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Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence

INTRODUCTION

Judges need information and tools to both guide them in holding perpetrators of domestic violence accountable for their abusive behavior and to ensure that efforts to reach perpetrators[1] do not cause unintended consequences or further harm to victims of domestic violence and their children. This *Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence* (*Accountability Checklist*) will help dependency judges intervene with those who use violence in ways that promote accountability and maximize the safety and well-being of children and victim parents. It provides a framework to help the court leverage its authority to hold perpetrators accountable, provide appropriate services, and improve judicial decision-making.

This *Accountability Checklist* complements the *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence*[2] (*Reasonable Efforts Checklist*) by providing specialized information to hold perpetrators of domestic violence accountable in child protection cases. Much of the narrative accompanying the *Reasonable Efforts Checklist* is also applicable to this *Accountability Checklist*.

This *Accountability Checklist* will help judges:

- Gather information needed to enhance decision-making on accountability issues;
- Assess the risk posed by perpetrators to lessen perpetrator-generated safety threats to children and victim parents;
- Review and tailor service plans to hold perpetrators accountable in ways that promote safety and compliance with orders;
- Evaluate treatment options to enhance perpetrators' capacity to change;
- Strengthen judicial decision-making about placement and visitation of children to increase the safety of children and victim parents; and
- Craft judicial policies and practices that promote the accountability of perpetrators and the safety of victim parents and children.

DEFINITIONS OF DOMESTIC VIOLENCE

For purposes of this tool, we define domestic violence as a pattern of assaultive and coercive behaviors that operate at a variety of levels – physical, psychological, emotional, financial, or sexual – that one parent uses against the other parent. The pattern of behaviors is neither impulsive nor "out of control," but is purposeful and instrumental in order to gain compliance or control. It can include assault, destruction of property, isolation, and acts or threats of abuse against the victim parent, children, and pets. Abuse is likely to increase at the time of separation.

Perpetrators often use court proceedings or threats of court proceedings and non-compliance with court orders to continue control over the victim parent and children. If courts focus exclusively on the legal definitions of domestic violence (usually assault and violation of protection orders) the underlying pattern of abusive behavior may not be apparent. Understanding the underlying pattern of fear, control, intimidation, and psychological abuse is essential to understanding the impact of domestic violence on victim parents and children. These same patterns of coercive control are often evident in the perpetrator's behaviors with child protection and supervised visitation personnel.

Major sources used to compile the information contained in this *Accountability Checklist* include: Lundy Bancroft, National Council of Juvenile and Family Court Judges, *The Batterer as Parent*, 6 SYNERGY (Winter 2002); Lundy Bancroft & Jay Silverman, ASSESSING RISK TO CHILDREN FROM BATTERERS (2002); Leigh Goodmark, *Achieving Batterer Accountability in the Child Protection System*, 93 KY. L.J. 613 (2004); Leigh Goodmark, National Council of Juvenile and Family Court Judges, REASONABLE EFFORTS CHECKLIST FOR DEPENDENCY CASES INVOLVING DOMESTIC VIOLENCE (2009); Margaret Hobart, Washington State Coalition Against Domestic Violence, BATTERER ACCOUNTABILITY: RESPONDING TO CHILD MALTREATMENT AND DOMESTIC VIOLENCE (2008); Peter Jaffe, Claire Crooks & Francis Wong, *Parenting Arrangements After Domestic Violence*, 6 J. CTR. FAM. CHILDREN & CTS. (2005); Fernando Mederos, Family Violence Prevention Fund, ACCOUNTABILITY AND CONNECTION WITH ABUSIVE MEN (2004).

[1] Statistically, the mother is at far greater risk of being abused by the child's father than he is by her. *See* BUREAU JUST. STAT., U.S. DEP'T JUST., FAMILY VIOLENCE STATISTICS ON STRANGERS AND ACQUAINTANCES 1 (2005), available at http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=828 (finding that females were 84 percent of spouse abuse victims, 86 percent of victims of abuse by a boyfriend or girlfriend, and 58 percent of family murder victims). For the purposes of this publication, victims of domestic violence will be referred to as female, perpetrators as male.

[2] Available online at http://www.ncjfcj.org.

GATHERING INFORMATION

- ❑ **Did the child protection agency (agency) gather information about the perpetrator and his violence from the following sources?**
  - ✓ The perpetrator
  - ✓ The perpetrator's
    - Medical records
    - Substance abuse records
    - Criminal records
    - Probation and parole officers
    - Treatment providers
  - ✓ Past partners of the perpetrator
  - ✓ Court records
  - ✓ Police reports, including previous domestic violence calls and arrest reports
  - ✓ Agency reports and reports of child abuse
  - ✓ School records and personnel
  - ✓ Witnesses to relevant events, including the pattern of coercive control
  - ✓ Affidavits in past court cases
  - ✓ Victim parent(s)[3]
  - ✓ Children[4]
- ❑ **Did the agency:**
  - ✓ Thoroughly document findings of abuse of the children and victim parent, including the ongoing pattern of control?
  - ✓ Provide language in its report that affirms the perpetrator's role in harming the children and avoids blaming the victim parent?
  - ✓ Provide timely and complete documentation of the perpetrator's compliance or lack thereof to the case plan?

ASSESSMENT

Failure to identify domestic violence does not mean that it does not exist. Assessments are snapshots in time. As such, they should be fluid and ongoing to provide a more complete picture. The agency should not rely on one individual assessment, but instead should conduct a series of assessments.

Dangerousness varies widely and may increase or decrease over time. Lack of a criminal record or police involvement does not mean the perpetrator is not dangerous. Continued anger or externalizing of responsibility tends to point to a return to violence. Lack of compliance with the service and treatment plans is an indication of continued or heightened dangerousness. The level of dangerousness decreases only when the perpetrator is compliant and changes behavior.

If the agency or the court finds that a perpetrator is dangerous, all persons and networks in the system working with the family, including the victim parent and treatment providers, must be notified. Treatment providers should be aware of the indicators of dangerousness.

- ❑ **Did the agency screen the family for domestic violence when the case was first opened and at other appropriate intervals?**
- ❑ **Is the perpetrator dangerous?**[5]
  - ✓ Does he blame someone other than himself for his violence?
  - ✓ Does he minimize his violence?
  - ✓ Does he use or threaten to use a weapon?
  - ✓ Does he own a firearm?
  - ✓ Does he use drugs or alcohol?
  - ✓ Does he ever threaten or try to commit suicide?
  - ✓ Does he threaten to harm the victim's children?
  - ✓ Does he engage in stalking behavior?
  - ✓ Has he ever strangled the victim?
  - ✓ Is he excessively jealous of his victims?
- ❑ **Did the agency assess the perpetrator for strengths? This may include:**
  - ✓ Identifying relatives or individuals in the perpetrator's life who can provide meaningful support and accountability to change the perpetrator's behaviors and attitudes.
  - ✓ Determining how to engage the perpetrator's family and community to support his use of non-violence.
  - ✓ Inquiring as to factors that may motivate the perpetrator to change.
  - ✓ Determining the ways the perpetrator cares for the children.
  - ✓ Consulting with the victim parent so the agency may determine what might motivate the perpetrator to change behaviors and what might hold him accountable.

Part of the accountability process for perpetrators includes establishing responsible parenting consistent with safety for the victim parent and children.

- ❑ **Has the agency assessed the perpetrator for fatherhood capacity?**
  - ✓ What is his attachment to the children?
  - ✓ How does he believe the children are affected by his violence?
  - ✓ What fears does he have about the children's future?
  - ✓ How do the children figure into his decision-making?
  - ✓ Has the agency allocated resources to the perpetrator to help him become a better parent?

[3] It is never appropriate to pressure or threaten children or victim parents to provide information about the perpetrator or his violence.
[4] *Id.*

[5] Jacquelyn C. Campbell, DANGER ASSESSMENT, Johns Hopkins University, School of Nursing, available at http://www.dangerassessment.org.

Research indicates that the most effective way to protect children is to keep their mothers safe. Ensuring the safety of the victim parent requires promoting change in and holding the perpetrator accountable. Change is not synonymous with attending or completing a batterer intervention program (BIP). The key to change is stopping old behaviors and replacing them with respectful new ways of interacting with victim parents and children. Child protection personnel should document and report the perpetrator's controlling and abusive behaviors toward victim parents and children as these behaviors are important indicators of whether change is occurring in the perpetrator.

- ❑ **Can the perpetrator change?**
  - ✓ Has he stopped the violence?
  - ✓ What steps has he taken to establish and maintain a non-abusive pattern of behavior?
  - ✓ What methods has he used to respond to conflict and disagreement in a reasonable way?
  - ✓ What has he done to demonstrate that he can maintain appropriate and respectful parenting?
  - ✓ In what way has he acknowledged the impact of his violence?
  - ✓ If the parents are separated, how has the perpetrator demonstrated that he can co-parent without abuse and intimidation?

- ❑ **Has the perpetrator demonstrated that he is serious about changing? For example, did he:**
  - ✓ Fully comply with the court's orders?
  - ✓ Demonstrate improvement in behavior with victim parents, children, and agency staff?
  - ✓ Disclose the history of abuse against the victim parent?
  - ✓ Recognize that his behavior is unacceptable and make unqualified statements that his behavior was wrong?
  - ✓ Recognize the behavior as an intentional choice?
  - ✓ Show empathy for the effects of the actions on the victim parent and children?
  - ✓ Identify in detail the destructive impact the abuse has had without shifting back to his own emotional injuries, grievances, or excuses?
  - ✓ Identify the pattern of controlling behavior and attitudes by naming specific forms of abuse and beliefs that drove his behavior?
  - ✓ Replace abuse with respectful behaviors and attitudes?
  - ✓ Show willingness to make amends in a meaningful way?
  - ✓ Accept the consequences of his own actions?

- ❑ **Are there ongoing assessments regarding substance abuse or mental health issues?**

  If yes, see the Treatment section of this *Accountability Checklist*.

SERVICE PLANS

- ❑ **Are the service plans generally appropriate?**
  - ✓ Does each party, the perpetrator, the victim parent, and the children have their own service plan?
  - ✓ Does each item in the plan have a positive effect on the safety of the victim parent and children?
  - ✓ Does the service plan for the victim parent avoid provisions or directives that only the perpetrator can be responsible for or held accountable for ensuring?
  - ✓ Are the requirements in the plan for the perpetrator available and accessible to the perpetrator?
    - Is the service offered locally?
    - Does the perpetrator have available transportation?
    - Is the service offered in the appropriate language?
    - Is the service culturally appropriate?
  - ✓ Are the requirements based on and tied to specific needs?
  - ✓ Are the services provided by those knowledgeable about domestic violence?
  - ✓ Are the requirements in the plan based upon a careful and accurate assessment of the domestic violence in the home and the impact of the violence on the victim parent and children?

- ❑ **Does the perpetrator's plan consider:**
  - ✓ The meaning and impact of his exposing the children to the abuse of the victim parent?
  - ✓ The degree to which the perpetrator has used the children as instruments of abuse?
  - ✓ The extent to which court proceedings are being used by the perpetrator to extend his power and control?
  - ✓ The safety risk he poses to the victim parent and children?
  - ✓ The willingness and ability of the perpetrator to change?
  - ✓ Overlapping forms of maltreatment (domestic violence and child physical and sexual abuse)?
  - ✓ The ability of the agency and the court to monitor safety and compliance?
  - ✓ How visitation can be done safely?

- ❑ **Does the perpetrator's plan include:**
  - ✓ Attendance in a BIP?
  - ✓ Supervised visitation center services or supervised visitation?
  - ✓ Substance abuse or mental health services?
  - ✓ Random drug/alcohol testing?

SERVICE PLANS (cont.)

- ✓ Fatherhood classes that include information on the impact of the perpetrator's actions on the children?
- ✓ Probation/parole contacts and compliance?
- ✓ Housing services? Transportation?
- ✓ Employment and training services?
- ✓ Compliance with court orders, including those in other proceedings?
- ✓ Restraint on all physical, psychological, and emotional abuse and intimidation of the victim parent, children, and caseworkers?
- ✓ Requirements that the perpetrator support and facilitate the victim parent's and children's access to treatment and compliance with their plans?
- ✓ Removal of all weapons from his possession and control?
- ✓ Confidential waivers and permission to obtain available information?
- ✓ Educational classes on how violence affects children, and steps to remedy the effects and heal the relationships with the children?
- ✓ Child support, if the children are not living with him?

TREATMENT

Psychotherapy, anger management, and mental health or substance abuse treatments are not acceptable substitutes for a BIP. Family or couples therapy are demonstrated to be ineffective and may jeopardize the safety of the victim parent. The goal of anger management is to reduce emotional feelings and the physiological arousal that anger causes; it does not address the underlying pattern of coercive control present in domestic violence. In some cases, substance abuse or mental health treatment may be appropriate if completed concurrently with a BIP.[6]

Communication between service providers is essential to keep the victim parent and children safe and to hold the perpetrator accountable. The domestic violence, substance abuse, and mental health treatment providers need to provide information to the court on the severity of the problems and whether they preclude treatment.

BIPs should focus on interrupting, avoiding, and ending violence and abuse and on the batterer's capacity to change. In jurisdictions where BIPs are not available, caution should be taken to ensure alternative treatments, such as individual counseling, account for and are provided by professionals trained in domestic violence.

❑ **Does the BIP (or alternative treatment if unavailable):**

- ✓ Concentrate on behavior changes?
  - Work to stop violent and abusive behaviors?
  - Teach positive alternative skills for non-abusive and responsible relationships?
- ✓ Hold the perpetrator accountable for changing behavior?
- ✓ Assess the need for concurrent substance abuse or mental health treatment?
- ✓ Terminate services for failure to comply or continued use of violence?
- ✓ Have confidential and safety-oriented contacts with victims?
- ✓ Address the impact of the perpetrator's violence on the children and victim parent?

❑ **If assessments found either substance abuse or mental health issues:**

- ✓ Does the treatment program for substance abuse or mental health issues take into account the perpetrator's use of violence?
- ✓ Is the perpetrator excused from the BIP only when the substance abuse is severe and current? For example, if the perpetrator must be taken to a detoxification program and then to substance abuse treatment, is he being required to start a BIP within one to two months after he has established sobriety?
- ✓ Is the perpetrator being assigned to the BIP to assess whether he can successfully participate in the BIP treatment when there are indications of his ability to function despite his mental health issues?

PLACEMENT AND VISITATION

If the court finds that a parent is a perpetrator of domestic violence, ordering supervised visitation or no contact with the perpetrator should be considered. Visitation should not be allowed if the perpetrator has not acknowledged responsibility for his past harm to the children and for the children's future safety or if the violence continues. There must be some certainty that the children and victim parent will be safe from further exposure to violence. Restrictions on visits, including making them supervised or stopping them altogether, should be considered if the perpetrator fails to comply with his requirements. These may be eased if the interventions are proving successful, the perpetrator's behaviors are changing, and safety permits. If the perpetrator is habitually non-compliant, the court should consider terminating the perpetrator's parental rights if allowed under local law.

If unsupervised visits are deemed safe, relatively short visits (generally not overnight) should be used until observable change has occurred. This reduces the perpetrator's ability to damage the relationship between the children and victim parent; limits the perpetrator's negative influence on the children's behavior and value system; and enhances the

[6] For a sample batterer intervention program model protocol please refer to Georgia's Model Protocol for Batterer's Classes available at http://www.biscmi.org/other_resources/docs/georgia.html.

PLACEMENT AND VISITATION (cont.)

children's feelings of safety and security while still allowing the children to feel connected to the perpetrator.

- ❑ **Will the children be safe if placed with or allowed unsupervised visits with the perpetrator or his family?**
  - ✓ What was the level of the perpetrator's violence in the home?
  - ✓ To what degree did the perpetrator expose the children to his violence? Were they involved, either directly or indirectly?
  - ✓ What is the capacity of the perpetrator to care for the children appropriately?
  - ✓ How does the perpetrator understand parenting?
  - ✓ Were the children physically or sexually abused by the perpetrator?
  - ✓ Are the children still at high risk of harm by having contact with the perpetrator?
  - ✓ Does the perpetrator use the children as weapons against the victim parent?
  - ✓ Does the perpetrator neglect the children?
  - ✓ Does the perpetrator undermine the victim parent's parenting?
  - ✓ Has the perpetrator's family been assessed for domestic violence?

- ❑ **Can the perpetrator provide:**
  - ✓ A sense of physical and emotional safety in the children's current surroundings?
  - ✓ Structure, limits, and predictability for the children?
  - ✓ An environment that allows for and promotes a strong bond between the children and victim parent and between siblings?
  - ✓ A sense that the children are not responsible for the violence?
  - ✓ Developmentally appropriate care-taking that meets the children's physiological needs, social needs, esteem, and well-being?

- ❑ **If the children were removed from the home:**
  - ✓ Must the children remain out of the victim parent's care to remain safe?
  - ✓ Is the perpetrator still in the family home?
  - ✓ Does the perpetrator's current abuse preclude the victim parent from protecting the children from further harm, either alone or with the help of services?
  - ✓ Are the perpetrator's actions coloring the agency's assessment of the victim parent's ability to care for the children?
  - ✓ Has a restraining order been considered to remove the perpetrator so the children may stay in the family home?
  - ✓ Has the agency checked the foster care or relative care placement for the presence of domestic violence?
  - ✓ Can the children safely return home if financial help, housing assistance, food assistance, transportation, child care, counseling, and access to legal services are immediately provided to the victim parent?
  - ✓ What clear guidelines, controls, and appropriate interventions have been established for the perpetrator in cases where supervised visitation is granted?
  - ✓ Will the victim parent and children be safe if visits occur in a supervised visitation center?
  - ✓ Will the victim parent and children be safe if the supervision is done by a third party rather than a supervised visitation center?
  - ✓ How will the court determine if current visitation arrangements are causing harm to the children or victim parent?
  - ✓ How will the court determine if current visitation arrangements are causing harm to the relationship between the victim parent and children or between siblings?
  - ✓ How will the court determine if current visitation arrangements are causing setbacks in the emotional healing of the children?
  - ✓ How will the court monitor the visitation?

JUDICIAL PROCESS

Judges play a leadership role in ensuring that the court sends a consistent message that domestic violence will not be tolerated. This can be accomplished by implementing processes and practices that are culturally appropriate, account for perpetrator manipulation, and monitor compliance. Judges should not allow proceedings to become a manipulative tool for the perpetrator.

Courts should share information with other courts and utilize review hearings to promote accountability. If there are concurrent court proceedings, the court must ensure that the orders do not conflict. If the perpetrator is non-compliant, he should be confronted since non-compliance lowers the likelihood of his achieving non-violence. The non-compliance must also be taken into account in safety planning for the victim parent and children.

- ❑ **Is the court sending a consistent message that there is zero tolerance for domestic violence?**
  - ✓ Is the focus on the safety of the victim parent and children?
  - ✓ Is there a focus on the perpetrator's behavior?
  - ✓ Is the court sending the message that the abusive behavior is that of the perpetrator, not the victim?
  - ✓ Is there recognition that safety planning for the victim parent and children is an integral part of perpetrator accountability?
  - ✓ Has the agency attempted to find and work with the perpetrator?

JUDICIAL PROCESS (cont.)

- ✓ Has the perpetrator been brought before the court?
- ✓ Is the agency working directly with the perpetrator and not through the victim parent or children?
- ✓ Are the lawyers appearing in court aware of and giving consideration to the growing body of knowledge on domestic violence?
- ✓ Is the responsibility for changing the abusive and violent behaviors being placed on the perpetrator and not on the victim parent and children?
- ✓ Does the judicial process enhance the safety of the victim parent, the children, the agency workers, and all service providers?

❑ **Does the process allow the perpetrator to receive the services and opportunities needed to move from perpetrator to safe and stable parent and partner in culturally appropriate ways?**

- ✓ Does the perpetrator experience respectful treatment in court?
- ✓ Does the perpetrator understand the process?
  - Have the orders, including restraining and no-contact orders, been explained in detail?
- ✓ Does the perpetrator have the capacity to follow court orders and the ability to pay for services when so ordered?
- ✓ Were court sessions and agency services offered in the perpetrator's primary language?
- ✓ Is the focus on the behaviors, attitudes, and responsibilities of the perpetrator rather than on shaming or blaming?
- ✓ Is the perpetrator given an opportunity to demonstrate a capacity to change and rebuild his relationship with the children?
- ✓ Is the perpetrator prevented from trying to use culture as an excuse for the abusive behaviors?
- ✓ Is there an understanding of both the positive and negative aspects of the culture, including the perpetrator's positive traditions and positive role models of fatherhood?
- ✓ Did the agency bring in cultural informants or cultural affinity organizations to communicate more effectively with the perpetrator or the victim parent and children?

❑ **If the victim parent is not in compliance:**

- ✓ Was the violation in response to the perpetrator implicitly or explicitly threatening the victim parent or children?
- ✓ Has there been an incident that made the victim parent or children feel unsafe?
- ✓ Was the violation an attempt to protect the victim parent, the children, or a third party?
- ✓ Was the violation an inappropriate response to the perpetrator's non-compliance?
- ✓ Is it necessary to revise the order to protect the victim parent or children?
- ✓ Has the court considered the violent context in which the victim parent must make decisions?

❑ **Are review hearings being held often and regularly?**

- ✓ Is the order still adequate?
- ✓ If the victim parent and children are not safe, was the order modified?
- ✓ Have there been changes in the family structure? Has the perpetrator moved out?
- ✓ Are there newly discovered needs that must be addressed?
- ✓ Is there monitoring and consequences for non-compliance?
- ✓ Are there consequences for each act of violence, each incident of non-cooperation with treatment providers, and each violation of the order?
- ✓ Are community service obligations imposed for non-compliance?
- ✓ Is the perpetrator being held in contempt, including incarceration if appropriate?

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