

FAMILY COURT JUDICIAL GUIDE TO DOMESTIC VIOLENCE RISK FACTORS

RISK FACTOR	WHAT TO LOOK FOR	LEGAL CONTEXT
Context of Violence	<ul style="list-style-type: none"> Was this the first time that something like this happened? If not, what happened before? How long ago? What was the worst or most serious thing that happened? Medical treatment needed? Has the physical violence increased in frequency or severity over the past year? Is there a recent loss of employment? Is there a history of substance abuse or mental health concerns? 	<p>Use of some illegal drugs; increased severity/frequency of violence; unemployment increases lethality and recidivism. Medical costs can be allocated FCA §828(4) and §842(h); batterer's program can be required, and may include substance abuse programs under §842(g).</p>
Criminal and Family Court History	<ul style="list-style-type: none"> Criminal and Family Court check, OP registry, sex offender registry Pending or prior Orders of Protection Pending order of Support 	<p>Prior OPs/crim history can be a risk factor for re-offending. FCA §814 provides for communication between Crim and Fam. Ct.; §822(6) OP inquiry required; prior orders and violations are relevant FCA §821-1(6); §FCA 827.</p>
Relationship Status	<ul style="list-style-type: none"> When did the relationship begin? When did it end? Where does each party live? Did they live together, if so when? Are they recently separated? 	<p>Separation within the past year increases risk of lethality and recidivism. FCA §828 authorizes temporary child support; FCA §842 and RPL §227-c authorize lease termination.</p>
Firearms/ Weapons	<ul style="list-style-type: none"> Does respondent have access to a firearm or weapon? Is there a firearm or weapon in the home? Has the respondent ever used or threatened to use a weapon against the petitioner? 	<p>Respondent access to firearm and use or threatened use of lethal weapon increases lethality risk. FCA §842-a and 18 U.S.C. 922(g)(8,9) include firearms restrictions.</p>
Strangulation	<ul style="list-style-type: none"> Has respondent ever attempted to strangle or choke the petitioner? 	<p>Strangulation increases lethality. Obstruction of breathing PL §121.11/12/13.</p>
Threats to Kill	<ul style="list-style-type: none"> Has respondent ever threatened to or tried to kill the petitioner? 	<p>Disorderly Conduct, Harassment and Aggravated Harassment PL §240.20/25/26/30/31.</p>
Sexual Violence	<ul style="list-style-type: none"> Has respondent forced the petitioner to have sex? 	<p>PL Art 130 Sex Offenses.</p>
Controlling Behavior	<ul style="list-style-type: none"> Does respondent try to control most or all of petitioner's daily activities? Is respondent constantly or violently jealous? Who has access to bank accounts, the car, etc.? 	<p>Violent jealousy and stalking behaviors are lethality factors and may constitute Stalking PL §120.45-60.</p>
Stalking	<ul style="list-style-type: none"> Does the respondent repeatedly call, text, or email the petitioner? Send unwanted gifts or other items to the petitioner? Monitor petitioner's phone calls, computer use, or social media? Use technology, like hidden cameras or global positioning systems (GPS), to track the petitioner? Drive by or hang out at the petitioner's home, school, or work? Follow or show up wherever the petitioner is? 	<p>Stalking increases risk of lethality. Stalking PL §120.45-60.</p>
Petitioner's Belief	<ul style="list-style-type: none"> Does the petitioner believe that the respondent will re-assault or attempt to kill the petitioner? 	<p>Petitioner's belief of harm is a lethality factor FCA §821(1).</p>
Children	<ul style="list-style-type: none"> Has there been direct physical abuse? Threats to harm children? Child sexual abuse? Were children present during the incident? Have the children witnessed violence between the parties? Is the respondent the biological parent of the child(ren)? 	<p>Having a child who is not the respondent's increases lethality and recidivism. Assault during pregnancy increases risk of lethality. Children present increases risk of recidivism. FCA §842(b)(c) and following; court may limit custody or access on OP; court may include child as a protected party on OP, Annie C. v. Marcellus W., 278 AD2d 177 (1st Dept 2000).</p>
Safety Planning	<ul style="list-style-type: none"> Are there safety measures in place? Petitioner service referral? Is the petitioner eligible for an attorney? 	<p>FCA §821-a requires court to inform both parties of right to attorney; §154-c(2) and §844 covers modification.</p>

This Guide is to assist Family Court judges in identifying domestic violence risk factors and to offer legal remedies or specific conditions that may be appropriate that respond to the correlating risk. This Guide may also be valuable in assisting courts in crafting temporary and final custody, parental access and visitation orders in cases involving domestic violence. The Guide is not exhaustive, is not meant to be a substitute for the court's discretion in determining the credibility of the allegations and weight of each factor, and is not meant to be filled out, scored in any way, or placed in any court file.

HOW TO USE - FAMILY COURT JUDICIAL GUIDE TO DOMESTIC VIOLENCE RISK FACTORS

GENERAL INSTRUCTIONS

- Provide both parties with notice of right to retain counsel and, if indigent, to assigned counsel under FCA 262(a)(ii) and 821-a(3)(a) and Jud L 35
- Provide the responding party with an opportunity to be heard as to any risk factors identified
- If ex parte application for a Temporary Order of Protection involves exclusion from the home, the case should be scheduled with a short return date
- **EXPLAIN THE TERMS AND CONDITIONS OF THE TEMPORARY ORDER OF PROTECTION TO ALL PARTIES, WITH THE ASSISTANCE OF AN INTERPRETER WHERE LIMITED ENGLISH PROFICIENCY OR HEARING IMPAIRMENT IS AN ISSUE**

Limitations of eliciting safety or risk information from petitioners in open court

- **Safety concerns or trauma** can affect the petitioner's ability to provide accurate information in open court
- **Soliciting information from petitioners** in a private setting (by someone other than the judge) improves the accuracy of information and also serves as an opportunity to provide information and resources to the petitioner

At Initial Hearing under §828:

- **This tool can assist in determining the terms and conditions** on the temporary order, whether to issue a warrant, how quickly to calendar the return hearing, and whether temporary support should be ordered

At Dispositional Hearings §833:

- **This tool can assist in determining type and length of order**, whether aggravating circumstances apply and which conditions are appropriate, including firearms surrender, support, children on the order, and/or program mandates

Requests for Modifications §154-c(2) and §844; Violation Hearings §846:

- **This tool can assist in modification of type and length of order**, and which conditions are appropriate, including firearms surrender, support, children on the order, and/or program mandates; or adding terms and conditions after a violation hearing

Provide petitioners information on risk assessment factors and the option of consulting with confidential advocates

- Information and access to advocates improves petitioner safety and the quality of petitioners' risk assessments and, as a result, the court's own risk assessments

Cultural factors may impact litigants' understanding of this tool

- Information and access to language services should be made available to litigants to ensure their understanding of the risk factors and the petition
- Some of the terms on this tool may need to be explained in more detail

Note that this list of risk factors is not exclusive

- The listed factors are the ones **most commonly present when the risk of serious harm or death exists**
- Additional factors exist which assist in prediction of re-assault
- Petitioners may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family supports

Remember that the level and type of risk can change over time

- **The most dangerous time is during or after the period when the petitioner:**
 - is separating or has separated from the respondent
 - has disclosed or is attempting to disclose the abuse to others

Risk factors may be used to tailor supervision strategies and oversight.

This Guide is an educational tool used to contextualize certain behaviors within the NY State Penal Code. It may also be valuable in assisting courts in making custody-related determinations in cases involving domestic violence.

REMEMBER TO EXPLAIN THE TERMS AND CONDITIONS OF THE TEMPORARY ORDER TO THE PETITIONER.

These factors were compiled based on the work of Minnesota's Gender Fairness Implementation Committee; 2009, Identifying Risk Worksheet created by Probation Officer James E. Henderson Jr. of the 15th District Court in Ann Arbor MI. This project was supported by subgrant No. VW10562640 and subgrant no.VW12562642 awarded pursuant to a S.T.O.P. Violence Against Women Formula Grant Program administered by DCJS, the New York State administering office. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the state or the U.S. Department of Justice, Office on Violence Against Women. This guide was developed by the Unified Court System with the assistance of the Center for Court Innovation. June 2015