Arizona’s Domestic Violence Victims Need a More Safety-Centered Approach in Their Pursuit of Family Court Orders

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ABSTRACT. The current procedural process for family court litigants in Arizona aggravates the ability of domestic violence victims to safely and quickly obtain custody, parenting time and support orders. Thus, the process should be modified to allow for an expedited route when domestic violence issues are present. There is a legislative presumption in Arizona that equal parenting time is in the best interest of minor children. While family court litigants with domestic violence issues can rebut this presumption, it requires a fact-finding process that normally occurs during an evidentiary hearing, which is generally scheduled thirty days after the initiation of an action. This extensive waiting period not only inhibits the court’s ability to enter timely orders with respect to custody and parenting time, but also frustrates the ability of domestic violence victims to protect themselves and their children while they await their day in court. This article proposes the creation of a new procedural process for cases that give rise to a presumption that domestic violence issues are present. Specifically, it is recommended that courts implement an initial screening process to identify cases involving domestic violence. Once identified, these cases would proceed through an expedited evidentiary process so that safety-centered orders concerning custody, parenting time, and support are accomplished quickly. Additionally, it is recommended that all cases involving domestic violence be assigned an advocate to assist the victim in navigating the judicial system, creating a safety plan, and ascertaining services and other resources needed to survive.

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Introduction

Arizona’s current procedural process in the family court aggravates the ability of domestic violence victims to safely and quickly obtain custody,\(^2\) parenting time, and support orders. The process should be modified to allow for an expedited route when domestic violence issues are present. There is a legislative presumption in Arizona that equal parenting time is in the best interest of minor children. Although family court litigants with domestic violence issues can rebut this presumption, it requires a fact-finding process (normally occurring through an evidentiary hearing), which is generally scheduled thirty days after the initiation of an action. This extensive waiting period not only inhibits the court’s ability to enter timely orders with respect to custody and parenting time, but also frustrates the ability of DV victims to protect themselves and their children while they await their sought after day in court. Thus, even when a

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\(^2\) In January 2013, the Arizona legislature enacted a new version of Title 25, Chapter 4, wherein the terms “custody” and “visitation” were replaced with “legal decision-making” and “parenting time”. For purposes of this Article, these terms are used interchangeably.
victim of domestic violence manages to flee her\textsuperscript{3} abuser, re-victimization may occur when she attempts to receive help through the family court.

For example, imagine the story of a woman with four young children.\textsuperscript{4} This woman has cerebral palsy and is confined to a wheelchair. Her husband has been diagnosed with AIDS. This family survives on a poverty-level income, and there is no familial or other support system available in times of need. Father is physically, mentally, verbally, and emotionally abusive to both mother and the children. Mother applied for and was granted an order of protection. However, a few days later the court held a hearing (pursuant to father’s request), and the order of protection was dismissed because mother failed to appear out of her fear to confront father. Mother then filed a petition for dissolution of marriage and requested emergency, ex-parte temporary orders for custody and parenting time.\textsuperscript{5} Her emergency request was denied and the court scheduled a temporary orders hearing for approximately one month later. Father refused to leave the residence. Mother had nowhere to go, no financial resources, and no legal representation.

Father was served with the documents mother filed a few days later. That evening Father picked Mother up from her wheelchair and attempted to drown her in the family washing machine. Father told mother that if she called the police and reported the incident he would infect their children with AIDS. Father then fled (temporarily) with the children. Mother did not

\textsuperscript{3} I use feminine terms when referring to domestic violence victims only because females comprise the majority of intimate partner violence victims. In 2005, it was reported that a majority (73\%) of family violence victims were female. Also, females comprise a majority (84\%) of spousal abuse victims. See Matthew R. Durose, Caroline Wold Harlow, Patrick Langan, Mark Motivans, Ramona R. Rantala & Erica L. Smith, \textit{Family Violence Statistics Including Statistics on Strangers and Acquaintances}, U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE STATISTICS, NCJ 207846 (June 2005). My specific word choice in no way minimizes the rate of occurrence, or effects of domestic violence, on men and transgendered individuals.

\textsuperscript{4} While based upon a true story, certain facts have been changed and names omitted to protect confidentiality. I assisted with this case and was substantially involved in it while employed at an Arizona family law firm as lead paralegal. The case initiated in 2009 and was ongoing until the latter part of 2011.

\textsuperscript{5} Mother also requested exclusive possession of the marital residence and a suspension of any parenting time father may have been entitled to because of the existence of domestic violence. If her request would have been granted, she would have been afforded similar relief to that available through an Order of Protection.
report this incident to the police out of fear that father would harm the children. Mother did not re-apply for an order of protection, as she feared father’s retaliation. Mother did not re-apply for an emergency ex-parte custody order because she believed she would once again be denied. For the next month mother endured repeated acts of violence by father, and the children were caught in the middle.

Unfortunately, this situation may have turned out differently if the family court had immediately processed mother’s request for emergency temporary orders solely based upon the inference that domestic violence issues were present (gleaned from the facts as presented in her underlying petition). Even if the court believed that the evidence presented could not sustain the issuance of an ex-parte custody order, access to an expedited temporary orders process could have afforded mother relief similar to that obtained through an order of protection and father’s due process rights would have been preserved. 6 Essentially, the court could have granted mother (and the children) the ability to avoid the repeated abuse that they suffered during that month-long wait.

This article addresses flaws within the current procedural framework as it relates to domestic violence victims and their ability to secure immediate custody and support orders. 7 Particular focus will be given to the length of time it takes DV victims to appear and be heard. More specifically, this article proposes for the creation of a new procedural route for DV cases, which includes implementation of an initial screening process to identify these types of matters.

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6 A temporary order for legal decision making (custody) and parenting time can include orders for occupancy of the marital residence, child support, supervised parenting time, suspension of parenting time, and other orders that would be necessary in addressing the immediate needs of domestic violence victims. See ARIZ.R.FAM.L.P. 47. See also, ARIZ.REV.STAT.ANN. § 25-404 (2013).

7 This article does not address those situations where victims are successful in obtaining emergency orders of protection and other ex-parte orders granting them custody and parenting time rights. The focus of this Article is on those circumstances where emergency protective and other custody orders have either not been pursued by the victim or were denied by the court.
Once identified, these cases would proceed down an expedited evidentiary process allowing safety-centered orders to be entered quickly and safety planning and resource referral to ensue.

Part I examines the current procedural process in Arizona custody litigation matters and the statutory presumptions that arise when domestic violence issues are present. Part II explores the problems associated with the existing process and the barriers that victims of domestic violence face when attempting to navigate the family court process. Finally, Part III makes recommendations for a more efficient approach within the family court when DV victims require orders relating to custody and parenting time of their children.

I. ARIZONA CHILD CUSTODY STATUTES AND PROCEDURAL PROCESS

A. Legal Decision-Making (Custody) and Parenting Time Statutes

As Judge Cardozo noted in 1925,

"The Chancellor in exercising his jurisdiction upon petition does not proceed upon the theory that the petitioner, whether father or mother, has a cause of action against the other or indeed against anyone. He acts as parens patriae to what is best for the interests of the child."

In Arizona, primary consideration in custody cases is the welfare of the child. When courts undertake the task of determining what is in the best interest of a child, certain factors are weighed, but the court’s analysis under the Best Interest Standard always begins with the presumption that both parents are entitled to share legal decision-making authority for their child. However, a parent denied either sole or joint legal decision-making status is still entitled to reasonable parenting time to ensure that the minor child has substantial, frequent, meaningful

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10 The factors that are considered by the court in a Best Interest analysis are enumerated under ARIZ.REV.STAT.ANN. § 25-403 (2013)
11 See ARIZ.REV.STAT.ANN. § 25-403.02(B) (2013)
and continuing contact with that parent. In fact, the Court begins its analysis regarding parenting time on the presumption that any schedule adopted should maximize both mother’s and father’s time with the child. On the other hand, if the court finds (after a hearing) that parenting time would endanger the child’s physical, mental, moral, or emotional health, the court has the ability to restrict or even deny parenting time.

Of course, the entire process of determining custody and parenting time orders requires a fact-finding process that can only occur through an evidentiary hearing. Evidentiary Hearings regarding the issuance of temporary orders are supposed to occur within thirty days after the petition is filed, but a period of up to sixty days or more may transpire before a hearing is actually held. Problematically, prior to adjudication on the merits parties find themselves essentially on equal (legal) footing with regard to custody and parenting time issues, regardless of whether domestic violence is present.

B. Domestic Violence Statutory Presumptions in Arizona

If the court determines that significant acts of domestic violence have occurred, the presumption in favor of joint legal decision-making authority is supposed to disappear. In its place, a rebuttable presumption that an award of custody to the offending parent is not in the best interest of the child arises. This rebuttable presumption also includes a burden-shifting component requiring the offending parent to prove that an award of parenting time would not endanger the child. However, even if the offending parent satisfies this burden the court may still place restrictions on parenting time, including making visits supervised and excluding

12 ARIZ.REV.STAT.ANN. § 25-403.01(D) (2013)
13 See ARIZ.REV.STAT.ANN. § 25-403.02(B) (2013)
14 ARIZ.REV.STAT.ANN. § 25-403.01(D) (2013)
15 See ARIZ.R.FAM.L.P. 47. This statement rests on the assumption that the victim was unable to secure (or did not pursue) emergency ex-parte orders for custody.
16 ARIZ.REV.STAT.ANN. § 25-403.03(D) (2013)
17 ARIZ.REV.STAT.ANN. § 25-403.03(F) (2013)
overnights.\textsuperscript{18} When the offending parent does \textit{not} rebut the presumption that an award of custody is contrary to the best interest of the child, the court can then disregard the other statutory best-interest factors.\textsuperscript{19} Hence, the Court \textit{must} treat evidence of domestic violence as contrary to the child’s best interest.\textsuperscript{20}

Issues of domestic violence are supposed to be taken very seriously in child custody matters. This is evinced by the presumption and burden-shifting components that trigger when DV findings are made by the court. Nevertheless, for the court to make such findings, an \textit{evidentiary hearing must occur}. Because there is no expedited or other special procedural route for litigants experiencing domestic violence issues, the traditional route associated with all child custody litigation matters must be followed. As a result, DV victims face a waiting period of potentially thirty to sixty days before they can appear before a judge and present evidence supporting their request to limit the offending parent’s access to the children.\textsuperscript{21}

\textbf{C. Procedural Process for Custody Litigation Matters in Arizona}

Currently, when family court litigants initiate proceedings involving custody, parenting time, or support, they are required to file several documents outlining the nature of their proceeding, the general issues, and their request for relief. Pro Se litigants can obtain instruction packets regarding the procedure for service of process, after which the time begins to run for opposing party to appear and respond.\textsuperscript{22} At this point in the process litigants essentially control the direction of the action. If the opposing party fails to appear and respond petitioner may initiate default proceedings.\textsuperscript{23} If the opposing party does appear in the action, either party may

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\textsuperscript{18} \textit{Id.} \\
\textsuperscript{20} ARIZ.REV.STAT.ANN. § 25-403.03(B) (2013) \\
\textsuperscript{21} ARIZ.R.FAM.L.P. 47. This statement rests on the assumption that the victim was unable to secure (or did not pursue) emergency ex-parte orders for custody. \\
\textsuperscript{22} ARIZ.R.FAM.L.P. 32(A) \\
\textsuperscript{23} ARIZ.R.FAM.L.P. 44
\end{flushright}
request mediation, temporary orders, or elect to wait until the statutory period has run at which time an evidentiary hearing/trial can be requested.\(^{24}\) If neither party does anything the case will be placed on the inactive calendar and eventually dismissed for lack of prosecution.\(^{25}\)

The Court cannot hold a trial on a petition for dissolution of marriage until a minimum of sixty days after the date of service of process.\(^{26}\) The court can schedule a temporary orders hearing in the interim,\(^{27}\) but may schedule it as long as thirty days into the future.\(^{28}\) Notably, the court is not actually \textit{required} to schedule a temporary orders hearing within this thirty-day period, but may elect instead to schedule a resolution management conference (RMC).\(^{29}\) The Court is not permitted to resolve disputed issues of fact at a RMC, absent agreement of the parties; but the court can, after a determination of the disputed issues, schedule an evidentiary hearing for as long as \textit{another} thirty days out.\(^{30}\) Unfortunately, if the court elects to hold a RMC before an evidentiary hearing victims of DV could be forced to wait \textit{sixty} days or more before they can obtain temporary orders for custody, parenting time, and support.

Domestic violence victims can petition the court for emergency, ex-parte\(^{31}\) orders for custody and parenting time, which can provide for immediate (albeit temporary) relief.\(^{32}\) Inherent in this process, however, are concerns regarding the due process rights of the accused parent.\(^{33}\) As a result, judges may be very cautious in issuing such an order absent a clear showing that

\(^{24}\) See ARIZ.R.FAM.L.P. 67(B)(2); ARIZ.R.FAM.L.P. 47(A); ARIZ.REV.STAT.ANN. § 25-329 (2013)

\(^{25}\) See ARIZ.R.FAM.L.P. 46(B)

\(^{26}\) ARIZ.REV.STAT.ANN. § 25-329 (2013)

\(^{27}\) ARIZ.REV.STAT.ANN. § 25-404 (2013)

\(^{28}\) ARIZ.R.FAM.L.P. 47(D)

\(^{29}\) Id.

\(^{30}\) Id.

\(^{31}\) Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested; of or relating to court action taken by one party without notice to the other, usu. for temporary or emergency relief <an ex parte hearing> <an ex parte injunction>. BLACK’S LAW DICTIONARY 657 (9th ed. 2009).

\(^{32}\) Arizona law allows one parent to proceed without notifying the other parent, when emergency circumstances exist, which can include issues of domestic violence. \textit{See}, ARIZ.R.FAM.L.P. 48

\(^{33}\) A parent is entitled to due process whenever his or her custodial rights to a child would be determined by a proceeding. \textit{Smart v. Cantor}, 117 Ariz. 539, 542, 574 P.2d 27, 30 (1977).
irreparable injury will result to the parent or child before the other party can be heard.\textsuperscript{34} Even when the Court does grant an emergency temporary order for custody, a hearing must be held within ten days from the entry of the order.\textsuperscript{35} The emergency temporary order then expires on the date and time set for hearing,\textsuperscript{36} and at the conclusion of the hearing the court will determine what (if any) temporary orders are required pending trial.\textsuperscript{37}

Essentially, a DV victim has three options when she must navigate the Family Court for custody and parenting time orders: 1) file only the underlying petition and wait the statutory period for a trial to occur (sixty days); 2) file for a temporary orders hearing which could take thirty to sixty days to occur; or, 3) file for an emergency ex-parte custody order, which is rarely granted. At first glance, this process may seem reasonable. Yet, for a victim of domestic violence attempting to flee her abuser and protect her children even thirty days can be a dangerously long time to wait. Absent an ability to secure an emergency order restricting a batterer’s ability to access to the children, a DV victim must adhere to the traditional procedural process in her pursuit for custody and support orders. Then, in the midst of the

\begin{footnotesize}
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\item Ex-Parte temporary orders are appropriate in limited circumstances involving serious risk of injury and irreparable harm. As a result, ex parte temporary orders are granted only in rare circumstances. See, e.g., Honorable Judge John Hannah, Specific Comments or Advice for Litigants, JUDICIAL BIOGRAPHIES, THE JUDICIAL BRANCH OF ARIZONA MARICOPA COUNTY, http://www.superiorcourt.maricopa.gov/JudicialBiographies/judges/profile.asp?jdgID=200&jdgUSID=5799 (last visited November 24, 2013) (“Temporary custody orders, unlike orders of protection, are rarely granted by me “without notice” to the opposing party. I will usually require that the other party be served with papers and given a chance to present his or her side at a hearing, before I take action. Emergencies that can’t wait for a response from the other party are usually best addressed by law enforcement or Child Protective Services.”). See also, Judge Martin B. McGee, One Judge’s View of Ex-Parte Custody Orders, http://familylaw.ncbar.org/newsletters/familyforumoct2011/exparte (October 2011) (last accessed September 29, 2013) (“Why do I dread considering ex-parte custody motions? Because I know that I am being asked to make an important, high risk, decision without complete – and occasionally with false - information. I do not have the other side’s story and I have only an affidavit or verified motion from the movant, which cannot be cross-examined. On top of all of this, time is usually short – the clerk’s office is closing, I have to get back to court, some other responsibility is pressing me to move to quickly, or the movant contends that there is no time to lose”). See also, ARIZ.R.FAM.L.P. 48
\item ARIZ.R.FAM.L.P. 48(B)
\item Id.
\item The hearing scheduled on an underlying petition for emergency ex-parte orders for custody operates as an expedited temporary orders hearing. See ARIZ.R.FAM.L.P. 48. Also see, ARIZ.R.FAM.L.P. 47.
\end{enumerate}
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survivor fearing for her and her children’s safety, issues surrounding the other parent’s threats, ability, and action to retake physical custody of the children arise. On the other hand, if survivors had access to an expedited procedural route in obtaining family court orders not only would their (and their children’s) safety likely be enhanced but the probability of the victim returning to her abuser may also decline.

II. THE PROBLEM WITH ARIZONA’S CURRENT PROCEDURAL PROCESS

A. Separation Assault

Post-separation violence, or separation assault, has been defined as any type of violence

38 It is common for batters to use children as pawns in custody and visitation proceedings. James N. Bow & Paul Boxer, Assessing Allegations of Domestic Violence in Child Custody Evaluations, 18 JOURNAL OF INTERPERSONAL VIOLENCE 1394, 1395 (December 2003). Threatening to kidnap or harm the children are common strategies used by abusive men. Laura Ann McCloskey, Socioeconomic and Coercive Power Within the Family, 10 GENDER AND SOCIETY 449, 459 (August 1996). See also, Lorraine Davies, Marilyn Ford-Gilboe & Joanne Hammerton, Gender Inequality and Patterns of Abuse Post Leaving, 24 JOURNAL OF FAMILY VIOLENCE 27 (September 2008). See also, Christine Harrison, Implacably Hostile or Appropriately Protective?: Women Managing Child Contact in the Context of Domestic Violence, 14 VIOLENCE AGAINST WOMEN 381, 390-391 (March 2008) (finding that 65% of the women participants had a pronounced fear that their abusive ex-partner would abduct the children. Some women in this study actually experienced abduction, while others experienced profound stress and anxiety because of the perceived risk of abduction when fathers would keep the children late or overnight without agreement).

39 Absent a court order, both parents generally have co-equal, but not exclusive, custody of their children. State v. Wood, 198 Ariz. 275, 278, 8 P.3d 1189, 1192 (App. Div. 1 2000). Thus, neither parent can exclude the other parent from access to the child; absent a court order to the contrary, either parent can exercise their right to physical custody of, and parenting time with, the children.

40 This type of behavior commonly includes one parent taking the children from school or day care and attempting to disappear or hide with the children with the hope of gaining an upper (legal) hand in the pending custody dispute. Interview with J. Robert Walston, Esq., Law Offices of J. Robert Walston, P.C., in Mesa, Arizona (October 25, 2013) (J. Robert Walston has over 25 years of experience as a family law practitioner). Notably, this type of action may qualify as criminal custodial interference, which is “knowing or having reason to know that the person has no legal right to do so, ... before the entry of a court order determining custodial rights, takes, entices or withholds any child from the other parent denying that parent access to any child”. State v. Wood, supra note 39, at 277. See e.g., M. Alex Johnson, Woman Found Living ‘Normal Life’ in Australia 19 Years After Abduction as an Infant in SC, NBC NEWS (November 22, 2013), http://usnews.nbcnews.com/_news/2013/11/22/21580216-woman-found-living-normal-life-in-australia-19-years-after-abduction-as-an-infant-in-sc?lite (A mother abducted her nine-month old daughter during the pendency of dissolution and custody proceedings and fled to Australia nineteen years ago. The child (now an adult) was just recently found and the mother arrested by authorities).

41 On average, women who experience intimate partner violence leave the violent partner five to seven times before fully ending the relationship. A victim’s choice to stay in a relationship, or return after leaving, is often a rational choice in an attempt to prevent her abuser from carrying out his threats against her and her children. See Jane K. Stoever, Freedom From Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders, 72 OHIO ST. L.J. 303, 333-335 (2011).
perpetrated by a former married or cohabitating partner subsequent to the moment of physical separation.\textsuperscript{42} Women who leave their abusers are often at a heightened risk of serious assault; in fact, it is quite common for batterers to continue or even escalate the violence after the relationship ends.\textsuperscript{43} Studies have shown that women separated from their partners have as much as thirty times the likelihood of reporting non-lethal violence as compared to married women.\textsuperscript{44} Women who separate from their abusive partners are also at the highest risk of intimate femicide.\textsuperscript{45}

Because the period shortly after separation is the time of greatest risk for severe post-separation violence,\textsuperscript{46} a thirty-day wait to obtain custody and support orders may quickly turn into a life or death situation for victims of domestic violence. Moreover, if the court elects to refer the parties for alternative dispute resolution in lieu of a temporary orders hearing,\textsuperscript{47} a DV victim could be required to face her abuser several times prior to having an opportunity to introduce evidence regarding the domestic violence. This scenario is dangerous and may also

\begin{itemize}
\item[42] Douglas A. Brownridge, Violence Against Women Post-Separation, 11 AGGRESSION AND VIOLENT BEHAVIOR 514, 516 (January 2006). Violence by an ex-partner is dynamically similar to violence perpetrated by a current partner. Batterers use violence after a separation to reassert the control lost over their former partner; thus, post-separation violence commonly manifests in the form of physical abuse, emotional abuse, verbal abuse, psychological abuse, and other controlling forms of abuse. See generally, Jennifer L. Hardesty, Separation Assault in the Context of Postdivorce Parenting An Integrative Review of the Literature, 8 VIOLENCE AGAINST WOMEN 597 (May 2002). See also, Fleury, Cris M. Sullivan & Deborah I. Bybee, When Ending the Relationship Does Not End the Violence: Women’s Experiences of Violence by Former Partners, 6 VIOLENCE AGAINST WOMEN 1363, 1371-1373 (December 2000) (documenting that violence by an ex-partner takes much the same form as violence by a current partner).
\item[43] See Hardesty, supra note 42, at 599 (citing various studies documenting that, for an abuse victim, separation does not always end the violence – although separated and divorced women constitute only 10% of women in the U.S., they account for 75% of all the abused women). See also, Jane Aiken & Katherine Goldwasser, The Perils of Empowerment, 20 CORNELL JOURNAL OF LAW & PUBLIC POLICY 139, 162 (Fall 2010) (noting that a batterer’s attempts to continue a pattern of exerting power and control over his victim continues and may even escalate after the relationship ends).
\item[44] Brownridge, supra note 42, at 517.
\item[45] Id. at 519.
\item[46] Id. at 521. See also, Fleury, et al., supra note 42, at 1371 (Finding that the majority of the initial assaults by an ex-partner took place soon after the end of the relationship. Specifically, 51% of initial assaults took place within 10 weeks, and nearly three quarters of the women assaulted experienced severe or potentially lethal violence).
\item[47] Alternative Dispute Resolution includes the setting of a resolution management conference, referral to mediation, or referral for a settlement conference. See ARIZ.R.FAM.L.P. 66 and ARIZ.R.FAM.L.P. 47(D)
\end{itemize}
constitute a form of re-victimization especially because victims of DV face an increased risk for violence when they are available to be abused. Among these particularly dangerous situations include court appearances regarding the children. Essentially, the negotiation phase of family court proceedings concerning custody and access to the children provide batterers with additional opportunities to continue abusing.

The possibility that a DV victim will endure some form of post-separation violence at the hands of her abuser while awaiting her day in court is high. It is this possibility of harm coupled with the wait she must endure before appearing in court that may drive a victim back into the abusive relationship. The judicial system needs to have an expeditious route for DV victims to utilize in a quest to safely flee their abuser and obtain appropriate custody, parenting time, and support orders. Importantly, when government bodies fail to properly address DV

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48 Brownridge, supra note 42, at 521 (citing empirical research documenting that court appearances and the orders that flow from these hearings regarding custody and parenting time may actually be creating high risk situations for victims). See also, Hardesty, supra note 42, at 603-606 (noting that the current legal framework may actually be providing a forum for separation assault by necessitating recurring contact between victims and their abusers during the litigation process for custody and parenting time).

49 Jennifer L. Hardesty & Grace H. Chung, Intimate Partner Violence, Parental Divorce, and Child Custody: Directions for Intervention and Future Research, 55 FAMILY RELATIONS 200, 201-204 (April 2006) (citing empirical research documenting that during the custody negotiation phase women experience ongoing physical violence and threats, including threats to physically harm them, kill them, take the children, or fight for custody). Moreover, victims report ongoing fear of and threats for continued violence when negotiations result in shared custody or parenting time orders. See Fluery, et al., supra note 42, at 1364.

50 Davies, Ford-Gilboe & Hammerton, supra note 38, at 36 (almost 90% of participants in this study who left an abusive relationship reported some form of harassment or continued abuse post-separation).

51 See Stoever, supra note 41, at 339-340. (Barriers to leaving include economic dependence, children, health related factors, familial and societal pressures, gender role expectations, and cultural or religious mandates or norms, social isolation, language barriers, immigration status, lack of resources and information, and a lack of immediate legal recourse. All of these barriers to leaving are also reasons for returning).

52 Abusers use a variety of tactics post-separation to epitomize their determination to exact control over their victims, including the use of parenting time schedules to track and control mother. Therefore, when domestic violence issues are present, appropriate custody and parenting time orders need to include provisions that ensure the victim and the children’s safety. For example, in situations where parenting time is considered to be in the best interest of the children, neutral third parties can be appointed to facilitate the pick-up and drop-off exchanges to obviate the need for any contact between the victim and the abuser. See April M. Zeoli, Echo A. Rivera, Cris M. Sullivan & Sheryl Kubiak, Post-Separation Abuse of Women and Their Children: Boundary-Setting and Family Court Utilization Among Victimized Mothers, 28 J. OF FAMILY VIOLENCE 547, 554 (June 2013) (Finding that a common tactic of abusers post-separation was manipulation of custodial and parenting time schedules).
such a failure may constitute negligence and a violation of the victim’s due process rights.\textsuperscript{53} This notion is derived from the recent characterization of domestic violence as a human rights concern.\textsuperscript{54} Although public policy (in practice) avoids intrusion into family life, when basic and fundamental liberties are being violated justice principles should be applied to protect people from harm.\textsuperscript{55}

### B. Empowerment Flaws and Misconceptions About Domestic Violence

The current procedural system is structured in such a fashion that requires a DV victim to successfully complete several procedural steps before she can obtain custody and support orders. She must file numerous documents with the court, all necessitating a reiteration of the violent events she has suffered and there is no guarantee at any stage of this process that she will be granted the relief she seeks. Unfortunately, this process not only presumes that a victim is aware of her various procedural options, but supposes that she knows how to keep herself and her children safe as she navigates through.

Allowing cases with domestic violence issues to be handled in the same procedural manner as other domestic relations cases perpetuates the traditional view that intimate partner violence is a private matter, placing the responsibility for ending the violence solely in the hands

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\textsuperscript{54} In August, 2011 the Inter-American Commission on Human Rights found that the U.S. Government was responsible for human rights violations against Jessica Lenahan and her three (deceased) children. See, Lenahan (Gonzales) v. United States, Case 12.626, Inter-American Commission on Human Rights, Report No. 80/11 (2011). For the U.S. Supreme Court decision that this case was predicated upon, see Castle Rock v. Gonzales, 545 U.S. 748 (2005). Also see, Elizabeth M. Schneider, Caroline Bettinger-Lopez, Julie Goldscheid, Sanfдра S. Park, Ejim Dike, Lisalyn R. Jacobs, Margaret Drew & Mary Haviland, Implementing the Inter-American Commission on Human Rights’ Domestic Violence Ruling, 46 CLEARINGHOUSE REVIEW: JOURNAL OF POVERTY LAW AND POLICY 113 (July-August 2012).

of the victim. At the same time, the current procedural process repeatedly places victims in harm’s way as they are forced to attend mediations, conferences, hearings, and the like where they must constantly face their abuser. Moreover, in the midst of waiting for these hearings and conferences to occur the victim is virtually without any protection from her abuser.

Most often, the first question that is asked when people discuss domestic violence is “why doesn’t she leave?” Unfortunately, this question has its foundation in quite a few misunderstandings. The misconception of specific concern here is that the abuse is the only problem. Many survivors find themselves isolated from family and other support units commonly available to others, and often times a victim’s financial situation is dire. Additionally, she will most likely have threats (either overt or covert) of retaliatory violence if she leaves, especially if she is pursuing custody and support orders from the court.

56 See generally, Aiken & Goldwasser, supra note 43 (arguing that current strategies to protect victims of domestic violence (empowerment approaches) place too much emphasis on victim-initiated remedies, which in turn have the paradoxical effect of perpetuating the traditional view of domestic violence as a private matter which actually frustrates a victim’s ability to flee her abuser safely).

57 Assuming there is no valid order of protection or other protective orders for custody in place.

58 See Aiken & Goldwasser, supra note 43 (discussing false assumptions regarding the dynamics of domestic violence, many of which are rooted in faulty ideologies ill-designed to bring about the social change necessary to appropriately combat the issues surrounding domestic violence). See also Hardesty, supra note 42, at 599.

59 Davies, Ford-Gilboe & Hammerton, supra note 38, at 29 (noting that women economically experience a deterioration in their economic situation after leaving). See Charlene K. Baker, Kris A. Billhardt, Joseph Warren, Chiquita Rollins & Nancy E. Glass, Domestic Violence, Housing Instability, and Homelessness: A Review of Housing Policies and Program Practices For Meeting the Needs of Survivors, 15 AGGRESSION AND VIOLENT BEHAVIOR 430, 431 (July 2010) (noting that women attempting to flee their abusers may have difficulty in finding jobs as a result of limited job experience and a lack of job related skills). See Christina A. Byrne, Heidi S. Resnick, Dean G. Kilpatrick, Connie L. Best & Benjamin E. Saunders, The Socioeconomic Impact of Interpersonal Violence Against Women, 67 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 362, 365 (1999) (finding that past exposure to interpersonal violence is linked to future unemployment and poverty). See Rachel Kimerling, Jennifer Alvarez, Joanne Pavao, Katelyn P. Mack, Mark W. Smith & Nikki Baumbird, Unemployment Among Women: Examining the Relationship of Physical and Psychological Intimate Partner Violence and Posttraumatic Stress Disorder, 24 JOURNAL OF INTERPERSONAL VIOLENCE 450, 460 (January 2009) (finding that psychological abuse and posttraumatic stress disorder are key elements of the relationship between IPV and employment status; specifically, that 20% of women experiencing any psychological abuse (including stalking, controlling and emotionally abusive behaviors) were unemployed). See Stephanie Riger, Courtney Ahrens & Amy Blickenstaff, Measuring Interference With Employment and Education Reported by Women With Abusive Partners: Preliminary Data, 15 VIOLENCE AND VICTIMS 161, 167 (2000) (finding that, for abused women who are working, staying employed may be difficult. In fact, 85% of the women who were working in this study reported missing work because of the abuse they suffered, and 52% were fired or had to quit working as a result of the abuse).
Professor Stoever asserts, “[t]he question of leaving is easy to ask, but it is much harder to answer questions of where she will go, how she will survive, and how she will overcome the challenges and dangers of leaving.” If a DV victim is without a familial or other support system, is unemployed and dependent upon her abuser for support, and is operating under the very real threat of escalated violence should she leave, a thirty (possibly sixty) day wait to appear before a judge is a huge obstacle in her ability to leave and stay away. The current procedural framework does not empower a victim to leave; it actually frustrates her ability leave.

Domestic violence victims that leave their abusers may face homelessness in addition to the issues relating to their safety. Moreover, survivors may be reluctant to seek welfare assistance because there is a risk that in doing so they will be strongly encouraged to pursue child support. This, in turn, could precipitate retaliatory violence and/or the abuser’s attempt to seek custody and parenting time. Essentially, a victim of domestic violence potentially risks homelessness and financial destitution atop the already present risk for (or experience of) physical harm, harassment, and/or stalking by her abuser when she leaves. When a survivor’s

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60 See Hardesty & Chung, supra note 49, at 201 (citing various empirical studies documenting that during custody negotiations women report ongoing physical violence and threats, including threats to physically harm or kill them, take the children, or fight for custody. Also noting that financial abuse occurs frequently as a result of women needing to hire attorneys, pay court fees, and/or cooperate with their abusers (out of fear) regarding child support matters). See also, Fleury, et al, supra note 42, at 1378 (finding that when living in the same area as her batterer, a victim has a greater likelihood of experiencing post-separation violence. Thus, when a woman needs to continue contact with her batterer due to custody and visitation issues she experiences ongoing and elevated risk for harm).

61 Stoever, supra note 41, at 338-339.

62 Baker, et al., supra note 56 (citing empirical research suggesting that domestic violence is among the leading causes of homelessness nationally for women and is also a significant predictor of housing instability). See also, U.S. CONFERENCE OF MAYORS-SODEXHO, Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America’s Cities, a 24-City Survey (December 2012) (finding that 16% of homeless adults are victims of domestic violence).

65 See Jessica Pearson, Esther Ann Griswold & Nancy Thoennes, Balancing Safety and Self-Sufficiency: Lessons on Serving Victims of Domestic Violence for Child Support and Public Assistance Agencies, 7 VIOLENCE AGAINST WOMEN 176, 177 (February 2001) (citing empirical research collectively showing that many abusers of victims on welfare are fathers that are subject to child support enforcement actions; abusers and their victims fight about child support more than their non-abused counterparts; and child support actions have the potential to renew violence). See also, Hardesty, supra note 42, at 606 (citing empirical studies collectively showing that many women report lowering or waiving their requests for child support because they feared further physical violence, and that some women reported exchanging child support for custody).
situation is viewed this way it becomes readily apparent why the decision to stay in an abusive relationship may seem like the safer option versus pursuing a divorce or other custody proceeding. By placing the sole responsibility of navigating a complex judicial system on the victim’s shoulders and by assuming that there are no other issues beyond physical abuse that are preventing the victim from leaving, the judicial system essentially engages in a form of re-victimization.

Domestic violence victims need a specialized procedural route that is not only effective at meeting their time sensitive safety needs, but also in defeating the traditional thought that DV is not of public concern. If a victim raises allegations of domestic violence in her pursuit of family court orders the judiciary should release her from the responsibility of navigating the system alone. Instead, her case should proceed effortlessly through an expedited route designed to not only identify risk factors and provide safety, but also to afford specific relief to meet immediate and ongoing needs.

C. Orders of Protection and Their Limitations

A domestic violence victim can pursue an order of protection prior to obtaining emergency or other orders for custody and parenting time. Immediately (within a few hours usually) after a petition for an order of protection is filed, an ex-parte hearing is held before the court. If the court finds reasonable cause to believe that defendant has committed (or may commit) an act of domestic violence, a protective should issue. However, in Arizona protective orders cannot include provisions regarding child custody, parenting time, or child

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64 See, ARIZ.R.PROT.ORD.P. 6
65 ARIZ.REV.STAT.ANN. § 13-3602 (2013)
Therefore, unless a child is included as a protected person in the order itself, the only relief that can be afforded to a victim regarding physical custody of the child must be obtained through the other procedural routes discussed above.

To obtain an order of protection with the child listed as protected person, the victim must show that the child is in danger of being harmed if defendant is permitted to have contact. If the child has not been physically harmed, or if there is no direct threat to the physical safety of the child, the victim runs the risk of receiving an order protecting only her and not the child. If this occurs her abuser potentially has unfettered access to the child until a temporary orders or other evidentiary hearing occurs.

Even if the initial order of protection lists the child as a protected person, if the batterer requests a hearing there is a possibility that the order (if not totally vacated) will be modified to remove the child as a protected person. When a defendant requests a hearing regarding the protective order it is the victim who bears the burden of proving (by a preponderance of the

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66 A protective order cannot contain provisions regarding child custody or parenting time issues. Legal issues such as maternity, paternity, child support, custody, parenting time, dissolution of marriage of legal separation, may only be addressed by the superior court in a separate action. ARIZ.R.PROT.ORD.P. 4(B) (1).

67 A judicial officer does not have authority to include a child of the defendant on a protective order, unless there is reasonable cause to believe: (1) physical harm has resulted or may result to the child; or (2) the alleged acts of domestic violence involve the child. ARIZ.R.PROT.ORD.P. 1(F)

68 ARIZ.R.PROT.ORD.P. 4(B)(4)

69 It is important to note that children exposed to domestic violence suffer many behavioral, psychological, emotional, cognitive, and academic problems even when they are not the direct victims of the violence and even if they do not actually view the violence occurring. Children can experience indirect harm to their adjustment and development as a result of the distress experienced by the abused parent. See, Gail Hornor, Domestic Violence and Children, 19 JOURNAL OF PEDIATRIC HEALTH CARE 206 (2005) (citing empirical research documenting the adverse effects of domestic violence on children). See also, Angeline Maughan & Dante Cicchetti, Impact of Child Maltreatment and Interadult Violence on Children’s Emotion Regulation Abilities and Socioemotional Adjustment, 73 CHILD DEVELOPMENT 1525, 1537 (September/October 2002) (finding that the negative changes in parenting that result from domestic violence may be what lead to a child’s behavioral and emotional issues, not necessarily the direct effects of domestic violence).

70 At any time during the period during which the order is in effect, a party who is under an order of protection is entitled to one hearing on written request. A hearing that has been requested is required to be held within ten days from the date of the request, unless exclusive use of the home was ordered in the order, in which case the hearing is required to be held within five days from the request. ARIZ.REV.STAT.ANN. § 13-3602(I) (2013)

71 See, ARIZ.R.PROT.ORD.P. 8(G)
evidence) that the order should remain in effect as originally issued.\textsuperscript{72} This may be an insurmountable hill to climb for some victims, especially where the domestic violence she has experienced includes verbal, psychological, mental, emotional, or financial abuse.\textsuperscript{73} If the survivor fails to satisfy her burden she is then in the same situation she initially found herself: vulnerable to additional and escalated abuse while she awaits her day in family court. This scenario may ring true even if the order is upheld, but the child is removed (or not initially included) as a protected person, because Arizona commissioners hearing disputed orders of protection cannot enter orders regarding custody and parenting time.\textsuperscript{74}

Those who seek protection orders may be dependent on their abusive partner for basic and essential needs (childcare, food, shelter, medical, and dental insurance).\textsuperscript{75} This further compounds the problem associated with a victim’s inability to obtain financial relief through an order of protection as many of her immediate needs cannot be met. Faced with this challenge a victim may decide that pursuing an order of protection will prove futile, and instead focus her attention on progressing through the traditional route of filing for divorce (or for a paternity/custody proceeding). This puts the victim back into the procedural nightmare of having to potentially wait thirty (maybe even sixty) days before she can obtain the custody and support orders she needs to be safe and financially independent.

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\textsuperscript{72} ARIZ.R.PROT.ORD.P. 8(F)
\textsuperscript{73} Domestic Violence, THE UNITED STATES DEPARTMENT OF JUSTICE, http://www.ovw.usdoj.gov/domviolence.htm (last visited November 10, 2013) (reinforcing the fact that domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. Domestic violence includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone). See also, L. M. Howard, K. Trevillion, H. Khalifeh, A. Woodall, R. Agnew-Davies & G. Feder, Domestic Violence and Severe Psychiatric Disorders: Prevalence and Interventions, 40 PSYCHOLOGICAL MEDICINE 881, 887-888 (June 2010) (finding through a systematic review of literature on victimization that patients in contact with mental health services are up to 11 times more likely to have experienced recent domestic violence than the general population. This reinforces the fact that domestic violence is not just physical).
\textsuperscript{74} ARIZ.R.PROT.ORD.P. 4(B) (1).
\textsuperscript{75} See Adrienne E. Adams, Cris M. Sulkivan, Deborah Bybee & Megan R. Greeson, Development of the Scale of Economic Abuse, 14 VIOLENCE AGAINST WOMEN 563, 580 (April 2008) (finding that 99% of the DV victims interviewed were subjected to some form of economic abuse. Abusive men commonly engage in economic abuse by
If a DV victim could proceed down an expedited route to an evidentiary hearing the family court could not only assuage her financial issues but could also alleviate her safety concerns, whether or not there is an order of protection. Custody orders are legally enforceable (just like orders of protection) and the family court can impose sanctions when violations occur. Moreover, provisions related to parenting time can be fashioned in such a way that the victim is released from any obligation to facilitate access between the children and the abuser. The court can even suspend the abuser’s parenting time, which obviates the victim’s need to associate with the abuser at all. Of course, child support orders can also be entered which provides the victim with the resources she needs to survive, even if only at a basic level. These are all issues that the court is precluded from addressing in orders of protection. Therefore, it is imperative that the judicial system provide domestic violence victims a more efficient route in obtaining custody and support related orders.

III. RECOMMENDATIONS FOR A NEW PROCEDURAL PROCESS IN ARIZONA

A. Initial Screening Process at Time of Filing

Beyond initial screening regarding the nature of the matter (i.e., paternity, dissolution, annulment) nothing more occurs at the initial stages of filing that would allow for the segregation of high conflict cases requiring immediate attention. However, because of the dangerously high possibility that DV victims will suffer escalated and ongoing abuse once they make the decision preventing the victim from obtaining and maintaining employment, by interfering with her efforts to partake in self-improvement and educational pursuits, by denying her the ability to have and spend her own money, by refusing to put her name on deeds and titles to property and other assets, and by preventing her from using assets she may already own. The result is financial dependence on the abuser, which can frustrate her ability to leave and/or stay away).

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76 See ARIZ.REV.STAT.ANN. § 25-414 (2013)
77 However, it is important to note that while the question of whether to limit visitation rights of non-custodial parent is committed to the sound discretion of the trial court, this power is to be exercised with caution and a parent should be denied the right to visitation only under extraordinary circumstances. Sholty v. Sherrill, 129 Ariz. 458, 632 P.2d 268 (App. Div.2 1981).
78 See ARIZ.REV.STAT.ANN. § 25-320 (2013)
to leave their abuser, a screening process for domestic violence issues is paramount if not absolutely necessary. Screening should occur simultaneously with the filing of initial documents to allow cases with DV issues to be given immediate attention. This in turn will allow for the court to quickly address the major difficulties inherent in a victim’s transition away from the abuser.

The Family Court/Sensitive Data Cover Sheet, a document currently required in the initial packet of documents filed, outlines the nature of the case, both parties’ identifying and personal information, and that of any children. This form is not filed, nor is it served on the respondent. Instead it is kept confidentially within the court’s file. By simply adding a section allowing litigants to indicate whether domestic violence issues are present, this form could be utilized in the screening process. Elaboration on the issues is not necessary. Rather the litigant would need only to indicate either yes, domestic violence issues are present, or no, they are not.

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79 See Fleury, et al., supra note 42 at 1371 (For more than one third of the women sampled in this study the abuse did not stop when they left the relationship. Almost half of these women experienced some sort of injury, with nearly three quarters of these women experiencing severe or lethal violence). Also see, Sarah M. Buel, Family Violence Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay, 28 THE COLORADO LAWYER 19, 19 (1999) (citing empirical data estimating that a battered woman is 75 percent more likely to be murdered when she tries to flee or has fled, than when she stays). Also see, Intimate Partner Violence in the U.S., BUREAU OF JUSTICE STATISTICS, http://www.bjs.gov/content/intimate/ victims.cfm (last visited November 10, 2013) (On average, from 2001 to 2005 both females and males who were separated or divorced had the greatest risk of nonfatal intimate partner violence while persons who were married or widowed reported the lowest risk of violence).

80 As noted earlier in this Article, once a victim is before the court for an evidentiary hearing, temporary orders for custody, parenting time, and child support can be entered. Moreover, orders regarding possession of the marital residence, medical insurance coverage, division of personal property, and allocation of debt can also be entered on a temporary basis. All of these issues are relevant to a domestic victim’s ability to safely flee her abuser, and to ultimately stay away.

81 See ARIZ.R.FAM.L.P. 25 and ARIZ.R.FAM.L.P. 43(G)

82 An important consideration here is how to frame the question to litigants. Research has shown that behaviorally specific screening measures may be able to better detect violence (i.e. “has the other party hit, kicked, or otherwise caused bodily harm to you”) versus general questions about victimization (i.e. “are domestic violence issues present”). Thus, generalized questions may not be sensitive enough to detect DV and this should be considered when framing this question to litigants. See Murray A. Straus, Sherry L. Hamby, Sue Boney-McCoy & David B. Sugarman, The Revised Conflict Tactics Scales (CTS2): Development and Preliminary Psychometric Data, 17 JOURNAL OF FAMILY ISSUES 283 (1996). See Jennifer Langhinrichsen-Rohling, Top 10 Greatest "Hits": Important Findings and Future Directions for Intimate Partner Violence Research, 20 JOURNAL OF INTERPERSONAL VIOLENCE 108, 109 (2005) (noting that the development and use of behaviorally specific screening measures, like the CTS, facilitates the reporting of socially undesirable events, resulting in a finding of higher rates of intimate partner violence).
When the clerk processes the initial filed documents, and when petitioner has indicated that there are issues of DV present, the clerk can flag the matter as potentially qualifying for the expedited procedural route. When this occurs, advocates and court personnel designated to handle these types of matters (potentially located within the Conciliation Services Division of the court) would be notified and the file referred to them for processing.

B. Presumption of Domestic Violence – A New Procedural Process

Currently, the Conciliation Services Division (CSD) of the Superior Court in Arizona provides numerous services to parties involved in domestic relations matters. Because of the nature of CSD’s involvement with families experiencing divorce and custody litigation, they already assist the court and parties with issues concerning domestic violence. At present, however, CSD does not generally become involved until the court refers the parties for mediation, or the court requests that a parenting conference occur.

When cases involve issues of domestic violence CSD is the preferable division to screen and make recommendations for eligibility for the expedited procedural route. Immediately

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83 See Conciliation Services, THE JUDICIAL BRANCH OF ARIZONA MARICOPA COUNTY, http://www.superiorcourt.maricopa.gov/superiorcourt/familycourt/services/conciliationservices/index.asp (last visited November 10, 2013) (Services offered by Conciliation Services include: conciliation counseling for parties contemplating divorce; mediation of legal decision making and parenting time plans for families of divorce, post-divorce or in paternity actions; evaluation services to the court when parents are unable to agree upon a parenting plan; providing information to parents concerning what their children may be experiencing during the dissolution or custody litigation process; and high conflict resolution classes designed specifically for high conflict parents).

84 ARIZ.R.FAM.L.P. 67

85 The purpose of a non-confidential Parenting Conference is to assist the Court in determining the best interests of the children by providing information and recommendations with respect to the children's residential arrangements, the amount of time they spend with each parent, and how the parents might assume decision-making responsibility for their children. See, Evaluation Services (Parenting Conference), THE JUDICIAL BRANCH OF ARIZONA MARICOPA COUNTY, http://www.superiorcourt.maricopa.gov/SuperiorCourt/FamilyCourt/Services/ConciliationServices/ParentingConference.asp (last visited November 13, 2013). The court may refer cases to conciliation services for assessment or evaluation regarding child custody or parenting time when the court believes it would be in the children's best interests. Conciliation services will conduct its assessment/evaluation according to standard practices regarding the best interest of the children and may conduct such interviews and review such materials, as it deems appropriate. ARIZ.R.FAM.L.P. 68.

86 The mediators employed by CSD are already educated and trained to work with the many issues that present in family court. For example, most mediators working in the CSD in Arizona are trained and required to perform duties such as: family and home studies, individual and conjoint marriage counseling, individual and family conferences,
upon referral from the clerk, CSD staff could review the file and screen for domestic violence issues and admissibility into the expedited routing process.\textsuperscript{87} The screening should initially occur through an immediate in-person consultation or telephonic contact with the victim. Domestic violence advocates should assist with the evaluation process, and then become permanently assigned to the case if it has been determined that DV issues are indeed present.

At this stage in the process it is the interviewer’s responsibility to assess the allegations made by the petitioner and to determine whether the matter should proceed to an expedited temporary orders hearing. A screening process can only be beneficial, however, when the tools used in the screening process are empirically sound.\textsuperscript{88}

\textsuperscript{87} A similar process already occurs in Arizona when a family court matter is referred to CSD, either by request of one of the parties or through direct referral from the assigned judge. See, Connie J. A. Beck, Michele E. Walsh, Mindy M. Mechanic & Caitilin S. Taylor, \textit{Mediator Assessment, Documentation and Disposition of Child Custody Cases Involving Intimate Partner Abuse: A Naturalistic Evaluation of One County’s Practices}, 34 LAW AND HUMAN BEHAVIOR 227, 230 (2010).

\textsuperscript{88} Empirically sound tools are sensitive and can identify those abused with a high degree of accuracy. Empirically sound tools are also specific and can identify those not abused with a high degree of accuracy. Lois A. Hagerty, Joellen W. Hawkins, Holly Fontenot & Annie Lewis-O’Connor, \textit{Tools for Screening for Interpersonal Violence: State of the Science}, 26 VIOLENCE AND VICTIMS 725 (2011) (addressing the utility of various measures designed to screen for abuse). See also, Straus, et al., supra note 79. An important consideration here is that measuring physical violence alone is insufficient to detect relational distress. The most efficient screening tool should include measures of coercive controlling behavior. In fact, one study revealed that while only 82 women in the study reported physical abuse, screening measures focused on coercive control yielded a total of 452 women that were suffering from abuse. See Connie J.A. Beck & Chitra Raghavan, \textit{Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control}, 48 FAMILY COURT REVIEW 555, 560-561 (July 2010). Violence cannot be reliably determined by incident-specific physical abuse – the key component of an abusive relationship is coercive control. \textit{Id.} at 562. Coercive control includes isolation of victims from family and friends, control of her access to resources, control of access to employment, use of actual physical and sexual violence, threats of physical and sexual violence and threats to the victim’s life and that of their family. See Evan Stark, \textit{Coercive Control: How Men Entrap Women In Personal Life}, New York: Oxford University Press (2007). See also, Mary Ann Dutton & Lisa A. Goodman, \textit{Coercion in Intimate Partner Violence: Toward a New Conceptualization}, 52 SEX ROLES 743 (June 2005). Moreover, not all women who suffer abuse identify with the socially constructed image of a battered woman. Therefore, it is crucial to determine whether respondents have experienced any of the particular behaviors that we define as violent or abusive, versus asking women questions regarding their perception of whether they are indeed a victim or survivor of domestic violence. See Samia Alhabib, Ula Nur & Roger Jones, \textit{Domestic Violence Against Women: Systematic Review of Prevalence Studies}, 25 JOURNAL OF FAMILY VIOLENCE 369, 374 (2010).
Therefore, adequate training and appropriate screening tools need to be provided to all professionals involved to avoid errors.  

Once the interviewer has determined that DV issues are present and that the matter is appropriate to proceed along the expedited procedural route, immediate referral to the assigned judge to schedule a hearing should occur. At this time, the DV victim should be counseled on how to achieve service on the respondent for the order to appear. The advocate assigned to her case can help facilitate this through the sheriff’s office or other avenues. This way, instead of having to wait up to sixty days in some situations for a hearing to obtain custody and support orders, a survivor can appear in court in a matter of a few days after filing and the opposing party’s due process rights will be preserved. For a domestic violence victim that that was unable (physically, financially, emotionally, or judicially) to secure protective orders in other ways, this expedited process will not only help ensure her safety but will also enable her to leave her abuser.

Abuse victims overwhelmingly turn to family court, at least at first, to help keep their children safe. However, they often fear that advocating for their or their children’s wellbeing

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89 Robin H. Ballard, Amy Holtzworth-Munroe, Amy G. Applegate, Viola J. Taliaferro & Connie J.A. Beck, Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening, 17 PSYCHOLOGY, PUBLIC POLICY & LAW 241, 256-258 (2011) (finding that despite pre-mediation preparation and talking to the parties about their concerns during intake and mediation, mediators did not report the presence of intimate partner violence in more than half of the cases in which the parties themselves reported physical violence on a screening questionnaire. The article hypothesized that reasons for these errors include, inadequate methods of assessing violence, inadequate or misguided perception by the mediator of what constitutes violence, mediator’s stereotypical beliefs about relationship violence or the dynamics of intimate partner violence, and a mediator’s inability to assess the parties’ degree of truthfulness regarding violence).

90 When a case is initially filed a judge is immediately assigned to hear the matter. See, SUP.CT.L.R.MAR.CTY. 6.1. If the assigned judge is not available to immediately review the matter and issue an Order to Appear, any judge assigned to cover emergency matters for the assigned judge should be given the matter to avoid delay. The Hearing should be scheduled to occur within five (5) days. This period is neither unreasonable nor uncommon in other procedural matters when there are issues concerning allegations of domestic violence. When a defendant requests a hearing on an issued Order of Protection, he is granted a hearing within ten days (five if he has been excluded from
will backfire and even increase their risk of harm.\textsuperscript{91} Although the family court has certain procedural processes and evidentiary rules that are to be followed, when these fail domestic violence victims and their children oftentimes suffer continue abuse and victimization.\textsuperscript{92} Accordingly, it is essential that family courts undertake the responsibility for conducting in-depth screening evaluations of every case that gives rise to the inference of DV issues so that efforts to protect victims and their children can occur and be successful.\textsuperscript{93}

\textbf{C. Safety Planning}

Domestic violence has its foundation in a planned pattern of abusive control.\textsuperscript{94} In an effort to maintain this control abusers frequently threaten to injure or kill their victims if they proceed with custody and child support litigation, threaten to financially drain their victims, fight for control of the children, and sometimes even abduct the children.\textsuperscript{95} Victims of domestic violence oftentimes navigate the family court system in a constant state of justifiable fear.\textsuperscript{96} It is this ongoing abuse during and after the physical separation from the abuser that necessitates child and adult safety planning at the onset of a family court matter, and continuing over time.

Efforts to expedite the procedural process become futile if a victim leaves the courthouse without financial resources or a safety plan, and nowhere to go. Essentially, a safety plan is a
plan that is constructed to enable DV victims to maintain their and their children’s safety.97

Research suggests that the safety and well-being of a victim’s child is enhanced by assuring the safety of the mother.98 This notion, coupled with the fact that a dominant goal in family court is the safety and well-being of children,99 makes clear that safety of the mother should be at the forefront of concern when DV issues are present. However, Arizona family courts do not currently employ DV advocates to perform safety planning or counseling. Unfortunately, a victim’s only contact with the court during and shortly after filing is with the clerk, who can only guide her through the initial filing process.

When domestic violence is an issue, the advocate assigned to help facilitate the screening process should assist the victim in constructing both a short and long-term safety plan.100 It is extremely risky to thrust a DV survivor into custody litigation without first conducting safety planning to connect her with resources that can support her transition away from her abuser.101

97 A sample safety plan is available on the American Bar Association’s website at: http://apps.americanbar.org/tips/publicservice/dvsafety.html. Arizona has a similarly crafted Safety Plan for victims of domestic violence, which can be found at http://www.azcourts.gov/Portals/33/Safety-Plan.pdf and a child safety plan, which can be found at http://www.azcourts.gov/Portals/33/Child-Safety-Plan.pdf.

98 See James E. Rivers, Candice L. Maze, Stefanie A. Hannah, Cindy S. Lederman, Domestic Violence Screening and Service Acceptance Among Adult Victims in Dependency Court Setting, 86 CHILD WELFARE 123 (January/February 2007). See also, Jessica R. Goodkind, Cris M. Sullivan, Deborah I. Bybee, A Contextual Analysis of Battered Women’s Safety Planning, 10 VIOLENCE AGAINST WOMEN 514, 521-528 (2004) (This study found that safety-plan strategies were effective for more than half of the women in keeping themselves and their children safe. Moreover, the two strategies most likely to ensure safety were contacting a domestic violence victim service program and actually staying at a domestic violence shelter. This finding is attributed to the fact that these same women were found to be more likely to create escape plans).

99 One of the primary goals of the Family Court Department is preventing family violence and protecting victims of family violence. SUP.CT.L.R.MAR.CTY. 6.1(a).

100 See, Deborah K. Anderson, Daniel G. Saunders, Leaving an Abusive Partner: An Empirical Review of Predictors, The Process of Leaving, and Psychological Well-Being, 4 TRAUMA VIOLENCE ABUSE 163, 184 (April 2003) (citing various empirical studies documenting that battered women who receive the support of advocates report experiencing a higher level of satisfaction in their ability to attain needed resources. Moreover, victims in these studies reported lower incidents of abuse by their former partner, and they reported higher levels of quality life than those women who did not receive intervention services from an advocate).

101 Without safety planning that can address a victim’s immediate needs concerning physical safety, and her ongoing needs such as financial resources, housing, emotional support, medical care, social, religious, and community ties, the victim may leave the courthouse facing even greater danger than before she arrived. See Stoever, supra note 41, at 349. Even were serious problems are evident many victims report continuing in the relationship (or retuning to the relationship) for a complex interplay of reasons, but the ability to gain access to support services and the capacity of these services to adequately screen and refer women to appropriate supports are often key to them.
Advocates in this capacity should identify immediate, short, and potentially long-term needs of the victim in order to locate resources not only maintain her and her children’s safety but also their health and wellbeing. An advocate’s efforts this way, however, must be able to take into account the individuality of each woman’s experience so that the tactics employed actually result in increased safety.

Many domestic violence victims struggle financially, whether due to an inability to secure employment or because maintaining employment after separation becomes difficult. Enabling a domestic violence victim in becoming financially independent and self-sufficient is a critical part of safety planning. This may include the advocate assisting the victim in activities such as preparation of a resume and locating food banks. Inextricably tied with the financial finding a pathway to safety. See Heather Douglas & Tanja Stark, Stories From Survivors Domestic Violence and Criminal Justice Interventions, T.C. Beirne School of Law, The University Of Queensland (2010).

In development of safety plan, appropriate education and training geared towards identifying the unique needs of each survivor needs to occur so that the resulting recommendations and referrals match with their health and safety needs. Services must extend beyond enabling a victim to flee her abuser, however, and must also help them navigate the long-term process of interacting with an abusive former partner (when ties cannot be severed completely because they are granted visitation access to children) in ways that promote safety and facilitate improved physical and mental health. See Jennifer L. Hardesty, Marcela Raffaelli, Lyndal Khaw, Elissa Thomann Mitchell, Megan L. Haselschwerdt & Kimberly A. Crossman, An Integrative Theoretical Model of Intimate Partner Violence, Coparenting After Separation, and Maternal and Child Well-Being, 4 JOURNAL OF FAMILY THEORY & REVIEW 318, 324-328 (December 2012) (these authors developed a proposed model (the IPV and Coparenting After Separation Model (ICAS)) incorporating pre-separation risk factors for post-separation conflict and violence, maternal and child health outcomes of post-separation relationship quality, and a set of potentially moderating and mediating variables. The Model seeks to inform the development of screening tools for courts and health care professionals and could be used here to assist advocates in developing both a short and long-term safety plan for victims).

See Goodkind, et al., supra note 95, at 527 (finding that some strategies may reduce violence for some women, while increasing it for others).

See Adams, et al., supra note 72, at 568 (Finding that economic abuse, comprised of a variety of tactics employed by an abuser to interfere with a victim’s ability to acquire resources, gain employment, and maintain employment, not only fosters economic dependence on an abuser but also threatens the victim’s long and short-term economic health. For women with limited economic resources, specifically low-income women, leaving an abusive relationship means having to face a very uncertain economic condition and women who do leave experience a significant decrease in their standard of living, resulting in poverty and even homelessness). See also, Davies, et al., supra note 38, at 29 (noting that women commonly experience a deterioration in their economic situation after leaving an abusive relationship; this phenomenon has direct consequences for a woman’s ability to leave her partner).

There are many other tasks involved in this process, such as assisting the victim in navigating the welfare system, locating services for day care, enrolling in educational programs, assisting with the location of services for drug or alcohol dependency issues, and assisting with any medical or psychological issues. See, Sarah M. Buel, Fifty
difficulties victims sometimes experience is the unfortunate reality that DV is prevalent among homeless women. Thus, the lack of appropriate housing may be a huge barrier in a victim’s ability to leave her abuser, and may be a factor in her decision to return. Locating appropriate housing arrangements is also a critical part of safety planning.

Research suggests that when DV screening occurs and appropriate assistance is offered, victims are eager to take advantage of available services and become motivated to succeed in their efforts to permanently escape the violence. Consequently, it is imperative that judicial efforts to assist survivors in ascertaining safety for themselves and their children encompass not only access to immediate custody and support orders, but also to the wide array of services and other resources that most of these victims desperately need. Without safety planning to

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106 See, Exposure to Intimate Partner Violence Among Poor Children Experiencing Homelessness Or Residential Instability, INSTITUTE FOR CHILDREN AND POVERTY (Winter, 2010), http://www.icphusa.org/PDF/reports/ICP_ResearchBrief_ExposureToIntimatePartnerViolenceAmongPoorChildren.pdf. (This study found that experiences with homelessness, poverty, residential instability, and intimate partner violence are largely intertwined. For example, over one-third (38.9%) of homeless, poor, and residentially unstable mothers reported both physical and sexual abuse, compared to 26.8% of residentially stable mothers. Furthermore, after controlling for demographic characteristics, this study found that experiencing homelessness, poverty, and residential instability greatly increased the likelihood that mothers would experience intimate partner violence, in comparison to residentially stable but poor mothers).

107 See, Rivers, et al., infra note 95, at 138.

108 California’s procedural framework regarding domestic violence issues in family court proceedings encompasses not only a screening process to identify domestic violence issues, but also provides for safety planning. This could be an excellent model and starting point for Arizona in implementing its screening process. See, CAL.R.CT. 5.215 (2013), Domestic Violence Protocol for Family Court Services. Additionally, the Quincy Court Domestic Abuse Program is an extremely successful model of an integrated approach to addressing domestic violence. This program is used primarily for victims seeking to obtain orders of protection, but the program is an excellent example of parties working together to achieve an effective family violence intervention protocol. See Justice Research and Statistics Association, Innovative Courts Programs: Results from State and Local Program Workshops (July 1995), https://www.ncjrs.gov/txtfiles/portland.txt (last accessed November 17, 2013). This Program could serve as an excellent model for the screening process and support service program recommended in this Article. Domestic violence courts can serve as resourceful tools as well when designing and structuring the new procedural process. Domestic violence courts were created with the intention of addressing concerns relating to traditional domestic violence cases in which multiple judges and attorneys were all handling different aspects of the case, information was spotty and disjointed, and victims coming through the court system were not being linked systematically with any assistance. See, Emily Sack, Creating a Domestic Violence Court Guidelines and Best Practices, FAMILY VIOLENCE PREVENTION FUND (May 2002). The core values and principles that drove the creation of domestic violence courts should be the same values and principles that operate within family court when dealing with DV victims. Specifically: victim and child safety, keeping the victim informed, information sharing and informed
address the countless needs of a domestic violence victim, she may leave the courthouse facing even greater risk to her safety and wellbeing. However, by utilizing domestic violence advocates during the pendency of the family court proceedings victims and their children may be able to achieve a higher level of safety and long-term independence, two overarching goals of the family court in domestic relations actions.

D. Additional Domestic Violence Training for Judges and Court Staff

There is now widespread acceptance that domestic violence is not only pervasive, but also a serious issue that accompanies many of the cases that flow through the family court system. Nonetheless, despite the growing literature on the topic of intimate partner violence and its deleterious effects on women and children, courts frequently continue to separate issues of DV from issues concerning custody and parenting time. Contempt and hostility are sometimes projected onto a victim when she attempts to restrict the abuser’s parenting time. Moreover,

decision-making, institutionalized coordination of procedures and services, training and education, judicial leadership, effective use of the justice system, and accountability of courts and programs. Id.

109 Joan S. Meier, Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions, 11 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW 657, 683 (2003) (noting that research has repeatedly found DV to be more prevalent amongst parties in the midst of divorcing, and even more common amongst those engaged in conflict regarding custody and parenting time).

110 Family violence accounted for 11% of all reported and unreported violence between 1998 and 2002. Of these roughly 3.5 million violent crimes committed against family members, 49% were crimes against spouses. Durose, et al., supra note 2, at 1.

111 See, Janet R. Johnston & Nancy Ver Steegh, Special Issue: Family Court Review’s Fiftieth Anniversary: Perspectives on the Past: Historical Trends in Family Court Response to Intimate Partner Violence: Perspectives of Critics and Proponents of Current Practices, 51 FAMILY COURT REVIEW 63, 66 (2013) (noting that several institutional values, priorities, and biases of the family court system (including the preference to not focus on the past, to find fault or assign blame, interfere with parents’ civil liberties, make restrictive court orders, or to exclude one parent from the child’s life), may not be well suited to serve the needs of families experiencing domestic violence issues).

112 See, Meier, supra note 105 (discussing the analytic misconceptions behind the court’s resistance to domestic violence victims’ claims in cases involving children with reference to, and specific discussion of, the author’s personal experiences as a domestic violence victim legal advocate). There is significant pressure on all parents to be “friendly” during separation for the sake of the children, and settlement is promoted in light of the high volume of cases pending in family court. Within this context it is often difficult to raise allegations of domestic violence, for the victim fears she will be seen by the court as alienating and hostile. When a victim is seen by the court in this light, she is perceived as unable to promote a good relationship with the other parent, which may result in her losing custody rather than being offered protection and safety. See Peter G. Jaffe, Claire V. Crooks & David A. Wolfe, Legal and Policy Responses to Children Exposed to Domestic Violence: The Need to Evaluate Intended and
and notwithstanding the codification of statutory presumptions in favor of denying an abuser’s request for custody, some judges attempt to evade legislative intent by finding that even if an act of DV took place it did not rise to the significant level of violence contemplated by the statute.\textsuperscript{113}

In accordance with the Best Interest Standard of review, child custody and parenting time decisions should be made with full knowledge of not only the specific dynamics of violence experienced by an individual family, but also the full extent of any history of violence that has been experienced.\textsuperscript{114} This is crucial for the court to be able to properly assess any potential for continued violence. However, courts and court evaluators may reject a victim’s allegations of domestic violence as exaggerated,\textsuperscript{115} and may place too much value on a father’s claim of desire

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\textit{Unintended Consequences}, 6 CLINICAL CHILD AND FAMILY PSYCHOLOGY REVIEW 205, 209 (September 2003).
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\textsuperscript{113} In Arizona, an award of joint legal decision-making cannot occur if the court makes a finding of the existence of significant domestic violence or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence. ARIZ.REV.STAT.ANN. § 25-403.03(A) (2013). The following Memorandum Decisions support the conclusion that Arizona trial courts are sometimes using the statute’s qualifying term “significant” to avoid a finding of domestic violence. \textit{See Watson v. Watson}, 1 CA–CV 10–0094 (Ariz. Ct. App. March 10, 2011) (WL 846427) (despite Wife’s allegations that she was a victim of domestic violence (emotional and verbal abuse), because she did not allege incidents of physical abuse the appellate court found no error with the trial court’s finding that significant acts of domestic violence had not occurred. Moreover, even though Husband had been previously arrested and charged with criminal damage and domestic violence (for allegedly choking and shoving Wife), these isolated incidents were not enough to compel the trial court to find that there was a significant history of domestic violence). \textit{See also, Sakry v. Young}, 1 CA–CV 11–0058 (Ariz. Ct. App. April 10, 2012) (WL 1207274) (even though Mother alleged incidents of verbal abuse, grabbing, pushing, and slapping that occurred two years prior, the appellate court found no error in the trial court’s decision that there was not a significant history of domestic violence. “Domestic violence is never acceptable, but on this record we cannot say the family court abused its discretion by finding that Father’s acts were not “significant” when viewed “in the spectrum of domestic violence” and in the context of the parties' overall relationship. Mother testified Father was drunk on that occasion and stated she had never claimed he “beat [her] up, or held a gun to [her] head”).

\textsuperscript{114} \textit{See} Douglas & Stark, \textit{supra} note 95, at 19 (noting that failure by the judiciary and other professionals to understand the whole picture of domestic violence creates problems when women attempt to navigate the justice system). Courts often seek to identify discreet categories and specific incidents of abuse, often outside of their wider context. However, individual events that sometimes seem minor in isolation, like a glare or a subtle action (i.e. placing a gun atop a table without saying anything more) can be understood as non-verbal threats of revenge when viewed in the context of the relationship. \textit{Id}.

\textsuperscript{115} Meier, \textit{supra} note 105, at 684 (noting that courts and evaluators commonly view a victim’s claim of domestic violence as exaggerated, and suggesting that this may due to an inaccurate understanding of the prevalence of domestic violence amongst couples involved in custody litigation). \textit{See also}, Memorandum Decisions cited, \textit{supra} note 109.
for custody of the children. As a result, many victims find themselves at continued risk for abuse.

Research suggests that even when there are clear indicators of DV in cases screened by court staff, the reports for custody and parenting time orders that flow from these assessments fail to properly document and acknowledge the abuse. There are factors not related to evaluator error that could possibly contribute to a failure in identifying domestic violence issues. Nevertheless, these types of errors are more commonly due to a lack of proper education and appropriate training. For example, one study found that mediators did not report the presence of domestic violence in more than half the cases in which the parties themselves reported physical violence. In examining possible explanations for why mediators failed to report the presence of DV the study concluded several reasons for the phenomenon, all

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116 Violence and the Family: Report of the APA Presidential Task Force on Violence and the Family -- Executive Summary, http://www.nnlfp.org/apa/APA_task_force.htm. (Finding that abusers are twice as likely to contest custody as non-abusers. “When the couple divorces the legal system may become a symbolic battleground on which the male batterer continues his abuse”). See also, Meier, supra note 105 at 685-692 (suggesting that abusers commonly see winning custody of children as a means of reinforcing their superiority and control over the victim; but, an abuser’s request for access is commonly treated with a presumption of good faith as courts often find batterers to be sympathetic and convincing in their denials of abuse).

117 Amy Holtzworth-Munroe, Connie J.A. Beck & Amy G. Applegate, The Mediator’s Assessment of Safety Issues and Concerns (MASIC): A Screening Interview For Intimate Partner Violence and Abuse Available in the Public Domain, 48 FAMILY COURT REVIEW 646, 652 (2010) (finding that mediators consistently underestimate the prevalence of domestic violence during the screening process. Ultimately, the authors recommend a more detailed and extensive screening tool designed specifically for mediators to utilize in screening for domestic violence). See also, Beck, et al., supra note 85, at 232 (finding that, despite self-reports by victims of domestic violence in 90% of the cases participating in mediation, the percentage of cases designated as Intimate Partner Violence by mediators was only 59%, and only 7% of these cases were actually screened out of mediation). See, Joan S. Meier, supra note 105 at 708 (noting (from her personal experience as a litigator) that, generally, custody evaluators are not properly educated on the dynamics of domestic violence, they are not properly trained to ask questions in a way that facilitates disclosure by the victim of pertinent information, they are not always educated on domestic violence literature, and they may not consider domestic violence to be a major factor in custody disputes (especially when the violence takes a more subtle form such as psychological or verbal abuse)).

118 In the mediation setting there may be instances where parties are inclined to either over-report or under-report their experiences with domestic violence. Some examples include fear of retaliation, embarrassment, desire to put the abusive history behind them, and belief that the abuse is irrelevant to the proceedings See, Ballard, et al., supra note 87, at 258.

119 See, Ballard, et al., supra note 87, at 256.
seemingly related to issues regarding a lack of education and training. Clearly, if the goal is to properly identify domestic violence issues and adequately address the needs of victims, court staff needs to be educated and trained on how to recognize DV and assess the risk of danger for the victim. Moreover, court staff needs to be highly knowledgeable with respect to what survivors may need in the form of immediate services and be well equipped to make referrals to those who can provide these resources.

With respect to the adjudication of custody and parenting time matters involving intimate partner violence, research shows that when there is lack of physical evidence that fathers have been the perpetrators of DV against their children courts are awarding the abuser unsupervised parenting time and sometimes even shared parenting time. An explanation for this occurrence may be a lack of proper education and training for judges on the dynamics of domestic violence

120 For example, mediators reported not knowing whether to believe parties' reports of violence or other indicators of possible violence. Further, it was suggested that some mediators might have been uncomfortable labeling a case as "violent" if they had stereotypes about relationship violence or the dynamics of domestic violence cases and the specific case does not conform to those expectations. It was also suggested that mediators may have been aware of existing violence in a particular case, but did not view "minor" aggressions as violence. See, Ballard, et al., supra note 87, at 256-258.

121 Using a behaviorally specific domestic violence-screening questionnaire aimed at identifying victims of domestic violence may help to uncover many instances of party-reported domestic violence that would not otherwise be detected by mediators. See, Ballard, et al., supra note 87, at 260. Attempts to reach conclusions about the nature and effects of domestic violence in any given case, and to then make recommendations regarding custody and parenting time should be undertaken by qualified professionals with specialized domestic violence training that also possess the ability to perform multilevel, multi-method assessments with both parents and the children. See, Peter G. Jaffe, Janet R. Johnston, Claire V. Crooks & Nicholas Bala, Special Issue: Domestic Violence: Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans, 46 FAMILY COURT REVIEW 500 (2008). “Each corroborating piece of information needs to be weighed and aggregated by a neutral screener who has been trained to avoid common errors in human perception” in an effort to avoid dismissal or minimization of domestic violence claims. Id. at 507.

122 See, Johnston & Ver Steegh, supra note 107, at 68. See also, Ellen Pence, Gabrielle Davis, Cheryl Beardslee & Denise Gamache, Mind the Gap: Accounting For Domestic Abuse in Child Custody Evaluations, BATTERED WOMEN’S JUSTICE PROJECT, OFFICE OF VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE (June 2012) (2009-TA-AX-K025) (finding that custody reports prepared for the courts did not consider domestic violence as relevant to parenting capacity. The experience of domestic violence and how it shapes the parenting of either the abusive parent or the abused parent was not discussed, and how domestic violence issues impact the children involved was seldom addressed and if it was, conclusory statements were made suggesting the violence had no impact on the children. Reports generated from these faulty evaluations are relied upon by the courts when they construct parenting plans; this can lead to inherently dangerous and safety-blind orders for custody and parenting time).
and its effects on children. In fact, it has been suggested that the least common area of understanding with respect to DV issues (especially with judges and evaluators) is knowledge regarding post-separation violence, screening for domestic violence, and assessing the level of dangerousness involved. Therefore, additional and more extensive training and education needs to be provided to judges regarding DV issues.

Currently, judges in Arizona are required to complete a minimum of sixteen hours of judicial education each calendar year, which includes ethics training and attendance at an annual judicial conference. Judicial branch employees have similar continuing education requirements. In contrast, the Service Standards and Guidelines for Domestic Violence Programs in Arizona recommends that all domestic violence shelters and other organizations that provide direct services to domestic violence victims require their staff and volunteers to complete a minimum of a 40-hour training program. Similar requirements should be put into place for all judges and court staff that are assigned to handle cases involving domestic violence. In addition to the baseline requirement for an in-depth training session, however, continuing legal education requirements should be imposed specifically on the subject of DV (in addition to

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123 One study showed that, among evaluators and judges, the belief that victims falsely allege domestic violence is strongly related to beliefs that: 1) victims alienate children from the other parent; 2) domestic violence is not an important factor in custody decisions; 3) children are negatively affected when victims are reluctant to co-parent; and 4) victims make false allegations of child abuse. Daniel G. Saunders, Kathleen C. Faller & Richard M. Tolman, *Child Custody Evaluators’ Beliefs About Domestic Violence Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations*, U.S. Department of Justice Award Number: 2007-WG-BX-0013, at 119 (June 2012) (This is a Research Report funded by and submitted to the U.S. Department of Justice, but has not yet been published). See, Allison C. Morrill, Jianyu Dai, Samantha Dunn, Iyue Sung & Kevin Smith, *Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother*, 11 VIOLENCE AGAINST WOMEN 1076, 101 (2005) (finding that even with a presumption against awarding custody to a perpetrator of domestic violence, 40% of the fathers studied were awarded joint custody in spite of the fact that they had committed acts of family violence against the mother.


the current requirements for continuing legal education).128 Judges and court staff have wide discretion on the types of seminars and training events they attend. Absent a requirement for completion of legal education specifically focused on DV issues, there is significant risk that it will continue to be minimized, misunderstood, overlooked, and/or misapplied in the family court litigation setting. If the goal is to protect victims by affording them a safer alternative to the current procedural route, we must be cautious not to undermine our efforts by failing to ensure proper training to the very individuals responsible for implementing the new process.

IV. ECONOMIC CONSIDERATIONS

Application of a new procedural route in family court for DV victims will require, at a minimum, additional training for court staff and advocates. The quantification of these particular needs and costs is beyond the scope of this article. However, any potential expense associated with the development and maintenance of this process would be minor in comparison to the expenditures that are currently thrust onto the public because of the direct and indirect costs associated with domestic violence.

The many costs associated with DV are assumed not only by the individual victims, but also by communities, businesses, governments (local and national), and society overall. Indeed, the Centers for Disease Control and Prevention (CDC) estimated that domestic violence cost the United States economy more than $5.8 billion in 2003.129 Nonmonetary costs of domestic violence include...

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128 For reference, California has mandated continuing legal education specifically regarding domestic violence for family court judges and family court services staff. Although the training hours required are significantly less than what is being recommended here, the concept and format used to implement the continuing legal education requirements is noteworthy. See, CAL.R.CT. 5.215 (2013).
129 National Center for Injury Prevention and Control, Costs of Intimate Partner Violence Against Women in the United States, 2 (2003). Direct costs measure the value of goods and services used to respond to domestic violence. Direct costs include the costs of healthcare services, social and welfare services, counseling, police and criminal justice services, legal services, transportation costs, housing, and special education services used to treat children of abused women. See Community Costs of Domestic Violence, STOP VIOLENCE AGAINST WOMEN A PROJECT OF THE ADVOCATES FOR HUMAN RIGHTS, http://www.stopvaw.org/community_costs_of_domestic_violence (last accessed on November 17, 2013).
violence have an economic impact on society as well. These costs include the negative health consequences of DV and the long-term effects they have on victims.\textsuperscript{130} Domestic violence causes both short and long-term physical, mental, and emotional health problems.\textsuperscript{131} DV also has negative health effects for children; research indicates that children of abused women suffer from a higher rate disease, lower rates of immunization, and higher rate of death before the age of five years.\textsuperscript{132} Moreover, disturbances in the home life that are caused by domestic violence can have adverse consequences for a child’s social, emotional, behavioral, cognitive and overall general development and functioning.\textsuperscript{133}

Notably, while the data cited above suggests the expense associated with domestic violence to be quite substantial, these figures may not represent the \textit{true} economic impact of DV. In fact, it has been suggested that studies enumerating the effects of family violence habitually underestimate the real cost.\textsuperscript{134} Whatever the true cost of domestic violence, there is evidence that programs targeted at \textit{preventing} DV can be economically efficient. For example, one Arizona study calculated that each dollar invested in services for assisting DV victims

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\item \textsuperscript{130} Community Costs of Domestic Violence, \textit{supra} note 129.
\item \textsuperscript{131} Violence Against Women Intimate Partner and Sexual Violence Against Women, \textsc{WORLD HEALTH ORGANIZATION}, http://www.who.int/mediacentre/factsheets/fs239/en/ (last accessed November 17, 2013) (documenting that domestic violence can lead to depression, post-traumatic stress disorder, sleep difficulties, eating disorders, emotional distress, suicide attempts, headaches, back pain, abdominal pain, fibromyalgia, gastrointestinal disorders, limited mobility and poor overall health).
\item \textsuperscript{132} World Health Organization/London School of Hygiene and Tropical Medicine, \textit{Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence}, 16-17 (2010).
\item \textsuperscript{133} \textit{Id.} at 16. \textit{See} Kasey M. Saltzman, George W. Holden & Charles J. Holahan, \textit{The Psychobiology of Children Exposed to Marital Violence}, \textsc{34 Journal of Clinical Child and Adolescent Psychology} 129 (2005) (finding that children exposed to marital violence present with significantly more trauma symptoms than do children unexposed to family violence, including elevated physiological arousal). \textit{See also}, Pence, et al., \textit{supra} note 117, at 21 (citing numerous empirical studies documenting that children who suffer from direct physical or sexual abuse experience myriad emotional and behavioral problems, including nightmares, flashbacks, depression, and regression. Moreover, children who have not been directly abused, but have been exposed to domestic violence, frequently suffer from emotional, behavioral, social, academic and developmental problems).
\item \textsuperscript{134} Tanis Day, Katherine McKenna & Audra Bowlus, \textit{The Economic Costs of Violence Against Women: An Evaluation of the Literature}, \textsc{United Nations}, 45 (2005). \textit{See also}, Alhabib, et al., \textit{supra} note 85, at 373 (finding that surveys may not measure the actual number of women who have been abused, but rather, the number of women who are willing to disclose abuse).
\end{enumerate}
returned between $6.80 and $18.40 in value.\textsuperscript{135} This suggests that financial benefit could be realized through other preventive action as well, such as the implementation of an expedited procedural and safety planning process for DV victims in family court. If no action is undertaken, the current cost associated with domestic violence will continue to accumulate. There is also a real possibility of added expense associated with the prosecution of a criminal action should the abuser launch a physical attack on the victim while she awaits her day in court.\textsuperscript{136} Employment of an expedited procedural and safety planning process for domestic violence survivors has the dual ability of minimizing the occurrence of separation assault when a victim flees her abuser and curtailing the cost associated with its prosecution.

\textbf{Conclusion: Promoting Strong Families, Preventing Family Violence, and Protecting Victims of Domestic Violence}

A man murders his wife or girlfriend every four days in the State of Arizona.\textsuperscript{137} Moreover, studies have reported that between 11-39\% of victims who leave their abusive partners experienced some sort of physical violence in the one to two year follow up period, and 85\% of these women reported multiple incidents.\textsuperscript{138} Unfortunately, post-separation violence appears to peak within the first few months after separation.\textsuperscript{139} Offenders commonly use children as a means to continue abusing the victim, and tragically, in some cases post-separation

\textsuperscript{135} Lesley Laing & Natasha Bobic, Economic Costs of Domestic Violence, AUSTRALIAN DOMESTIC AND FAMILY VIOLENCE CLEARINGHOUSE, 49 (April 2002).

\textsuperscript{136} One recent study found the average cost to the justice system per murder is about $426,000, and about $4,700 for the average assault crime. Matt DeLisi, Anna Kosloski, Molly Sween, Emily Hachmeister, Matt Moore & Alan Drury, Murder By the Numbers: Monetary Costs Imposed By a Sample of Homicide Offenders, 21 THE JOURNAL OF FORENSIC PSYCHIATRY & PSYCHOLOGY 501, 506-507 (June 2009).


\textsuperscript{139} See, Fleury, et al., supra note 42, at 1371. See also, Brownridge, supra note 42, at 521.
contact with the abuser ends in the homicide of the victim and/or her children.\textsuperscript{140} DV survivors and their children are often at risk for serious harm if their attempts to obtain appropriate family court orders are frustrated through a procedural system unequipped to handle their safety and other issues.

Unfortunately, Arizona’s current system is ill-designed to deal with family court cases involving significant risk of danger, including the threat of lethal harm.\textsuperscript{141} These cases need to proceed through a specialized and expedited procedural route where domestic violence issues are given priority, and specialized care is given to the safety of the victim and her children during the fact-finding process. Properly trained and educated court staff and domestic violence advocates should be utilized to conduct an in-depth screening process to differentiate cases with DV issues (and a need to progress along an expedited procedural route) from those that do not. Further, this team of professionals and advocates could work together in developing intervention and safety planning for victims and their children to ensure their wellbeing during the pendency of the family court proceedings. A potential thirty to sixty day wait to appear before a judge and receive orders pertaining to custody, parenting time, and child support is far too long for a domestic violence victim attempting to flee her abuser. Unfortunately, the statistics almost guarantee that she (and/or her children) will suffer some sort of abuse or harassment once she does leave. Nevertheless, this risk for escalated or continued violence can be mitigated when

\textsuperscript{9\%} of the murders that occurred in 2002 were murders of a spouse. Durose, et al., \textit{supra} note 2, at 1. \textit{See} Brownridge, \textit{supra} note 42, at 519 (“separated women are at the highest risk of intimate femicide”).

\textsuperscript{Arizona does not currently have a system for routinely identifying victims of domestic violence during the divorce/custody litigation process. As outlined in this Article, screening for domestic violence issues only occurs once a case is referred for mediation or for a custody assessment, which generally occurs late into the process. For the many reasons cited in this Article, victims may not volunteer information about the abuse they have experienced, or if they do, their cries for help are delayed and frustrated by the current procedural process. Options for legal assistance and protection (and exemption from court programs like mediation) are accessible only after victims have been identified. This occurs through self-identification as a victim, or through identification by a professional who is screening for domestic violence issues. Thus, the screening process must occur quickly, accurately, and professionally if victims of domestic violence are to be protected and successfully enabled to flee their abuser.}
immediate orders are entered, and access to appropriate safety planning and resource referral is
given. One of the primary goals for the Arizona Family Court Department is preventing family
violence and protecting its victims. Implementation of a procedural process allowing DV
victims quicker access to custody and support orders while simultaneously providing safety
planning and resource referral can support efforts to meet this goal.