

California Domestic Violence Courts: A Historical Perspective

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It is now widely accepted that domestic and family violence is a widespread serious social problem. Domestic and family violence is manifested by criminal behavior having long term effects on abused persons, their families, and their communities. It is reported that children who witness abuse are at greater risk of suicide, teen pregnancy, alcohol and drug use and juvenile delinquency. Often young persons who commit acts of domestic or family violence have learned such behavior within their families.

The efforts to view domestic violence in this different more serious light has been a slow, and at times, an unpleasant and frustrating process. It is only in recent years that the criminal justice system has re-examined and modified its response to this important social disease. First, this was at the urging of battered women's advocates, who demanded the criminal justice system treat domestic violence as criminal behavior. Now communities are demanding coordinated efforts as a result of the creation of domestic violence councils or coordinating committees comprised of the many stakeholders in each county or community.

Originally, the office of the district attorney was the first to become involved in an examination of domestic violence and their response to it within the criminal justice system. Prosecutors make the initial decision whether or not an alleged battering will be criminally charged and prosecuted. It was therefore felt, by many, that they held the key to positive progressive change. Gradually, mandatory no-drop prosecution policies were developed. These policies required that batterers would be prosecuted, assuming that all of the elements of the crime could be proven, regardless of whether or not the victim wanted her batterer prosecuted.

Victim advocates greeted this change in policy with a mixed response. On the one hand, advocates wanted to remove victims from the process of having to "press charges." It was their opinion that this re-victimized the victim by forcing her to decide whether to prosecute her batterer. This new policy accomplished this objective. Others expressed concern that the victim knew the complexities of her batterer best and that by removing her from the decision making process was not power enabling and therefore another form of victimization.

Early on it was recognized that prosecutors chosen for this specialized unit must be specially trained in understanding victim and batterer dynamics as well as assuming responsibility for the case from the time that the criminal charges are first issued until the time the case is concluded. This concept is referred to as "vertical prosecution." The same district attorney, or at least unit, would again be assigned to the case in the event of future needs as for example, violation of probation hearings or new case filings with domestic violence related matters.

In California, most jurisdictions have resolved the above conflict between no-drop and victim input policies by the adoption of a mandatory prosecution policy whenever an incident of domestic violence is believed to have taken place. Assuming that the prosecution believes that they can prove their case to a jury using the required standard of proof: beyond a reasonable doubt.

It quickly became obvious that the prosecution was just one part of a very complex criminal justice system and to positively effectuate change required a more cooperative, collaborative, community based response to the many facets of domestic violence. The next logical step in this process was to identify the key stakeholders in the community who had an interest in domestic violence prevention and who also had the power to be catalysts of change.

Law enforcement was identified next as a pivotal participant for they have important decision making authority at the scene of a domestic violence incident. As a general rule, the police are given a great deal of discretion whether to make on-view domestic violence arrests. Historically, the police rarely made arrests in the home, preferring to encourage one of the participants to leave until “things cooled off.”

Victim advocates were similarly concerned about the issue of mandatory arrest policies for domestic violence cases, as they had been with mandatory prosecution policies. Many police agencies were arresting both parties to a domestic violence incident when both parties alleged that their violence was in response to the violence of the other party. Rather than investigate and determine who was the initial or primary aggressor, both of the parties were arrested. In certain cases the police were being vindictive as a result of their loss of discretion to make individual arrest decisions. In other cases, the police decided that it was the role of the prosecution to “sort it all out.”

Most communities have adopted a mandatory arrest policy in the case of domestic violence cases. California law now requires that all police officers receive training regarding initial aggressor determination and additionally requires that police agencies are required to keep statistical information on the number of cases where dual arrests are made in domestic violence cases. Recent studies indicate that a mutual or dual arrest rate in excess of three percent in domestic violence cases suggest inadequate training and/or supervision of decisions made by police officers while on patrol.

Probation plays a very important role with victim safety, batterer accountability and rehabilitation and is therefore a very important participant in a collaborative approach to domestic violence prevention. Domestic violence crimes warrant immediate and intensive intervention. Once the court has acquired jurisdiction over the batterer either through an entry of a plea of guilty or by a jury’s finding of guilt, probation then assumes the responsibility to make certain that the court’s orders of probation are carried out fully and timely. Additionally, probation may need to intervene and bring a matter back to court where the batterer needs, and victim safety requires, additional conditions of probation or

where the batterer has violated a condition of probation or committed a new criminal domestic violence related act.

In order to accomplish the above stated goals, it is important that the probation officer, supervisor, and administration receive necessary training in understanding the dynamics of domestic violence including how the batterer exercises control over the victim by the use of power and control techniques. The caseloads should be dedicated exclusively to domestic violence offenses to insure consistency in case management and thereby providing increased victim safety awareness and batterer accountability. Specialized caseloads also require that specialized protocols be developed and in place. The protocols must be reviewed at least twice a year to insure that they are consistent with current legislative and case law and that they include the best intervention practices. Probation must also be in a position to assess a batterer's additional rehabilitation needs such as substance abuse intervention, parenting classes, and parenting without violence cases. Experienced and dedicated caseload probation officers are more likely to spot these important needs.

Probation must also work collaboratively with community agencies and advocates developing both standards and curriculum for the intervention programs and a method for effective evaluation of the current methods of batterer intervention services provided to batterers.

An alliance must also be forged with legal advocates allowing for specialized victim services including shelter, clothing, support, medical services, counseling, family law representation.

There must be coordination between the juvenile and adult divisions of the court, probation, the prosecution, and the public defender in order to protect victims and their families and to increase the likelihood of batterer intervention, rehabilitation, safety of the victim and family, and batterer accountability.

The above approach is necessary, in order to reduce domestic violence whether the batterer is an adult or a juvenile. Their accountability and rehabilitative needs and the safety concerns of the victim remain the same.

At about the same time as probation and the police joined the collaborative, the importance of Pre-Trial Services was noticed. Pre-Trial Services gives valuable information to the courts recommending or not recommending that a batterer be released on the supervised own recognized release, straight own recognized release, bail, or a combination of supervised own recognized release with bail as one of the conditions of release. Over time, Pre-Trial Services developed its own protocol for the type of information that it would give the court to aid in the decision making regarding the setting of bail and the pre-trial release of accused batterers. It is part of the present protocol that the court will receive criminal history information, including prior domestic violence incidents, including juvenile convictions, as well as victim input and desire regarding release and current medical condition.

The first domestic violence court came into being about ten years ago, after the initial responses of the district attorney and the police. At first, the court was not one judicial officer, but rather a number of judges who presided over domestic violence cases for either a few days a month or maybe for a period of a couple of months before a new judge was rotated into the court.

Judges have not always supported the idea of a specialized court for domestic violence cases for a number of reasons.

First, was the perceived loss of autonomy by the judges. Judges were concerned that “others” might run the court and that judicial decision making would be made by others regarding standards for release, prosecution, and sentence, to name a few concerns.

Second, judges were concerned that a specialized court might appear to the legal community that the judges assigned might not be perceived as maintaining a neutral position- they might not be perceived as being fair. Consistent with this belief was a concern that a specialized court might somehow be in violation of the judicial canons of ethics.

Third, many judges are opposed to the idea of specialization in any subject area, criminal or civil in that it limits a chief or a court’s presiding judge’s flexibility in making assignments based upon the needs of the court and the different abilities of individual judges.

Gradually these concerns were addressed to the satisfaction of the community and the court, although the issues are likely to be raised again whenever a new judge is rotated into the specialized court.

A successful domestic violence court requires that everyone from the victim, victim’s advocate, prosecution, criminal defense bar; all the community stakeholders trust the judge, presiding over the domestic violence court, to be fair, neutral, and impartial to all sides who appear before the court.

More recently, domestic violence courts have involved others from the community as part of the collaborative effort.

The batterer intervention program is, in many ways, the eyes and ears of the probation department and the court as they see the batterer every week throughout the fifty-two week intervention program (which is the California legal requirement.) They do the initial assessment for lethality, substance abuse, victim safety, and whether or not a batterer needs a specialized program (that cannot be provided as part of a standardized domestic violence intervention program.) The intervention program providers are in a better position to observe how the batterer is performing on a weekly basis and whether the batterer needs modifications to the terms and conditions of probation. The intervention provider must be perceived as being fair to the batterer and supportive of the

goals of rehabilitation while at the same time, be concerned about victim safety. If a batter demonstrated behavior that suggested that the victim might be at immediate risk for personal safety, probation and the victim would be notified.

Some domestic violence courts have the mental health agency as part of its support team. These specialists are concerned about the mental health needs of victims, their children, and the batterer and provide supportive assistance to those needing them.

The social service agency provides assistance and support services to children who might be at increased risk because the batterer continues to live in the home or because of other needs. It is the goal of social services to keep the victim and the children together as an intact family without the need of removing the children from the home and placing them into foster care or the children's shelter.

In many communities, there is an organization that provides state funds that are provided especially those who are victims of violence offenses. The funding provides medical treatment and care as well as psychological supportive services.

What then does a dedicated domestic violence court look like? This is not an easy question to answer because it depends upon the size of the community that the court serves. Often domestic violence courts are compared to drug treatment courts. The comparison is not a fair one.

Drug treatment courts deal with individuals who are criminal defendants who are dealing with an underlying illness that is the primary motivating factor in their criminal behavior. Many professional state and federal organizations have developed key components of a drug treatment court.

Domestic violence courts are dealing with criminal behavior that is learned and one that is not easily unlearned. There isn't one accepted model for a domestic violence court for there are both criminal and civil issues present in domestic violence cases. Most domestic violence courts assign judicial officers to hear a special domestic violence calendar, regardless of whether the judicial officers hear those cases exclusively or as part of a mixed assignment.

“The major feature that unifies domestic violence courts is that they seek to enhance victim and child safety and ensure batterer accountability.” Additional objectives include improving case management, making more efficient use of resources, training and education of personnel, and overcoming resistance of key participants. In many counties, there are domestic violence courts in criminal and the family courts (restraining orders are usually heard in the family court even if a family law action has not been filed.) Some counties have responded to the development of a domestic violence court by establishing a calendar whereby the judicial officer hearing the criminal law matter may also hear a related restraining law case.

Domestic violence courts have been in existence in the United States for in excess of ten years. The biggest benefits of the court have been the promptness that they allow the criminal justice system to respond in the event of violations of court orders or in the event of new criminal offenses. History also suggests that batterers are more apt to comply with court orders, including mandatory intervention programs, where there will be frequent court reviews and batterers will be held accountable for their behavior.