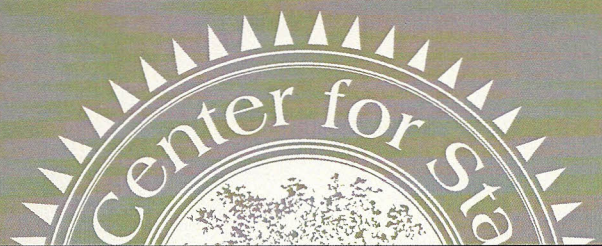


Trends in State Courts 2013

25th Anniversary Edition



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PROCEDURAL FAIRNESS, SWIFT AND CERTAIN SANCTIONS: Integrating the Domestic Violence Docket

Hon. David Suntag

Vermont Superior Court Judge

What might happen if a court system integrated into one docket, before one judge, related criminal, family, and protective order cases of domestic violence; institutionalized principles of procedural fairness; consistently applied swift and certain sanctions for offenders; front-loaded needed rehabilitative services; and tried to do it on the cheap? The results are in.

The Vermont Center for Justice Research (2011) evaluated just such an innovative, three-year (2007-10) integrated domestic violence docket (IDVD) court program in Bennington, Vermont. Their report demonstrated that the IDVD program substantially decreased criminal recidivism when measured against statewide data of similar offenders in the traditional justice system. A new process evaluation from the Vermont Center for Justice Research (2013) has identified the critical components for the program's success.

The original outcome evaluation provided strong support for the IDVD concept. There was a 38 percent reduction in recidivism for new violent crimes and a 42 percent reduction in recidivism for new crimes of domestic violence for those convicted and supervised in the IDVD program, as opposed to those similar offenders in the traditional criminal justice process statewide over a three-year period (Vermont Center for Justice Research, 2011: 6).

Even more significantly, there was a 54 percent reduction in recidivism for any type of new crime for IDVD participants as opposed to domestic violence offenders statewide (Vermont Center for Justice Research, 2011: 8).

There was a 42 percent reduction in recidivism for new crimes of domestic violence ... [and] a 54 percent reduction in recidivism for any type of new crime... [A]t the same time IDVD was significantly reducing recidivism, we did so by actually significantly reducing the use of incarceration.

TREND

Applying "procedural fairness" to the justice system and "swift and certain sanctions" to the criminal justice system have been gaining increased attention. One innovative court in Vermont chose to apply both to an integrated domestic violence docket and had significant success, including a substantial reduction in recidivism.

Recidivism—New Domestic Violence Convictions

| | IDVD Participant | % | Statewide | % |
|----------------|------------------|------|-----------|------|
| Recidivist* | 6 | 4.3 | 127 | 7.4 |
| Non-Recidivist | 134 | 95.7 | 1,597 | 92.6 |
| Total | 140 | 100 | 1,724 | 100 |

* "Recidivist" was defined by the Vermont Center for Justice Research as being convicted of a new crime.

A regression analysis led to a conclusion that "[t]he differences in reconviction behavior between the two study groups are more likely to be the result of program benefits rather than the result of the participant characteristics that were analyzed in this report" (Vermont Center for Justice Research, 2011: 33).

Recidivism—New Criminal Convictions (any type)

| | IDVD Participant | % | Statewide | % | Difference (%) |
|----------------|------------------|------|-----------|------|----------------|
| Recidivist | 31 | 22.1 | 822 | 47.7 | 54.0 |
| Non-Recidivist | 109 | 77.9 | 902 | 52.3 | |
| Total | 140 | 100 | 1,724 | 100 | |

How was this accomplished and can the process be duplicated? Just as important, how can it be afforded? The process evaluation has identified key ingredients of the program's success. The research suggests

that it just may cost more to ignore the program's promising results. The initial financial investment in the Bennington IDVD program was minimal (only one part-time coordinator/case manager was added to existing staff and community resources), and fewer hearings were necessary to resolve litigants' legal issues, fewer violations of court orders resulted, and significantly less jail time was needed. A third report analyzing system-wide cost savings is expected later in 2013.

BACKGROUND

The Bennington County IDVD program opened its doors at the beginning of September 2007. Drawing on the latest research on the dynamics of domestic violence (DV), procedural fairness, and criminal sentencing, as well as recognizing the inadequacy of the traditional justice system's attempts to successfully resolve DV cases in separate dockets, the IDVD program sought to provide a holistic approach to address the complex and varied needs of DV victims, offenders, and their families.

The IDVD program initially handled all criminal court misdemeanor DV offenses, some felony DV offenses, and all related probation violation cases, as well as all abuse prevention order (protective order) cases in family court. (Serious crimes of DV and long-term battering were considered inappropriate for the IDVD program.) The IDVD program also integrated related family court child-custody matters, juvenile court matters, and child/family-support matters whenever possible. Dedicated to the idea of one family, one judge, the IDVD

program allows a single judge, one day each week, to have immediate access to all relevant information regardless of the traditional docket and to gather all appropriate players at the table regardless of any traditionally limited roles.

IDVD CASE STUDY—HOW IT WORKS

A husband, after being assigned counsel, was arraigned, pleaded not guilty, and was released on appropriate bail conditions for a criminal charge of misdemeanor domestic assault allegedly committed against his wife in the presence of their child approximately 48 hours earlier. His wife, who also had a free attorney, received without opposition by husband, on the same day in the same courtroom, a family court DV protection order with conditions that paralleled defendant's bail conditions. The mother was also given a family court order awarding her temporary custody of her child, but with an agreed-upon and enforceable supervised visitation provision for the father.

The husband agreed to undergo an expedited assessment by a community mental-health provider for mental-health-and-substance issues, as well as attend an initial intake with the provider of a batterer's intervention program (BIP), all within the week. (The husband, with state's attorney agreement, was assured that no statements made at these sessions could be used against him should the criminal case not resolve without trial.) Appointments for the assessments, as well as intake appointments for each parent at the supervised visitation center, were scheduled by the coordinator from the court before the parents left the courthouse. A temporary family court order of support was issued to provide financial support to the wife and family until the next court appearance. The mother was also referred to a support group available at little cost for parents who have been subject to domestic violence. Although both parents indicated they did not wish to permanently separate or divorce at that time, both were handed an information packet with easily understood instructions to use if they changed their minds.

One week later, both parents returned to court, and the judge reviewed the recommendations contained in the assessment reports from the mental-health counselor and BIP director. The defendant, during a detailed colloquy with the judge in open court after consultation with counsel, pleaded guilty to the charge and clearly acknowledged responsibility and regret in the presence of his wife and other family members during his guilty-plea hearing. He was placed on probation with conditions designed to address

Procedural Fairness Principles: Voluntary compliance with court orders significantly increases when court users feel that:

- They were treated with respect
- They had an opportunity to tell their story
- They understood what was going on
- The judge was trying to be fair

Adapted from Tyler, 1990.



An attorney from "Have Justice Will Travel" provided free legal representation to plaintiffs in IDVD protective order hearings, while the public defender offered free legal advice to the defendants.

his risks and needs as identified by the assessments. Conditions required successful participation in substance-abuse treatment, batterer's intervention counseling, and parenting classes with a focus on the effects of domestic violence on children. The conditions of the protective, child custody, and visitation orders were reviewed and modified as necessary to ensure they did not conflict with the probation conditions.

There is simply no question that it would have been impossible to accomplish all of these outcomes in the traditional justice system within approximately nine days of the violent event that first brought the family to the courthouse.

OFFENDER ACCOUNTABILITY

In addition to providing immediate assessment and access to an array of needed services for the victim, family, and defendant, we knew that any domestic violence docket had to focus initially on victim safety and offender accountability. Consequently, perhaps the most attention and innovative efforts were applied to accomplish these goals. The IDVD program sought to ensure offender accountability in a number of different ways.

[T]ime to disposition from arraignment in IDVD occurred "three times more quickly than statewide."

Time from DV Event to Disposition. Believing that court case delays often result in less accurate determinations of culpability and decreased treatment success, IDVD required an offender to choose whether to accept an IDVD criminal case resolution generally within no more than one or two weeks from initial arrest and arraignment. (Most individuals charged with crimes of domestic violence were arrested and lodged or "flash cited" so that they were arraigned generally within no more than 24 to 48 hours of the alleged offense.) The result was that time to disposition from arraignment in IDVD occurred "three times more quickly than statewide" (Vermont Center for Justice Research, 2011: 34).

Deferred Sentences. The prosecutor offered as a plea agreement the incentive of a more lenient criminal case disposition than the standard criminal docket as long as the defendant acknowledged guilt and accepted responsibility for abusive behavior quickly. These

dispositions often involved "deferred sentences." Once defendants entered a guilty plea and judgment was entered, the court "deferred" the sentence for one or more years, during which time offenders were placed

on probation under a special probation warrant (see below). If a defendant went through probation without any violation, at the end of the term the conviction would be expunged.

Arraignment Time to Disposition (Days)

| | Count | Maximum | Mean | Median | Mode | Standard Deviation |
|-----------|-------|---------|------|--------|------|--------------------|
| IDVD | 89 | 358 | 51 | 28 | 5 | 59 |
| Statewide | 5,844 | 1,102 | 158 | 113 | 0 | 113 |

If a violation did occur, the offender was immediately returned to the IDVD judge, lost the benefit of the deferred sentence, and was then subject to whatever sentence was deemed appropriate at that time.

Guilty Pleas Only. IDVD required that if a defendant was prepared to take responsibility in criminal court for abusive behavior he or she had actually committed, guilty pleas only would be accepted. "No Contest" pleas (where the defendant acknowledges only that there is sufficient evidence to convict) or *Alford* pleas (where the defendant continues to fully deny responsibility while still "accepting" a conviction) were not accepted in IDVD. That is, only those offenders who were willing and able to accurately acknowledge their guilt and responsibility for the charged abusive criminal behavior were permitted to pursue an IDVD resolution. The value of prohibiting nolo or *Alford* pleas has been discussed in great detail by many a scholar (see, for example, Bibas, 2003). Dr. Phillip Stahl, national expert on child custody and domestic violence, in a discussion with the author in 2012, makes the point simply: "Until someone takes responsibility for his actions, he can never change for the better. Taking a plea of no contest avoids responsibility and allows the abuser to blame others." Defendants who would not do so for any reason were simply returned to the traditional criminal docket for trial, where all rights were fully protected.

Plea Hearing and Procedural Fairness. The hearing at which a guilty plea was offered and sentence imposed or deferred took on a level of attention and importance that can be lost in the daily administration of a busy criminal docket. A detailed colloquy between the judge and defendant was undertaken, whereby the defendant discussed and acknowledged the facts which underlay the crime being pled. Often the victim of the offense would be present, because the related protective order or family court case would be on the same docket. There was direct communication between the judge and defendant, often heard by the victim and other family members, concerning the importance of attending to the issues that brought the defendant to the court, especially relating to the well-being of their children. The defendant was encouraged to engage in that discussion.

The judge attempted to avoid condemnation, to encourage and hear the defendant's point of view, and then offer alternatives to prior abusive behavior patterns, which led to current problems. Further, the judge explained the critical components of the probation supervision, including any restrictions on contact with the victim (taking into account the victim's requests and desires), explained clearly the consequences of any violation of probation conditions, and tried to encourage and respond to any questions from the defendant or victim to ensure as full an understanding as possible under the circumstances.

Robert Boag, NCSC

25 YEARS AGO

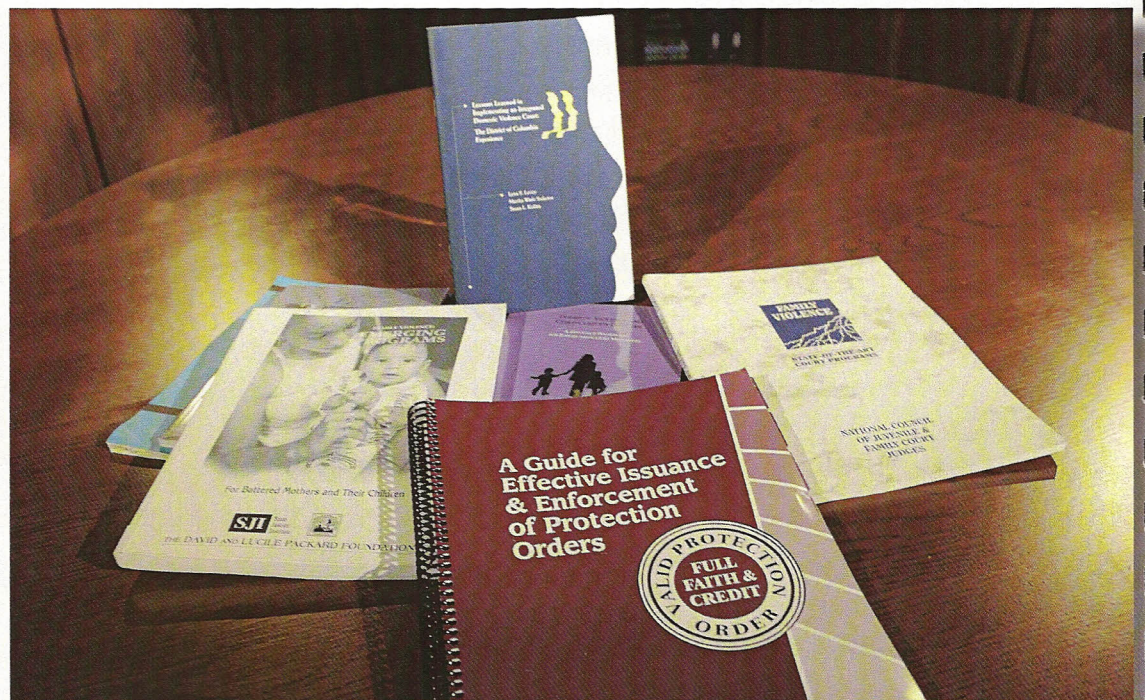
Domestic Violence Courts

Few domestic violence courts were operating in the United States 25 years ago, and courts could neither address the complex dynamics of intimate partner abuse nor integrate multiple cases involving the same individuals effectively. Domestic abuse, especially with children in the home, was often exacerbated by the court system. Specialized domestic violence courts and increased judicial understanding of domestic violence dynamics began in the 1990s, but there was still a lack of coordination among dockets. Integrated domestic violence courts are a more recent development.

Specialized Probation Warrant. The IDVD program, in conjunction with the local probation and parole office (probation in Vermont is part of the Department of Corrections), created a specialized probation warrant, which helped facilitate more effective monitoring of the defendant's compliance with court orders. For example, as opposed to imposing a probation condition that simply prohibited "harassing behavior," as had been the norm, the DV warrant not only contained a prohibition against "harassing behavior," but also gave examples, such as "interfering or attempting to interfere with utilities and or services being provided to the victim's and/or her children's home"; "damaging or attempting to damage any property owned by the victim or her children"; and "cursing at the victim and/or the children."

As noted in the process evaluation, "The detailed explanations made it clear to the defendant what behaviors were prohibited. It also gave defense counsel and probationers the ability to engage in a conversation beyond what they normally would have" (Vermont Center for Justice Research, 2013: 12). Defendants reviewed these conditions with their attorney before a guilty plea was entered. The judge, upon accepting a guilty plea and imposing the probation conditions, would then refer to the same examples directly with the defendant. The supervising probation officer would then review the very same definitions and examples with the probationer immediately after sentencing. Such clarity was designed to ensure that the same clear message be provided to the offender at least three times before probation began.

Swift and Certain Sanctions. Defendants were informed by the judge and their attorneys to expect both support from their probation officers in working toward



rehabilitative goals, as well as swift arrest and enforcement should they violate any, even minor, probation conditions. The probation officers agreed to carry out a stricter level of supervision in keeping with the overall policy of the IDVD program and did so.

Institutionalized support for swift action by the probation officer (who was authorized to arrest and lodge probationers upon probable cause to believe any probation violation had been committed) allowed for similarly swift action by the court when dealing with violations of probation. The judge then carefully reviewed the purpose and meaning of the conditions of probation with the probationer once again and offered continued support for the defendant in pursuing a future violation-free lifestyle, while reminding the defendant again of the immediacy of sanction should further violations occur "just like what happened to you this weekend." Most often, unless the circumstances or probationer's attitude warranted different treatment or the violation involved further violence, the probationer was then returned to probation, rather than incarcerating the offender for a more significant period. Enforcement and respect were thereby joined in one process.

The data, we believe, support the efficacy of this combination of procedural fairness and swift and certain sanctions. The result is that at the same time IDVD was significantly reducing recidivism, we did so by actually significantly reducing the use of incarceration. "IDVD participants were significantly less likely to be sentenced to incarceration . . . (and when sentenced to incarceration) significantly less likely to receive a maximum sentence" (Vermont Center for Justice Research, 2011: 26).

IN CLOSING

Describing all components of the IDVD project would require a great deal more space than available in this article. I have attempted to focus, therefore, on the most innovative mix of ingredients that made the IDVD project unique, in my experience: integrating related cases from traditionally separate dockets; accelerating the process for those ready to do so; institutionalizing the principles of procedural fairness even during plea hearings, which have become in many ways the most critical part of the modern criminal justice system; and then consistently applying swift, certain, and clear but generally short jail sanctions for those who violate resulting orders. This combination of philosophies and practices drew on those who pioneered the concepts.

As for myself, after 23 years on the family and criminal court trial bench experiencing the frustration and helplessness of watching the traditional court system deal inadequately with so many of those affected by domestic violence, the IDVD program provided new hope and energy.

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