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# DOMESTIC VIOLENCE

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The Children’s Commission partnered with the Texas Council on Family Violence (TCFV) to develop this chapter. For more information on TCFV, please visit the [TCFV website](#). Please see the following tools and resources provided by TCFV for additional helpful information. Additionally, judges are encouraged to contact their [local Domestic Violence Program](#) to access opportunities for education and training. For more support or assistance in identifying a local program, please contact TCFV through the [website](#).

## A. Background

Domestic violence (referred to as “family violence” in [Tex. Fam. Code § 71.004](#)) is defined as a pattern of coercive control<sup>130</sup> which takes the form of behavior choices and strategies used purposefully and systematically by a person to gain or maintain power and domination over their intimate partner.<sup>131</sup> Domestic violence is present in every community and across all ages, socio-economic levels, sexual orientations, genders, races, religions, or nationalities and “can be made up of physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.”<sup>132</sup> Different forms of control and abuse can occur simultaneously and can increase in severity over time. Physical aggression is not always a tactic that is utilized in domestic violence; however, physical aggression may or may not show physical evidence of harm.

Coercive control can be challenging to identify for the domestic violence victim/survivor parent (hereinafter referred to as survivor parent) experiencing it as well as for others, including law enforcement, child welfare professionals, judges, friends, and family. Domestic violence is often viewed as incident-based, rather than as a dynamic that shapes how families function and respond. Viewing domestic violence as a pattern and not as a singular incident or series of incidents is critical to responding supportively to the safety needs of the survivor parent and the children exposed to it.

Coercive control can include the domestic violence perpetrator (hereinafter referred to as perpetrator) taking away access to resources needed by the survivor parent and the children as well as removal of psychological or emotional support. In a child welfare case, coercive control can manifest as the perpetrator taking away access to money, food, childcare, transportation, health insurance, and/or critical documents as a threat or consequence for the survivor parent participating in the child welfare investigation process, signing a safety plan, or getting a protective order. This could also take the form of the perpetrator making threats about the children, employment, or basic needs. These actions by the perpetrator increase risk to the survivor parent and the children and can compromise the survivor parent’s ability to protectively parent and in turn increase the negative impact that domestic violence has on the children. It is crucial to respond to domestic violence in a way that supports the protective capacities of the survivor parent and bolsters protective factors for the children, while simultaneously holding the perpetrator accountable for the impact that their behavior and parenting choices have on the family.

It is important to note that witnessing family violence, in and of itself, is not child abuse under Texas law. However, co-occurrence of domestic violence and child neglect or abuse is common. Domestic

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violence constitutes the single greatest precursor of child maltreatment fatalities.<sup>133</sup> In 2020, Texas DFPS' annual report on child fatality and near fatality<sup>134</sup> documented that out of the 251 child fatalities in Texas the following circumstances were present:

- 132 children (52.59%) had a documented history of domestic violence in their case file;
- 27.1% of the families who experienced a child fatality had active domestic violence present in their home environment; and
- 22.7 of the families which experienced a child fatality had both a history of domestic violence and active domestic violence present in their home environment.
- Physical abuse was the cause of death for almost 60% of the 57 child fatalities where there was both a documented history and active domestic violence present in the home environment.

A common response by perpetrators is an unwillingness to participate in the child welfare process, including choosing not to engage in conversations, meetings, and services. This leaves the survivor parent accountable for meeting all safety concerns on their own, even when they may not be the cause of all safety concerns. It is important to note that a survivor parent's decision to leave an abusive relationship may leave them without the financial resources to care for the child and might result in a loss of employment, housing, and childcare. Instead, the survivor parent may stay in the relationship as a protective response, believing that the perpetrator will do more serious harm if the survivor parent tries to leave. Notably, women who leave their abusive partners have a 75% greater risk of being killed than those who stay.<sup>135</sup>

Exposure to domestic violence can have long-lasting negative effects on children's physical and emotional well-being. Children who are removed from their home as a result of domestic violence may also then experience the trauma of being separated from the survivor parent. Also, the separation of the children from the survivor parent creates more opportunity for the perpetrator to use the children as a tool to manipulate the survivor parent. These threats can add to other sources of pressure to stay in a domestic violence situation, such as cultural practices or norms, religious pressures, and the desires of the children to return to their home.

## **B. Domestic Violence and Disproportionality**

The following information specifically addresses the intersection of disproportionality, child welfare, and domestic violence. For a discussion of disproportionality, please see the [Disproportionality and Equity](#) chapter of this Bench Book.

Within the child welfare system, the prevalence of poverty can lead to a disproportionate identification of poverty as neglect for African American families.<sup>136</sup> Poverty has a significant impact on survivor parents due to the isolation, coercion, and economic abuse they may experience. African American women experiencing domestic violence may be less likely than other women to be referred for domestic violence services, even though they are twice as likely to report severe physical violence than non-Hispanic white women.<sup>137</sup>

The child welfare system relies on other systems to help assess parents' abilities to care for and protect their children. The criminal justice and mental health systems are two of these systems, and

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families of color may experience disproportionate and disparate impacts<sup>138</sup> or be fearful of the impact of using these systems to assess their protectiveness. Regarding the criminal justice system, families of color may be reluctant to seeking such relief as calling law enforcement, requesting a protective order, or testifying against the perpetrator. The mental health system is especially connected to survivor parents involved in the child welfare system as mental health professionals are often asked to assess the mental health of survivor parents. Trauma survivors (both child and adult) experience a wide range of issues related to trauma exposure and may at times experience co-occurring mental health issues stemming from their experiences, such as Post Traumatic Stress Disorder (PTSD).

## C. Judicial Responses to Child Welfare Cases Involving Domestic Violence

Judges may consider taking the following steps to have a positive impact on the safety and stability of families experiencing domestic violence:

- **Keep the children’s safety in mind:** It is common for the perpetrator to use the children to control the survivor parent. Perpetrators may threaten to gain sole custody, kill, kidnap, or otherwise harm children if the survivor parent leaves. Services, planning, and hearings should be conducted with the safety and well-being of the children as a primary concern and in the context of domestic violence dynamics.
- **Keep the domestic violence survivor parent’s safety in mind:** If virtual hearings or separate testimony/hearings are an option, consider allowing the survivor parent to make the decision about which hearing format suits their safety needs. In addition to upholding privilege, judges and might consider holding separate hearing times to discuss each parent’s individual portion of the case if there are concerns by the survivor parent about continued use of intimidation, threats, manipulation, or retaliation by the perpetrator. Also, the child’s safety and well-being is closely connected to that of the survivor parent.
- **Address the trauma of removing children from the survivor parent:** Considerations may include placing the children with relatives or fictive kin that the survivor parent identifies as safe and supportive for the shortest duration while the survivor parent plans for their next step and seeks safety. Note that placement with the perpetrator’s family could lead to continuing coercion and/or collusion against the survivor parent by the perpetrator or the perpetrator’s family depending on their relationship with the perpetrator.
- **Recognize the danger of separation:** Separation from an abusive partner increases the risk of lethality when domestic violence is a dynamic in the relationship, as can pursuing legal options such as protective orders, divorce, custody, and mediation. Additionally, because the perpetrator’s actions often directly involve, target, and impact the children in the family, the fear of being harmed might impact the information that the survivor parent and their children share with caseworkers or other individuals.
- **Order additional services to address the parenting and behavior choices that the perpetrator is inflicting on the survivor and the children:** This may include mental health support and substance use services as well as peer support and counseling with a domestic violence shelter counselor.

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- **Recognize the benefits of supervised visitation:** Limiting and/or supervising the access of the perpetrator is best provided by a supervised visitation and exchange program whose staff are trained in the dynamics of domestic violence. Trained staff can identify when a perpetrator is using the children to control the survivor parent or to gain access to information including new contact information. If the visits cannot be supervised by trained staff, then it is recommended to consult with the survivor parent about who is identified as a safe person and arrange for that person to provide for access and visitation with the children for the survivor parent.
  - **Create a Service Plan based on the survivor's experiences and strengths:** Judges can encourage a culture where the survivors' experiences are heard, valued, and considered in safety planning, and where the survivor parent's supports, strengths, and protective factors are identified and bolstered. Service plans should be tailored to address safety concerns and should include input from the survivor parent.
  - **Include the survivor parent in placement decisions:** When possible, keeping the children and survivor parent safe and together is preferred. If separation must occur due to safety concerns, judges can request input from the survivor parent about placement for the children with relatives or fictive kin who the survivor parent trusts. This should be a time-limited placement that allows for safe visitation by the survivor parent and should address any safety concerns that the survivor parent identifies.
  - **Recognize the potential for ongoing domestic violence during the CPS case, even if the parents are separated:** A perpetrator can continue to intimidate, manipulate, and harm a survivor parent during a CPS case. Some examples might include using the children to garner information about the survivor parent, making false reports to CPS or to law enforcement and/or filing for a protective order under false allegations to control the survivor parent, taking away access to transportation or funds, tracking phone calls and the location of the survivor parent, and violating stay-away orders. An option for safe communication can be through a phone app such as [Our Family Wizard](#). Also, judges should be aware that records kept by child welfare caseworkers can be requested and obtained by the perpetrator, and that these records can give the perpetrator access to the survivor parent's or child(ren)'s location and increase the danger posed to them. Such confidentiality concerns can be addressed through redaction.
  - **Consider how to maintain safety in mediation:** In cases involving domestic violence, judges and attorneys might consider selecting a mediator who has undergone specialized training. In addition, judges and attorneys should solicit feedback from the domestic violence victim/survivor parent about what precautions should be implemented and consider orders to ensure the safety of all parties participating in mediation. Finally, related information and suggestions on best practices about mediation when domestic violence is involved can be found in the Texas Council on Family Violence Child Custody Mediators [Training Series](#) and Children's Commission [Mediation Round Table Report](#).

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## D. Batterers Intervention and Prevention Programs (BIPP)

Opportunity exists to increase the expectations of the child welfare system around understanding and safely addressing the dynamics of domestic violence. This can include increased partnerships with domestic violence experts and making appropriate referrals for services when domestic violence is identified such as a Batterers Intervention and Prevention Program (BIPP).

Many accredited BIPPs in Texas contract with DFPS and therefore are available free of charge to participants. TCFV can provide a list of these contracted providers upon request to [bgzimmer@tcfv.org](mailto:bgzimmer@tcfv.org). For accredited non-contracted BIPPs, please check the [TDCJ website](#). If a BIPP is not available, individual counseling with a practitioner who specializes in working with issues of power, control, and coercion is recommended. Ordering Anger Management classes is not recommended since perpetrators can use information from those classes to become more effective at controlling their intimate partners while minimizing the visibility of their possessive behavior/parenting choices.

Ordering domestic violence perpetrators to participate in BIPP sends the message to the survivor parent and the family that the perpetrator is accountable for their choices that impact the safety of their children and family. BIPPs are designed to give clients the skills to treat their partners and children with respect and handle conflict without violence. However, these programs cannot guarantee safety for survivor parents, or “fix” someone who has been and/or continues to be chose abusive and coercive behaviors that harm and disrupt the family functioning of the survivor parent and their children.

Asking follow-up questions of the perpetrator about the parenting choices that they are making, and confirming their attendance, participation, and progress with the BIPP is critical.

Below are some suggested questions for judges to ask of the **person enrolled in the BIPP**:

### **Understanding Prior History:**

1. Have you previously participated in services to address similar behaviors?
2. What services? How often? For how long did you participate in those services?
3. What behavior changes, if any, did you notice from participating in those services?
4. What helped you to keep those behavior changes?
5. How long did those behavior changes last?
6. Did you reach out for additional support if you chose to use tactics such as manipulation, coercion, threats, weapons, physical violence, emotional violence, and psychological violence against the survivor parent?
7. Did you think those services were beneficial?

### **Prior to Attendance of BIPP (or other court-ordered services):**

1. What are two hopes that you have for your relationship with your children?

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2. What are two behaviors about yourself that you would like to improve or change?
  3. What are two things you are proud of yourself for?
  4. What are two ways that you think your child's other parent supports your children to grow?
  5. What are two ways you show your children that you care?
  6. What do you think your children would say about how they know when you are upset, frustrated, or angry?

**During Service Participation:**

1. What are you learning from the services?
2. What is your role in creating an unsafe environment for your child?
3. What is your role in creating a safe environment for your child?
4. What is your role in disrupting the safe environment for your child?
5. Can you give me three examples of ways that you are making different choices? What would you have normally done and what did you choose instead? What supported you in making the decision?
6. Can you share with me two examples of your behaviors that you are worried causes a safety concerns or fear for the survivor parent? How about for your children?
7. How do those behaviors impact your child feeling safe?

**After Completed Attendance of a Batterer Intervention and Prevention Program:**

1. Did you think those services were beneficial?
2. What did you learn that you did not know before or understood differently this time?
3. How has the program impacted your behavior choices?
4. Can you share one example of a choice that you made but did not take responsibility for this week?
5. If you had another opportunity to make that choice, what would you do?
6. Can you share about some of the decisions that you made and the impact it caused your family?

For more information about how to inquire about and support safe parenting choices by the perpetrator, judges might access resources available through the [Safe and Together Institute](#).

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Below are some suggested questions that judges might consider asking the **survivor parent**:

**Questions that Support Safety and Security:**<sup>139</sup>

1. What support you need to continue to parent and feel safer?
2. What support, services, or resources do you need to continue to run your home while continuing to keep your children safe?
3. Do you have access to a car or another mode of transportation?
4. Do you have the continued ability or inability to pay rent and buy food?
5. What other needs do you have?
6. Are you aware if you currently have any active protective orders against the perpetrator or if you have had an active protective order against them in the past?

**If the Survivor Parent has a substance abuse concern:**

1. What are the factors in place that contribute to your continued substance use/abuse?
2. Do you want to work towards getting clean/sober?
3. Have you ever tried to get clean/sober before?
4. If so, what factors were in place that supported you staying clean/sober?
5. What factors were in place that led to your continued use?
6. Has the perpetrator ever disrupted your attempts at sobriety?

**If the Survivor Parent has a mental health concern:**

1. What are the factors in place that contribute to your mental health challenges?
2. Do you want to work towards addressing potential mental health challenges?
3. Have you ever tried to address your mental health before?
4. If so, what factors were in place that supported you feeling well?
5. What factors were in place that led you to feeling unwell?
6. Has the perpetrator ever disrupted your attempts to care for your mental health and wellness?

**Talking with the Survivor Parent Privately:**

1. What are you already doing that is helping to keep you and your children safe?
2. How can we support you to continue those protective strategies and actions?
3. What additional supports will help you keep yourself and your child safe and together?

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## E. Protecting Privacy

Safety must be at the forefront of any survivor parent and their families' needs. A survivor parent fleeing a perpetrator often seeks services and shelter from a family violence center to escape a violent home. Judges might recommend their local domestic violence agency as a resource for free and confidential services for survivor parents. Domestic violence agencies can support survivors in a variety of ways, including addressing trauma concerns and stability and safety planning (housing, food, and other basic needs which are critical, alongside the confidential therapeutic support). It is important to note that family violence centers are bound by the Family Violence Prevention and Services Act (FVPSA) to have all services be voluntary.

The advocates at these centers understand that trust is crucial to build with survivors so they feel comfortable in sharing details about their experience with violence and can receive survivor-centered services to meet their individual needs. Being able to do this confidentially represents a critical component to feeling safe and provides the circumstances for a survivor to be able to share intimate details without having to worry about them later being revealed or used against them as they rebuild their lives. Victim-advocate privilege, outlined in [Tex. Fam. Code Chapter 93](#), supports survivors seeking help and engaging in services offered at a shelter which is tantamount to securing safety. This law is further supported by federal confidentiality protections found in the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA).<sup>140</sup>

The confluence of these laws creates a safety net for survivors. When DFPS or courts compel information or circumvent the privacy protections afforded by law, this can create safety risks and send a message to survivors that seeking support and safety may be used against them. Texas law does not allow disclosure except in narrow instances. Absent a properly executed release of information signed by a survivor who has consented to the privilege disclosure with an advocate, Texas victim-advocate privilege law attaches to all confidential communications and the advocate or family violence center must not disclose them outside of a few exceptions. Exceptions to privilege include:

- Mandatory reporting of child abuse and neglect and adult abuse, neglect, and exploitation.
- An in-camera review by a judge to assess if the family violence center holds a specific document that proves forfeiture by wrongdoing in the event of a proceeding under [Tex. Code Crim. Proc. Art. 38.49](#).
- If an advocate serving as an expert witness reviews confidential communication and then derives an opinion based on the review of that information.

Judges play a critical role in upholding the carefully constructed privacy laws in Texas and can serve to uphold survivor safety when confidentiality and privilege laws are upheld and carefully navigated.

### **Privilege and Confidentiality Questions for Judges to Consider:**

1. Have relevant state and federal privacy statutes addressed whether disclosure of survivor information is permissible?
2. Is there any other way to access needed information without breaching the critical privacy protections survivors of family violence receive from family violence centers?



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3. Will seeking this information put the survivor parent or their children at risk?
  4. Who would have access to these records after disclosure and how would it help the family or affect their safety?

## **F. Firearm Safety and Addressing Known Lethality Factors**

Research has shown that 59% of female homicides were committed with firearms—more than all other means combined.<sup>141</sup> Firearms amplify the inherent power and control dynamics characteristic of abusive intimate relationships. When perpetrators have access to a firearm, the risk of intimate partner murder increases dramatically.<sup>142</sup> National Domestic Violence Hotline survivor callers whose abusers had access to firearms reported 10% said their abuser had fired a gun during a domestic violence incident, 22% said their abuser had explicitly threatened to kill them, their children, families, pets, friends, and/or to commit suicide while 67% said they believed their abusers were capable of killing them.<sup>143</sup>

Child welfare professionals may not be aware of an existing dynamic of domestic violence between the parents by the time the case comes to court, unless a mandatory report was made by police who went out on a domestic violence call. In addition, it is unlikely that a child welfare investigator will be immediately aware of whether or not the domestic violence perpetrator owns a firearm.

### **Questions for Judges to Ask About Firearm Safety:**

1. Does the perpetrator own or have access to a gun?
2. Does the perpetrator have any prior history of domestic violence or a history of using weapons (including plea deals and charges that were deferred)?
3. Has the perpetrator ever threatened to kill the survivor parent, the children, or themselves?
4. Has the perpetrator ever threatened the survivor parent with a gun or weapon prior to the hearing?
5. Ask the survivor parent and the perpetrator if there are any guns or weapons in the home. To minimize risks to the survivor parent and children, do not ask the survivor parent questions directly related to their own safety in open court. Instead, involve a domestic violence advocate from your local domestic violence program who could ensure that the survivor has access to information, safety planning and support if they choose.
6. If guns are present and there is concern about how to move forward to decrease the lethality risk for the survivor parent and children, judges are encouraged to reach out to their local Domestic Violence Program or to contact the Texas Council on Family Violence.

### **Texas Laws Addressing Domestic Violence and Firearms**

Texas law prohibits domestic violence and dating violence misdemeanants from possessing firearms for five years after release from confinement or community supervision.

- [Tex. Penal Code § 46.04\(b\)](#) (Unlawful Possession of a Firearm);
- [Tex. Penal Code § 22.01\(a\)](#) (Assault);

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- [Tex. Fam. Code § 71.004\(3\)](#) (Family Violence);
  - [Tex. Fam. Code § 83.001\(b\)](#) (Temporary Ex Parte Orders); and
  - [Tex. Fam. Code § 85.022](#) (Requirements of Order Applying to Person Who Committed Family Violence).

Respondents to ex parte and permanent protective orders are prohibited from possessing firearm for the duration of the order.

- [Tex. Penal Code § 46.04\(c\)](#) (Unlawful Possession of a Firearm);
- [Tex. Penal Code § 25.07\(a\)\(4\)](#) (Violation of Certain Court Orders or Conditions of Bond In a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case);
- [Tex. Fam. Code § 85.026](#) (Warning on Protective Order); and
- [Tex. Fam. Code § 71.004\(3\)](#) (Family Violence).

Judges can issue protective orders are authorized to order relief that is necessary to protect survivors.

- [Tex. Fam. Code § 83.001\(b\)](#) (Requirements for Temporary ex Parte Order); and
- [Tex. Fam. Code § 85.022](#) (Requirements of Order Applying to Person Who Committed Family Violence).

## **G. Intersection of Child Welfare Cases and Child Custody**

Information emanating from a child welfare case where domestic violence is involved can impact concurrent and future custody issues. It is common for the perpetrator to use custody orders and other issues related to the children, including exchanges, to continue to threaten and harass the survivor parent. Fathers who are violent towards the mothers of their children are twice as likely to seek sole custody of their children as non-abusive fathers.<sup>144</sup> It is important for final orders in a child welfare case to address conservatorship and access with information about known safety risks spelled out so that long-term safety for survivor parents and children is clear in the event of a future SAPCR.

Similarly, documentation during the child welfare case can impact the ongoing safety of the survivor parent and child even after the child welfare case has ended. Case documentation should include an accurate identification of the perpetrator, clearly identified patterns of the dangerous behaviors that initiated the original and ongoing safety concerns, as well as documentation of the additional negative impacts that those behaviors had on family functioning. Documentation of the services ordered to support behavior change by the perpetrator is critical. That documentation should include detailed attendance records of their participation in court ordered services, including their participation in the Batterers Intervention and Prevention Programming (BIPP). In addition, it is critical to document if the perpetrator was court-ordered to attend BIPP and failed to follow through, and/or received a finding of contempt.

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Case documentation can prove invaluable to determining safety issues in child custody matters as they determine the ongoing access that the perpetrator has to the child and therefore to the survivor parent. This documentation should include how and when exchanges will take place, along with information pertaining to the financial responsibility held by the perpetrator. This documentation is critical because it will limit two of the ways that the perpetrator might attempt to shift the power dynamics by inciting the fear and dependency of the survivor parent and the child.

**Relevant Law:**

- [Tex. Fam. Code § 261.501](#) (used by the Harris County Attorneys' Office for Protective Orders in CPS cases)
- [Tex. Fam. Code § 262.102\(4\)\(c\)](#) (emergency order)
- [Tex. Fam. Code § 262.201\(k\)](#) (adversary hearing)
- [Tex. Fam. Code § 262.1161\(c\)](#) (removal: misdemeanor exception)
- [Tex. Fam. Code § 262.1095\(4\)\(c\)](#) (family violence exception to providing information)

## **H. Resources**

**Training and Materials:**

- National Child Traumatic Stress Network - National Domestic Violence Awareness Month [Resources](#)
- Quality Improvement Center on Domestic Violence in Child Welfare (QIC-DVCW):
  - [Resource Library](#)
  - Protective Factors for Survivors of Domestic Violence [Issue Brief](#)
  - Relational and Systemic Accountability for Persons Who Use Violence [Issue Brief](#)
  - Child Welfare and Domestic Violence: The Impact on Children and Families [Fact Sheet](#)
  - Battered Women's Justice Project Resource SAFeR - Promoting Intimate Partner Violence Informed Decision Making in Family Law Issues [Website](#)

**Judicial Bench Cards and Guidebooks:**

- Safe and Together Institute (Connecticut) - Domestic Violence [Guidebook](#): A Guide for Juvenile Court Professionals
- Supreme Court of Ohio - Assessing Allegations of Domestic Violence in Child Abuse Cases [Benchcard](#)
- National Council on Juvenile and Family Court Judges Bench Cards:
  - [Checklist to Promote Perpetrator Accountability](#) in Dependency Cases Involving Domestic Violence

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- [A Judges Guide Navigating Custody Visitation Evaluation](#) in Cases with Domestic Violence
  - [Reasonable Efforts Checklist](#) for Dependency Cases Involving Domestic Violence
  - [A Judicial Checklist for Children and Youth Exposed to Violence](#)
  - Battered Women’s Justice Project - [Practice Guides](#) for Family Court Decision Making in Domestic Abuse Related Child Custody Matters
  - Minnesota - Domestic Violence Risk Assessment [Bench Guide](#) authored by the Minnesota Gender Fairness in the Courts Implementation Committee of the Battered Women’s Justice Project
  - National Child Trauma Stress Network [Bench Card](#) for the Trauma-Informed Judge