

Smarter Courts Can Help Victims, Offenders

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Historically the medical profession and the criminal justice system (both adult and juvenile) have had a basic principle in common: Both have been reactive. Before either became involved, harm had already occurred.

Fortunately, both are changing. Medicine has become very concerned with prevention, intervention education, and professional relationships/partnerships with patients and insurance companies aimed at a long-term view of maintaining good health.

The criminal justice system is evolving as well, perhaps more slowly. Society has come to realize that the mere processing and locking up of certain kinds of low-level criminals has not worked. Their behavior is not changed, resulting in repeated arrests. The result is expensive, both in actual taxpayer monies spent and in the lives that are lost, not productive.

In 1989 the first drug treatment court began in Miami, Fla., and with it a national movement began to use the courts in a way that they have never been used before — as agents of change. The courts were to be part of the process of assisting drug abusing persons who were facing low-level criminal charges, such as being under the influence of a drug or simple possession of a drug, with becoming clean and sober, responsible citizens.

Judges were to do more than merely impose a sentence and say goodbye.

The movement started in 1989 now has more than 2,300 drug treatment courts and over 1,200 other types of courts nationwide using a similar philosophy: courts, and especially judges, can be agents of change. These courts now exist in every state in the nation and throughout many democracies in the world.

In April 1999, the Santa Clara County Superior Court and the county Juvenile Probation Department began the Juvenile Domestic Violence and Family Violence Court, believed to be the first in the United States.

There had been adult domestic violence courts in the United States for years. Santa Clara County has had one since 1990.

But the Juvenile Domestic Violence and Family Violence Court was interested in all cases involving teen dating violence as well as cases where a teen had assaulted a parent or sibling.

A person entering a specialized court does not escape consequences. Usually the work is harder for the accused, the judge, and for all members of the court team. For the defendant, the benefit is an increased likelihood of completing all required programs, and therefore a chance at understanding the causes of domestic violence and at changing the behavior. The major potential benefit, though, is for the victim, as it is hoped that she will receive increased services and a chance at increased safety for her and her children.

FOCUS ON VICTIMS

Many courts are voluntary — for example, drug treatment courts. A person participating will complete a treatment plan. Usually charges are dismissed upon successful completion of a year or more of required programming. This is in comparison to a person who is not participating in a drug court who enters a plea, receives a sentence, and is then released to informal probation with the likelihood of a future arrest and a return visit to court to face additional consequences.

A domestic violence court is a very different concept to a traditional "treatment court." It is not voluntary. It is a traditional court in the sense that it is fully adversarial. The accused maintains all of the traditional rights of any criminal defendant.

A domestic violence court is similar, though, in that the court is trying to change behavior, in this case relationship violence. The court is also trying to protect victims and their children from future harm.

The Juvenile Domestic Violence and Family Violence Court was started with no additional financial resources. Instead, collaborative partners "loaned" personnel. Juvenile probation provided dedicated probation officers to supervise cases; the public defender and district attorney provided dedicated personnel to the court. The

largest police agencies in the county provided supervisors to an oversight committee, as did county mental health and other county agencies.

The court was victim-focused, meaning that victim services would be frontloaded to protect victims and their children. It is believed to be the first such model for a criminal court.

At the first appearance, a protection order was issued in favor of the victim and any children, preventing the accused juvenile from any contact.

Probation referred the victim to local nonprofit agencies to obtain free services such as civil restraining orders, paternity testing, child support determination, custody and visitation and counseling. In addition, referrals were made to governmental agencies that provided victim services for medical treatment, moving expenses and family support funding.

In cases involving assault against parents and siblings, probation assisted the victims in obtaining medical and counseling services and special programming for the assaulting teen.

Changing violent behavior is extremely challenging. It was thought that by providing the victims with the previously described services, they and their children were more likely to be safe. It was also hoped that by receiving counseling and other services, victims would be more likely to safely separate from the abuser if this were the course of action they wanted to take. It is recognized that the most dangerous time for a victim of domestic violence is at the time of leaving an abusive relationship.

If the teen was found to be responsible for an act of teen dating violence or violence against a parent or sibling, conditions of probation were crafted with the goal of rehabilitation and accountability.

To assist the court with its mission, a number of protocols were developed between the collaborative partners and the court. This provided a common understanding of the responsibilities and role that each partner was to play, while at the same time institutionalizing the court and its procedures to allow for the expected transfer of personnel, including the judge of the court.

The court has now been in existence for over 10 years. The attorneys and court personnel attending the court must receive domestic violence training. It's very important that the court be fair and impartial, and that it be perceived as such.

Defendants receive all of their constitutional rights, indeed, given the training requirement, which helps their attorneys understand domestic violence behavior and puts them in a better position to represent their clients. Under existing law, probation officers, police officers and deputy sheriffs receive domestic violence training, too, as part of the basic police academy and during required update training.

RECIDIVISM

The first question that is commonly asked is, "How effective has the court been regarding the reduction of recidivism?" The answer to the question is, "It depends."

It depends on whether the battering juvenile completed the intervention course lasting 26 weeks. It also depends upon whether the domestic violence offense was the first criminal offense for the juvenile. It is important to distinguish re-offending occurring while the juvenile is on probation from re-offending occurring at a later period of time.

The court has been the subject of two comprehensive evaluations. The first one was based upon data collected from April 1999 through June 2001, and is reported at 4 J. Center for Fam. Child. & Cts. 91 (2003). The second study, "Juvenile Domestic and Family Violence: The Effects of Court-Based Intervention Programs on Recidivism," was conducted through September 2005 and was published as a joint report in 2006 from the National Center for State Courts and the National Institute of Justice.

Both demonstrated that a first time offender who completed the intervention program was less likely to re-offend. Both studies also demonstrated that juveniles were less likely to re-offend while on probation while they were attending the intervention program and attending the frequent court reviews which were part of the program requirements.

But there were many important accomplishments of the specialized court the studies were unable to measure, leaving a number of unanswered questions:

- How many juvenile victims were able to leave their abuser safely as a result of services provided to them by the specialized court?
- How many victims later had healthy relationships as a result of the intervention services provided to them?

- How many children avoided removal proceedings in the dependency system as a result of the services provided by non-profit partners of the court?
- How many children were able to have healthy relationships with a formerly abusive parent as a result of information-sharing protocols allowing the family court to make better informed decisions? (For example, the juvenile court has allowed the probation department to share victim contact information with LACY, a collaborative partner that offers free representation to help obtain a civil restraining order or establish paternity, child support, custody and visitation.)
- How many parents of juvenile batterers were able to leave abusive relationships as a result of services provided to them by non-profit partners of the court?

Most people focus on the measured successes regarding re-offending. But unfortunately, personal interviews with victims would be necessary to answer most of the above questions. That would be extremely costly and therefore prohibitive.

The Juvenile Domestic Violence and Family Violence Court has received three awards of excellence. The Ralph N. Kleps Award for improvement in the administration of the courts (2001) was given by the California State Administrative Office of the Courts.

It was named one of the Top 50 programs in the 2004 Innovations in American Government Awards competition, a program administered by the Ash Institute for Democratic Governance and Innovation at Harvard University's John F. Kennedy School of Government.

And in 2008 the court was awarded the United Nations Public Service Award for improving transparency, accountability, and responsiveness in public service. The award program began in 2003 and 2008 represented the first time that an American entry had won an award.

Judge Eugene M. Hyman specializes in preventing juvenile, family and domestic violence. In 1999 he founded the Santa Clara County Juvenile Domestic Violence and Family Violence Court. He has taught for 21 years as an adjunct professor at Santa Clara University School of Law, where he earned his law degree in 1977.