A Structured Approach to Decision-Making in DV-Related Child Custody Disputes

Gabrielle Davis
Legal & Policy Advisor
Battered Women's Justice Project

Protecting Delaware's Children Conference
March 2015

Learning Objectives

• Apply up-to-date research on the role of practitioners’ assumptions, biases and beliefs in child custody decision-making

• Employ a structured approach to decision-making in DV-related child custody disputes

• Integrate a set of practice guides into work with battered parents

Framework

Identify Domestic Abuse

Understand Nature & Context of Abuse

Connect Abuse to Standard for Decision-Making

Apply Analysis to Assess and Decide
Slide 7

Framework

Identify Domestic Abuse
Understand Nature & Context of Abuse
Connect Abuse to Standard for Decision-making
Apply Analysis to Actions and Decisions

Slide 8

What is DV Screening?

A routine process for identifying a potential problem
• It’s tentative (not a judgment, ruling or diagnosis)
• A way to find out if there is reason to take a closer look
• Distinct from an assessment

Slide 9

Screening Research

• Screening for physical violence alone is insufficient to detect coercive controlling abuse.
  – Beck & Raghavan, 2010
• Practitioners who do not use systematic screening methods tend to under-detect IPV between custody-disputing parents.
**Slide 10**

**Screening Protocols**

- Elements of a good screening protocol
  - Systematic and universally applied
  - Behaviorally-specific
  - Focused on multiple forms of abuse
  - Attuned to both past abuse and more recent abuse
  - Alert to established risk factors
  - Structured in a way that promotes safe and informed disclosures

**Slide 11**

**Multiple Forms of Abuse**

- Physical abuse
- Sexual abuse
- Emotional abuse
- Economic abuse
- Coercive control

**Slide 12**

**Behavioral Specificity**

<table>
<thead>
<tr>
<th>Concrete Actions</th>
<th>Abstract Concepts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hitting, punching, strangling</td>
<td>Domestic violence</td>
</tr>
<tr>
<td>Destroying things</td>
<td>Abuse</td>
</tr>
<tr>
<td>Damaging credit</td>
<td>Alienation</td>
</tr>
<tr>
<td>Disabling vehicles</td>
<td>High conflict</td>
</tr>
<tr>
<td>Following, stalking</td>
<td>Emotional abuse</td>
</tr>
<tr>
<td>Forcing activities</td>
<td></td>
</tr>
<tr>
<td>Denying access to money</td>
<td></td>
</tr>
<tr>
<td>Forced sex</td>
<td></td>
</tr>
</tbody>
</table>
Slide 13

Risk Factors

• Increased frequency/severity
• Access to firearms
• Recent separation
• Threat to kill/current suicide
• Assistance of arrest for DV
• Forced sex
• Attempted strangulation
• Obsessive jealousy
• Stalking
• Control of daily activities
• Assault during pregnancy

Slide 14

Deciding Whether to Disclose

Why disclose?

- What do I hope to gain by disclosing?
- Is disclosure likely to get me what I need?

What to disclose?

- What does this person need to know?
- What happens if they don’t know it?

How to disclose?

- What is the best way to convey this information?
- Should it come from me or somebody else?

When to disclose?

- Is now the time to disclose?
- What happens if I wait? What happens if I don’t?

To whom to disclose?

- Does this person need to know and can I trust them?
- What will the likely effect(s) of disclosure be?

At what cost?

- Can negative effects be mitigated and, if so, how?

Slide 15

Strategies for Safe & Informed Disclosures

• Explain your role & function in the case.
• Explain why you are asking about domestic abuse.
• Explain how you will use the information.
• Explain whether & how information will be shared.
• Explain the scope and/or limits of confidentiality.
• Explain your duty to report.
Slide 19

Contexts

- Patterned
- Intimidation
- Dominance
- Entitlement

Coercive Controlling Abuse

- Produced and shaped by exercise of abuse
- No power and control tactics at work

Abuse Unrelated to Coercive Control

What we often mean

What others often mean

Slide 20

Importance of Context

Safety
Children
Parenting
ADR Process
Outcomes

Slide 21

Framework

Identify Domestic Abuse
Understand Nature & Context of Abuse
Connect Abuse to Standard for Decision-Making
Apply Analysis to Risk and Decisions
More Research

• Evaluators' beliefs are more closely associated with their parenting recommendations than the actual nature, context and severity of abuse they observe.


Yet Another Study:

• Mothers' demeanor is more closely associated with evaluators' recommendations than the severity (mild v. severe), type (conflict v. coercive control), or documentation of violence.


  – University of Illinois at Urbana Champaign

And Another Study:

• Evaluators' knowledge about domestic violence (awareness of risk factors and application of a power and control model) is more predictive of their parenting recommendations than: (1) the severity of abuse, or (2) the thoroughness of their investigations.

  – Michael S. Davis, et al., Custody Evaluations When There are Allegations of Domestic Violence (2011).

Framework

Identify Domestic Abuse
Understand Nature & Context of Abuse
Connect Abuse to Standard for Decision-making
Apply Analysis to Actions and Decisions

Standards for Decision-Making
- Nature of the case
  - Criminal proceeding
  - Issue = guilt or innocence
  - Focus = elements of the crime
- Protection order case
  - Issue = whether a protection order should issue
  - Focus = safety of the petitioner (and children)
- Custody dispute
  - Issue = allocation of parental responsibilities
  - Focus = best interests of the child
Standards for Decision-Making

- Nature of the process
  - Readiness to Mediate
  - Safe participation
  - Knowing and voluntary participation
  - Good faith and fair dealing
  - Autonomous decision-making

- Appropriateness of Early Neutral Evaluation
  - Safe involvement
  - Knowing and voluntary participation
  - Appreciation of relevant facts and applicable law
  - Ability to articulate facts and arguments
  - Autonomous decision-making

Standards for Decision-Making

- Nature of the Issue
  - Capacity to Co-Parent
  - Safe parental involvement
  - Secure parent-child relationships
  - Low parental conflict
  - Effective parental communication
  - Clear boundaries between partner & parental roles

- Access to the Child
  - Safety for the child and victim parent
  - Mastery of basic parenting skills
  - Competent parental decision-making
  - Age and developmentally appropriate engagement

Framework

Identify Domestic Abuse
Understand Nature & Context of Abuse
Connect Abuse to Standards for Decision-making
Apply Analysis to Actions and Decisions
Slide 31

Research

Even when IPV is detected, cases often proceed without accommodations for safety or power differentials.

Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005; Bow, 2006

---

Slide 32

Priorities

Johnston, 2006; Jaffe, Johnston, Crooks & Bala, 2008; Ver Steegh & Dalton, 2008

- Protect children
- Support the safety and wellbeing of the victim parent
- Respect the right of adult victims to direct their own lives
- Hold perpetrators accountable for their abuse
- Promote the least restrictive parenting arrangement

---

Slide 33

Recap

Identify Domestic Abuse
Understand Nature & Context of Abuse
Connect Abuse to Standard for Decision-making
Apply Analysis to Abuse and Decisions

Is abuse an issue here?
What is actually going on?
Why does it matter?
What is to be done about it?