

# Domestic Violence

## Court Action Plan

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Office of Court Improvement

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# Court Action Plan

## Domestic Violence Injunction Cases

This document outlines broad recommendations for the handling of Domestic Violence injunction cases and then identifies specific actions to be taken to implement the recommendations.

The Court Action plan is based upon:

- The findings and recommendations of the Domestic Violence Court Assessment Project;
- The continuing work of the Domestic Violence Subcommittee of the Florida Supreme Court's Steering Committee on Families and Children in the Courts; and,
- Input from the circuit breakout sessions at the Statewide Domestic Violence Summit.

### Guiding Values

Judicial responses in cases involving domestic violence should reflect an understanding of the dynamics of family violence, victim and perpetrator behaviors, and the effects on children of exposure to violence; provide fairness to all parties; promote perpetrator accountability; and, promote the safety of the parties and their children.

Safety of the family should be a priority over the court docket, case management, attorney obligations, local court practices, and the court's convenience.

The court system should be an integral part of a coordinated community response to domestic violence.

Judges should assume a leadership role in improving the administration of justice for domestic violence cases.

## Readiness Assessment

Consider the following to determine the circuit's readiness to carefully examine and retool family court practices regarding domestic violence injunction cases:

- Have judges and court staff read the following Supreme Court opinions regarding unified family court and domestic violence injunction cases?

See: *In re Report of the Family Court Steering Committee*, 794 So. 2d 518 (Fla. 2001); and, *Amendment to the Florida Family Law Rules of Procedure*, 845 So. 2d 174 (Fla. 2003).

- Have judges and court staff read the following?  
Your circuit's family court administrative orders  
*Florida's Family Court Tool Kit: Volume I*  
"Unified Family Courts: How Will They Serve Victims of Domestic Violence?"  
*32 Family Law Quarterly* 131 (Spring 1998).
- Has the circuit identified all available family court staff and courthouse staff who could potentially contribute to implementing the Court Action Plan?
- Does the circuit have willing and experienced judges assigned to hear Domestic Violence injunction cases?
- Does the circuit have strong judicial leadership for its family court?

# Domestic Violence Court Action Plan

## Section One: Intake and Access

**Recommendation:** Assistance should be provided to petitioners at intake and thereafter to assist them in completing required paperwork, preparing for court hearings, and obtaining information about community services and resources.

### **Actions:**

- All persons seeking intake assistance should receive accurate information and referrals to appropriate services from courteous, informed, professional and well-trained staff.
- Intake services should include an explanation of the court process and assistance with the process of filing for injunctions for protection. Instructions should be provided to petitioners regarding what to do when an injunction is violated and whom to call concerning other problems or issues related to their injunctions.
- Petitioners should be informed of available community resources and the availability of legal services, and referred to support systems and community resources that conduct safety planning, including certified domestic violence centers.
- Written materials or videos containing telephone numbers and information concerning community resources and the effects of domestic violence on children should be provided.
- When necessary to protect parties and children from abuse, litigants should have access to the courts for the purpose of filing a motion to modify a temporary order of custody, parenting time, or support issued as part of a final judgment of injunction for protection against domestic violence; such motions should be heard on an expedited basis.
- Materials should be available in all languages appropriate to the community.
- Respondents should be furnished information in the injunction package that explains the court process and whom they may call for further assistance.

## Section Two: Case Management

### Courts

**Recommendation:** Case management services should be provided to petitioners and respondents to ensure that they are informed of court processes and hearings and to ensure that compliance with provisions of injunction orders is documented and enforced.

#### Actions:

- Case management conferences and other related activities conducted directly with litigants should follow guidelines established by the DV Subcommittee of the Florida Supreme Court Committee on Families and Children in the Courts.
- Other case management services should be provided consistent with the Basic Case Management Techniques for Domestic Violence Cases as outlined in *Florida's Family Court Tool Kit: Volume I*.
- Courthouse facilities, including clerks' offices, courtrooms, waiting areas, parking garages, and other points of foreseeable contact between petitioners and respondents in injunction cases should be secure and managed in a manner that minimizes contact between the parties and limits opportunities for parties to intimidate or harass each other. Security should be available as needed for petitioners when coming into and out of court.
- Certified court interpreters, including those required under the Americans with Disabilities Act, should be available as needed in all court proceedings.
- Courts should make parties aware that they have access to legal representation in domestic violence cases.
- When children have been exposed to violence in the home, their custodians should be referred to programs that treat such children.
- Judges handling injunction cases should have access to and consider information about any related court cases past or pending in all other divisions of the court system so that coordination of services, judicial economy, and avoidance of conflicting court orders may be addressed.

## Section Two: Case Management

### Courts (continued)

- Courts and clerks should take the appropriate steps to ensure that confidential address and contact information remain strictly confidential in all court documents which are public record.
- Parties should be provided a copy of the injunction at the conclusion of the hearing. Respondents who are not present at the hearing should be personally served as soon as possible after receipt by the sheriff's office of the injunction.
- Circuits should develop and implement a protocol to avoid conflicting orders in criminal and civil domestic violence cases involving the same family.

### Law enforcement

**Recommendation:** Law enforcement agencies should make every effort to accomplish timely service on respondents as well as rapid notification to the Clerks of the Court that such service has been accomplished.

#### Actions:

- The Clerk of the Court should provide a certified copy of the court's order to law enforcement for service as soon as possible.
- The law enforcement agency should provide the notice of service to the Clerk's Office as soon as possible. Any enforcement actions taken during service (i.e., surrender of firearms, ammunition) should be documented on the notice of service.
- Law enforcement should document any refusal to surrender firearms and immediately notify the judge who issued the injunction.
- Notification should be provided to the petitioner when an injunction has been personally served on the respondent.

## Section Three: Judicial Consideration

### Orders

#### Actions recommended by the Domestic Violence Subcommittee

- Courts should refer petitioners to community support services and counseling, rather than mandate their attendance by court order.
- Judges should consider, and when appropriate order in the temporary injunction, all available relief to which a party may be entitled, including, without limitation, no contact, custody, exclusive use of the home, possession of personal property, and prohibition of firearms and ammunition. In addition to those issues, judges should consider, and when appropriate order in the “final” injunction, child support, spousal support, parenting time, and appropriate treatment.
- The court should make the safety of the parties and the children a primary factor in determining custody and parenting time arrangements.
- If the judge deems unsupervised parenting time appropriate, the judge should consider whether to require that parenting time be exercised at a location physically separate from the primary residential parent or that the transfer of the children between the parents be accomplished using a third party intermediary in a protected setting.
- Courts should take into consideration disabilities of parties and of children when structuring orders.
- Judges should ensure that provisions within an injunction do not conflict with each other.
- Except as provided under Chapter 39, courts should enter civil orders which prohibit violence only as injunctions issued pursuant to chapter 741 or 784, Florida Statutes. Courts should not include domestic violence injunctions within orders or final judgments in dissolution of marriage, separate maintenance, child support, or paternity cases.
- Judges should phrase all injunction orders in terms that litigants and law enforcement can understand.
- Courts should not enter “consent orders” unless, after a hearing, the court finds that the petitioner is a victim of domestic violence or is in imminent danger of becoming a victim of domestic violence, that the respondent has

been fully advised of the ramifications of his or her decision, that he or she will be subject to the terms of the injunction, and what the possible consequences of a violation are.

**Recommendation:** Courts should order treatment provisions for respondents whenever appropriate and enforce compliance with such orders.

**Actions:**

- Courts should order “partner” respondents to successfully complete Batterers’ Intervention Programs (BIPs) if after a hearing the Court determines that such a program is statutorily mandated or otherwise appropriate.
- Courts should ensure respondents are ordered to attend only those BIPs that comply with the minimum state standards for those programs.
- Courts should order respondents for assessment and treatment for substance abuse and mental health issues when appropriate.
- Courts should establish protocols to monitor compliance with and enforce injunction provisions regarding alcohol, substance abuse, and mental health treatment as well as batterer’s intervention program enrollment and completion, and should utilize contempt and show cause proceedings as appropriate.

**Recommendation:** The court should pay particular attention to the statutory requirements regarding possession of firearms and ammunition in cases where final injunctions are issued.

**Actions:**

- Judges should require respondents in injunction cases to surrender firearms and ammunition in their possession in accordance with state and federal law.
- When surrender is ordered, injunction orders should contain instructions regarding surrender of firearms/ammunition, including the requirement that the respondent produce a receipt documenting the sale or surrender of the firearm/ammunition within a specified timeframe and authorize law enforcement officers to execute the firearms surrender provision upon service of the order on the respondent.
- Circuits should track and enforce compliance with firearms surrender when surrender is included in final injunctions for protection against domestic violence.

## Section Three: Judicial Consideration

### Conduct of hearings

#### Actions recommended by the Domestic Violence Subcommittee

- Judges should afford both parties the opportunity for a full, fair, and impartial hearing on all matters to be decided in injunction cases.
- An advocate from a state attorney's office, law enforcement agency, or certified domestic violence center should be allowed to be present with the petitioner or respondent during any court proceedings or hearings related to an injunction for protection, provided that the petitioner or respondent has made such a request and the advocate is able to be present.
- Courts should ensure the accurate recording of domestic violence hearings.
- Courts should not dismiss injunction cases at the petitioner's request without first conducting a hearing at which the court determines whether the petitioner initiated the request freely and voluntarily, is aware of community resources, and understands the requirements for filing a case in the future.
- Judges should maintain a serious and unbiased courtroom atmosphere.
- Judges should deal with unrepresented parties fairly, impartially, and effectively.
- Before the parties leave the final hearing, the court should explain its decision, the terms of the injunction, the possible consequences of violations, and how to proceed if the injunction is violated.
- Judges should advise the litigants of the full faith and credit provisions of the injunction which make the terms and conditions enforceable nationally.
- Judges should emphasize to the parties that decisions regarding the terms of an injunction are the court's and not the petitioner's.
- Mediation is not an appropriate mechanism for determining whether criminal charges should be filed or whether an injunction for protection should be issued.

## Section Three: Judicial Consideration

### Conduct of hearings (continued)

Recommendation: Timeliness of the court's actions should be emphasized.

#### Actions:

- Sufficient numbers of trained judges should be available to preside over domestic violence civil injunction for protection cases.
- Judges should be available for ex parte injunctive relief 24 hours a day, seven days a week. Specific information regarding injunction procedures should be disseminated.
- Judges should recognize domestic violence injunction proceedings as emergency matters and review petitions for injunction immediately so that petitioners are not required to remain at or make multiple trips to the point of intake to obtain a temporary injunction.
- Courts should handle injunction cases in a timely manner by scheduling all original return hearings within the 15-day statutory time limit. If the respondent is not served on the first attempt, courts should consider whether extending the temporary injunction for longer than an additional 15 days would facilitate service on the respondent. Courts should schedule motion hearings on an expedited basis.

## Section Four: Coordinated Community Response

Recommendation: Circuits and counties should develop and utilize mechanisms for effective interagency coordination of processes and services. All key participants should be included or represented, including but not limited to the Court and Court Administration, Clerks of the Court, State Attorneys, law enforcement agencies, domestic violence centers and domestic violence advocates, Department of Children and Families, probation offices, BIP providers, and Supervised Visitation Programs.

#### Actions:

- Each organization directly participating in the operation of the domestic violence court process is encouraged to develop detailed written protocols which relate to their involvement in the court process, and these protocols should be shared with all other participants.

## **Section Four: Coordinated Community Response (continued)**

- Courts should develop protocols for reporting to the Department of Children and Families when child abuse allegations or information concerning domestic violence acts committed in the presence of children are revealed in court. These protocols should include procedures for providing notice to the Department of Children and Families in cases in which a petitioner seeks to dismiss a final judgment of injunction for protection against domestic violence in cases where there are children involved and there is a pending dependency case.
- The Family Law Advisory Group may be used to coordinate processes related to Domestic Violence cases and processes.

**Recommendation:** Key participants should avail themselves of training related to the dynamics of domestic violence, the effects of domestic violence on children, dealing with angry individuals, and the laws, processes, and procedures related to domestic violence injunctions.

### **Actions:**

- The judiciary, court staff, intake personnel, guardians ad litem, and custody evaluators handling family cases that may involve domestic violence should receive mandatory and ongoing training regarding domestic violence laws, the dynamics of domestic violence, and services available in the community. In addition, the judiciary should receive training on batterer's intervention programs and anger management programs. All such training should be available as staff turnover may require.
- Court staff, clerk staff, and security personnel should receive periodic training in dealing with persons who are involved in emotionally volatile situations and often adversarial and complex litigation.
- Court and clerk staff should receive training and develop competence in dealing with traditionally underserved populations, including issues of disability and elder abuse, as well as same sex relationships and cultural diversity.