



Dead Reckoning



The Attorney's Role in Managing Dangerousness & Lethality in Domestic Violence Cases

Agenda



Why Assess Dangerousness/Lethality?

The Nature & Extent of DV

Understanding the Indicators

Providing a Heightened Response

Coordinating Responses



This training was made possible by Grant Number 2009-WE-AX-0009 from the Office on Violence Against Women, U.S. Department of Justice. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the U.S. Department of Justice.

Why Assess Dangerousness/Lethality



Why Should We Assess Dangerousness/Lethality?

- Risk from DV is not assessed consistently
- No formal process of communicating risk
- Assumptions: e.g. in most lethal cases, victims will seek shelter

Why Assess Dangerousness/Lethality



Why Should We Assess Dangerousness/Lethality?

- Decisions are only as good as the information we have to base them on
- Puts individual incidents of violence into context
- Research shows we can save lives.



Intimate Partner Homicides

- 1,500 DV fatalities a year in U.S.
- Police had previously been on scene in 50% of DV homicides
- Only 4% of DV homicide victims had ever availed themselves of DV services
- Re-assault dropped by 60% when victims went into shelter

Why Assess Dangerousness/Lethality



- The escalation of DV to a lethal level follows an identifiable pattern with identifiable indicators.

Campbell, J., Webster, D., Kozel-McClain, J., Block, C., Campbell D., Curry, M., et.al. (2003) Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study. American Journal of Public Health 93(7)1069-1097

Why Assess Dangerousness/Lethality



- “In the (intimate partner) femicide study, the majority of victims or perpetrators (up to 83%) or both had contact with criminal justice, victim assistance and/or health care agencies in the year prior to the homicide...This indicates opportunities for prevention by identification of women at risk and appropriate intervention

*Campbell, J., PhD, R.N., F.A.A.N., Johns Hopkins University,
Intimate Partner Homicide: Review and Implications of
Research and Policy*

Why Assess Dangerousness/Lethality



- “...there are approximately NINE near-lethal incidents for every intimate partner homicide (IPH).”

Campbell, J., Glass, N., Sharps, P., Langhron, K., & Bloom, T., (2007), Intimate Partner Homicide: Review and Implications of Research and Policy. Trauma, Violence and Abuse 8(3), 246-269

Why Assess Dangerousness/Lethality



WV Model

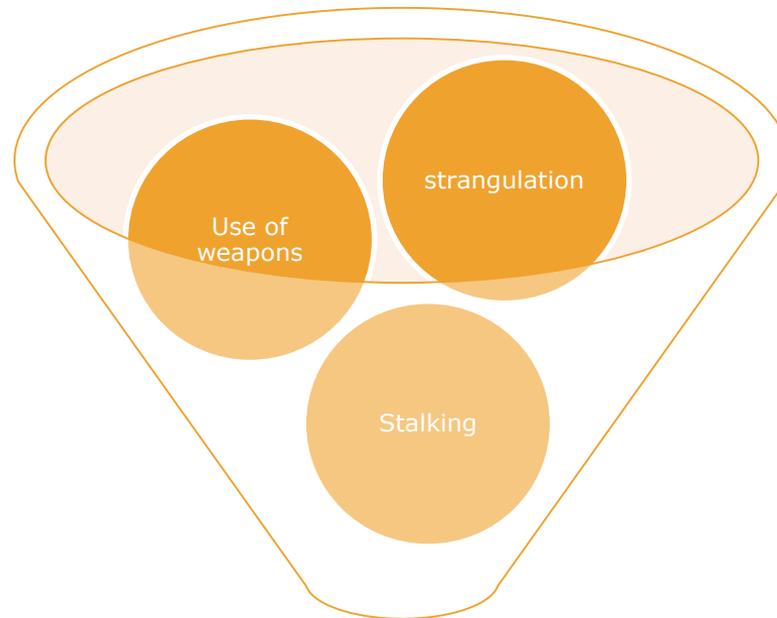


- Based on evidenced based models
- Adapted for rural settings
- Provides “Dangerousness/Lethality Assessment Guide” (DLAG) for use by all responders across civil/criminal systems
- Will collect data to evaluate effectiveness

WV Model



All Domestic Violence Cases



**Highly Dangerous/Potentially
Lethal Cases**

WV Model



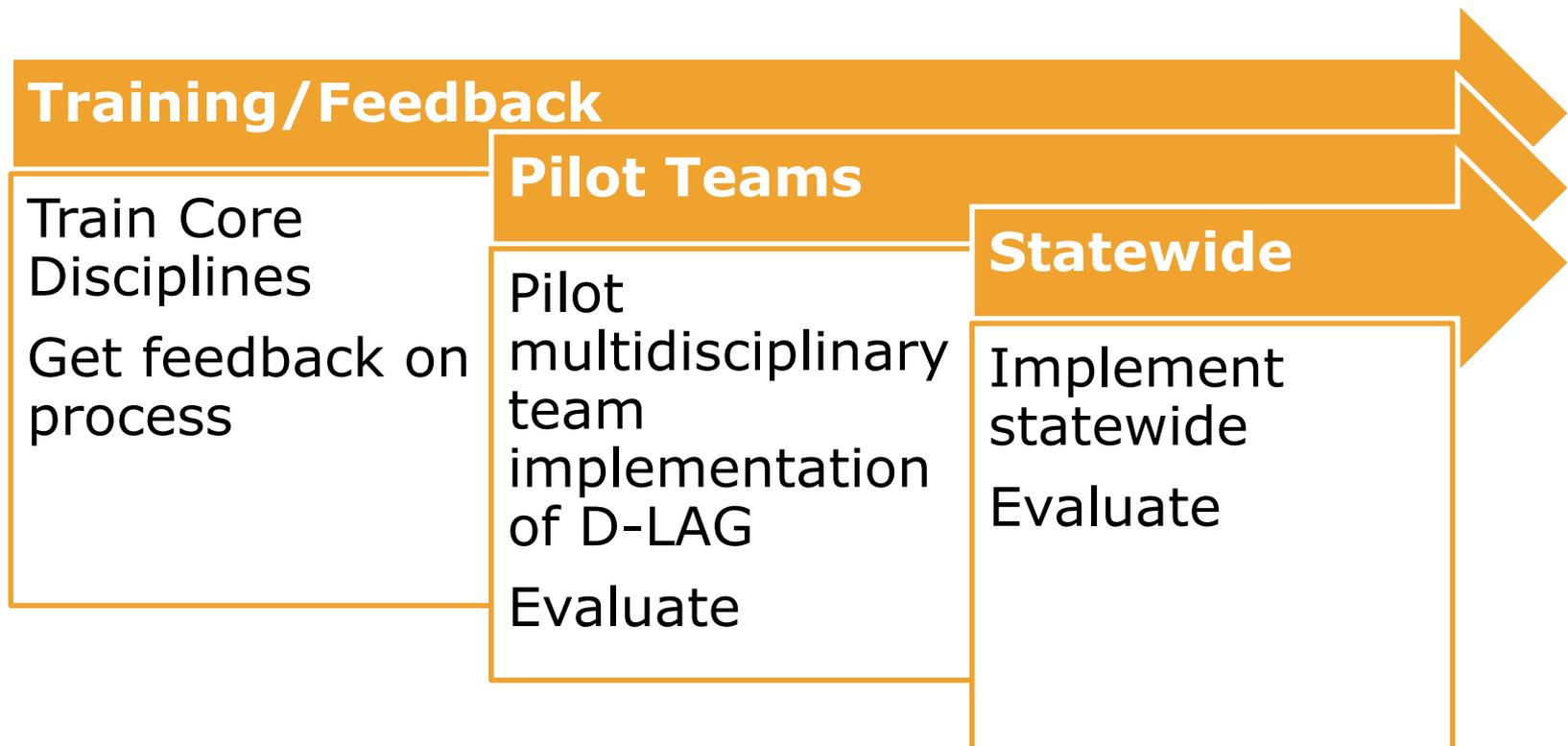
Assessing for Dangerousness/Lethality Informs the System



WV Model



Plan for Implementing WV Model



WV Model



1

Understand the nature and extent of the DV

2

Identify highly dangerous/potentially lethal behaviors

3

Provide heightened response when indicators are present

4

Coordinate responses across systems

WV Model



What is the goal?

Prevent domestic violence related
fatalities and near fatalities



WV Model: D-LAG

Dangerousness
Lethality **A**ssessment **G**uide

D-LAG

Recognize
**Highly
Dangerous
Potentially
Lethal**

Behaviors of Domestic Violence
Offenders

A research-based guide for systems interacting with
families experiencing domestic violence.

GAL Page



Victim Attorney/GAL Response

Researched indicators of highly dangerous/potentially lethal behaviors:

Possession, access and use of weapons and/or possession of weapons when prohibited

Direct threats to kill—anyone in the family, including self

Stalking behavior—following victim, leaving threatening/intimidating messages, electronic monitoring

Strangulation (“choking”) restriction of airway/blood flow

Intrusive coercive control—control most of daily activities, constant monitoring

Forced sex

Victim has left or is attempting to leave the relationship

Offender is unemployed

Victim has a child who is not the offender’s biological child

Violence is escalating

Substance abuse may exacerbate highly dangerous/potentially lethal behaviors

1 Who is doing what to whom and with what impact

In proceedings involving domestic violence, determine the nature and extent of the domestic violence.

2 Observe for indicators for highly dangerous/potentially lethal behavior from interviews with adult victim, and other records if available (i.e. law enforcement report, arrest records, DVPO’s, criminal backgrounds, etc.). GAL can access medical records, CPS records, education records and counseling reports.

Victim behavior may not appear appropriate or “normal” based on the trauma they have experienced. Each victim responds differently. While gathering information from the victim is helpful in determining the presence of indicators, some victims may be afraid or further traumatized when being interviewed or questioned.

The history and severity of the violence will help to determine the predominant aggressor (Title §149-3, section 7.5) if both parties are using violence. However, the victim of a predominant aggressor may be the defendant in some cases.

The presence of these factors can indicate elevated risk of serious injury or lethality. The absence of these factors is not, however, evidence of the absence of risk of lethality.

Victim Attorney/GAL Response

3 If indicators for highly dangerous, potentially lethal behaviors are present, consider the following enhanced response options to:

Increase Safety for Victim

Make contact with the victim as soon as possible to:

- Discuss the highly dangerous, potentially lethal indicators and express heightened concern for victim and child(ren) safety - Indicators for adult victims are also indicators for substantial risk of harm to children.
- Explain the court process to victim emphasizing how the process has been influenced by the presence of the highly dangerous/potentially lethal indicators of offender.
- Discuss impact of court process on victim safety.
- Discuss immediate referral to a domestic violence advocate.
- Assess impact of offender behavior on victim (s) - Adult and child(ren) - understand impact of trauma and survival tactics.
- Maintain protective orders in agreements.
- Argue to determine predominant aggressor (with cross petitions or victim is charged when defending him/herself).
- Discourage mediation.
- Appeal unfavorable orders.
- Know that to stay safe, some victims will use the Address Confidentiality Program out of the WV Secretary of State’s Office (Legislative Rule 153CSR37).

Reduce Dangerousness of Offender

Civil proceedings:

- Child abuse and Neglect proceedings: Offenders using highly dangerous/potentially lethality behaviors create substantial risk of harm to children that could rise to the level of aggravated circumstances.
- Advocate for compliance review hearings—Rule 24a.
- Cross examine GAL report.

Attorneys must take credible threats seriously and take appropriate actions.

4 System Collaboration

- If children or vulnerable adults are exposed to potentially lethal offender behaviors, make referral to CPS or APS, and document indicators on verbal/ written report.
- Include highly dangerous/potentially lethal behaviors in any motion or arguments made before the court.
- Refer to community and system based advocates.
- If victim contacts offender’s attorney (public defender), refer to advocate and contact prosecutor.
- Balance judicial need for information and victim autonomy/safety.
- Understand how other systems assess for indicators.

1



**UNDERSTAND THE
NATURE AND EXTENT OF
THE DOMESTIC VIOLENCE**

1

Understand the Nature and Extent of the DV

- Legal Definitions focus on “Snapshot” and physical threats or harm
- Behavioral Definition – focus on “video” pattern of behaviors experienced by families

1

Understand the Nature and Extent of the DV

Understanding Context

Coercive Controlling Abuse

- **Patterned**
- **Intimidation**
- **Dominance**
- **Entitlement**

Violent Resistance

- **Produced and shaped by coercive controlling abuse**

Non-Coercive Controlling Abuse

- **Unrelated to coercive controlling abuse**

1

Understand the Nature and Extent of the DV

INTENT

MEANING

EFFECT

Who is doing what to whom and with what impact?

2



IDENTIFY THE DANGER SIGNS

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Possession, access and use of weapons

- Perpetrator threats/use of weapons (in history of abuse)
- Possess weapons and prohibited to possess

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Threats to kill

- Direct threats
- In Homicide/suicide, history of poor mental health of perpetrator significant

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Victim perceives offender
might kill her/him

- Not all victims accurately perceive their risk for lethality
- If victim perceives risk, take it serious

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Strangulation

- “choking” more common term
- Ultimate form of power and control
- Unconsciousness may occur within seconds and death within minutes

New WV Strangulation Law



§61-2-9d. Strangulation; definitions; penalties.

- (a) As used in this section:
 - (1) “Bodily injury” means substantial physical pain, illness or any impairment of physical condition;
 - (2) “Strangle” means knowingly and willfully restricting another person’s air intake or blood flow by the application of pressure on the neck or throat;
- (b) Any person who strangles another without that person’s consent and thereby causes the other person bodily injury or loss of consciousness is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,500 or imprisoned in a state correctional facility not less than one year or more than five years, or both fined and imprisoned.

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Stalking behavior

- Following victim, family/friends
- leaving threatening/intimidating messages
- Soliciting others to follow or message
- Electronic monitoring
- **76% of IP femicide victims were stalked**

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Intrusive coercive control

- Control of most daily activities
- Constant monitoring
- Controlling personal autonomy
- Violently or constantly jealous

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Forced sex

- May be difficult for some victims to discuss

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Victim has left/attempting to leave

- Especially in first three months
- One behavior of victim (other indicators are perpetrator behaviors)
- Often behavior thought to increase safety – actually increases lethality
- Or perpetrator left – victim has new boyfriend or refuses to reconcile

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Offender is unemployed

- Unemployed – and perpetrator of battering
- Not an indicator for risk assessment tools

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Victim has child
not perpetrators biological child

- Possibly jealousy trigger
- Not an indicator for risk assessment tools

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Violence is escalating

- Violence happening more frequently
- Violence more severe
- More significant in the past 1-2 years

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Substance abuse

- May exacerbate highly dangerous potentially lethal behaviors
- May impair victim safety planning when used by victims

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Additional Considerations

- Lack of indicators does not guarantee victim is safe
- Expert judgment should guide intervention when danger is perceived
- Indicators should never be used to limit services

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Additional Considerations

- Understanding indicators is an ongoing process – not a one time assessment
- Consider victim protective strategies as well as danger indicators

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Assessment Goals

- Prevention more than prediction
 - Safety measures, access to advocacy, increased resources
 - Increased containment of offender, higher bail, swift and certain consequences
 - Surveillance, monitoring, court conditions

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Gather Information on Indicators

- The more sources of information, the better
- Perpetrators may minimize behaviors
- Understand how trauma and risks from legal proceedings impact victim behaviors

Victim Attorney/GAL Response

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Identify Highly Dangerous/ Potentially Lethal Behaviors

Gathering information: Attorneys

- Victim interview – for interview guide:
- <http://www.bwjp.org/our-work/projects/national-child-custody-project.html>
- [Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters](#)

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

20/20
Video

2

Identify Highly Dangerous/ Potentially Lethal Behaviors

Based on 20/20 video:

Were there any behaviors that were highly dangerous or potentially lethal?

3



**PROVIDE A HEIGHTENED
RESPONSE**

3

Provide a Heightened Response When Indicators are Present

When highly dangerous/potentially lethal behaviors are present:

- Strengthen efforts to increase safety for victim
- Strengthen efforts to reduce dangerousness of offender

3

Provide a Heightened Response When Indicators are Present

The goal is all disciplines will:

- Identify indicators and express concern for victim and child(ren) safety
- Highly Dangerous/Potentially Lethal indicators create a substantial risk of harm to children

3

Provide a Heightened Response When Indicators are Present

Intimate Partner Homicides & Children

- In 19% of Homicides, children were also killed (Websdale, 1999)
- In 70% of the cases that involved children, the child either witnessed the homicide or found the body (Hardesty, Campbell, 2008)
- 8% of the cases involved a prior report to child protective services (Hardesty, Campbell, 2008)

Victim Attorney/GAL Response



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3

Provide a Heightened Response **Attorneys**

Increase Safety for Victim

- Discuss with victim:
 - Indicators
 - Heightened safety options and immediate referral to advocates
 - Impact of court process on safety
 - Trauma impact
- Maintain protections in agreements
- Predominant Aggressor

3

Provide a Heightened Response **Attorneys**

Increase Safety for Victim

- Discourage Mediation
- Appeal unfavorable orders
- Indicators in D-LAG help identify a need for a heightened response – they are not required to get a DVPO
- Other responses?

3

Provide a Heightened Response **Attorneys**

Reduce Dangerousness of Offender

- CPS proceedings:
 - Aggravated circumstances
- Civil proceedings:
 - Compliance review hearings Rule 24a
 - Cross examine GAL report
- Take threats seriously & take appropriate actions
- Other responses?

4



COORDINATE RESPONSES ACROSS SYSTEMS

4

Coordinate Responses Across Systems

- Communication across systems is key
- Using Team approach to work out process
- Process to share information in individual cases



the WV Secretary of State's Office
(Legislative Rule 153CSR37).



4

System Collaboration

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4

Coordinate Responses Across Systems

D-LAG – Attorney System Collaboration

- Include indicators on any motions or arguments
- Refer to community & system advocates
- If victim contacts offender's attorney, refer to advocate & contact prosecutor
- Understand how other systems assess for indicators
- **Ethical issue: balancing judicial need for information & victim autonomy/safety**
- Others?



Questions?

Thank You



- For more information contact:
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