343\(b\)\(12\)](#)). Judges should also order other appropriate conditions, such as no contact, no weapons, etc. As with any other supervised probation, a violation must be brought before the court and determined by the judge.

The advantages to offering deferred prosecution agreements according to the above guidelines include:

- A defendant who is offered deferred prosecution has more incentive to accept responsibility and comply with the terms of the agreement. This moves the court docket and reduces the number of times the victim has to attend court.
- Early court intervention and supervised probation in the case of a first-time offender may prevent future violence; thereby increasing victim safety.
- Prosecutors will have another option in cases where the victim is uncooperative or wants to pursue the case, but does not want the defendant to be convicted (which may have a financial or immigration impact on the family, etc.).
- A defendant who is convicted in district court, either by plea or trial, may appeal to superior court. An appeal stays the sentence and leaves the victim vulnerable until the case is reached in superior court, which could be several months or more. Defendants who enter deferred prosecution agreements begin probation immediately.
- The victim would not have to testify in a trial, which could be a traumatic experience.

**IV. Maintaining Appropriate Data for Convictions.** When handing down the judgment in a domestic violence case, the judge must direct the clerk to “**flag**” the conviction as domestic violence in the computer system (ACIS). Unless the judge directs the clerk to

flag the case, it will be defaulted to not flag for domestic violence even if it was flagged by the magistrate on intake. The clerk does not have authority to flag a conviction unless specifically directed to do so by the judge.

**2012 Update:** The Justice Reinvestment Act (S.L. 2011-192, as amended by S.L. 2011-412) has impacted sentencing and probation in numerous ways. Those essential to crimes of domestic violence are outlined below.

Courts are now limited in their revocation authority for probation violations. Under G.S. 15A-1344(a) and -1344(d2), the court may revoke probation only for:

- Violations of the “commit no criminal offense” condition
- Violations of the new statutory “absconding” condition
- Defendants who have previously received two CRV periods in the case (see below)

Confinement in Response to Violation (CRV) is now authorized for probation violations other than a new criminal offense or absconding. The court may impose confinement of 90 days for a felony or up to 90 days for a misdemeanor as a CRV.

Short-term jail confinement of 2-3 days, for not more than 6 days per month, during any 3 separate months of a probation period, may be ordered by a judge or, in certain circumstances, by a probation officer.

Please refer to the School of Government publication, “[Justice Reinvestment Essentials](#),” January 2012, for further information.

[http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Justice%20Reinvestment%20Essentials\\_1.pdf](http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Justice%20Reinvestment%20Essentials_1.pdf)

## Section 16 Compliance Hearings

### ***Best Practice #13 Institute Compliance Hearings to Monitor Probationers and Enhance Victim Safety***

#### **Key Points**

- Monitor domestic violence offenders early and often.
- Sanction and reward based on level of compliance.
- Sanctions and rewards should be consistently applied.
- Specialized domestic violence judge for compliance hearings.

- I. Importance of Monitoring.** Monitoring domestic violence offenders presents a challenge to the courts that is different from other types of offenders. For example, battering is not a mental illness or a condition that can be clinically treated, such as alcoholism or drug addiction. The following research supports the need for courts to be consistent in monitoring compliance for domestic violence probationers.
- A.** Reabuse rates are estimated to be more than 50 percent.<sup>46</sup>
  - B.** A multistate study found that nearly half of defendants who reoffended did so within three months of batterer program intake; two thirds within six months.<sup>47</sup>
  - C.** Doing nothing about noncompliance increases abuse.<sup>48</sup>
  - D.** Early noncompliance is a warning sign.<sup>49</sup>
- II. Frequency of Compliance Hearings.** The number of hearings ordered will depend on the level of the probationer's compliance. A probationer who has been compliant may be rewarded with fewer court dates, whereas more frequent dates may be appropriate for a probationer who is partially noncompliant. This is part of the graduated sanctions and rewards that can be implemented through compliance hearings. Most hearings begin 30, 60, 90 or 120 days after sentencing. An earlier initial date is preferable to ensure that the probationer has begun complying with the court's sentence (e.g., has contacted or begun an abuser treatment program, is beginning any drug or alcohol treatment ordered, has obtained employment, etc.).

**III. Violations Prior to Compliance Hearing.** For probationers who violate conditions prior to the compliance date, the probation officer has the option of bringing the case before the court earlier. Compliance dates continue throughout the period of probation and are held every two to three months (with weekly probation meetings throughout).

**IV. History of Compliance.** A probationer who has a history of compliance may not be required to appear at the hearing, as long as the court receives documentation of compliance from the abuser treatment program and/or probation officer. Again, this would be a reward for compliance with probation.

**V. Procedures for Conducting Compliance Hearings.**

**A. Address the Defendant.** The judge will review the terms of probation and speak with the probationer regarding his/her compliance. Defense attorneys do not typically attend these hearings, although if the defendant begins to incriminate him/herself, any conversation should cease and an attorney should be appointed (or hired or waived).

**B. Input from the Probation Officer and Representatives from Treatment Services,** e.g., abuser treatment program, alcohol treatment, etc. Community partners should be present and report to the judge regarding the probationer's status or, if unable to be present, submit a written report. It is helpful to schedule compliance hearings on set days so that those representatives may all be in court to report personally to the judge. Some courts prefer to hold compliance hearings on Fridays so that the judge has the option of weekend incarceration for a noncompliant probationer.

**C. Input from the Victim or Others.** The judge may also hear from the victim (if present and wishes to be heard) or any other relevant parties (e.g., the probationer's employer, if employment is a condition of probation, etc.) The probation officer notifies the victim of the court dates and updates the victim on the progress of the case (but should take care not to impose on victims or make them share information against their wishes). The victim should be given the probation officer's contact information and told how to report a violation.

**D. Judges Reward and/or Sanction.** After reviewing the evidence, the judge may either reward compliance or impose sanctions for noncompliance. It is critical that the sanctions and rewards offered are consistent so that probationers and probation officers know the likely consequences. Rewards and sanctions are typically graduated in relation to the level of the probationer's compliance.

### **Examples of graduated sanctions include:**

1. Short period of incarceration.
2. Full period of incarceration.
3. Work-release.
4. Intensive probation.
5. Attend increased number of abuser treatment program sessions.
6. Additional programs.
7. More frequent home or office visits with probation.
8. Increased fines, restitution, or community service.

### **Examples of graduated rewards include:**

1. Public praise.
2. Fewer, less intensive compliance hearings.
3. Less intensive reporting to probation.
4. Reduction or waiver of fines or court costs.
5. Not requiring the probationer to appear at future compliance hearings after a certain number of favorable reports.
6. Giving the probationer the opportunity to share his/her success story to new probationers.

**VI. Importance of Consistency.** It is a best practice for the same judge to preside over compliance hearings so that s/he knows the history of each probationer and can follow through more effectively. In addition, holding compliance hearings at the start of the domestic violence docket allows audience members to observe the court's treatment of probationers — impressing the importance of compliance with court orders — and set the tone for the courtroom.

*Information for this section partially based on “Judicial Review Hearings: Keeping Courts on the Case.”<sup>50</sup>*

## Section 17 Federal Law and Domestic Violence

### **Best Practice #14 Consider Federal Domestic Violence Law Requirements in all Civil and Criminal Domestic Violence Cases**

#### **Key Points**

- Refer cases that qualify for federal prosecution to U.S. Attorney's Office (e.g. those with interstate and firearms facts).
- Screen defendants requesting return of firearms for federal firearms prohibitions.
- Include the U.S. Attorney's Office as a resource for victims.
- Enforce appropriate protection orders issued by other states or Tribal courts.

I. **Federal Domestic Violence Offenses.** Four federal domestic violence related offenses are summarized below. When the facts of a district court domestic violence case appear to qualify for federal prosecution, the case should be referred to federal prosecutors (contact information for the United States Department of Justice is below). In addition, referrals to the USDOJ victim/witness coordinator should be provided to domestic violence victims in cases with interstate or firearms related facts. For more detailed information on these offenses, see the [Federal Violence Against Women Statutes and Elements for Federal Prosecution](#). Maximum terms of imprisonment for the four offenses listed below range from five years for no injury to life if the crime of violence results in the victim's death.

**A. Interstate Travel to Commit Domestic Violence - 18 U.S.C. §2261.** It is a federal crime for a person to travel between states (or Indian country) with the intent to kill, injure, harass or intimidate that person's intimate partner or dating partner, and as a result of such travel, commit or attempt to commit a violent crime against that person. It is also a federal crime to cause an intimate or dating partner to cross state lines (or Indian country) by force, coercion, duress or fraud, to attempt or commit a crime of violence. The term "intimate partner" in this statute refers to a current or former spouse, parents of a child in common, or current or former cohabitants who live(d) together as if married. The term "dating partner" in this statute refers to a social relationship of a romantic or intimate

nature. There is no injury requirement and the defendant must have had the required intent when crossing the state line.

**B. Interstate Stalking – 18 U.S.C. §2261A(1).** It is a federal crime to:

1. travel between states with the intent to kill, injure, harass or place under surveillance with the intent to kill, injure, or harass another person when crossing the state line, **and**
2. as a result of such travel, the defendant places such person in reasonable fear of the death of, serious bodily injury to, or causes substantial emotional distress to that person or a member of that person's immediate family (such as spouse, parent, sibling, child, or other person in the household related by blood or marriage).

**C. Cyber Stalking – 18 U.S.C. §2261A(2).** It is a federal crime with intent to:

1. kill, injure, harass, or place under surveillance with the intent to kill, injure, harass or intimidate a person in another state, **or**
2. cause substantial emotional distress, or place in reasonable fear of death or serious bodily injury a person in another state;

to use the mail, any interactive computer service, or any facility of interstate commerce (including the Internet) to engage in a course of conduct\* that causes substantial emotional distress or places such person in reasonable fear of the death of, serious bodily injury to, that person or a member of that person's immediate family or that person's intimate partner. \*Note: this offense requires 2 acts or more.

**D. Interstate Travel to Violate an Order of Protection – 18 U.S.C. §2262.** It is a federal offense to travel between states (or Indian country) with intent to violate the portion of a valid protection order that prohibits violence, threats, harassment or proximity to another person when crossing the state line; and such travel results in a violation. This statute does not require an intimate partner relationship.

**II. Federal Firearm Offenses that Apply to Domestic Violence.** Four federal firearm offenses relating to domestic violence are summarized below. It is important for state judges to be aware of these offenses so that they do not return firearms or ammunition to defendants who are prohibited from possessing them under federal law. For more detailed information on these offenses, see the [Federal Violence Against Women Statutes and Elements for Federal Prosecution](#). All federal firearms offenses listed below are punishable by up to ten years imprisonment.

**A. Possession of Firearm While Subject to Order of Protection – 18 U.S.C. §922(g)(8).** It is a federal crime for a person to possess a firearm or ammunition while subject to a qualifying protection order. Under this statute, a qualifying protection order is one that:

1. Followed a hearing of which the defendant had actual notice and an opportunity to participate, **and**
2. The plaintiff is an intimate partner of the defendant (includes a current or former spouse, co-parent, or parties who live or have lived together), **and**
3. Restrains future conduct, such as harassing, stalking, or threatening the intimate partner or the child of either party (or any other conduct that would place the partner or child in reasonable fear of bodily injury), **and**
4. Includes a specific finding that the defendant represents a credible threat to the physical safety of the intimate partner or child, or forbids future violence or threats of violence.

Note: This statute applies even when firearms are not prohibited under the terms of the protective order. To comply with federal requirements, the AOC domestic violence protection order form contains a notice to defendants regarding federal firearms laws.

**B. Transfer of Firearm or Ammunition to Person Subject to Order of Protection – 18 U.S.C. §922(d)(8).** It is a federal crime to transfer a firearm or ammunition to a person knowing or having reasonable cause to believe that such person is subject to a qualifying protection order.

**C. Official Use Exemption:** The above laws (922(d)(8) and (g)(8)) do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel so long as the person is on duty. 18 U.S.C. §925.

**D. Possession of Firearm or Ammunition After Conviction of Misdemeanor Crime of Domestic Violence – 18 U.S.C. §922(g)(9).** It is a federal crime to possess a firearm or ammunition after being convicted of a misdemeanor crime of domestic violence. A qualifying misdemeanor is an offense that:

1. Is a federal or state misdemeanor, **and**
2. Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, **and**
3. At the time the offense was committed, the defendant was:
  - a) A current or former spouse, parent, or guardian of the victim;
  - b) A person with whom the victim shared a child in common;
  - c) A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or
  - d) A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.



It is a federal requirement that defendants convicted of domestic violence misdemeanor offense be notified that federal law may prohibit possession of firearms. To meet this requirement, courts should provide defendants with a Firearm Prohibition Notice, form [AOC-CR-617](#).

Note: This law only applies where the defendant had counsel or knowingly and intelligently waived counsel, and where the defendant had a jury trial or knowingly and intelligently waived the right to a jury trial. It does not apply where the conviction was set aside or expunged, the person was pardoned, or the person's civil rights were restored (e.g. right to vote, sit on a jury, and hold elected office). This exception does not apply where the expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or, the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

**E. Transfer of Firearm or Ammunition to Person Convicted of a Misdemeanor Crime of Domestic Violence – 18 U.S.C. §922(d)(9).** It is a federal crime to transfer a firearm or ammunition to a person knowing or having reasonable cause to believe that such a person has been convicted of a misdemeanor crime of domestic violence.

**F. Official Use Exemption:** There is no official use exemption to 922(g)(9) and (d)(9).

**III. Felony Possession of a Firearm or Ammunition – 18 U.S.C. §922(g)(1).** It is a federal crime to possess a firearm or ammunition after being convicted of a crime punishable by imprisonment for a term exceeding one year. The conviction is determined in accordance with the laws of the jurisdiction in which the proceedings were held.

**2012 Update:** In *United States v. Simmons*, 635 F.3d 140 (2011), the Fourth Circuit Court of Appeals overruled the longstanding precedent that a North Carolina conviction is a crime punishable by imprisonment for a term exceeding one year if any defendant charged with that crime could have received a sentence of more than one year imprisonment. After *Simmons*, a prior conviction will only qualify if that particular defendant's conviction could have resulted in a term of imprisonment exceeding one year.

#### **IV. Enforcing a Domestic Violence Protection Order Issued in Another State (or Tribal Country).**

**A. Full Faith and Credit – 18 U.S.C. §2265.** A state must enforce a protection order of another state (or tribe) when the order complies with the federal statute. That is, the defendant must have been provided reasonable notice and an opportunity to be heard. This law does not apply to mutual protection orders. The statute does not require that the order be registered in the enforcing state. If the order is registered, do not notify the defendant unless the plaintiff makes such a request in writing. 18 U.S.C. § 2265 (d)(1).

##### ***North Carolina U.S. Attorney’s Offices:***

U.S. Department of Justice; Eastern District of North Carolina  
Thomas G. Walker  
310 New Bern Avenue, Suite 800  
Terry Sanford Federal Building & US Courthouse  
Raleigh, NC 27601-1461  
919 856-4530  
<http://www.justice.gov/usao/nce/>

U.S. Department of Justice; Middle District of North Carolina  
Ripley E. Rand  
P.O. Box 1858  
Greensboro, NC 27402  
251 North Main Street, Suite 726  
Winston-Salem, NC 27101  
336 333-5351 or 335 631-5268  
<http://www.justice.gov/usao/ncm/>

U.S. Department of Justice; Western District of North Carolina  
Anne M. Tompkins  
227 West Trade Street, Suite 1650  
Charlotte, NC 28202  
704 344-6222  
<http://www.justice.gov/usao/ncw/>

Office of Violence Against Women, U.S. Department of Justice Website:  
<http://www.ovw.usdoj.gov/regulations.htm>

## Section 18 Abuser Treatment Programs

### **Best Practice #6** *Actively Coordinate with Community Resources and Constitute a Local Domestic Violence Advisory Committee*

#### **Key Points**

- Abuser treatment programs must be approved by the state (Domestic Violence Commission) in order for the court to make referrals from both civil and criminal court.
- Abuser treatment programs follow a prescribed set of program guidelines.
- Anger management programs are not appropriate for domestic violence offenders.

I. **Certified Abuser Treatment Programs.** North Carolina law requires that referrals by the court be made only to “approved” programs (G.S. 50B-3(a)(12)), a process administered by the Department of Administration through the Domestic Violence Commission, a part of the N.C. Council for Women. Administrative rules govern this approval process. **A sampling of these requirements include:**

- A. Programs must offer groups for a total of 39 hours over a minimum period of 26 weeks. Fees are locally determined.
- B. Certified programs may *not* provide couples therapy or counseling, or provide interventions that lay primary causality on anger, i.e. “anger management programs.”
- C. Programs must conduct lethality assessments.
- D. When participants are terminated, programs must:
  - 1. Document the reasons for the termination without jeopardizing the victim's safety.

2. Make specific recommendations to the probation officer or referring judge, including any alternatives such as weekend incarceration, community service hours, restitution, probation violation, or a return to the program.
3. Inform the victim of the participant's termination within two days, unless the victim declines contact or is unable to be located.
4. Inform the program from which the victim is receiving domestic violence services of the participant's termination within seven days.
5. Complete a risk assessment with the victim and make efforts to assist the victim in minimizing violence that may occur after the participant's termination, unless the victim declines contact or is unable to be located.
6. Inform the probation officer and referring judge (or the chief district court judge in the absence of the referring judge) and District Attorney's Office in writing of the participant's termination within seven days.

Many of these programs operate as part of larger, non-profit organizations. In some cases, they are mental health agencies; in many cases, they are housed in agencies that also provide victim services.

Courts should specify the agency to which an offender is ordered. In some districts, there is more than one program that has been approved by the Domestic Violence Commission; however, not all counties have programs.

In districts where no approved program is available, this type of relief should not be ordered with a substitute provider indicated. Referrals to mental health services may or may not be appropriate but should not be presented as ATP referrals, which conform to a specific set of governing rules. The next page addresses the differences between anger management programs and batterers intervention or abuser treatment programs.

**II. The Difference between Abuser Treatment Programs and Anger Management Programs.** Most states have rules that govern the operation of programs to address domestic violence perpetration and most, including North Carolina, expressly prohibit the use of anger management techniques. Abuser treatment programs are designed to hold offenders accountable, and were originally introduced as an alternative to incarceration. They are closely tied to the justice system. Anger management programs focus on the development of individual coping skills to manage anger.

Domestic violence is a willful decision to commit harm in a specific and controlled way, while anger problems are something over which the person must develop impulse control. While some domestic violence offenders may benefit from learning coping strategies that some anger management programs teach, the central issue is not an inability to control anger, but a need to control their intimate partner. Simply focusing on

improving individual coping skills to manage anger dismisses the well-known dynamics of domestic violence relationships. A person may have coping skills to manage anger, as demonstrated by interactions with others outside the intimate relationship, but the person *chooses* not to use those skills with his or her partner because they perceive far more benefit to controlling his or her partner than to employing this set of coping skills. Given that choice, it is important that offenders be mandated to abuser treatment programs where they are held accountable by the court system and motivated to change their behavior under threat of consequences such as incarceration.

Finally, anger management programs are unregulated and therefore are not held to program standards the way that abuser treatment programs are. For example, they are not required to contact partners of participants, and can be of any length. Furthermore, they may or may not have a working relationship with the court system.

### III. Resources:

For a full copy of the administrative rules that govern approved abuser treatment programs (ATP), go to:

<http://www.doa.state.nc.us/cfw/documents/abuser/AbuserTreatmentProgramRules.pdf>

For a description of the process for applying to become a certified program, go to:

<http://www.doa.state.nc.us/cfw/documents/dh/flowchart-perm.pdf>

To access a list approved programs by county, go to:

<http://www.doa.state.nc.us/cfw/programs.htm>

# APPENDICES



## Appendix A – Interpreting Services

**Appointing a Foreign Language Interpreter.** The eligibility requirements for a court appointed interpreter vary depending on the type of proceeding. The standards regarding court appointed interpreters in ex parte 50B hearings, Permanent Order 50B hearings, and criminal proceedings are listed below:

- I. **Ex Parte 50B Hearing:** The plaintiff is always entitled to a court appointed interpreter when making a courtroom appearance in an ex parte hearing, regardless of indigence. However, please note that the interpreter:
  - May **only** interpret anything that has been said or written.
  - May **only** sight translate forms for the plaintiff or for the judge.
  - May **not** fill out forms for plaintiff or explain forms to plaintiff.
  - May **not** write anything.
  - May **not** advise anyone as to court proceedings or explain court orders.

The judge may clarify, through the interpreter, whether the plaintiff understands the terms of the order and how it may be enforced.

- II. **Permanent Order 50B Hearing:** The plaintiff is always entitled to a court appointed interpreter when making a courtroom appearance in a 50B hearing, regardless of indigence, and costs are never assessed against the plaintiff. The defendant only qualifies for a court appointed interpreter if found to be indigent by the judge. The defendant must complete an affidavit of indigence (either AOC-G-106 or AOC-CR-226, if there is a criminal charge associated with the 50B). The interpreter may assist in determining indigence by sight translating indigence form.

A. A defendant who is **not indigent** must provide an interpreter at his/her own expense. The options for a non-indigent defendant are:

1. Defendant may hire an interpreter, preferably from the AOC Spanish Foreign Language Registry to ensure proficient service (link at the end of this section), **or**
2. If an AOC contracted court interpreter is present on the day of court and the defendant has not previously hired an interpreter, defendant may hire the AOC contract interpreter (AOC should not be charged for time spent interpreting for defendant), **or**

3. Court may appoint the court interpreter and order the defendant to pay the contract interpreter directly (pursuant to Rules of Evidence [604](#) and [706\(b\)](#)).

### III. Criminal Cases in District Court:

**A. Initial Appearance/Bond Set:** Both the victim and the defendant are always entitled to a court appointed interpreter at this stage. If a court interpreter is not present, then the court should use the telephone interpreting service available to avoid unnecessary delay of the first appearance. Indigence should be determined for a non-English speaking defendant even if the defendant waives counsel. This provides the court with the knowledge that an interpreter is necessary for the case and, if the defendant qualifies, to schedule an interpreter for the next court date. If the defendant is *not* indigent, be sure to advise defendant that s/he must provide his/her own interpreter for future court dates.

**B. Regular Scheduled Court Dates** (after initial appearance): The victim and the State's witnesses are always entitled to a court appointed interpreter. The defendant only qualifies if found to be indigent. If the defendant is indigent and convicted, an interpreter fee (\$10 or actual cost of services) should be assessed as part of the court costs.

**C. A defendant who is not indigent** must provide an interpreter at his/her own expense. The options for a non-indigent defendant are:

1. Defendant may hire an interpreter, preferably from the AOC Spanish Foreign Language Registry to ensure proficient service (link at the end of this section), **or**
2. If an AOC contracted court interpreter is present on the day of court and the defendant has not previously hired an interpreter, defendant may hire the AOC contract interpreter (AOC should not be charged for time spent interpreting for defendant), **or**
3. Court may appoint the court interpreter and order the defendant to pay the contract interpreter directly (pursuant to Rules of Evidence [604](#) and [706\(b\)](#)). Because this is treated as hiring an expert under the Rules of Evidence (and not part of court costs), ordering these costs does not require a conviction.

**IV. No Interpreter Available.** For all spoken foreign languages, telephone interpretation is available and may be appropriate, depending on the type of hearing. AOC contracts with UTT, Inc., which provides telephonic interpreters in over 150 languages. This interpreting service may be used in:

**A. Short hearings** (such as initial and first appearances)



**B. Ex parte hearings.** If short and uninvolved; UTT is typically only used for 50B by the magistrate's office (if magistrate authorized to grant 50Bs when no judges are available). To use this service, you must have a speakerphone in the courtroom and an access code (each district court and each magistrate's office has its own access code). Call Interpreting Services at 919-890-1213 for additional information regarding this service and your district's access code.

**C. For longer hearings or more complex cases that are AOC-authorized**

1. **Spanish-speaking:** consult the Spanish Foreign Language Registry at <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/SpanishForeignLanguageRegistry.pdf>
2. **Language other than Spanish (LOTS):** you must reschedule the court date and submit a request to AOC for a Non-Spanish interpreter. Go to the Interpreting Services Section at <http://www.nccourts.org/Citizens/CPrograms/Foreign/Default.asp> to access the Request for a Non-Spanish Interpreter form.

**D. Deaf and Hard of Hearing.** Interpreters are provided at state expense for ALL proceedings, regardless of indigence. ASL interpreters can be contacted directly via the DSDHH directory for licensed interpreters (link below).

**V. Resources:**

Interpreter Policies and Best Practices:

<http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>

DSDHH Sign Language Interpreter Directory and Information

<http://www.ncdhhs.gov/dsdhh/>

Motion And Appointment Authorizing Foreign Language Interpreter/Translator

<http://www.nccourts.org/Forms/FormSearch.asp> Form AOC-G-107

Motion, Appointment And Order Authorizing Payment Of Deaf Interpreter Or Other Accommodation

<http://www.nccourts.org/Forms/FormSearch.asp> Form AOC-G-116

AOC Spanish Foreign Language Registry:

<http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/spanishforeignlanguageregistry.pdf>

## Appendix B – Chapter 50C Actions

I. **History.** Chapter 50C was the result of a longstanding concern by advocates for victims of sexual assault and stalking that remedies available under the Chapter 50B statute were inadequate to address circumstances where the assault and stalking behavior was committed by a person outside the parameters of a relationship defined under Chapter 50B. In other words, persons being victimized by strangers or acquaintances (or those not meeting the required relationship outlined in Chapter 50B), would not be eligible for a protective order under the 50B statute. In addition to addressing the needs of sexual assault and stalking victims, there was an effort during the legislative process to address the concerns of human resource managers who were seeking a remedy to address situations in which the employer could file a protective order against a former employee for harassing or menacing behavior towards the employer (for non-domestic violence related activity). Ultimately, the final bill did not contain specific language addressing workplace situations, however, the history bears noting. A separate workplace violence protective order bill passed during the same session. The chapter reads in part:

### **G.S. 50C-2. COMMENCEMENT OF ACTION; FILING FEES NOT PERMITTED; ASSISTANCE.**

(a) An action is commenced under this Chapter by filing a verified complaint for a civil no-contact order in district court or by filing a motion in any existing civil action, by any of the following:

- (1) A person who is a victim of **unlawful conduct** that occurs in this State.
- (2) A competent adult who resides in this State on behalf of a minor child or an incompetent adult who is a victim of unlawful conduct that occurs in this State.

Unlawful conduct is defined by this statute as:

The commission of one or more of the following acts by a person 16 years of age or older upon a person, but does not include acts of self-defense or defense of others:

- a. Nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct.
- b. Stalking.

II. **Numbers and Types of Filings.** Since Chapter 50C was created in 2004, about 27,000 actions have been filed in North Carolina. By way of comparison, approximately 32,000 50B actions are filed *each year* in North Carolina. A review of data over the past five years indicates that some counties experience a high volume of filings, while many others rarely see these filings. In addition to variations between counties, the data also indicate fluctuations over the years that differ from county to county (e.g. some counties

have seen steep increases from year to year and others have seen decreases). This leads to speculation about what types of local practice may be driving these filings. Specifically, law enforcement or magistrates may be encouraging individuals involved in a dispute who are not in a relationship that meets the Chapter 50B definition to utilize the 50C statute. Because Chapter 50C requires unlawful conduct, law enforcement investigations should be conducted and magistrates should determine whether an offense has occurred.

There is no statewide data system to ascertain the exact types of situations for which 50Cs are being filed or entered; however, anecdotal information from districts and the North Carolina Coalition Against Sexual Assault suggests that litigants are filing complaints under this statute, sometimes with very high frequency, to address the following scenarios:

- A. Neighbor-to-neighbor disputes over property lines or possessions.
- B. Assaults between strangers or acquaintances (i.e. barroom fights).
- C. Cases where the relationship defined under Chapter 50B IS met. G.S. 50C-1(8) specifically excludes cases where a 50B relationship exists from being eligible for a Chapter 50C order.
- D. School fights between students.

**III. Reviewing data, screening cases, and referring to mediation only in certain circumstances.** A district can determine if there is a high percentage of filings for which the legislation was not intended by reviewing their data that reflects Chapter 50C filings. Reasons that a party may choose to file a Chapter 50C include attempts to circumvent some of the restrictions that are a part of Chapter 50B including prohibitions on firearms; or that law enforcement may be referring individuals to the magistrate to determine their eligibility for either a Chapter 50B or Chapter 50C order. The following strategies are recommended for Chapter 50C Cases:

- A. Screen cases early and provide an opportunity to mediate them, when appropriate.** Implement a pre-filing or pre-hearing screening system whereby litigants whose complaints do not appear eligible under the statute (i.e. neighbor disputes, barroom fights) are given an opportunity to take their complaint to mediation. The person who conducts the pre-filing or pre-hearing screening may differ by district but could be a mediator, a clerk or an advocate from the domestic violence or sexual assault agency. The screening would include a review of the Motion and an opportunity to go to mediation IF the complaint appears to fall clearly outside the scope of the statute.
- B. It is strongly recommended that cases that appear to fall within the scope of Chapter 50C or involve current or former intimate relationships regardless of whether the standard for Chapter 50B relief appears to be met, NOT be screened and proceed to a hearing.** It is critical that persons with

legitimate claims for relief from domestic violence not be referred to mediation; domestic violence cases are almost always inappropriate for mediation.

**C. Determine whether your local Legal Aid of North Carolina office will assist litigants in Chapter 50C cases.** A clerk or Family Court Administrator will be able to determine this by calling the [local Legal Aid offices](#).

#### **IV. Case law and resources related to Chapter 50C:**

[Ramsey v. Harman](#), 191 N.C. App. 146, 661 S.E.2d 924 (2008).

[Williams v. Vonderau](#), 181 N.C. App. 18, 638 S.E.2d 644 (2007); Affirmed in part and reversed in part by [Williams v. Vonderau](#), 362 N.C. 76, 653 S.E.2d 144 (2007).

The AOC form for a [Complaint for No Contact Order For Stalking or Non Consensual Sexual Conduct \(AOC-CV-520\)](#) is available online.

G. S. 50C

[http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_50C.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_50C.html)

## Appendix C – Links to State and Federal Statutes

### **North Carolina Statutes:**

G. S. 50B

[http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_50B.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_50B.html)

G. S. 50C

[http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_50C.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_50C.html)

Victim's Rights Act

<http://www.nccourts.org/Citizens/CPrograms/Victims/Rightsact.asp>

G. S. 7B-301 Mandatory Reporting Law; Duty to report abuse, neglect, dependency, or death due to maltreatment:

[http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_7B/GS\\_7B-301.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_7B/GS_7B-301.html)

### **Federal Statutes:**

Federal Violence Against Women Act Statutes and Elements for Federal Prosecution:

[http://www.ovw.usdoj.gov/docs/federal\\_violence.pdf](http://www.ovw.usdoj.gov/docs/federal_violence.pdf)

Office of Violence Against Women, US Department of Justice Website:

<http://www.ovw.usdoj.gov/regulations.htm>

## Appendix D – Administrative Policies and Community Resource Directories

### **Administrative Policies:**

NC Division of Social Services' Child Protection Services policy on domestic violence:  
<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/CS1409.htm#TopOfPage>

NC Abuser Treatment Program Administrative Rules:  
<http://www.doa.state.nc.us/cfw/documents/abuser/AbuserTreatmentProgramRules.pdf>

NC Rules of Recordkeeping:  
<https://cis1.nccourts.org/intranet/manuals/rrk/index.jsp>

### **Community Resource Directories:**

North Carolina Abuser Treatment Programs, by county:  
<http://www.nccfwdvc.com/programslist.htm>

North Carolina Domestic Violence Agencies, by county:  
<http://www.nccfwdvc.com/programslist.htm>

Supervised Visitation Centers in North Carolina:  
<http://www.svnetwork.net/chapterpage-roster.asp?chapID=17>

A National Directory of Supervised Visitation Centers can be accessed at:  
<http://www.svnetwork.net/>

To find the nearest Child Advocacy Center in North Carolina: <http://www.cacnc.org/>

## Appendix E – Websites for Further Research and Information

NC District Courts' Response to Domestic Violence: Report Regarding Best Practices and Judicial Training, December 2007

[http://www.nccourts.org/documents/dv\\_studyreport.pdf](http://www.nccourts.org/documents/dv_studyreport.pdf)

North Carolina Annual Service Statistics for Abuser Treatment Programs and Domestic Violence Agencies, by county

<http://www.doa.state.nc.us/cfw/stats.htm>

North Carolina Attorney General's annual report on domestic violence homicides

<http://www.ncdoj.gov/getdoc/e79bb308-90e3-44e5-be11-1c847f65a1b0/Domestic-Violence-Statistics.aspx>

North Carolina DHHS Division of Public Health's Violent Death Reporting System:

<http://www.injuryfreenc.ncdhhs.gov/About/ncVDRS.htm>

NC Magistrate's Protocol for Domestic Violence Cases

<http://www.doa.state.nc.us/cfw/documents/publications/mpdv.pdf>

Centers for Disease Control, "Measuring Intimate Partner Violence Victimization and Perpetration: A Compendium of Assessment Tools"

<http://www.cdc.gov/ncipc/dvp/compendium/IPV%20Compendium.pdf>

Ohio Domestic Violence Network, 2006, "Guidelines for Domestic Violence Risk Assessment"

<http://www.odvn.org/PDFs/AssessmentGuidelineFinal.pdf>

The National Council for Juvenile and Family Court Judges, Family Violence Department:

<http://www.ncjfcj.org/content/blogcategory/256/302/> Resources include:

A Judicial Guide to Child Safety in Custody & Visitation Cases

Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence (2009)

A Guide for Effective Issuance & Enforcement of Protection Orders (2005).

Navigating Custody & Visitation Evaluations in Cases With Domestic Violence: A Judge's Guide (2004, revised 2006).

The Greenbook Initiative at <http://www.thegreenbook.info/>: Resources for collaborative solutions to domestic violence and child maltreatment.

The MINCAVA Electronic Clearinghouse: <http://www.mincava.umn.edu/>

Family Violence Prevention Fund: [www.endabuse.org](http://www.endabuse.org)

North Carolina Coalition Against Domestic Violence: [www.nccadv.org](http://www.nccadv.org)

North Carolina Council for Women: <http://www.nccfwdvc.com/>



## Appendix F – Sample Forms

- 1) Sample Visitation Worksheet
- 2) Sample Domestic Violence Victim Statement

## VISITATION WORKSHEET

These conditions apply to the following child or children: \_\_\_\_\_

*(A separate sheet should be used for each child when conditions are different)*

**SUPERVISED**

**VISITATION ORDERED**

**UNSUPERVISED**

**VISITATION ORDERED**

Who will supervise the visits?

- Supervised Visitation Center**  
Name of Center: \_\_\_\_\_
- Social Worker or other Professional**  
Name: \_\_\_\_\_
- Friend or Relative**  
Name and Relationship: \_\_\_\_\_
- This person has accepted this responsibility by**
  - Appearing in court**
  - Filing an affidavit**

DAY	Pick Up Time & Place	Drop Off Time & Place
Mon		
Tues		
Wed		
Thur		
Fri		
Sat		
Sun		

**Are overnight visits allowed?** \_\_\_\_\_

**Holidays, School Vacations, or Other Arrangements:**

**Person(s) who will transport the child:**

\_\_\_\_\_

**Other persons allowed or not allowed to be present during transfers or visitations:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Who will pay for the costs associated with the visits?

- Defendant will pay \_\_\_\_\_ % of costs
- Plaintiff will pay \_\_\_\_\_ % of costs
- Other: \_\_\_\_\_

Aside from visits, what type of contact is allowable by the defendant?

- Phone**
  - On the following days and at the following times:** \_\_\_\_\_
  - There are no limitations on when phone calls can be made.**
  - Child must initiate calls.**
  - Defendant can initiate calls.**
  - Number(s) to be called to reach child \_\_\_\_\_; to reach defendant \_\_\_\_\_.**
- Email**
  - Email address(es) defendant is allowed to use:** \_\_\_\_\_
- Letters**
  - Address for letters to be sent:** \_\_\_\_\_

**OTHER CONDITIONS RELATED TO CONTACT (attend ATP, GAL assigned, No use of alcohol or other substances, bond):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# Sample Domestic Violence Victim Statement

Date Completed: \_\_\_\_\_

Time Completed: \_\_\_\_\_

Where Completed: Magistrate

On scene

DV Agency/Shelter

Other: \_\_\_\_\_

## Incident Information

Your Name: \_\_\_\_\_

Date of Incident: \_\_\_\_\_ Time of Incident: \_\_\_\_\_ am/pm Location of Incident: \_\_\_\_\_

**Please describe what happened:**

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Was a weapon involved? Yes  No

Type of weapon: \_\_\_\_\_

Were you injured? Yes  No

Describe injuries: \_\_\_\_\_

Were photos taken of your injuries? Yes  No

Who took photos? \_\_\_\_\_

Did you get medical attention? Yes  No

Where? \_\_\_\_\_

Was any property damaged? Yes  No

What property? \_\_\_\_\_

Were photos taken of the damage? Yes  No

Who took photos? \_\_\_\_\_

Was the defendant using drugs or alcohol during the incident? Yes  No  What kind? \_\_\_\_\_

Were **any** children present during the incident? Yes  No

**What was your relationship with the defendant when this occurred?** (Check all that apply):

- Married     Divorced     Separated     Living together     Previously lived together  
 Dating     Previously Dated     Have children together     Other: \_\_\_\_\_

When this incident occurred, were you trying to end your relationship with the defendant? Yes  No

Who was the first person you spoke to immediately after the incident? (please indicate age if under 18)

\_\_\_\_\_  
(Name) (Address) (Phone) (Relationship/Age)

Who was present during the incident or witnessed any part of the incident? (please indicate age if under 18)

\_\_\_\_\_  
(Name) (Address) (Phone) (Relationship/Age)

\_\_\_\_\_  
(Name) (Address) (Phone) (Relationship/Age)

\_\_\_\_\_  
(Name) (Address) (Phone) (Relationship/Age)

Was 911 called? Yes  No  Who called 911? \_\_\_\_\_

Did law enforcement respond? Yes  No

If yes, which agency? \_\_\_\_\_ Which officer? \_\_\_\_\_

### Defendant Information

Name: \_\_\_\_\_ Race: \_\_\_\_\_ Sex: \_\_\_\_ DOB/Age: \_\_\_\_\_

Home Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_\_

Employer Name and Address: \_\_\_\_\_

Has the defendant ever threatened your family, children, or friends? Yes  No

Has the defendant ever shown jealousy or possessive behavior? Yes  No

Has the defendant ever threatened to use a firearm or weapon? Yes  No

Does the defendant have access to weapons? Yes  No

Has the defendant ever shown stalking behavior (following you, etc.)? Yes  No

Has the defendant physically assaulted you or your children in the past? Yes  No

Has the defendant ever threatened to kill you or commit suicide? Yes  No

Has the defendant ever tried to strangle (choke) you? Yes  No

Has the defendant made any threats against law enforcement? Yes  No

If yes, describe threats: \_\_\_\_\_

Has the defendant ever threatened you if you sought help from the police or the courts? Yes  No

If yes, describe threats: \_\_\_\_\_

**Do you have a Domestic Violence Protective Order against the defendant now?** Yes  No

The information I have given on this statement is true and accurate to the best of my knowledge.

Your signature \_\_\_\_\_ Date \_\_\_\_\_

Witness (or name of person who filled out this form, if other than the victim): \_\_\_\_\_

## Appendix G – Serving People with Disabilities

- I. **Be prepared to handle domestic violence cases that involve people with disabilities.** Like the rest of the population, people involved in domestic violence cases as victims, defendants, witnesses or parties may have physical or intellectual disabilities. In fact, a recent Bureau of Justice Statistics (BJS) report titled “Crime Against People with Disabilities, 2007,” found that people with a disability are actually more likely to be victims of nonfatal violent crimes than people without a disability. Therefore, it is critical that courts take steps to ensure that those with disabilities have equal access to the justice system. The BJS report also includes the following information:
  - A. Persons with disabilities were victims of about 47,000 rapes, 79,000 robberies, 114,000 aggravated assaults, and 476,000 simple assaults.
  - B. Age-adjusted rate of nonfatal violent crime against persons with disabilities was 1.5 times higher than the rate for persons without disabilities.
  - C. Females with a disability had a higher victimization rate than males with a disability; males had a higher rate than females among those without a disability.
  - D. Persons with a disability had an age-adjusted rate of rape or sexual assault that was more than twice the rate for persons without a disability.
  - E. Click on the link below to view the full BJS report.  
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2022>
- II. **Provide appropriate, individualized protections for a victim/plaintiff with a disability,** as needed, under the terms of a Domestic Violence Protective Order (DVPO), pretrial release conditions, or a criminal sentence. Additional measures may be necessary to protect a victim/plaintiff with a disability due to his/her limitations. If a victim/plaintiff is reliant on a defendant for care related to a disability, the court should inquire as to how those needs can be met without the defendant. For example, the court should consider:
  - A. Whether the defendant is in possession of any medical information (prescriptions, insurance information, disability checks, etc.) that the victim will need. If so, consider having this information turned over to the victim or another caretaker. Necessary medical supplies should also be included, such as a walker, hearing aid, TTY phone, wheelchair, oxygen, etc. Ask what the defendant has that the victim will need.

- B. Whether the defendant receives the victim's disability checks. If so, consider whether this arrangement should be altered so that the victim or another caretaker receives the check.
- C. Whether the victim relies on the defendant for transportation, and if so, consider alternative arrangements that can be made.
- D. Whether Adult Protective Services (APS) should be contacted. The APS website is [http://www.ncdhhs.gov/aging/adultsvcs/afs\\_aps.htm](http://www.ncdhhs.gov/aging/adultsvcs/afs_aps.htm).

The court may refer the victim to a domestic violence advocate to help address some of these issues and explore alternate ways to meet the victim's needs. The advocate may also be able to link the victim to community resources that can assist.

Courts should also ensure that a defendant with a disability is capable of fulfilling all the requirements that the court orders. For example, a defendant who is unable to drive should work out other accommodations in advance to attend ordered programs such as batterer's treatment classes, substance abuse treatment, etc.

**III. Ensure access to justice for those with disabilities.** Each county has the legal duty to make the courthouse accessible to people with disabilities. An appropriate court official (e.g., the chief district court judge) should alert the county to any modifications the courthouse needs in order to accommodate those with disabilities and comply with the Americans with Disabilities Act. Whether the individual with the disability is a defendant, victim, witness, or party, the court should take steps to ensure that s/he has equal access to justice. Below are some resources and recommendations for judges as they work towards this goal.

**A. Physical disabilities** – A video produced by the AOC and Carolina Legal Assistance provides guidance on making courts accessible to those with physical and intellectual disabilities. This video, titled, "Access to Justice; Making Our Courthouses Accessible to People With Disabilities," provides recommended modifications for accommodating people with physical disabilities, which include the following:

1. Wheelchair ramps and wide doorways to assist those with mobility disabilities.
2. Signs with large print and Braille placed outside of courtrooms where they can be felt to assist those with vision disabilities navigate the courthouse.
3. Hand scanners or similar devices that scan, magnify and/or read documents aloud to assist those with vision disabilities.
4. Infrared system, real-time closed caption television, a loop receiver, relay telephone services, sign language interpreters, and TTY to assist those with hearing disabilities.
5. Please click on the link below to view the video in its entirety.  
[http://www.nccourts.org/\\_Videos/Accessibility/atj-subtitle.wmv](http://www.nccourts.org/_Videos/Accessibility/atj-subtitle.wmv)

**B. Intellectual disabilities** (formerly called “mental retardation”) – The Arc of North Carolina, through the Partners in Justice project, published materials to assist those working with persons who have intellectual disabilities. The project’s website provides a specific link for judges and attorneys facing these challenges. The website includes a list of tips for communicating with a person with an intellectual disability, which are cited below.

1. Speak directly to the person. Make eye contact before you speak and say her/his name often. Note: People with Autism Spectrum Disorder may find it difficult to make or maintain eye contact. This should not be interpreted as a sign of guilt.
2. Keep sentences short.
3. Use simple language. Speak slowly and clearly.
4. Ask for concrete descriptions (colors, clothing, etc.).
5. Break complicated instructions or information into smaller parts.
6. Use pictures or symbols of actions, if needed to help convey meaning.
7. Be patient and take time giving or asking for information.
8. Ask “who,” “what,” or “where” questions. “When” or “how” questions may be more difficult to answer. Avoid confusing questions about time, sequences, or reasons for behavior.
9. Repeat questions more than once if necessary. If the person does not seem to understand, ask it in a different way.
10. Do not ask leading questions or questions phrased in a way to solicit a certain answer.
11. Phrase questions open-ended when possible (e.g. “Tell me what happened.”)
12. Treat adults as adults, regardless of their disabilities.
13. If you are unsure if the person really understands what you are saying, ask the person to repeat it in his/her own words.
14. Be sensitive to self-blame and fear.
15. Pay attention to non-verbal cues, over compliance, resistance and body language.

Click on the following link to view the full text of the “Bridging the Gap Between the Justice System and People with Disabilities” information provided by The Arc, cited above. <http://www.arcnc.org/services/pij/index.shtml>

**C. Mental illness** – The video, “Access to Justice; Making Our Courthouses Accessible to People With Disabilities,” (referenced above in section A) also provides information on ways judges can work with people with mental illness in court. In addition to many of the tips above for accommodating people with intellectual disabilities, the following strategies are recommended.

1. Remember that disabilities, especially mental illness, cannot always be seen.
2. Inappropriate behavior may not be intended as disrespectful. Stress and chaos in the courtroom can increase the chances of this behavior.
3. Allow frequent breaks if needed.
4. Explain the proceeding to help overcome anxiety and fear, if needed.
5. Be flexible with possible changes to rules and procedures as needed to allow access to justice.

In addition, certain conditions are highly related to victimization, such as post-traumatic stress disorder (PTSD) and depression. A victim affected by these conditions may present in court with various related symptoms. According to the National Center for Victims of Crime article, "PTSD; Understanding a Victim's Response to Trauma," the three primary responses to PTSD are:

1. Recurring, intrusive recollections;
2. Emotional numbing and constriction of life activity; and
3. A physiological shift in the fear threshold, affecting sleep, concentration, and sense of security.

The article further reports that in addition to the intrusive recollections and emotional numbing effect, some trauma survivors "are dazed, moving in and out of trance-like states. Some are full of fear, hypervigilant, easily startled, unable to concentrate, wary of strangers."<sup>51</sup> These trauma responses may become evident during a court proceeding. To view the article in its entirety, go to <http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspx?DocumentID=38418>.

**IV. Additional Resources.** For further information, please consult the following additional resources:

Office for Victims of Crime (Office of Justice Programs) – Crime Victims with Disabilities  
<http://ovc.ncjrs.gov/Topic.aspx?topicid=62>

University of Minnesota, The College of Education and Human Development provides a list of resources:  
<http://ici.umn.edu/products/impact/133/res.html>

National Center for State Courts, "Implementing the Americans with Disabilities Act in a Trial Court"  
[http://www.ncsconline.org/WC/Publications/CS\\_AmeDisActImpNJPub.pdf](http://www.ncsconline.org/WC/Publications/CS_AmeDisActImpNJPub.pdf)

AOC website provides information on Access to the NC Courts for People with Disabilities  
<http://www.nccourts.org/Citizens/SRPlanning/Disability.asp>



National Alliance on Mental Illness

<http://www.nami.org/>

National Alliance on Mental Illness - North Carolina

<http://naminc.org/>

Seeking Safety – an evidence-based program for individuals with co-occurring PTSD and substance abuse

[SEEKING SAFETY](#)

North Carolina Office on Disability and Health - developed the Fundamental Elements of Accessibility for all SA and DV service providers in N.C.

<http://fpg.unc.edu/~ncodh>

For legal and related issues or questions about the court's duties under the Americans with Disabilities Act and N.C. law, contact Jo McCants in the AOC Legal Services Division (ph: 919 890-1305; email: [Jo.McCants@nccourts.org](mailto:Jo.McCants@nccourts.org)) or Brooke Bogue in Interpreter Services (ph: 919 890-1213; email: [Brooke.A.Bogue@nccourts.org](mailto:Brooke.A.Bogue@nccourts.org)) for assistance.



## Endnotes:

- <sup>1</sup> Emily Sack, *Creating a Domestic Violence Court: Guidelines and Best Practices* (San Francisco, CA: Family Violence Prevention Fund, 2002), 13.
- <sup>2</sup> Barbara J. Hart, *Battered Women and the Criminal Justice System*, Minnesota Center Against Violence and Abuse, <http://www.mincava.umn.edu/documents/hart/hart.html#id2354833> (July 20, 2010).
- <sup>3</sup> Sack at 9.
- <sup>4</sup> *Georgia Domestic Violence Benchbook: A Guide to Civil and Criminal Proceedings (5<sup>th</sup> edition)*, University of Georgia, Institute of Continuing Judicial Education, <http://www.uga.edu/icje/DVBenchbook.html>, 1.1 (June 29, 2010).
- <sup>5</sup> Sack at 25.
- <sup>6</sup> University of North Carolina at Chapel Hill, School of Government, *District Court Benchbook, Volume 1, Family Law Section, Chapter 7, Domestic Violence*, 2007.
- <sup>7</sup> Sack at 24.
- <sup>8</sup> *Hensey v. Hennessy*, 201 N.C. App. 56, 685 S.E. 2d 54; 685 S.E.2d 541, 545 (2009).
- <sup>9</sup> National Institute of Justice Journal, Issue No. 250, *Assessing Risk Factors for Intimate Partner Homicide*, <http://www.ncjrs.gov/pdffiles1/jr000250e.pdf> (July 20, 2010).
- <sup>10</sup> Jeffrey L. Edleson and Susan Schechter, *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice* (Reno, NV: National Council of Juvenile & Family Court Judges Family Violence Department, 1999), 9.
- <sup>11</sup> <http://www.uga.edu/icje/DVBenchbook.html>, A-10.
- <sup>12</sup> Andrew R. Klein, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges* (Washington, DC: National Institute of Justice, 2009), 26.
- <sup>13</sup> *Georgia Domestic Violence Benchbook*, <http://www.uga.edu/icje/DVBenchbook.html>, 4-19.
- <sup>14</sup> See *Steve D. Bryant v. Dale O. Williams*, 161 N.C. App. 444, 508 S.E. 2d 506 (2003).
- <sup>15</sup> *District Court Benchbook, Family Law Section, Chapter 7*.
- <sup>16</sup> *District Court Benchbook, Family Law Section, Chapter 7*.
- <sup>17</sup> *State v. Eure*, 172 N.C. 874, 89 S.E. 788 (1916).
- <sup>18</sup> *Crawford v. Washington*, 541 U.S. 36, 62 (2004).
- <sup>19</sup> *State v. Lewis*, 361 N.C. 541, 549-550, 648 S.E. 2d 824 (2007); *State v. Bodden*, 190 N.C. App 505, 515, 548 S.E. 2d 802 (2001).

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<sup>20</sup> North Carolina Conference of District Attorneys, *Domestic Violence Resource Manual for North Carolina Prosecutors* (Raleigh, NC: North Carolina Conference of District Attorneys, 2009), 111, quoting *Leonard v. Williams*, 100 N.C. App. 512, 514 (1990).

<sup>21</sup> Klein at 13.

<sup>22</sup> *Domestic Violence Resource Manual for North Carolina Prosecutors* at 116.

<sup>23</sup> See [State v. Williams](#), 144 N.C. App. 526, 529-230, 548 S.E. 2d 802 (2001).

<sup>24</sup> Klein at 46-47.

<sup>25</sup> *Id.* at 65.

<sup>26</sup> *Id.* at 65.

<sup>27</sup> *Id.* at 18.

<sup>28</sup> *Id.* at 72.

<sup>29</sup> *Id.* at 21.

<sup>30</sup> *Id.* at 72.

<sup>31</sup> *Id.* at 65.

<sup>32</sup> *Id.* at 18.

<sup>33</sup> *Id.* at 25.

<sup>34</sup> *Id.* at 26.

<sup>35</sup> *Georgia Domestic Violence Benchbook*, <http://www.uga.edu/icje/DVBenchbook.html>, 4-19.

<sup>36</sup> Klein at 30.

<sup>37</sup> *Id.* at 17.

<sup>38</sup> *Id.* at 18.

<sup>39</sup> *Id.* at 23.

<sup>40</sup> *Id.* at 48.

<sup>41</sup> *Id.* at 22.

<sup>42</sup> *Id.* at 28.

<sup>43</sup> *Id.* at 33.

<sup>44</sup> *Id.* at 22-23.

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<sup>45</sup> *Georgia Domestic Violence Benchbook*, <http://www.uga.edu/icje/DVBenchbook.html>., A-10.

<sup>46</sup> Klein at 19.

<sup>47</sup> *Id.* at 21.

<sup>48</sup> *Id.* at 72.

<sup>49</sup> *Id.* at 71.

<sup>50</sup> Vera Institute of Justice, *Judicial Review Hearings: Keeping Courts on the Case*, [http://www.ovw.usdoj.gov/judicial\\_review\\_hearings\\_final.pdf](http://www.ovw.usdoj.gov/judicial_review_hearings_final.pdf) (July 12, 2010).

<sup>51</sup> Frank Ochberg, *PTSD; Understanding a Victim's Response to Trauma*, National Center for Victims of Crime, <http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=38418> (Fall 2003; Winter 2004), 14.

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