

**New York State  
Division of Probation  
and Correctional Alternatives**

**CHILD CUSTODY INVESTIGATIONS:  
GUIDELINES FOR PRACTICE**

**A Model Procedural Package for Use in a  
Coordinated Community Response  
To Domestic Violence**

**June 2008**

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# Introduction and Goals

## Introduction to the Project

This model procedural package addresses policies and procedures to be adapted by probation officers conducting Child Custody Investigations in Family Courts throughout New York State.

The goal is to assist in the development of local probation policies, procedures, and protocols designed to guide practice in response to **domestic violence**<sup>1</sup> cases, specifically those that involve **adult intimate partner relationship**<sup>2</sup> violence.

This package was developed for adaptation in localities where a **coordinated community response to domestic violence**<sup>3</sup> is operating. This coordinated response is recognized as an effective way to address the behavior of offenders who commit acts of domestic violence. The contents of this package are designed to promote closer collaboration in case processing as called for in the Guiding Principles in the **New York State Domestic Violence Policy for Counties**.<sup>4</sup> This document will help local probation departments create policies, procedures, and protocols that will guide practice in responding to domestic violence when it is part of a custody investigation. A document entitled **Probation Intervention in Domestic Violence: Guidance for Policy Development**<sup>5</sup> issued by the New York State Division of Probation and Correctional Alternatives

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<sup>1</sup> A pattern of coercive tactics that can include physical, sexual, economic, and emotional abuse perpetrated by one adult person against an intimate partner, with the goal of establishing and maintaining power and control over the victim. Some acts of domestic violence are not necessarily violations of the law. A domestic violence offense should be viewed as being part of a pattern of behavior, not a singular criminal event. [New York State Division of Probation and Correctional Alternatives; *Probation Intervention in Domestic Violence: Guidelines for Policy Development* (April 2000) p.2]

Note: The above is an exclusive definition of “Domestic Violence,” which might be restricted by statutory definitions. For the purposes of this document, we urge that the most inclusive definition be used as localities develop and implement Domestic Violence policies, procedures, and programming.

<sup>2</sup> Includes adult persons who are legally married to one another; were formerly married to one another; have a child in common regardless of whether they were ever married or lived together at any time; are unrelated, but living together or have lived together in the past; are unrelated but who have had intimate or continuous social contact with one another and who have access to one another’s household; and who have or have had a dating or sexual relationship, including same-sex couples. [New York State Office for the Prevention of Domestic Violence: *Model Domestic Violence Policy for Counties* (1998) p.1]

<sup>3</sup> As described in *Evaluating Coordinated Community Responses to Domestic Violence [Violence Against Women Online Resources, <http://www.vaw.umn.edu/Vawnet/ccr.htm> (10/2000) p.8*], a Coordinated Community Response involves police, prosecutors, probation officers, battered women’s advocates, counselors, judges, and others in developing and implementing policies and procedures that improve interagency coordination and lead to more uniform responses to domestic violence cases. Components of a Coordinated Community Response: Pro-arrest or mandatory arrest policies; advocacy for victims; aggressive and prompt prosecution; monitoring individual cases; batterer programs; strengthening civil protection; system-wide monitoring of offenders. For the purposes of this project, we believe that such a coordinated response, as well as each of its component agencies, must have as overarching goals: prioritizing safety for the victim; and holding the batterer accountable for his behaviors and attitudes.

<sup>4</sup> New York State Office for the Prevention of Domestic Violence (January 1998) pp.8-24. The entire policy document is available electronically at <http://www.opdv.state.ny.us/coordination/model/policy/index.html>.

<sup>5</sup> New York State Division of Probation and Correctional Alternatives, Executive Deputy Director’s Memorandum to Probation Directors and ATI Administrators, April, 2000.

provides specific detail and information that can be adapted as local procedures for domestic violence cases.

All probation professionals within New York State should regularly receive training on the nature and dynamics of domestic violence from New York State Office of Children and Family Services (OCFS)-licensed domestic violence programs, or DPCA and/or OPDV professional staff familiar with this area.

This model procedural package addresses custody investigations that are prepared for Family Courts regarding domestic violence. Such cases are not limited to specified **family offense**<sup>6</sup> convictions.

- Where a coordinated community response is not already established, probation and other agencies should develop a working relationship with local **domestic violence victim advocates**<sup>7</sup> and law enforcement in processing these investigations.
- Using this document as a model will assist the court to make a more informed disposition by providing a thorough investigation and presentation of the litigants' family dynamics. This approach requires that the investigation be an accurate assessment of family circumstances/dynamics, the impact of domestic violence on family members and records of prior incidents, especially those of domestic violence, substance abuse, and/or threats to the safety and security of family members. Such an assessment must be made by trained officers after having reviewed information provided by the litigants, their child(ren), service providers, police, criminal history records and various other sources.

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<sup>6</sup> Any one of the following offenses between spouses, former spouses, or between parent and child, or between "members of the same family or household" (as listed in Criminal Procedures Law §530.11: Disorderly Conduct [(PL §240.20) Note: Acts need not occur in a public place]; Harassment in the First Degree (PL §240.25); Harassment in the Second Degree (PL §240.26); Aggravated Harassment in the Second Degree (PL §240.30); Stalking in the First Degree (PL §120.60); Stalking in the Second Degree (PL §120.55); Stalking in the Third Degree (PL §120.50); Stalking in the Fourth Degree (PL §120.45); Menacing in the Second Degree (PL §120.14); Menacing in the Third Degree (PL §120.15); Reckless Endangerment (PL §120.20); Assault in the Second Degree (PL §120.05); Assault in the Third Degree (CPL §120.00); and Attempted Assault (PL §§110.00 and 120.05 or 120.00

<sup>7</sup> Individuals/agencies that may provide advocacy services, shelter services, information, and other services to a narrowly defined group of crime victims (victims of domestic violence). These advocates are often based in, or linked with a not-for-profit, non-governmental agency. The victim's involvement with the advocates is entirely voluntary. The advocate's role is largely defined by the needs and desires of the victim (within the parameters designated by the employing agency), and the overarching goal of the advocate is to support and reinforce the victim's decision by providing options and information. Although program models may differ, the provision of advocacy services is not contingent upon the existence of a pending court case. The allegiance of the advocate lies with the victim, and the advocate may be called upon to represent the victim's interests to other persons and/or agencies. Advocates and advocacy agencies are potentially a major resource for Probation Officers and departments, and vice versa. This interdependent relationship should be encouraged, strengthened, and formalized on the local level as a necessary part of a coordinated community response to Domestic Violence.

- There is no one normative way to raise children, keep a home, affiliate in ones community/culture or respond to crises. It is the custody investigator's responsibility to conduct an investigation with an appropriate and informed consideration of the social, cultural, and religious context of litigants and not interject personal beliefs.

## The Screening Process

### Screening for Domestic Violence

Pursuant to Chapter 85 of the Laws of 1996, New York State Courts are required to consider the effects of domestic violence in custody and visitation decisions. Courts are required to make determinations in accordance with the Domestic Relations Law § 240(1):

“Where either party to an action concerning custody of or a right of visitation with a child alleges in a sworn petition or complaint that the other party has engaged in an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the Family Court Act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making such a direction pursuant to this section.”

Child custody investigations should include screening for domestic violence that may exist between intimate partners. Probation officers conducting child custody investigations can become aware of domestic violence by reviewing records and documents. Domestic Incident Reports (DIR's) and Orders of Protection can serve as primary sources of information regarding current and prior history of domestic violence. Probation's access to these and other such records is provided for in Executive Law §§ 221(a) and 243(3)(b).

- Child custody investigators who do not have documentation of current or past domestic violence should screen for it as a standard practice.

### Child Custody Investigators<sup>8</sup>:

- Should conduct interviews with parents/guardians separately
- Must arrange for interpreters who are neither friends nor relatives (including children) of either party
- Should inform litigants of the limits of confidentiality with respect to threats made by litigants to do harm to themselves and/or others.
- Must report disclosures of child abuse and/or neglect, as required by mandated reporter laws and departmental policy, when that information is shared (see Title 6 of the Social Service Law, especially §§ 413-419).

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<sup>8</sup> Adapted from the *New York State Model Domestic Violence Policy for Counties* (see Footnote 4)

- Must, in cases involving child abuse, report the *person who has perpetrated the abuse*, regardless of the source of that information (i.e. third party).
- Should not use information obtained from persons who are abused while screening or interviewing the abuser.
- Take appropriate measures to protect the child's health and life, including taking a child into protective custody under certain circumstances.

Note: *The use of standardized point scale instruments to predict batterer dangerousness is not recommended for use in custody investigations.*

*Translators work with written material while interpreters offer oral rendition. Interpreters must be safe, unbiased, non-judgmental and reliable. They should not know either party involved in a custody case, a requirement which especially challenging in rural areas and small communities. Refer to [www.LEO.gov](http://www.LEO.gov) for guidance rather than utilizing any source with personal knowledge of the parties or the case.*

### **The Screening Process**

All cases should be screened for domestic violence and all acts of abuse should be taken seriously. Employing the following process will enable the investigating officer to identify the elements of domestic violence and assist in producing a thorough investigation and presentation of the family circumstances and dynamics:

- Determine whether the elements of the case meet the definition of domestic violence (see the definition below)
- Review the case file
- Determine which party or parties is/are the primary aggressor
- Conduct an interview with the determined primary aggressor/s
- Interview the abused person, asking direct questions. The answers to those questions will determine how you should proceed.
- Develop recommendations that support the safety of the abused person and child(ren).

## **The Definition of Domestic Violence**

### **Domestic Violence is**

A pattern of coercive tactics and behaviors that can include emotional, economic, physical, and/or sexual abuse perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the adult intimate partner. It does not, however, exclude acts committed by others in the same household.

# The Screening Interview

## Screening Interview Questions

While interviewing each litigant separately, record their responses to the following questions. Encourage persons who are abused to put these questions into their own cultural context. There may exist important information that this list of questions will not identify. Ask if there is other information related to the line of inquiry that they would like to share or that they feel would be important.

Does your partner ...

- Hit, punch, slap, kick, shove, bite, choke or strangle you?
- Threaten to hurt or abuse you, your child(ren), your pet(s)?
- Threaten to hurt friends or family members?
- Have sudden outbursts of anger or rage that places you or your child(ren) in fear of harm?
- Behave in an overprotective manner or control all your movements?
- Become jealous to the point of making you feel unsafe?
- Prevent or prohibit you from seeing family or friends?
- Prevent or prohibit you from going where you want, when you want?
- Prevent or prohibit you from working, attending school, learning English?
- Destroy personal property or sentimental items?
- Deny you access to family assets such as money, credit cards, or car?
- Deny you access to your passport or other important documents?
- Control all finances and/or require you to account for what you spend?
- Force you to have sex?
- Force you to engage in sexual acts?
- Insult you or call you derogatory racial, ethnic or sexual names?
- Threaten to have you deported or report you to law enforcement authorities, such as Immigration and Customs Enforcement (ICE)?
- Use intimidation or manipulation to control you or your child(ren)?
- Threaten to take the child(ren) to another state or country without you?
- Humiliate you in front of others?
- Threaten to disgrace you in the community?
- Escalate altercations out of proportion to the issue/incident?
- Blame you and the children for most problems?

When the relationship and the behavior of either litigant meets the above definition of domestic violence, and the answer to one or more of the above questions is “yes”, *domestic violence is indicated and details should be noted in the investigation and report.*

# Practice Recommendations

**Recommendations** When it is learned through the child custody investigation that domestic violence is present, the probation officer must pay special attention to victim safety and gain a thorough understanding of each parent's preparation and appropriateness to assume custody. Conducting a thorough investigation includes the review of a wide range of sources of documentation and information including, but not limited to the following:

- Interviews with parents (conducted separately) and with the child(ren) who are the subject of the custody investigation whenever feasible and with other children where relevant.
- Interviews with other significant parties who may have information about the case such as police, school personnel, past partners, and other persons. Include family members when living arrangements (i.e. same household as in-laws) necessitate it.
- Sex Offender Registration Act (SORA) Registry Information
- Records from police, Child Protective Services/Administration for Children's Services, courts, and medical/mental health service providers of children and those seeking custody
- Child Abuse Registry per NYS Social Service Law §422(4)(A)(K) for family court custody investigations under certain circumstances
- Examination of criminal history records of the parents and other court documents such as Orders of Protection per NYS Executive Law §221-a(4) and Domestic Incident Reports. Probation officers may request that Family Court Judges order the release of presentence investigations and other records from sentencing courts. A judge can order the litigants to be fingerprinted.<sup>9</sup> Per NYS Executive Law §243(3)(b) probation departments conducting custody investigations shall have access to criminal history records.
- Descriptions of the residence
- Additional collateral sources of information such as taped recordings, correspondence, text messages, email, diaries, logs, journals, day planners, and other documents
- Objective observations of the rapport between parent and child(ren)
- Other relevant sources that are identified during the investigation
- Other information as directed by the court.

**Note:** Recognize that the absence of documentation does not mean that the person who is abused fabricated the abuse allegations or that domestic violence is not present.

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<sup>9</sup> Per Title 9 NYCRR Subtitle H Part 350.11 – Pre-disposition Investigations and Reports in all Other Family related Matters states in part, “Upon receipt of a court order and in the absence of court direction, the scope of the investigation, type of report, format and content for all other family related matters shall be in accordance with local probation policies and procedures. In custody, adoption, visitation, and guardianship investigations, the parties of the investigation are subject to fingerprinting in order for probation to obtain complete access to any criminal history information. Therefore, the scope of these investigations shall include a multi-state criminal history search, and the probation officer shall include any such criminal history information in the report.”

# Cautions and Considerations

## Remember

**Statements made to investigating probation officers may vary widely in accuracy and truthfulness. A thorough investigation may reveal a marked difference in the credibility of the litigants. In cases where abusers are found to be repeatedly dishonest, previous indications of domestic violence may be strengthened and supported.**

**Victims may recant for many reasons (e.g. fear, intimidation, threats, conflicted emotions) and such recantations may not indicate that they are being evasive or dishonest.**

## Considerations

- Finding a party to be credible simply because (s)he does or does not present him/herself as a stereotypical abuser or victim may put the actual victim and child(ren) in greater danger. Remember that commonly accepted measures of credibility can prove misleading when domestic violence is alleged.
- Giving too much weight to a short interaction between the child and the parent may not present an accurate image as child(ren) may be upset; unfairly blaming the victim for the current situation and disruption in their lives (i.e. living in a shelter, change in school, separation from friends, etc.)
- It is not uncommon for children to speak more highly of the abusive parent because of favoritism, rewards, indoctrination from abusive parent.
- Children recognize that the abuser has power and control over the family and may react accordingly.
- Children frequently deny that domestic violence has occurred, even when there is documentation to the contrary (fear of consequences, being uprooted from familiar surroundings, injury to self and/or others).
- Be aware that when domestic violence is present, joint custody is harmful to the child(ren) and the victim.
- It is best that sole custody be awarded to the non-offending parent and to create visitation schedules that take into account victim and child(ren) safety.
- An absence of police or medical records does not mean that domestic violence has not occurred. Victims often do not report violence or seek medical attention.
- Do not base custody recommendations on personal impressions of who seems to be more “truthful”. Batterers are manipulative. Victims may appear confused and nervous and reluctant to talk.

- Guard against potential collusion with abusers.
- Psychological testing is not appropriate for establishing domestic violence as it cannot identify a batterer from a non-batterer nor predict who is the most suitable (responsible, honest, caring, safe, good values) custodial parent. Battered woman may suffer from depression, low self-esteem and other psychological symptoms caused by the batterer.<sup>10</sup>
- Abusers should not have unsupervised contact with the child(ren) until such time it is satisfactorily determined that the abuser is abiding by all of the terms of any judicial order and children's safety is not in jeopardy.
- Do not assume that ongoing "tensions" between parents are mutually caused. Abusers often portray themselves as victims, make false allegations as to victims and victim's fears and concerns.
- Abusers often recreate key aspects of the abuse they perpetrate with their partner in their relationships with their child(ren).
- Your job is to assess the alleged abuser's ability to focus on the needs of the child(ren), the child(ren)'s relationship with the other parent and put the child(ren)'s needs and best interests ahead of all others.
- An abuser's presentation as calm, articulate, insightful, or victimized by the divorce or by denial of visitation should be weighed cautiously when assessing the presence or severity of domestic violence.

## Special Considerations

**The Experiences of Women of Color with Regard to Domestic Violence:** Women of color face quantitatively more issues when they experience violence. Additionally, many programs, evaluations, and basic assumptions about parental fitness are based on value judgments that do not take into account the specific realities and individual needs of women of color. It is crucial to really listen to women of color when they define terms like "normal," "safe," and "healthy" in the context of their own lives, in order to make a determination about their understanding of what they are able and willing to provide for their children. Remember, parental fitness should never be assessed based on economic, educational, or social success as these are so narrowly defined by the dominant American culture. In custody investigations in particular, focus on the potential and willingness of both parents/parties to provide a safe, healthy, clean environment for their children. Finally, never consider women of color more accepting of abuse or "more likely" than other women to be abused. As a custody investigator/evaluator, assess the abuser and the victim based on their realities and lifestyle factors, but do not use the information to penalize the victim and her children by minimizing the abuse and/or indirectly colluding with the abuser.

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<sup>10</sup> Bancroft, L. (Winter 2002). "The Batterer as a Parent." *Synergy* 6(1), 6-8. (Newsletter of the National Council of Juvenile and Family Court Judges.)

**Women with Disabilities:** Women with disabilities who are abused often experience additional tactics of power and control in which abusers use the disabilities to perpetrate the abuse. Often, the abuser will use a partner's disabilities to further degrade and/or undermine her. The abuser may withhold or hide medications, remove wheelchairs and mobility devices, disable adapted phones, etc. It is important to be aware that an abused individual with a diagnosed psychiatric disability may present as unstable or erratic as a result of the abuser's ongoing mishandling, withholding, and/or tampering with psychiatric medications.

**What Should the Investigator Do?**

**In order to present the Court with the most complete investigation, you should:**

- Prioritize the physical and emotional safety of the child(ren) and the non-abusing parent
- Give more weight as to custody to the primary caretaker of the child(ren) and carefully assess level of past involvement and bond with child(ren).
- Question the motives of the abuser in seeking custody.
- Consider the potential impact of each recommendation or summary statement on the relationship between the child and the non-abusing parent and among siblings
- Promote the strongest relationship possible between the child(ren) and the non-abusive parent
- Consult a domestic violence advocate on custody investigations that involve allegations or indications of domestic violence, ensuring that confidentiality is protected in all respects.
- Recommend sole custody to the non-abusive parent. Consider supervised visitation and create visitation schedules that do not involve frequent exchanges and limit any unnecessary communications with the abusive parent
- Prioritize the safest environment for children physically and emotionally, in light of the history of domestic violence

**NOTE:** *Remember that unsupervised contact with the abusive parent should be granted only after an abuser has established that he/she is not a present danger to the child(ren) in any way. Any expansion should be gradual and tied to abuser's positive rehabilitation and adherence to judicial orders, including any and all orders of protection that may exist.*

# Sources of Information

## Records and Documents

**Sources of information that may provide a probation officer with more insight concerning the case, the parties, and the dynamics of the relationship(s) involved include the following:**

- Probation case notes/files, social service business records that contain statements of fact and not merely conclusions
- School records and correspondence, report cards and attendance/guidance records that can illustrate how well a child is doing while in the care of a specific parent. You should ask the child “Who helps you with your homework?” “Who takes you to doctor’s appointments?”
- Letters, cards and children’s artwork should be reviewed to examine whether children have made them for a parent as examples of love, attachment, or fear/resentment of a parent; indicators of threats and/or harassment from one parent to the other; or indicators of threats and/or harassment from a parent to the child.
- Photographs/videotapes demonstrating the physical setting provided for the child(ren) depicting the home, living and sleeping areas, nearby playgrounds or the various events/activities shared with the child(ren) including celebrations, holidays, trips and vacations, and visits with friends and relatives. These can be used to document injuries from domestic violence and child abuse.
- Department of Social Services interactions with parent and child(ren).
- Criminal court information, including Family Offense Petitions, Orders of Protection (Executive Law §221-a), Domestic Incident Reports and records of child support payments.
- Other reports from drug/alcohol rehabilitation counselor, police/police reports, CPS/ACS involvement about abuse. Child Abuse Registry information per Social Services Law §422(4)(A)(K) under certain circumstances.
- SORA Registry per Article 6-c of the Corrections Law
- Financial information, including repossessions, bank records, loans, mortgages, liens, IRS penalties, etc.
- Weapon registry
- Pediatrician/therapist
- Criminal History Record per Executive Law §243(3)(b)

NOTE: Secure appropriate consent forms as necessary.

## **Collateral Sources of Information**

Those who provide collateral information may not be aware that domestic violence is or has been occurring. They may not understand the nature and dynamics of domestic violence. They may, however be able to provide important information to the investigator.

### **Possible collateral sources of information include the following:**

- **Teachers/Coaches/Guidance Counselors:** ability, development, and aptitudes of child(ren); interaction with parents (which is more involved in the child's school life); discipline/parents' responses; school records of child (to show doing well/poorly with current parent).
- **Day Care Workers and Child Care Providers:** observations regarding care and development of child; parent participation, transportation, etc; household routine; observations of child(ren) at home and with each parent who supervises.
- **Department of Social Services:** interaction with parents and child(ren)
- **Activity Leaders:** youth groups, sports, music, etc; parent participation.
- **Faith, Spiritual and Religious Leaders:** attendance, interactions with parents. (Note: a lack of the child's involvement in religious or faith communities does not indicate a parental deficiency)
- **Doctors/Health Care Providers:** Medical problems/general health of parties; mental health providers; pediatrician/dentist/therapist for child(ren); interaction with parents; transportation; consultation medical records; ambulance squads; child's preventive health care needs met annually.

Note: Secure appropriate consent forms as necessary.

# Language for the Investigation

## Suggested Language

This language will promote the objectivity and completeness of the report. Refer to:

- The contending parties as: Mrs., Ms., Mr., respondent, petitioner, respondent/petitioner, petitioner/respondent, litigants, and/or the parent of...
- Medical or Mental Health conditions: using quotations from the parties; official records; i.e., "The medical record reflects...", "Dr. \_\_\_\_\_ diagnosed this patient as being... or having...", "This litigant appears to display some of the symptoms of...". "The record states that..." "This case was screened for domestic violence. Our screening process indicates a strong possibility that domestic violence is part of this case."  
**Note:** Do not diagnose or present your opinion on the record such as: "He/she is depressed," "He/she has (name of illness or disease)," "He/she is a batterer"
- **Observations using objective, as opposed to subjective/judgmental phrases:**  
"The child's closet contained multiple hangers, two shirts, and one pair of pants," versus "The closet contained an insufficient amount of clothing for a child of this age."  
"He/she has maintained continuous employment" versus "He/she is a good parent"

# Suggestions for the Investigation

## Recommendations For Inclusion

This is a suggested list of items to be included in the custody Investigation report. Other information should be added as deemed essential by the investigator. The suggested inclusions are as follows:

- An overview of the investigation process; summary of information gathered, analysis and recommendations (where local practice allows)
- Assessment of the litigants' ability to provide a safe, stable and nurturing environment for the child(ren)
- Recommendation of community services that may be helpful to the family
- Description of issues and recommendations that support the safety of the child(ren) when they are with the abuser
- Description of the safety and sanitary conditions of the litigants living environment(s)
- Address how supervised visitation will occur when visitation centers are not available
- Describe each litigant's plans for medical care, school, daycare, leisure time activities and financial support
- Document current physical or mental health needs, treatments and concerns of the litigants and the child(ren)
- Assess the safety considerations associated with each litigant's family and extended family support system

# Organizational Aids

## Tools

**Please review all the information contained in this model policy package before starting the investigation process.**

Use the following templates and tools as a guide to help organize your work. Adjust the template to conform to your local policy and procedure in the absence of court direction:

- **Sample Custody Investigation Case Summary** – This document provides a framework for a two-page summary of a custody investigation.
- **Custody/Visitation Questionnaire** – This questionnaire is designed to serve as a tool to assist the investigating probation officer in collecting information prior to interviewing each litigant. This questionnaire may be mailed to each litigant in time for him/her to complete it before meeting with the investigator. Alternately, the questionnaire may be completed during the course of the interview.
- **Custody Investigation Home Description Report** – This report can assist investigators who conduct home reports with litigants.
- **Custody Investigation Checklist** – This list can be used as a case inventory checklist and/or as an investigation outline.

# Custody Investigation Case Summary

Judge \_\_\_\_\_ Court \_\_\_\_\_

Court Date \_\_\_\_\_ Docket/Index No. \_\_\_\_\_

NAME	ADDRESS	AGE	RELATIONSHIP TO RESPONDENT
<b>Respondent/Defendant</b>			n/a
<b>Petitioner/Plaintiff</b>			
<b>Child(ren)</b>			
<b>Other Interested Parties</b>			

**Reasons for Involvement with the Court:**

- Visitation
- Marital History
- Others in Household
- Allegations/why better custodial parent
- Child Care arrangements
- School progress

Respondent \_\_\_\_\_ Docket/Index # \_\_\_\_\_

Defendant \_\_\_\_\_

1. Name		2. Address			
3. Sex	4. DOB	5. Marital Status	6. Place of Birth	7. Telephone Number	
8. Religion		9. Soc. Sec. No.	10. Resides with		11. Education

12. Military

13. Income

14. Occupation

15. Employer

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16. Evaluation of Residence:

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17. Previous Family Court Involvement:

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18. Previous Criminal Court Involvement:

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19. Present Physical Health:

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20. Present Mental Health:

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21. Previous Physical or Mental Health Problems:

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22. Alcohol/Drug Use:

COMMENTS/ADDITIONAL INFORMATION:

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# Custody/Visitation Questionnaire

**PLEASE BRING THIS COMPLETED QUESTIONNAIRE WITH YOU  
TO YOUR FIRST APPOINTMENT**

Name \_\_\_\_\_  
(Including middle initial and maiden name if applicable)

Date of Birth \_\_\_\_\_ Place of Birth \_\_\_\_\_

Social Security Number \_\_\_\_\_ Driver's License Number \_\_\_\_\_

Current Residential Address \_\_\_\_\_

Mailing Address (if different) \_\_\_\_\_

Telephone: Home \_\_\_\_\_ Work \_\_\_\_\_ Cellular \_\_\_\_\_

Your Attorney \_\_\_\_\_ Attorney's Phone Number \_\_\_\_\_

Law Guardian \_\_\_\_\_ Law Guardian's Phone Number \_\_\_\_\_

Next Court Date \_\_\_\_\_ Judge \_\_\_\_\_

## **STATUS OF YOUR RELATIONSHIP TO THE OTHER PARTY IN THIS MATTER:**

- \_\_\_ A. We are both parents to the child(ren) in question, but we have never married.
- \_\_\_ B. We are both parents to the child(ren) in question and were married on \_\_\_\_\_.  
We have been separated since \_\_\_\_\_.
- \_\_\_ C. We are both parents to the child(ren) in question and were married on \_\_\_\_\_  
and divorced on \_\_\_\_\_.
- \_\_\_ D. I am the biological/adoptive parent to the child(ren) in question. He/She is not.  
Explain the relationship the other party has with the child(ren).  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_ E. He/She is the biological/adoptive parent to the child(ren) in question. I am not.  
Explain your relationship to the child(ren).  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_ F. I have no relationship with the other party in this matter. Explain your relationship  
to the child(ren) in question.  
\_\_\_\_\_  
\_\_\_\_\_

**1) Have you even been convicted of a crime in New York State or any other location?**

No  Yes If yes, for each conviction, describe the following information:

Date \_\_\_\_\_ Location of Arrest \_\_\_\_\_  
Arresting Law Enforcement Agency \_\_\_\_\_  
Criminal Charge \_\_\_\_\_  
Final Disposition of Case \_\_\_\_\_

Date \_\_\_\_\_ Location of Arrest \_\_\_\_\_  
Arresting Law Enforcement Agency \_\_\_\_\_  
Criminal Charge \_\_\_\_\_  
Final Disposition of Case \_\_\_\_\_

Date \_\_\_\_\_ Location of Arrest \_\_\_\_\_  
Arresting Law Enforcement Agency \_\_\_\_\_  
Criminal Charge \_\_\_\_\_  
Final Disposition of Case \_\_\_\_\_

Date \_\_\_\_\_ Location of Arrest \_\_\_\_\_  
Arresting Law Enforcement Agency \_\_\_\_\_  
Criminal Charge \_\_\_\_\_  
Final Disposition of Case \_\_\_\_\_

**2) Have you ever been CHARGED/CONVICTED for a motor vehicle moving violation such as speeding offenses or driving while under the influence of alcohol or drugs?**

No  Yes If yes, describe the following information for each:

Date \_\_\_\_\_ Location of Arrest \_\_\_\_\_  
Arresting Law Enforcement Agency \_\_\_\_\_  
Criminal Charge \_\_\_\_\_  
Final Disposition of Case \_\_\_\_\_

Date \_\_\_\_\_ Location of Arrest \_\_\_\_\_  
Arresting Law Enforcement Agency \_\_\_\_\_  
Criminal Charge \_\_\_\_\_  
Final Disposition of Case \_\_\_\_\_

Date \_\_\_\_\_ Location of Arrest \_\_\_\_\_  
Arresting Law Enforcement Agency \_\_\_\_\_  
Criminal Charge \_\_\_\_\_  
Final Disposition of Case \_\_\_\_\_

List the automobiles you regularly drive:

Make _____	Model _____	Year _____	Plate Number _____
Make _____	Model _____	Year _____	Plate Number _____
Make _____	Model _____	Year _____	Plate Number _____

**3) Have you ever been convicted of a sexual offense that has required you to be registered as a sex offender on any state's sex offender registry?** \_\_\_No \_\_\_Yes  
If yes, what State? \_\_\_\_\_ What level sex offender (I, II, III)? \_\_\_\_\_

**4) Do you, or does anyone with whom you reside, currently own or possess any firearms, weapons, guns, rifles, and/or pistols?** \_\_\_No \_\_\_Yes

If yes, list each weapon and where they are currently located/kept:

Weapon _____	Location _____

**5) Are you required to have/carry a firearm or weapon for your employment?**  
\_\_\_No \_\_\_Yes If yes, for each firearm/weapon, list the following:

Employer \_\_\_\_\_ Firearm/Weapon \_\_\_\_\_  
Location of where weapon is kept \_\_\_\_\_

Employer \_\_\_\_\_ Firearm/Weapon \_\_\_\_\_  
Location of where weapon is kept \_\_\_\_\_

Employer \_\_\_\_\_ Firearm/Weapon \_\_\_\_\_  
Location of where weapon is kept \_\_\_\_\_

**6) Has any complaint ever been made against you to Child Protective Services (CPS) and/or Administration of Children's Services (ACS), either in New York State or any other location, charging you with child neglect or child abuse?**

\_\_\_No \_\_\_Yes If yes, explain the circumstances including the following:

Date of complaint \_\_\_\_\_ Location of the Complaint \_\_\_\_\_  
Agency responding to complaint \_\_\_\_\_  
Final resolution of the complaint \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7) Are you involved in a current CPS/ACS investigation?** \_\_\_No \_\_\_Yes

If yes, provide the following information:

Name of the CPS/ACS worker assigned to case \_\_\_\_\_

Telephone number of CPS/ACS worker \_\_\_\_\_

**8) Have you ever been involved in any other civil proceeding of a similar nature, in this or any other Court?** \_\_\_No \_\_\_Yes If yes, explain the circumstances and the disposition.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9) Please list ALL of your children. Place a check mark in front of the name of any child(ren) who is/are the subject(s) of this custody/visitation proceeding:**

\_\_\_ Name \_\_\_\_\_ DOB \_\_\_\_\_  
Address \_\_\_\_\_ School \_\_\_\_\_

\_\_\_ Name \_\_\_\_\_ DOB \_\_\_\_\_  
Address \_\_\_\_\_ School \_\_\_\_\_

\_\_\_ Name \_\_\_\_\_ DOB \_\_\_\_\_  
Address \_\_\_\_\_ School \_\_\_\_\_

\_\_\_ Name \_\_\_\_\_ DOB \_\_\_\_\_  
Address \_\_\_\_\_ School \_\_\_\_\_

**10) List any other individuals residing in your home:**

Name \_\_\_\_\_ DOB \_\_\_\_\_  
Occupation \_\_\_\_\_ Relationship \_\_\_\_\_

**11) Have any of the individuals with whom you reside been convicted of a crime or named as the subject of a child abuse or child neglect investigation to your knowledge?**

No  Yes If yes, please provide details below:

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**12) Indicate your current marital status:**

Single  Separated  Divorced  Married

If currently married, Spouse's name: \_\_\_\_\_ DOB \_\_\_\_\_  
Social Security number \_\_\_\_\_ Date of Marriage \_\_\_\_\_  
Education \_\_\_\_\_ Income \_\_\_\_\_

**13) List all previous addresses where you have resided during the past ten years including dates:**

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**14) List all previous marriages and note if you are currently in any intimate relationships:**

1. Name of spouse (maiden name if applicable) \_\_\_\_\_  
Date and place of marriage \_\_\_\_\_  
Date and place of divorce \_\_\_\_\_  
Reason for divorce \_\_\_\_\_  
Name and birth dates of child(ren) from this marriage/relationship, if any

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2. Name of spouse (maiden name if applicable) \_\_\_\_\_  
Date and place of marriage \_\_\_\_\_  
Date and place of divorce \_\_\_\_\_  
Reason for divorce \_\_\_\_\_  
Name and birth dates of child(ren) from this marriage/relationship, if any

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3. Name of spouse (maiden name if applicable) \_\_\_\_\_  
Date and place of marriage \_\_\_\_\_  
Date and place of divorce \_\_\_\_\_  
Reason for divorce \_\_\_\_\_  
Name and birth dates of child(ren) from this marriage/relationship, if any  
\_\_\_\_\_  
\_\_\_\_\_

4. Name of person you are currently dating or with whom you have an intimate relationship.  
Address \_\_\_\_\_

**15) Please list the name of your parents, their ages, full addresses and occupations (if deceased, list same information and also date, age, and cause of death). Full complete addresses must be provided for all relatives, including those who live outside of New York State or outside of the United States.**

- a. Father \_\_\_\_\_
- b. Mother \_\_\_\_\_
- c. Step-Parents (if any) \_\_\_\_\_
- d. Siblings (brothers, sisters, including half and step) \_\_\_\_\_  
\_\_\_\_\_

**16) Education Status**

Highest Grade completed (circle) 1 2 3 4 5 6 7 8 9 10 11 12  
College Years (circle) 1 2 3 4 Name/location of last school attended \_\_\_\_\_  
Date of high school graduation or GED (if applicable) \_\_\_\_\_  
Colleges attended \_\_\_\_\_  
Degrees Earned \_\_\_\_\_ Year(s) Awarded \_\_\_\_\_

**17) If you have served in the military, provide the following information:**

Branch of Service \_\_\_\_\_ Highest Rank Achieved \_\_\_\_\_  
Dates of Services \_\_\_\_\_ to \_\_\_\_\_ Type of discharge \_\_\_\_\_

**18) Please list any and all employment during the last five (5) years including current job (if employed). List the address for each job.**

Employer \_\_\_\_\_ Address \_\_\_\_\_  
Job Title \_\_\_\_\_ Dates of service \_\_\_\_\_ to \_\_\_\_\_  
Reason for leaving \_\_\_\_\_

Employer \_\_\_\_\_ Address \_\_\_\_\_  
Job Title \_\_\_\_\_ Dates of service \_\_\_\_\_ to \_\_\_\_\_  
Reason for leaving \_\_\_\_\_

Employer \_\_\_\_\_ Address \_\_\_\_\_  
Job Title \_\_\_\_\_ Dates of service \_\_\_\_\_ to \_\_\_\_\_  
Reason for leaving \_\_\_\_\_

**19) Income status:**

A. Present income per month \_\_\_\_\_ Sources of income (including employment, public assistance, unemployment, Social Security, spousal support, etc.) \_\_\_\_\_

B. Spouse's income per month \_\_\_\_\_

C. Are you receiving any child support? \_\_\_No \_\_\_Yes If yes, amount \_\_\_\_\_  
For which child(ren) \_\_\_\_\_  
Name of the person responsible for paying the child support? \_\_\_\_\_

D. What arrangements, if any, have been made for your child(ren)'s college education?  
\_\_\_\_\_

E. What are your current monthly expenses?  
Monthly rent/mortgage and real estate taxes \_\_\_\_\_  
Monthly child care (day care and/or after school program) \_\_\_\_\_  
Monthly child or spousal support you pay \_\_\_\_\_

**20) Present living facilities:**

Type of dwelling: \_\_\_ single family home \_\_\_ mobile home \_\_\_ duplex or 2 or 3 family home  
\_\_\_ townhouse \_\_\_ apartment building \_\_\_ rented room \_\_\_ condominium/cooperative

Physical structure of your home (place a check next to those features which exist within your current home): \_\_\_ kitchen \_\_\_ family room \_\_\_ living room \_\_\_ dining room  
\_\_\_ number of bathrooms \_\_\_ number of bedrooms

Name of school your child(ren) will attend if you are awarded custody \_\_\_\_\_

**21) Health issues**

Do you currently or have you in the past experienced any physical problems or conditions which you believe may impair your ability to care for a child? \_\_\_No \_\_\_Yes If yes, please specify issue(s) and provide name and address or the physician who is treating you?

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Do you currently or have you in the past used drugs which are not prescribed? \_\_\_No \_\_\_Yes If yes, please specify. \_\_\_\_\_

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Do you currently or have you in the past used drugs which are prescribed? \_\_\_No \_\_\_Yes If yes, provide the name and address for the physician who is treating you and list drugs you are prescribed to. \_\_\_\_\_

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Do you currently or have you in the past been involved in treatment or counseling for any reason? \_\_\_No \_\_\_Yes If yes, please provide name(s) of therapist(s), counselor(s), rehab(s), or hospital(s), their addresses, and dates of treatment. \_\_\_\_\_

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**22) Are or have any of the children been experiencing any medical/health problems?**

\_\_\_No \_\_\_Yes If yes, please specify. \_\_\_\_\_

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List the name, address, and telephone number for the child(ren)'s doctor. \_\_\_\_\_

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Do any of the children have health, emotional, or behavioral problems, and/or learning disabilities? \_\_\_No \_\_\_Yes If yes, please explain. \_\_\_\_\_

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Are any of the children currently or in the past been in counseling or therapy? \_\_\_No \_\_\_Yes If yes, please provide name(s), address(es), and phone number(s) of all therapist(s) and counselor(s) who has/have seen or is/are currently seeing the child(ren) including dates of treatment, rehabilitation or counseling, or hospital(s), their addresses, and dates of treatment.

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**23) Custody/Visitation Questions**

For each child, list their hobbies and extra-curricular and after school activities. \_\_\_\_\_

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Have you discussed the issue of custody/visitation with the child(ren) in question?  
\_\_\_No \_\_\_Yes If yes, briefly restate what you have explained to the child(ren). \_\_\_\_\_

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Have the children expressed to you any concerns about this custody/visitation case?  
\_\_\_No \_\_\_Yes If yes, please explain. \_\_\_\_\_

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Describe childcare arrangements made for the child(ren) when you are at work or school.

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Describe present custodial/visitation arrangements for your child(ren). Describe the schedule for visitation and the means by which visitation is arranged, including the pick-up and delivery of the child(ren) for visitation and any arrangement for telephone contact with the child.

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If you are granted custody or visitation, please describe the plans that you have made for school, medical care, childcare, etc. \_\_\_\_\_

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In your own words, please explain why you think you should be granted custody of, or visitation with, the child(ren). Include the benefits that you think the child(ren) would derive from the Court ruling in your favor. \_\_\_\_\_

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Briefly state your objections, if any, to the Court granting custody/visitation to the other party in this matter. \_\_\_\_\_

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Print Name

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Date

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Signature

# Custody Investigation Home Description Report

## Location:

Name of Litigant \_\_\_\_\_  
Address \_\_\_\_\_  
Neighborhood \_\_\_\_\_  
Describe access to stores, playground, etc. \_\_\_\_\_  
\_\_\_\_\_  
School district \_\_\_\_\_  
School bus stop/transportation: \_\_\_\_\_

## General Exterior Appearance:

Describe exterior \_\_\_\_\_  
Type of structure \_\_\_\_\_  
Yard or play area (if applicable) \_\_\_\_\_  
Safety factors (i.e. loose porch railings, etc.) \_\_\_\_\_  
\_\_\_\_\_

## Own/Rent Housing:

Own \_\_\_\_ Rent \_\_\_\_ Mortgage/rent monthly \$ \_\_\_\_\_ Utilities monthly \$ \_\_\_\_\_  
Length of time at current address \_\_\_\_\_  
Length of time at previous address \_\_\_\_\_

## Animals in the Home or on the Property:

Number and type of animals \_\_\_\_\_  
Indicate state of animals (i.e. appear well cared for or possible concerns such as urine odor, abuse/injuries, etc.)? \_\_\_\_\_  
\_\_\_\_\_  
Describe animals' temperament \_\_\_\_\_  
\_\_\_\_\_  
Indicate any safety concerns for child(ren) with animals \_\_\_\_\_  
\_\_\_\_\_  
Indicate if the child(ren) have any allergies to the animals \_\_\_\_\_  
\_\_\_\_\_

**Smoking:**

Does the litigant smoke? \_\_\_No \_\_\_Yes If yes, indicate where he/she smokes (i.e. in the house, one room only, outside) \_\_\_\_\_

Indicate if the child(ren) have any breathing problems (i.e. asthma, other allergies)

\_\_\_\_\_  
\_\_\_\_\_

**Interior:**

Conduct general safety review and indicate any issues/concerns below:

Fire hazards (i.e. exposed wires, unsafe extension cords, stacks of papers, clothes)

\_\_\_\_\_  
\_\_\_\_\_

Smoke alarms – fire extinguishers \_\_\_\_\_

Ventilation \_\_\_\_\_

Alternative exit – emergency egress \_\_\_\_\_

Wood stove/fireplace (i.e. safety factors, distance from wall and furniture, gate to keep child away, carbon dioxide detectors) \_\_\_\_\_

\_\_\_\_\_

Stairs and landings (i.e. railings, child gate) \_\_\_\_\_

Presence of alcohol/how secured from child(ren) \_\_\_\_\_

\_\_\_\_\_

Knives, medicines, and cleaning products (i.e. placed up high, safety catches on doors)

\_\_\_\_\_

Guns (i.e. how they are secured) \_\_\_\_\_

Outlet plugs \_\_\_\_\_

Second and third floor windows (how are they secured) \_\_\_\_\_

Are there window guards? \_\_\_\_\_

Broken windows, holes in walls and doors (indicate what and how they were broken)

\_\_\_\_\_

Adequate heating system/type of system \_\_\_\_\_

Presence of lots of flies or insects in the house \_\_\_\_\_

Screens on windows \_\_\_\_\_

Is there adequate room for all adults and children? \_\_\_No \_\_\_Yes      Pets? \_\_\_No \_\_\_Yes

**Kitchen and Bathroom:**

Adequate sink, refrigerator, toilet, shower/tub \_\_\_\_\_

\_\_\_\_\_

Old, dried food on plates \_\_\_\_\_

Adequate disposal of dirty diapers \_\_\_\_\_  
Presence of basic food for child(ren) \_\_\_\_\_  
Presence of door for bathroom \_\_\_\_\_

**Bedrooms:**

General description of all bedrooms with special attention to child's/children's sleeping arrangements. Consider all safety factors. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name all those living in the home, as well as any visitors who spend the night. Where does each party sleep? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If children are present, ask if they will show you their room(s). Indicate if children have own room(s) or share. Describe room(s). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Indicate if there are age appropriate toys. \_\_\_\_\_

Ask child/children who sleeps there, who puts them to bed, and who takes care of them if they are sick. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Indicate if adequate bedding, sheets, blankets, etc. for each child and the condition they are in. \_\_\_\_\_  
\_\_\_\_\_

Indicate if each child has adequate clothing \_\_\_\_\_  
\_\_\_\_\_

Indicate if bedrooms have doors \_\_\_\_\_

Is it necessary to walk through child's room to get to another room (for example, the bathroom)? \_\_\_\_\_  
\_\_\_\_\_

Does child have to walk through someone's bedroom to get to bathroom? \_\_\_\_\_

**Basement:**

Indicate general condition of basement and note any safety concerns (i.e. fuse box, stair railing, adequate lighting, etc.) \_\_\_\_\_

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**Other Structures on Property:**

Describe other structures on property and note any safety concerns \_\_\_\_\_

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**Overall General Impression of Home:**

Indicate general impression of home (i.e. neat and clean, cluttered, very dirty, condemnable for major health and safety violations) \_\_\_\_\_

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**Other Information:**

Determine this is really the litigant's address (name on mailbox, prescriptions in medicine cabinet, etc.) \_\_\_\_\_

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**Any Additional comments** \_\_\_\_\_

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# Custody Investigation Checklist

## HISTORY OF THE LITIGANTS' RELATIONSHIP:

- Names, birthdates and ages of the litigants
- Length of their courtship and/or marriage
- Any outstanding courtship events (they took a special trip, indication of future concerns)
- Note the current status of the relationship between the litigants
- Note the ability of the litigants to communicate and cooperate in matters regarding the children
- Note either litigants' current intimate relationships (if any)
- Note any history of court involvement; criminal or family court
- Note the results of screening for domestic violence
- Note what each of the litigants is asking of the Court Re: custody/visitation

## THE CHILDREN:

- State the names, ages and birthdates of each child in the home
- Note the relationship between each child and parent
- Discuss children's physical, mental health or emotional concerns (if any)
- Discuss children's substance abuse concerns (if any)
- Discuss any adult domestic abuse to which the children have been exposed (if any)
- Discuss how each child has been impacted by domestic violence
- Discuss how each child is responding to the litigant's current relationship status
- Discuss how the children relate to the litigant's current intimate partners
- Discuss your observation of how each child relates to either litigant

## DISCUSS THE FOLLOWING FOR EACH LITIGANT:

- History of current/past employment and income
- History of current/past medical treatment
- History of current/past mental or emotional health treatment
- History of current/past domestic violence
- History of current/past substance abuse treatment
- Note any agency contact as result of the above

## **Investigation Checklist, Continued**

### **HOME STUDY:**

- Note the safety issues of each litigant's living area given the age of the children
- Note if there are firearms in the home; if so, how are they secured
- Note if clothing for each child is available
- Note the availability of age appropriate toys
- Note if the amount of space is sufficient for the number and ages of the children and adults
- Note the bathroom facilities
- Note the sleeping arrangements
- Note the sanitary conditions of the living area
- Note number of pets and other animals in and around the home
- Note the availability and amount of outside play space
- Note any health or safety hazards
- Note appearance/cleanliness of children and/or pets

### **COMMENTS FROM COLLATERAL INDIVIDUALS:**

The comments should be based on their observations

### **INFORMATION FROM COLLATERAL DOCUMENTS AND RECORDS:**

Summarize key information including indications of domestic violence and any safety concerns

### **EVALUATIVE ANALYSIS: (summary of the above)**

There should be no new information presented here. Do not quote but paraphrase information that logically leads to the recommendation

### **RECOMMENDATIONS:**

The investigator should not recommend an abusive parent to have custody of any child

# Interviewing Parents – Lessons Learned

## Procedures for Interviewing Parents

Procedures for interviewing parents include the following:

- Explain the role of the probation officer, the investigating agency, and the investigation report within the court process.
- Explain that the interview will involve very personal information, but it is the only manner in which the investigator can assist the Court in making a truly informed decision about the child(ren). Address the limitations of confidentiality of information before asking any questions.
- Advise litigants that they are not on probation and that the probation department cannot require that they take or not take any actions.
- Advise litigants that your agency cannot require anyone to be a good parent and that they must call the police (911) in emergency situations and not rely on the custody investigator as an emergency contact.
- Provide an overview of the court process and clarify that while the probation officer and supervisor may make recommendations to the Court, the judge makes final custody decisions.
- Recommendations are based on the best interests of the child or children, not upon what is viewed as fair or equitable to litigants. Where domestic violence is present, the best interests of the children must include both the safety of the child(ren) and the non-abusing parent.

## Cautions When Interviewing Parents

Interview each parent out of sight and hearing of the other parent. There are other precautions you must take in order to support the safety of all parties while developing the most accurate assessment of each parent in respect to the child(ren).

### Custody Investigators must be aware of the following:

- **Motive** – Does the parent appear motivated by a sincere belief that he or she is the better custodial parent? Or does the parent seem motivated to “win the children”, control or hurt the other parent or collect/avoid paying child support money?
- **Interaction** – Does the parent show that he or she is the parent who gives the most love, support, psychological awareness, empathy, developmental sensitivity, and encouragement to the child(ren)? For example, how well does the parent know the child(ren)? How familiar is the parent with the child(ren)’s ages, schools, names of teachers, doctors, etc.?
- **Role Model** – Does the parent demonstrate that he or she is an appropriate role model for the child(ren)?
- **Honesty** – Are the parents’ statements consistent and truthful?

- **Emotional Health** – Psychological evaluations may have limited value in determining parenting skills. The impact of domestic violence on many women who are abused may result in them being perceived as having mental or emotional health issues. Thus, any documentation regarding the mental functioning and emotional health of each parent must be viewed with caution.
- **Capacity to facilitate interactions** – In cases in which domestic violence is not present, does the parent demonstrate that he/she has the capability to facilitate the relationship between the child(ren) and non-custodial parent? **Note: In cases involving domestic violence, it may not be safe for women and their children to have contact or attempt to negotiate with the abuser.**
- **Availability of extended family** – Will each parent be able to offer the child(ren) contact with a larger, extended family and support system? **Note: Persons who are abused may have been isolated or alienated from their family because of the actions of their abuser, and therefore may have limited or no contact with extended family.**
- **Firearms** – Are there firearms in the home? What kind and how many are there? What is their stated purpose? How are they stored/secured? Are such weapons legally licensed?
- **Pets and Other Animals** – Are there pets in the home? If so, are they well cared for and do they have adequate facilities? Are there other animals on the property, such as livestock? If so, are they well cared for and do they have adequate facilities?

**Assessing for  
Readiness to  
Assume Custody**

Is each parent ready and prepared to assume full custody of the child(ren)? Is there a plan in place to address the following?

- **Residence** – Where will the custodial parent and child(ren) live? Will the children remain in the same home? If they will live in a different home, will they be near their schools, extended family, and the non-custodial parent? **(Note: For safety and survival, women who are abused may have to move or live in a shelter or temporary housing as a result of the abuse.)**
- **Schools** – Will the child(ren) remain in the same school district? **(Note: For safety and survival, women who are abused may have to relocate to another school district as a result of the abuse.)**
- **Child Care Arrangements** – Will the parent be a stay-at-home parent? Is there the need to arrange for childcare when the parent is at work or school? Are extended family members or other individuals available to assist? Will the child(ren) participate in after-school programs, and who will pay for these programs?

- **Other Parents' Access** – What type of visitation plan does the parent think works best for the child(ren) and their schedules? Does the parent have any hesitations or concerns regarding supervised or unsupervised visitation with the other parent? If domestic violence is present, are there concerns about unsupervised visitation?
- **Community Services** – What services are available for supervised visitation? Should be neutral person to avoid bias and ensure objectivity.
- **Other needs** – Will the child(ren) keep the same doctors, counselors, and medical insurance plan? What about extra-curricular, school, faith-based, and other youth activities? Location move may be necessary for child(ren) and victim's well being and safety.
- **Financial Capacity** – What are the means of both parents? Should not discount victim as custodial parent because of her current lack of financial resources. Abuser may be required to assist victim financially and pay child support. Should consider requiring abuser/ batterer to pay for supervised visitation, child(ren)'s therapy, mother's (victim's) legal fees and needs.

## **RESOURCES for MORE INFORMATION**

### **NYS Domestic Violence/Custody Law and Court Ruling**

Pursuant to Chapter 85 of the Laws of 1996, New York State courts are required to consider the effects of domestic violence as a factor in custody and visitation decisions. Specifically, all courts are required to make a determination in accordance with Domestic Relations Law (DRL) §240( ). This DRL provision reads in part:

“...Where either party to an action concerning custody of or a right of visitation with a child alleges in a sworn petition or complaint that the other party has engaged in an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the Family Court Act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making such a direction pursuant to this section...”

#### **Nicholson v. Scoppetta**

3N.Y.3d 357, 787N.Y.S.2d196, 820N.E.2d840, N.Y., 2004, October 26, 2004

**Holdings:** The Court of Appeals, Kaye, Chief Judge, held that: (1) evidence that caretaker allowed child to witness domestic abuse against caretaker is insufficient, without more, to satisfy statutory definition of “neglected child,” and (2) emotional injury from witnessing domestic violence can rise to level that justifies removal of child, but witnessing does not, by itself, give rise to any presumption of injury.

#### **Relocation Issues and Custody Laws**

Some factors the court should consider when making a relocation determination include but are not limited to the following: Lazarevic v. Fogelquist, (175 Misc.2d 343, 668 N.Y.S.2d 320; N.Y.Sup.,1997. December 12, 1997)

- 1) the quality of the alternate home environments;
- 2) a comparison of the parental guidance which would be provided to the child if relocation were granted and if relocation were denied;
- 3) the financial status and ability of each parent to provide for the child;
- 4) the ability of each parent to provide for the child's emotional and intellectual development;
- 5) the desires of the child with appropriate weight given to the child's young age and maturity;
- 6) the quantitative and qualitative impact upon the child of losing existing contacts with one parent and the community or with the other parent, Step-parent and siblings;
- 7) the quantitative and qualitative impact upon the non-custodial parent of losing existing contacts with the child;

8) the feasibility of devising a visitation schedule or other arrangement that will enable the non-custodial parent to maintain a meaningful parent-child relationship;

9) the difficulty, advantage and disadvantage that the child will experience in residing and adapting to a remarkably new and different place and culture;

10) the economic necessity or lack thereof for wanting to relocate;

11) the existence of good faith in requesting and opposing the relocation and whether reasons for moving are valid and sound;

12) parent's attempts to obtain a "fresh start" i.e., whether relocation would strengthen and stabilize the new post-divorce family unit; and

13) the continued or exacerbated hostility between Petitioner and Respondent if relocation were permitted and if relocation were denied.

## **Federal and Interstate Custody Laws**

### **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was adopted by New York State in 1999, and became effective April 28, 2002. The UCCJEA is codified in Article 5-A of the Domestic Relations Law, and has replaced the Uniform Child Custody Act (UCCJA) as governing custody and interstate jurisdiction issues in New York. This act is an attempt to minimize parental kidnapping.

### **Parental Kidnapping Prevention Act (PKPA), 28U.S.C.A. §1738A(C)(2)(B)**

The PKPA was enacted to add the force of the Full Faith and Credit Clause of the Constitution to the UCCJA. The PKPA requires every state to enforce a custody order of every other state, as long as the issuing state's order meets the jurisdictional and due process requirements set forth in the PKPA.

### **THE UCCJEA**

The UCCJEA primarily achieves four goals: (1) it codifies practices that reduce interstate conflict, (2) it determines which state has and should exercise jurisdiction, (3) it conforms jurisdictional standards to the PKPA, and (4) it protects victims of domestic violence who move out of state.

## **International Custody Law**

### **The Hague Convention**

In October 1980, representatives from 29 countries met in The Hague Netherlands to address the issue of international child abduction. It resulted in drafting the Convention on the Civil Aspects of International Child Abduction, otherwise known as the "Hague Convention." Over 30 countries, including the United States, has ratified this agreement. The Hague Convention

seeks to “secure the prompt return of children wrongfully removed to or retained in a foreign state” and “to ensure the rights of custody and access under the law of one state are effectively respected in the other foreign states.” Since the law in this area is complicated, we recommend you consult with appropriate legal and domestic violence professionals familiar with this law.

## **General Reference Material**

Bancroft, Lundy. “Understanding the Batterer in Custody and Visitation Disputes.” 1998

Sullivan. Beyond Searching for Deficits: Evidence that Physically and Emotionally Abused Women Are Nurturing Parents.

NOW Legal Defense and Education Fund, Immigrant Women’s Project. “Countering Abuser’s Attempts To Raise Immigration Status of the Victim in Custody Cases.” 2002

In Motion. “Litigating Custody and Visitation Matters in Family Court.” Modified: Dec. 7, 2006

## **Separation Violence**<sup>11</sup>

A variety of reasons motivate the offender to continue to abuse the victim during and after separation. Since offenders use abuse as a way of maintaining and sustaining power and control over their intimate partners, even the potential for separation from the victim can be enough to threaten the abuser’s sense of power (both perceived and actual). The abuser’s power and control-driven reactions to the separation put the victim at increased risk for violence that often escalates in both frequency and intensity as the attempts to “win the victim back” through fear and manipulation fail. It is at this point, during separation, that safety planning for the victim and children should be carefully developed with a specialized domestic violence advocate who is most equipped to assist the victim’s assessment of the situation and safety.

## **Victim Safety and Self-Determination**<sup>12</sup>

Seeking help, getting an order of protection, or deciding to leave an abuser only makes sense to a victim when, on balance, it reduces the overall risks that the victim and child(ren) have to deal with. Evaluating leaving as an option requires an honest and rigorous assessment of the risks attached. Service providers should recognize that, at any given point, a victim’s choice to stay with an abuser is often the most rational and safest choice they can make to protect themselves, the child(ren), and others. Also note that a victim’s decision to obtain an Order of Protection may put her/him at increased risk, as it is one more order the abuser is being forced to obey. While Orders of Protection can function as one component of holding an offender accountable, never insist or even recommend to an individual who is abused that they petition for an Order. Provide them with as much information as possible and share with them the potential positive aspects of all the options (Order of Protection, safe housing, etc) as well as the high probability that many abusers will violate an Order of Protection at least once. Finally, allow the victim to inform you about what is safest for her/him by supporting their choices and decisions, to the best of your ability, regarding their safety. You can empower a victim by listening to her/him, believing her/him, providing her/him with all information, and respecting

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<sup>11</sup> Adapted from *Battered Mothers’ Testimony Project*, AZCADV

<sup>12</sup> *New York State Model Domestic Violence Policy for Counties*. New York State Office for the Prevention of Domestic Violence (January 1998)

her/his decisions. And, whenever possible, always follow through with her/him regarding outcomes.

### **Offender Accountability**

Accountability means that an individual is to be held responsible, or answerable for their action or behavior.

As it relates to domestic violence, offender accountability is a core issue when discussing the criminal justice response to domestic violence. The NYS Office for the Prevention of Domestic Violence [NYS OPDV] Model Domestic Violence Policy for Counties, published in January 1998, addresses offender accountability and comments upon two aspects of holding offenders accountable.

Accountability requires that the Investigator must not engage in any communication that allows the offender to perceive support for any excuses offered in explaining behavior. The rules of engagement with the offender must be clear. Professional interactions are not social discourse. The officer must be vigilant to keep the focus on the offender's behavior – not the victim's behavior.

### **Joint Custody Considerations**<sup>13</sup>

The “Best Interests of the Child” should not assume joint custody. Joint custody orders force a parent who is abused to continue a relationship with the abuser and places both her/him and the child(ren) in further danger, as the offender will continue to use their power and control techniques to intimidate and subjugate them.

### **Risks for Children During Visitation with an Abuser**<sup>14</sup>

Where a history of domestic violence is present, risks to children from unsupervised visitation with the abuser can be assessed by examining the following information:

- History of directly abusive or irresponsible behavior toward the child(ren)
- Psychological cruelty toward the woman who is abused
- Willingness to hurt the child(ren) as a deliberate or incidental aspect of abusing the mother (i.e. throwing things at her when the child(ren) are near her, being mean or deliberately risk-taking with the child(ren) to control her, and failing to pay child support for which he has resources)
- Manipulation of and toward family members
- Selfishness and self-centeredness toward family member, including having expectations that the children should meet this needs.
- Violence or physically frightening behaviors in front of the child(ren)
- Being verbally degrading to the woman who is abused in front of the child(ren)
- Severe or frequent physical violence and threats, including threats to hurt himself
- History of sexual assaults of the woman who is abused (linked to increased risk of sexual abuse of the child(ren) and increased physical danger)

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<sup>13</sup> Sullivan, Chris M. “Beyond Searching for Deficits: Evidence that Physically and Emotionally Abused Women Are Nurturing Parents.”

<sup>14</sup> R Lundy Bancroft, “Understanding the Batterer in Custody and Visitation Disputes”, 1998

- History of boundary violations toward the child(ren)
- History of substance abuse
- Entitlement (his attitude that his violence is justified, expectations that his needs should always be met, and perceiving the child(ren) as his personal possessions)
- Past under-involvement with the child(ren) (i.e. not knowing basic information, such as the child(ren)'s birthdays, name of doctors or teachers, or the routine of the child(ren)'s daily care)
- Refusal to accept the end of the relationship with the woman who is abused
- Refusal to accept the new partner of the woman who is abused, and that new partner's presence in the children's lives
- Refusal to accept responsibility for past abuse (including denying, minimizing, and blaming)
- The escalation of the abuse
- Inability to put the children's needs ahead of his own

### **Parenting by Mothers Who Are Abused**<sup>15</sup>

Women whose partners abuse them live with ongoing anxiety, fear, and depression, all of which are increased when these women are mothers, simultaneously worrying about the safety and health of their children. However, many women counter the impact of their partners' abuse by being extremely caring and nurturing toward their child(ren).

According to a 2000 study by Chris M. Sullivan, the majority of mothers (91%) who were also victims of domestic violence reported that they enjoyed being parents and that they tended to use non-corporal forms of punishment with their children (i.e. grounding, taking away privileges, etc) as opposed to the physical forms of discipline similar to the abuse and violence inflicted upon them by their male partners. Additionally, 93% of the children interviewed in the same study cited their mothers as their main sources of social support.

### **Supporting Children's Resilience**<sup>16</sup>

Child custody investigators should understand that individual work and safety planning with children exposed to domestic violence is the best way to support their resilience. Additionally, helping to foster a positive and healthy relationship with at least one adult, preferably the "non-offending" parent provides the necessary stability and consistency children require, particularly following the uncertainty of living in an environment consisting of violence and fear.

While housing and economic support are crucial to fostering children's well-being, socialization, relationship and trust-building, and healthy communication skills are also necessary key elements in working with children whose parents have been abused and who may be feeling confused, scared, and isolated. Communities should attempt to refer to specific developmentally-appropriate services designed for child victims of domestic violence, but should also recognize, more importantly, that the abused parent's victimization cannot prevent them from playing a central role in the strengthening of their child(ren)'s social supports and personal growth.

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<sup>15</sup> Sullivan. *Beyond Searching for Deficits: Evidence that Physically and Emotionally Abused Women Are Nurturing Parents.*

<sup>16</sup> Edelson, Jeffrey L., *Childrens' Witnessing of Adult Domestic Violence*, University of Minnesota, 1997

### **Raising Immigration Status as a Tactic of Abuse**<sup>17</sup>

Many immigrant women who are abused are reluctant to leave abusers for fear of losing their children. In many child custody cases, abusers raise the issue of the lack of legal immigration status of a woman who is abused in order to tip the custody scales in their favor. However, many immigrant women who are abused are often undocumented because abusers have refused to file immigration papers for them. The refusal to file immigration papers is a tool of power and control and becomes a key part of the pattern of abuse.

### **Exposure to Violence and the Impact on Decision-Making by Children**<sup>18</sup>

It is estimated that in the United States alone, between 3.3 and 10 million children witness violence in their home annually. It is now clearly documented that children exposed to domestic violence are at risk for a range of emotional and behavioral difficulties. Many still believe that in order to be affected children must directly observe the infliction of violence. While many children are exposed to this level of horror, many others are deeply affected by more indirect exposure. For example, children may hide under their beds or in their closets while listening to objects being smashed, blows to their mother, or pleas from their mother (to their father) to stop. These children, although not directly witnessing their mother's assault, may nonetheless fear she will be injured or killed. Children in these circumstances do not react in a uniform fashion. Whereas some may fear for their mother's safety, others may be angry with their mother for not leaving. Some children may experience divided loyalties, whereas still others may be overwrought with guilt regarding their inability to intervene and protect their mother. Professionals who interview and observe these children must be aware of the experiential differences among children exposed to domestic violence.

Ultimately, legal and mental health professionals face difficult challenges in situations in which children express a preference not to see one of their parents. Careful and thorough exploration as to why a particular child holds this view must be undertaken. Currently, there is a proclivity toward snap judgments and simplistic interpretations as to why a child is apprehensive about seeing a parent, and mothers are blamed when their children resist visitation (See Parental Alienation Syndrome below). Other, more reasoned hypotheses about the genesis of a child's reluctance, such as having witnessed their father hurting their mother, appear anemic in the face of competing allegation of Parent Alienation Syndrome.

For additional understanding of the child's stated preferences, refer to information on the Susan Still case (Erie County, NY) and "The Stockholm Syndrome".

### **Parental Alienation Syndrome**<sup>19</sup>

Parental Alienation Syndrome (PAS) is a theory proposed by Dr. Richard Gardner based on his personal observations and is not recognized by the APA as a diagnosis. This concept is complex and requires a thorough understanding of the work and its author.

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<sup>17</sup> Reichler. *Custody, Domestic Violence and a Child's Preference*.

<sup>18</sup> Jaffe, Peter G. Lemon, Nancy K.D. Poisson, Samantha, E. *Child Custody & Domestic Violence: A Call for Safety and Accountability* Sage Publications, 2003.

<sup>19</sup> Jaffe, Peter G. Lemon, Nancy K.D. Poisson, Samantha, E. *Child Custody & Domestic Violence: A Call for Safety and Accountability* Sage Publications, 2003.

Recently, the concept of Parental Alienation Syndrome has been reformulated to shift the focus to the alienated child. An alienated child is one who persistently voices unreasonable negative feelings and beliefs toward parents that do not reflect the child's actual experiences with that parent. Although this line of inquiry is in its infancy, theorists have postulated that alienation is best viewed as a fracture in the attachment between parent and child. Within such a framework, strong attachment would be at one end of the continuum and alienation would be at the other. In cases where the child does not appear to have a strong attachment to a parent, the salient question becomes "To what can this be attributed?" Possible explanations include a preferred affinity for one parent, an alignment with one parent, an estrangement from one parent as a result of past abuse, or alienation as a result of one parent's efforts. (53-54)

## Understanding Negative Impacts of Commonly Used Practices

### Parent Education Programs

Parent education programs assume that women who are abused need to strengthen their parenting skills, and require victims/mothers to attend parenting sessions with their abusers. Such programs compromise the safety of women who are abused and make assumptions about their fitness as mothers simply because they are victims of domestic violence. As discussed in Chris Sullivan's 2000 study cited above, mothers who have been or are abused tend to be more nurturing with their children, while there exists no evidence that they are in any way more violent or less effective as mothers as a result of having been abused themselves. Forcing women who are abused to communicate with, and take even partial responsibility for the violence inflicted on them by their abusive partners is unfair, unsafe, and uninformed and should never be considered in any custody case when there are suspicions of domestic violence.

**Note:** In any domestic violence case where there exists an active Order of Protection, services that may facilitate, encourage or require the abuser to have direct physical, verbal, or written communication with the victim should never be permitted.

### Couples Counseling and Mediation

These practices assume equal power and control between participants and are dangerous for women who are abused and their child(ren). Victims of domestic violence, who by definition are being controlled by their partners, are significantly compromised in their ability to negotiate freely and on an equal footing. These practices also assume and assign equal responsibility for the abuse perpetrated solely by the abuser, thereby encouraging parties to negotiate their "conflicts." The reality is that domestic violence is the sole responsibility and choice of the abuser, who is capable of stopping the abuse at any time, without assistance from a counselor, mediator, or other third party. Any attempts at negotiation between the two parties compromise the victim's safety and collude with the abuser in his attempt to minimize and deny his abusive tactics. For example, in programs like mediation or couples counseling, a woman may communicate freely about her abuser's violence if she feels she has an ally in the mediator or counselor. Such disclosures will typically lead to further abuse after the session ends. Alternatively, a woman may be well aware of the danger if she does disclose the violence and admit her desire for the abuser to stop. She may therefore refuse to speak at all and may appear, to the counselor or mediator not trained in domestic violence, as uncooperative or unwilling to "negotiate." Both situations are harmful to women on many levels and both can negatively impact the outcome of any program evaluations that assess parents seeming "willingness" to work out "conflict" in favor of more cooperative parenting.

**Note:** In any domestic violence case where there exists an active Order of Protection, services that facilitate, encourage or require the abuser to have direct physical, verbal, or written communication with the victim should never be permitted.

### **Mental Health Testing in Custody Investigations**

Child custody evaluations which rely solely or predominantly on mental health testing do not appropriately address domestic violence and safety issues for women who are abused. It is very important that probation officer understand the context in which a mental health evaluation is requested as part of a custody investigation.