



EVIDENCE ON THE EFFECTIVENESS OF INTEGRATED DOMESTIC ABUSE COURTS



CRIME AND JUSTICE

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Key Findings:

- There are a number of different court models using a 'One Family, One Judge' model.
- The existing Integrated Domestic Abuse Courts vary in their complexity and remit. The levels of complexity generally relate to the types of civil matters addressed by the court (i.e. divorce, child protection, property) and whether or not the court has the capacity to hear contested criminal trials.
- Following a literature review, three main categories of court were identified that use the 'One Family, One Judge' Model. These have been categorised as: the simple IDAC model; the complex IDAC model; and 'One Family One Judge' problem-solving courts.
- There is no single model of IDACs and even within jurisdictions there are local differences between courts.
- There are a number of similarities in the context in which IDACS have been introduced across jurisdictions, as follows:
 - New court models are often implemented by grassroots-level actors working within the justice system, usually members of the judiciary;
 - Interest and political will for IDACs depends on specific local contexts and circumstances;
 - Pre-established specialised domestic violence courts are common across jurisdictions that introduce IDACs.
- There are also commonalities in the desired outcomes of IDACs, which are consistent across different courts. The desire to avoid the 'silo approach' of the civil and criminal processes was an overarching theme in literature on IDACs and, more generally, IDACs aim to address the challenges of the traditional court system.
- There are a number of practical considerations for Scotland if IDACs were to be considered, including the costs of introducing and maintaining an IDAC, the increased costs of a collaborative court approach, and the cost of specialised IDAC staff.
- There are also specific implications for the Scottish context with regard to the implementation of IDACs, related to: not guilty and not proven verdicts; legal prejudice, burdens of proof and rights of audience; and consent and information-sharing. This is a non-exhaustive list and further consultation and research is required to inform this section.
- The evidence base on Integrated Domestic Abuse Courts is limited. Specifically, there is limited available evidence on integrated courts that deal only with child contact issues and domestic abuse and research that examines civil court outcomes.

Introduction and Background

This paper presents the findings from a small scale research project on Integrated Domestic Abuse Courts (IDACs). Research for the project began as part of an SGSSS internship project within Justice Analytical Services (JAS) over 12 weeks between April and July 2018, and has been continued in 2019 by JAS researchers.

The project was established in the context of the work of:

- The Justice Expert Group, established under the *Equally Safe* strategy, and in particular under that Group's objective of informing the justice response to violence against women;
- The Scottish Government Consultation on the Review of Part 1 of the Children (Scotland) Act 1995 and the Creation of a Family Justice Modernisation Strategy which included consideration of various aspects of family law as it impacts on children and young people.

In particular, the project sought to inform the debate on possible approaches to improving engagement between courts considering criminal and civil issues where there has been an allegation of domestic abuse. This need for improved engagement was raised during early discussion within the Justice Expert Group, and emerged as an issue during debates on the Domestic Abuse (Scotland) Act 2018. One potential response to the the issues raised by the separation of criminal and civil issues around domestic abuse was put forward by Scottish Women's Aid – the 'one case, one judge' system (with New York being offered as an example of such an approach).

Picking up on these debates, the subsequent Consultation on the Review of the Children (Scotland) Act, stated that the Scottish Government "*would want to carry out research on the experience of other jurisdictions which have integrated courts or other forms of arrangements for interaction between the criminal and civil courts, to learn from their experience*"

This research reviews the evidence on one approach to improving engagement between civil and criminal justice processes in the context of domestic abuse: the Integrated Domestic Abuse Court (IDAC).

A further project which has been grant funded by Justice Analytical Services will focus on the interrelationship between the investigation and prosecution of domestic abuse in Scottish criminal justice and parallel child contact proceedings within the civil justice processes. It will generate recommendations concerning possible measures to encourage and support a closer articulation between domestic abuse proceedings and child contact decisions.

Aims and objectives

The Consultation paper noted above recommended that further evaluation of the effectiveness of an integrated court structure would need to be undertaken. With this specific focus in mind, this project aimed to explore the available evidence on the effectiveness of IDACs, and in particular sought to:

- Identify jurisdictions where models of integrated domestic violence courts have been adopted;
- Discuss the justification for introduction in jurisdictions, and the desired outcomes of the particular models;
- Describe the practical operation of these models; and
- Explore any evidence which assesses the effectiveness of these courts in meeting outcomes, and identify gaps in the evidence base.

Methodology and Terminology

Methodology

Prior to the project commencing, an early exploration of the available evidence base suggested that there may be a paucity of empirical evidence on the operation of IDACs and their effectiveness in achieving their stated goals. In recognition of this, a mixed methodology was adopted for the study as follows:

- A web-based review of literature on IDACs, including empirical, evaluation evidence as well as more 'grey' literature¹;
- A series of key informant interviews in a small number of jurisdictions. The choice of jurisdictions selected for the interviews was guided by a small number of stakeholder interviews in Scotland, and by analysis of the literature obtained.

As such, the literature review was focused on literature that was readily available, and in English. There may exist additional literature on IDACs from other jurisdictions that has not been identified, which is not published in English or where the court is titled differently and so not identified during the literature search. The short period of review precluded further investigation of other jurisdictions, and this limitation is recognised and highlighted.

It is also worth noting that while this review is very focused in nature, it found there is a broader body of available evidence on many of the discrete elements of IDACs

¹ Literature database searches were conducted by the research intern and Scottish Government Library service in May 2018 using the following search criteria: "Integrated domestic violence court", "Integrated domestic abuse court" "Court interface" and "Domestic violence". Search sites were academic sources, primarily SpringerLink, Taylor & Francis Online and JStor, and Scottish Government Library resources Idox and KandE. Articles were selected based on title and abstract screening. Bibliography available on request.

– such as the provision of advocacy for victims in court, for example, which can be utilised to draw useful comparisons with other jurisdictions as part of a broader project on approaches to Family Justice. This report does not cover such material in depth, however there is the potential for further research into the discrete elements that inform the wider IDAC process and their use in Scotland.

Terminology

Language is important in the context of domestic abuse and there are a number of terminological sensitivities associated with research into domestic abuse. Consistent with the Domestic Abuse (Scotland) Act 2018 and *Equally Safe* strategy, which recognise domestic abuse to include non-physical conduct, this paper will refer to domestic abuse rather than domestic violence.

Accordingly the integrated court system on which this paper focuses is referred to as the Integrated Domestic Abuse Court (IDAC). In other jurisdictions where the court is labelled as the Integrated Domestic Violence Court (IDVC) this term will be honoured.

Stakeholders and key informants

Having introduced the idea of ‘One family, one judge’ in Parliament, Scottish Women’s Aid (SWA) were approached to confirm their definition of the concept and discuss their motivation underpinning the introduction of IDACs. Representatives were interviewed on 26th June 2018.

Interviews were conducted with key informants in the USA and Canada. Rachel Birnbaum is a full professor based at King’s University College, Western, London, Ontario. She was heavily involved in the evaluation of the Toronto Integrated Domestic Violence Court. She was interviewed by telephone on 5th July 2018.

David Suntag is a retired trial court judge based in Vermont. He was responsible for the concept and introduction of the IDVC in Vermont at Bennington County and Windham County. He was interviewed by telephone on 6th July 2018.

IDACs in international jurisdictions

Identifying IDACS in other jurisdictions provided an initial challenge. There is no single model of IDACs and even within jurisdictions there are local differences between courts (particularly in New York state, where courts developed asymmetrically across different districts). Part of the reason for confusion is the use of the ‘one family, one judge’ model across numerous different court types. Inclusion of only ‘one family, one judge’ and domestic abuse/family court cases would mean the scope of the study was very wide.

Confusion on definition was reflected in interviews with some key informants in Scotland, who communicated uncertainty regarding the specific model which might be most effective in the Scottish court context. Scottish Women’s Aid advocated for “some version...of family courts” as operationalised in the USA but emphasised

that ‘one family one judge’ was only one element of a more holistic approach towards improving the experience of justice for women and children experiencing domestic abuse.

The models identified as IDACs varied in their level of complexity in terms of the remit and range of matters addressed by the court. The working definition of IDAC for the purposes of this research was confirmed as: ‘a court in which a single judge hears both criminal and civil cases relating to one family, where the underlying issue is domestic abuse’.² For the purposes of this research, IDACs are considered a single court which includes all of the following elements:

- Jurisdiction over summary-level domestic criminal cases; and
- Jurisdiction over civil cases involving child contact, child maintenance, parental rights/responsibilities, but excluding divorce, property disputes and child protection cases; and;
- A system of one family, one judge.

A criminal domestic abuse charge and a concurrent family law case are the compulsory elements of this model. The levels of complexity generally relate to the types of civil matters addressed by the court (i.e. divorce, child protection, property) and whether or not the court has the capacity to hear contested criminal trials. The literature review also identified that there were some courts that use the ‘one family, one judge’ model where domestic abuse is included in the remit of the court but not a compulsory element; rather domestic abuse is one of many possible entry points to the court.³

There were three categories of ‘integrated courts’ identified during the literature review:

- **The simple IDAC model:** courts that deal solely with summary-level domestic abuse and concurrent family law cases; but which do not have the capacity to deal with contested criminal trials, child protection, divorce or property disputes.
- **The complex IDAC model:** courts that deal solely with domestic abuse and concurrent family law cases, but also have the capacity to deal with divorce, property disputes and child protection.
- **‘One Family One Judge’ problem-solving courts:** integrated courts which use the ‘one family, one judge’ model to address a variety of cases, including but not limited to: domestic abuse, substance abuse, mental health, and juvenile offending. Domestic abuse is one of a number of different case types handled by the court and is not compulsory for entry into the court system.

² This definition is based on that of the Ontario IDVC and New York IDVC, which were deemed most relevant.

³ For example, mental health, youth offending, or substance abuse were categorised as equal ‘community justice’ issues and heard by a single judge.

For the purposes of clarity and focus, the decision was made to concentrate primarily on the simple IDAC model. However, as the majority of literature on IDACs is from the USA, an impactful assessment is difficult without also considering the US (complex) models to some degree. However, the evaluation methods of the US models vary making it difficult to draw meaningful comparisons. The ability to cleanly evaluate and monitor IDACs is particularly difficult when other factors – such as substance abuse and civil issues (e.g. property division) – are included in the court process.⁴ Establishing baseline equivalence between jurisdictions is made additionally difficult due to the presence or absence of multiple different factors (such as divorce and child protection issues) between cases.⁵

The simple IDAC models: Ontario and Croydon

The Croydon and Ontario IDVCs are categorised as simple IDAC models. This model “provides one court where families can have their family cases (excluding divorce, family property and child protection) and domestic violence criminal charges heard before a single judge” (OCJ no date). The Croydon and Ontario courts focus on domestic abuse and the domestic criminal charge is entry point for access into the IDVC. The court process takes place within a dedicated courtroom and the traditional two-court civil and criminal structures are maintained (in the explanation of the Croydon IDVC, it is emphasised that “the IDVC, despite the use of the word ‘court’ involves only new **procedures** and is not a new **jurisdiction**” (emphasis in original)).⁶

Croydon IDVC was set up in 2006 and is now discontinued. It was established to deal with summary-level domestic criminal charges where the family had concurrent civil family proceedings, which fell under the Children Act 1989 or Family Law Act 1996.⁷ It was established in the context of the Home Office’s (2003) *Safety and Justice* report, which focused heavily on the interface between criminal and civil court in cases of domestic abuse⁸ and has been described as an “experiment” in the literature.⁹ The IDVC began life as an SDVC with the longterm aim of bridging the gap between civil and criminal cases involving domestic abuse and child contact.¹⁰ Despite extensive planning and the expectation of approximately one case per week, only 5 cases were entered into the Croydon

⁴ Interview with Rachel Birnbaum 05/07/18

⁵ Birnbaum, R. and Saini, M. (2016) ‘Canada’s First Integrated Domestic Violence Court: Examining Family and Criminal Court Outcomes at the Toronto I.D.V.C.’ *Journal of Family Violence*, p. 630

⁶ Hester, M., Pearce, J., Westmarland, N., (2008) 'Early evaluation of the Integrated Domestic Violence Court, Croydon' *Ministry of Justice Research Series 18/08* available at <http://www.bristol.ac.uk/media-library/sites/sps/migrated/documents/rk6668reportpart2.pdf>, p.6

⁷ Burton, M. (2018) 'Specialist domestic violence courts for child arrangement cases: safer courtrooms and safer outcomes?' *Journal of Social Welfare and Family Law* 40:4, p.539

⁸ Robinson, A. L., (2007) 'Improving the Civil-Criminal Interface for Victims of Domestic Violence' *The Howard Journal* Vol 46 No 4. September 2007 ISSN 0265-5527, p. 357

⁹ Burton (2018) p. 533

¹⁰ *ibid.*, p. 538

IDVC over an 18 month pilot period¹¹. Of these, only one case involved directly overlapping criminal and civil cases eligible for the IDVC, and there were no instances of a perpetrator being found guilty of a domestic abuse offence and the court then proceeding to hear the civil matter.¹²

The Ontario IDVC was established in 2011, following a pilot in 2009, and is still running. The court hears criminal domestic cases followed by the same family's relevant civil case on the same day, by the same judge (except in the case where there is an unresolved criminal trial – trials are adjudicated by a second judge to avoid legal prejudice.¹³ Summary-level domestic criminal cases are sifted to identify whether there is a concurrent relevant civil case and entered into the IDVC if so. The types of summary charges being heard in the IDVC include “criminal harassment, threatening, assault, assault causing bodily harm and sexual assault”.¹⁴ On occasion, immigration issues are addressed in the court if they are relevant to the family, but otherwise what is included in proceedings is limited solely to relevant domestic crimes/offences and family law cases.

Complex IDAC models: New York and Vermont

The New York and Vermont IDVCs are categorised together as complex IDAC models, though they vary in their form. In Vermont, the Bennington County IDVC was set up in 2007, founded by Judge David Suntag, and ran for just under 3 years (its closure was due to the withdrawal of stakeholders' support for the court). Judge Suntag set up the IDVC at Windham county in 2013 using the same model, which operated for one year but closed when Judge Suntag retired. The courts dealt with summary-level domestic criminal charges and all relevant family cases for one family, including divorce, separation, child contact, residency and parental responsibilities. The court did not hear trials: if a case was not resolved it was returned to the criminal court for the trial to be heard.

The IDVC used a multi-actor collaborative approach that aimed for improved victim safety, access to services for victims and increased offender accountability via community resources. Judge Suntag aimed to institutionalise procedural fairness in the court's approach to domestic abuse cases. Immediacy of response was also emphasised in the IDVC's objectives.¹⁵ Its main objectives were:

¹¹ *ibid.* p. 539; Hester *et al.* (2008) pp.31-2

¹² Burton (2018) p.540

¹³ Interview with Rachel Birnbaum 05/07/18; Birnbaum R., Bala N., and Jaffe, P. (2014) 'Establishing Canada's First Integrated Domestic Violence Court: Exploring Process, Outcomes, and Lessons Learned', *Canadian Journal of Family Law* 117 32:6, pp. 621-631; Birnbaum, R., Saini, M., and Bala, N., (2017) 'Canada's First Integrated Domestic Violence Court: Examining Family and Criminal Court Outcomes at the Toronto I.D.V.C', *Journal of Family Violence* 32: 621

¹⁴ Siegel, B.D. (2011) 'Ontario's Integrated Domestic Violence Court Safeguards Women's Rights' Blog post, Huffington Post available at: https://www.huffingtonpost.ca/brahm-d-siegel/integrated-domestic-violence-court_b_1141834.html

¹⁵ Vermont Centre for Justice Research (2011) 'Bennington County Integrated Domestic Violence Docket Project: Outcome Evaluation' available at:

- “protection and safety for victims and their children as well as other family members”
- “providing immediate access to community services and resources for victims, their children, and offenders” and
- “providing an immediate and effective response to non-compliance with court orders by offenders”.¹⁶

In New York state, 42 integrated courts were established by 2016.¹⁷ The courts have jurisdiction over civil family proceedings (including divorce, property disputes and child protection) and criminal domestic violence cases. Domestic violence criminal cases are automatically diverted into the IDVC system. By contrast to the Vermont Courts, the New York courts have the capacity to hear contested criminal trials.

The first New York courts were established between 2001 and 2003 without a clear or communal remit. As a result those eleven courts “adapted the model to local conditions”.¹⁸ In 2003 a document, the ‘*Integrated Domestic Violence Court Model Court Components*’ was developed to guide new IDVCs in their work (the list of components is detailed in appendix 1). Despite the guidance – aimed at making the IDVCs more uniform¹⁹ - the high level of judicial discretion afforded to the county courts in New York resulted in significant differences between the IDVCs. A passage from the literature explains the inconsistencies:

“Over time, courts might choose to expand these criteria (e.g., accepting couples with a family court case and a matrimonial case and no criminal domestic violence case). In some jurisdictions that anticipated large caseloads, the criteria may have been even more restrictive at start-up, usually limiting admission to couples with both a domestic violence case in criminal court and a family offense case (which involves a petition for a protective order) in family court. Once the court has confirmed that a given family meets its case eligibility requirements, the court may identify and accept additional family cases – most commonly custody and visitation and paternity, but often neglect and abuse, and cases related to juveniles. These may even extend to other family members and partners: for instance, a

http://www.crgvt.org/uploads/5/2/2/2/52222091/idvd_final_report_b.pdf; Vermont Centre for Justice Research (2013) ‘Bennington County Integrated Domestic Violence Docket Project: Outcome Evaluation Final Report’ available at:

http://www.crgvt.org/uploads/5/2/2/2/52222091/idvd_process_final_2-22-2013b.pdf

¹⁶ *ibid.*

¹⁷ Office of the Statewide Coordinating Judge for Family Violence Cases (2016d) ‘Integrated Domestic Violence Courts: Overview’ accessed 02/07/18; Peterson, R (2014) ‘Criminal Case Processing in Brooklyn’s Integrated Domestic Violence Court’ *Domestic Violence Report*, 19:4, p. 55

¹⁸ Picard-Fritsche (2011) ‘Litigant Perspectives in an Integrated Domestic Violence Court The Case of Yonkers, New York Match 2007 - March 2008’ available at:

http://www.courtinnovation.org/sites/default/files/documents/Yonkers_IDV.pdf, p. 4

¹⁹ *ibid.*

couple may have qualifying criminal and family court cases, while one partner has another family court case with a former spouse”.²⁰

The New York IDVCs were the first established courts, and judges from both the Toronto and Vermont courts separately visited New York during their planning stages. Interviews with key informants, however, provided that while there was definite learning from observation of the New York IDVC, the model did not ‘fit’ for local jurisdictions. This was due to a combination of issues, namely differences in legal process and in the motivation for introduction of the IDAC.

Other ‘one family, one judge’ problem-solving court models

Other courts identified in this review were categorised as ‘one family, one judge’ problem-solving courts. These types of court are aimed at employing the law therapeutically²¹, often including mental health or substance abuse treatment as sentencing options.²² Domestic abuse is a possible but not compulsory criteria for a case’s entry into these courts. These models can be found across numerous jurisdictions internationally and incorporate various multijurisdictional community, procedural and/or therapeutic justice approaches to issues such as drug and alcohol abuse, brain injury, mental health, homelessness and financial hardship. The approach of these courts tends to emphasise offender rehabilitation and aims to slow “the ‘revolving door’ of crime and punishment by addressing the reasons or conditions that contribute to offending behaviour” (NJC 2018b)²³.

Due to the high number and variance between courts, IDACs that included wider problem-solving and/or procedural/therapeutic justice approaches were excluded from the analysis. The models examined are therefore limited to: Ontario, New York, Vermont and Croydon, with the limitations of reliable comparison highlighted and recognised.

Commonalities of IDACs across international jurisdictions

This section examines the commonalities across the identified IDAC models. First, there are similarities in the context in which IDACS have been introduced across

²⁰ *Ibid.*, pp. 5-6

²¹ Parkinson P., (2016) Specialist Prosecution Units and Courts: A Review of the Literature. Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, p. 6

²² Sloan, F., Gifford, E., Eldred, L., Acquah, K., and Blevins, C. (2013) ‘Do specialty courts achieve better outcomes for children in foster care than general courts?’ *Evaluation Review* 37, p.4

²³ <https://www.neighbourhoodjustice.vic.gov.au/knowledge-centreservice-innovation/improving-services-for-family-violence-victims>

jurisdictions. Second, the desired outcomes of IDACs are consistent across different courts.

The Introduction of IDACs

The necessary preconditions for the establishment of IDACs vary significantly across jurisdictions, however there were some identifiable generalisations, as follows:

New court models are often implemented by grassroots-level actors working within the justice system, usually members of the judiciary

In the majority of jurisdictions the introduction of IDACs has evolved as an organic response to challenges posed by the traditional justice system. These challenges have tended to be recognised and addressed by 'grassroots' actors working in the justice system. The need for a driving force at the grassroots level was emphasised by key informants during interview. Birnbaum stated "in order for this thing to work you really need the foot soldiers: people on the ground, people to help the court in its work".²⁴ The New York courts were spearheaded by a small number of judges who set out to change the approach of the New York court system.²⁵

An identified commonality across US and Canada is that judges have tended to be the driving force behind IDACs. In his analysis of the Vermont IDVC, Judge Suntag stated "the judge has to be the leader: judicial leadership is significant". IDACs have been championed and implemented by individual judges within summary-procedure courts, although it should be noted their motivations have differed. The government's involvement in these courts has been limited to grant funding as part of Violence Against Women initiatives (New York, Vermont and Toronto), funding and authorising the allocation of prosecution resources (New York and Toronto respectively) and identifying eligible cases for the IDAC (Toronto).

The lead actors in England were different. The introduction of the IDVC was managed by a multi-agency group hosted at the Magistrates Court. Following a period of consultation and research at local and national government level, the implementation was ultimately overseen by two specially appointed project managers within HMCS.²⁶

Interest and political will for IDACs depends on specific local contexts and circumstances

Croydon was a leader in innovative judicial approaches and domestic abuse was high on the political agenda at the time of its establishment. As noted above, it was established in the context of the Home Office's (2003) *Safety and Justice* report,

²⁴ Interview with Rachel Birnbaum 05/07/18

²⁵ Leventhal, J. M., Angiolillo, D. D., D'Emic, M. J. (2014), 'The Trials, Tribulations, and Rewards of Being the First' *Judges' Journal* Spring 2014, 53: 2

²⁶ Hester *et al.* (2008) p.5

which focused heavily on the interface between criminal and civil court in cases of domestic abuse.²⁷

There has been a focus on domestic abuse and the silo systems of the criminal and family justice systems in Canada since the early 2000s. The political environment underpinning the introduction of the Ontario IDVC was influenced by a high profile case in which a child, Jared Osidacz, was murdered by his father during a court-ordered parental visit in 2006. The child's father was subject to a criminal court order to stay away from his ex-partner, the child's mother, but was allowed unsupervised weekend access to his son following a family court order. Media interest and a coroner's inquest following the incident drew public and political attention to the poor interface between the family and criminal courts.

In Vermont, Judge Suntag was aware of a need to secure political buy-in from stakeholders for the court, particularly from District Attorneys (DAs), who are elected in the State, thus their involvement required to be considered as politically popular. Judge Suntag understood that the IDVC was perceived as being "soft on crime". He therefore implemented a system whereby offenders who violated the terms of their probation would be returned to court immediately, thereby securing buy-in from the police and DA as this was considered a robust system.

Pre-established specialised domestic violence courts are common across jurisdictions that introduce IDACs

Jurisdictions that introduce IDACs tend to have already institutionalised some provisions to address domestic abuse within the criminal justice system. The Croydon IDVC was seen as the "logical extension" to the already-existing SDVC, in a further attempt to bring better outcomes (higher conviction rates, offender accountability and improved victim safety) in domestic violence cases.²⁸

In Vermont, the IDVC was also an extension of the existing SDVC. Relevant family law cases were entered into the existing criminal SDVC to schedule the processes together.

In New York, and the USA more widely, there was an existing tradition of family courts of various forms, including versions of SDVCs.

SDVCs have been established in a number of Canadian provinces for some time. Ontario introduced SDVCs across the province from the mid-1990s onwards. Similar to the Scottish model, these courts heard criminal matters related to domestic abuse. .

²⁷ Robinson (2007) p.357

²⁸ Hester *et al.* (2008) pp.1-2

The desires outcomes of IDACs

The second commonality across IDAC models is the desired outcomes of the court, which have been identified as follows:

IDACs aim to address the challenges of the traditional court system

The desire to avoid the 'silo approach' of the civil and criminal processes was an overarching theme in literature on IDACs and was experienced in all studied jurisdictions.²⁹ A review of the available literature identified the following challenges posed by the traditional two-court system:

- Conflicting court orders;³⁰
- Increased risks for women and children due to the fragmentation of the court system;³¹
- Poor judicial information-sharing and poorly-informed decision-making;³²
- Poorly trained court staff (including the judiciary);³³
- Slow response by the courts to domestic abuse and family matters;

²⁹ Birnbaum *et al.* (2014) p.123; Jaffe, P. Crooks, C., and Poisson, S., (2003) 'Common Misconceptions in Addressing Domestic Violence in Custody Disputes' *Juvenile and Family Court Journal* 57; Jaffe, P., Crooks, C., and Bala, N., (2008) 'Domestic Violence and Child Custody Disputes: The Need for a New Framework for the Family Court' in Ursel, T., and LeMaistre. eds, *What's law got to do with it? The Law, Specialized Courts and Domestic Violence in Canada*, Toronto: Cormorant Books; Maytal, A., (2008) 'Specialized Domestic Violence Courts: Are They Worth the Trouble in Massachusetts?' *BU Public International Law Journal*; Tsai, B. "The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation" (2000) 68:4 *Fordham L Rev* 1285. cf. Birnbaum *et al.* 2014: 123

³⁰ Bala N., and Kehoe, K., (2013) *Concurrent Legal Proceedings in Cases of Family Violence: The Child Protection Perspective*, Ottawa: Department of Justice Canada; Birnbaum *et al.* (2014) p. 129; Lawton, Z. (2017) 'ONE COURT, ONE JUDGE: An Integrated Court System for New Zealand Families Affected by Violence' p. 25 available at: <https://www.lawfoundation.org.nz/wp-content/uploads/2017/05/One-Court-One-Judge-Discussion-Paper-2017.pdf> accessed 30/04/18; accessed 30/04/19; Lee, L (2015) 'Problem-Solving Courts for Taiwan Family Courts: Current Preface and Future Prospects in Domestic Violence' *A dissertation submitted in partial satisfaction of the requirements for the degree of Doctor of Juridical Science In the School of Law of the University of California*, p. 51 available at: http://digitalassets.lib.berkeley.edu/etd/ucb/text/Lee_berkeley_0028E_15848.pdf accessed 25/04/18

³¹ Barnett A. E. (2014) 'Contact at all costs?: domestic violence child contact and the practices of the family courts and professionals' *A thesis submitted for the degree of Doctor of Philosophy*, Brunel law School. Brunel University available at: <https://bura.brunel.ac.uk/bitstream/2438/8753/1/FulltextThesis.pdf>; Birnbaum *et al.* (2014) p. 123; Fitz-Gibbon, K. (2015) 'THE PETER MITCHELL CHURCHILL FELLOWSHIP to examine innovative legal responses to intimate homicide in the UK, USA and Canada' *CHURCHILL FELLOWSHIP REPORT*, p. 27; available at https://www.churchilltrust.com.au/media/fellows/Fitz-Gibbon_K_2015_Innovative_legal_reponses_to_intimate_homicide.pdf; Lee 2015: 51

³² Birnbaum *et al.* (2014) p. 131; Lawton (2017); Lee (2015); Leventhal *et al.* 2014

³³ Hester *et al.* (2008); Lawton (2017) p. 25

- Appropriate family support services are not available;³⁴
- A lack of coordination in the community response to domestic abuse³⁵

Different jurisdictions emphasised the challenges of the two court system differently according to their specific context. In England and New York in particular, there was also an emphasis on the inefficiency of the court system and the associated cost of repeated court appearances for the same family.³⁶

In Canada, there was a widespread recognition that poor communication between the courts exposed women and children to further violence, and also resulted in inconsistent orders and increased costs to the courts due to additional appearances.³⁷

Vermont is a unique case. The concept of the integrated court was designed and managed by a single judge and its implementation was something of a personal project.³⁸ Judge Suntag had 28 years' experience as a civil and criminal judge and had a particular interest in both domestic abuse and procedural fairness. He considered judicial approach as integral to the court's effectiveness. He stated: "in terms of the courtroom, how a judge behaves in the courtroom and interacts with the people in it may be the most crucial part of how people respond". These interests, coupled with his observations of the shortfalls of the traditional court system motivated him to champion the introduction of the IDAC.³⁹

Despite the differences between IDAC models, the desired outcomes are relatively consistent across the jurisdictions

In broad terms, the goals of IDACs are identified consistently across jurisdictions as improved victim safety, improved offender accountability and more efficient use of court time and resources. Specifically the desired outcomes are identified in the literature as:

- A coordinated response to improve victim safety and offender accountability via involvement of other services; deferred sentences to allow for offender-management programmes to be completed, and a more holistic oversight of rehabilitation;⁴⁰

³⁴ Birnbaum *et al.* (2014) p.131

³⁵ This also refers to a disconnect between the court and community services.

³⁶ Ling (2015) p. 51

³⁷ Birnbaum *et al.* (2014) p.123; Jaffe *et al.* (2008); Maytal (2008)

³⁸ Interview with David Suntag 06/07/18

³⁹ *ibid.*

⁴⁰ Birnbaum *et al.* (2014); Brooks, O., Burman, M., Lombard, N., McIvor, G., Stevenson-Hastings L., and Kyle, D., (with assistance from Alix Thomazi) (2014) 'Violence against women: effective interventions and practices with perpetrators: A literature review' *REPORT No. 05/2014 Violence against women: effective interventions with perpetrators* Scottish Centre for Crime and Justice Research, available at <http://www.sccjr.ac.uk/wp-content/uploads/2014/06/VAW-Literature-Review-SCCJR-Report-No-05-20141.pdf> accessed 01/05/18; Casey and Rottman 2005; Centre for Justice Innovation (2016) 'Problem-solving Courts: An Evidence Review', available at:

- Victim advocacy and support;⁴¹
- Efficiency, in terms of quicker outcomes, less appearances/days at court;⁴²
- An improved approach to the complex/unique criminal nature of domestic abuse;⁴³
- Specially-trained staff (prosecutors, solicitors, judges, clerks).⁴⁴

The practical operation of Integrated Domestic Abuse Courts

Assessing the practical operation of the IDACs is complex. This section highlights the key practical elements of an operational IDAC. These are based on the most common features identified from the selected models. The practical operation of IDACs is reasonably consistent across jurisdictions.

Specialist training

As a starting point, judges and all other court staff involved in IDAC cases have specialist domestic abuse training. This is best established in New York. The New York OFVC is responsible for providing IDVCs judges and other court staff with

<http://justiceinnovation.org/wp-content/uploads/2016/08/Problem-solving-courts-An-evidence-review.pdf> accessed 27/04/18; Florida State Senate (2006) 'Implementation of the Unified Family Court' *Interim project report* available at: http://archive.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-133ju.pdf; Koshan, J. (2014) 'Investigating Integrated Domestic Violence Courts: Lessons from New York' *Osgoode Hall Law Journal* 51: 3, pp. 989-1036; Lawton (2017); Lee (2015); Mazur, R. and Aldrich, L. (2003) 'What makes a Domestic Violence Court Work? Lessons from New York' *Judges' Journal* 42(2); Ontario Ontario Court of Justice (2018) 'Integrated Domestic Violence Court - Overview' <http://www.ontariocourts.ca/ocj/integrated-domestic-violence-court/overview/> accessed 25/04/18; Ontario Women's Justice Network (OWJN) (2016) 'Toronto Integrated Domestic Violence Court' August 23rd 2016, <http://owjn.org/2016/08/toronto-integrated-domestic-violence-court/> accessed 25/04/18; Schwarz, C., (2005) 'Unified Family Courts: A Saving Grace for Victims of Domestic Violence Living in Nations with Fragmented Court Systems' *Family Court Review* 42; Vermont Center for Justice Research (VCFJR) (2013) 'BENNINGTON COUNTY INTEGRATED DOMESTIC VIOLENCE DOCKET PROJECT: PROCESS EVALUATION FINAL REPORT' February 2013, available at http://www.crgvt.org/uploads/5/2/2/2/52222091/idvd_process_final_2-22-2013b.pdf accessed 25/04/18

⁴¹ Casey, P. M., and Rottman, D., B., (2005) 'Problem-Solving Courts: Models and Trends' *The Justice System Journal* 26:1, 35; Florida State Senate (2006); Koshan (2014); Mazur and Aldrich (2003); Ontario Court of Justice (2018); OWJN (2016); Peterson (2014); VCFJR (2013)

⁴² Florida State Senate (2006); Lee (2015) Leventhal *et al.* (2014); Ontario Court of Justice (2018)

⁴³ Koshan (2014); Lee (2015); Mazur and Aldrich (2003); Peterson (2014)

⁴⁴ Casey and Rottman (2005); Florida Courts (2017) Florida Courts 2016-2017 Annual Report' available at <http://www.flcourts.org/publications-reports-stats/publications/2016-17-annual-report/issue2.shtml#family>; Mazur and Aldrich (2003); Office for the Prevention of Domestic Violence (OPDV) (2006) 'New York State's Response to Domestic Violence: Systems and Services Making a Difference' http://www.opdv.ny.gov/whatisdv/about_dv/nyresponse/index.html

training on new practices and legislation. Annual conferences to introduce new best practice and discuss progress are also organised by the OFVC.

Case identification

Prior to the court beginning, the process of case identification and selection takes place. This is carried out by a specially appointed IDAC coordinator who 'matches' criminal and civil cases. This process has been developed on an ad hoc basis for each individual court. There were no jurisdictions identified where civil and criminal IT systems were matched so as to automatically enter cases into the IDVC, and the process was entirely manual.

The Vermont IDVCs operated a slightly different system that did not require case identification prior to the court day. In both Vermont IDVCs all summary-level domestic criminal cases and all civil protection orders were entered into the IDVC.⁴⁵ A member of staff then identified all other civil and criminal cases involving the families cited in these cases. Overlapping cases were thereafter identified as the court proceeded. Even if the cases involved different partners, the judge could be aware of all the circumstances. Of note, other agencies – including third sector organisations – could also make referrals into the court.⁴⁶

The IDAC coordinator

The IDAC coordinator is a role common to the existing IDACs. The literature review and interviews with key informants provided that the coordinator is integral to the smooth-running of the IDAC, and it has been undervalued and under-resourced in existing jurisdictions.⁴⁷ The role is intended to improve the efficiency of the IDAC and 'streamline' the process. The role is varied across different jurisdictions but tends to involve:

- case identification and management;
- acting as a point of contact and signposting of services to victims;
- liaising between agencies; and
- informing decision-making in accordance with the court objectives.

Victim advocacy and legal representation

In most IDACs, victim advocacy services are offered before, during and after the court day. In addition, legal advice – usually supplemented by legal aid – is offered

⁴⁵ Interview with David Suntag 06/07/18

⁴⁶ *ibid.*

⁴⁷ *Hester et al.* (2008): iii; Vallely, C., Robinson, A., Burton, M., and Tregidga, J., (2005) 'Evaluation of Domestic Violence Pilot Sites at Caerphilly (Gwent) and Croydon 2004/05, Final Report' London: Crown Prosecution Service, p. 4, available at https://www.cps.gov.uk/sites/default/files/documents/publications/final_evaluation_domestic_violence_pilot_sites_gwent_and_croydon_2004-05.pdf accessed 27/04/18; Interviews with Birnbaum 5/7/18; David Suntag 6/7/18

to *all* parties in the civil dispute. This is particularly important in the US and Canada where there are endemic issues of litigants attending civil court without legal representation.

Scheduling

Once a case is identified and entered into the IDAC, all participants involved are invited to court for the same day. In some courts, perpetrators and victims have separate entrances and waiting rooms, and there are increased security personnel to manage interactions.

The relevant family members and a single judge are present in the court throughout both hearings. In some IDACs, namely in New York, the prosecution also remain present throughout the civil procedure, for the purposes of information-sharing and gathering. If they have sufficient training, lawyers can represent their client throughout both processes, however in many cases two separate lawyers are used, one for each stage of the IDAC. Some remain present, but do not participate, in the case for which they are not representing their client, for the purposes of having full information on the concurrent case.

Due to legal complexities around legal prejudice and differing burdens of proof, the criminal court sits first. If the criminal case is not resolved, procedures for trials vary between IDACs: some have the capacity to hear trials,⁴⁸ but most return the case to the traditional criminal court and can thereafter proceed with the resolved criminal case at a later date.

Once the criminal case is concluded, the civil case is heard. Again, all parties are present within the courtroom. Civil protection orders, child residency and contact orders are decided as part of this process. In some courts, divorce and separation are handled, and in the problem-solving courts child protection, mental health and substance abuse can be addressed holistically.

Offender monitoring

Offender monitoring is identified as an important part of the IDAC process.⁴⁹ The judge's remit extends past the conclusion of the court day to monitoring the accused's progress and compliance with offender management/rehabilitation programmes. These tend to be provided by external community-based agencies. Breaches of order are quickly returned to the same judge and decisions made based on his/her pre-existing knowledge of the family.

The cost of IDACs

This section examines evidence on the costs associated with IDACs.

⁴⁸ Some New York models may hear trials.

⁴⁹ Birnbaum *et al.* (2014) p.131; Lee (2015) p.51

There is a very weak evidence base on the costs of IDACs

There is very little evaluation of the costs of IDACs within the literature and only one evaluation study adopts a cost-benefit analysis framework.⁵⁰ Some of the literature explores the logic that fewer appearances at court entail a reduced cost to the individual,⁵¹ but there is no identified evaluation of service users' experience that focuses on cost.

A collaborative court approach may entail an increased cost.

While IDACs may have benefits in terms of information-sharing and victim safety, there is the potential for significant additional costs involved in increased staff time and output. In New York and Toronto, criminal solicitors observed the civil court and civil solicitors attended the criminal process.⁵² Similarly, in the Toronto IDVC the crown prosecutors sat in on family cases.⁵³ In the evaluation of the Croydon IDVC, it was identified that, while the 'one family one judge model' was maintained, the number of legal practitioners present per case was increased, as many criminal lawyers could not represent in civil cases and vice versa.⁵⁴ Additionally, staff attendance at the ten multi-agency meetings per year for the Croydon IDVC, were estimated to cost £5450.20 between 2006 and 2007.⁵⁵

The IDVCs in Vermont provide an interesting case study in evaluating the cost of collaboration. The first IDVC project in Bennington County was not funded. The second IDVC in Windham County was funded by a governmental VAW grant of \$250,000. The leader of the court project, Judge Suntag, provided that the unfunded project was more successful, partly because it was unfunded. Suntag's collaborative approach involved securing relevant actors' participation by convincing them of the efficiency of the IDVC framing their role as "work they would be doing anyway".⁵⁶ This promoted community participation and buy-in. Suntag was surprised by the positive response from actors, particularly community agencies who engaged particularly well. Comparing the two funding experiences, Suntag stated "If I did it again, I'd do without a grant".⁵⁷

Provision of legal aid may affect the cost of IDACs

⁵⁰ Menerrich *et al.* (2005)

⁵¹ Lawton (2017)

⁵² Beck, K. (2017) 'One court, One Judge – an integrated court system for New Zealand families affected by violence' Letter addressed to Zoe Lawton, New Zealand Law Society, p. 3 available online at https://www.lawsociety.org.nz/_data/assets/pdf_file/0006/114873/I-Z-Lawton-IDV-Court-model-29-8-17.pdf accessed 14/05/18

⁵³ Birnbaum *et al.* (2014) p. 157

⁵⁴ Hester *et al.* (2008) p.29

⁵⁵ Vallely *et al.* (2006) p.76

⁵⁶ Interview with David Suntag 06/07/18

⁵⁷ *ibid.*

There are also implications for legal aid as a result of victim- and offender-representation within the IDAC. In Ontario and Vermont both the pursuer and defender in the civil hearing and the accused in the criminal case are offered legal counsel.⁵⁸ A family lawyer, interviewed on their experience in the Toronto IDVC, stated that because multiple lawyers were involved in one case, more time was spent in court, which was an inefficient use of counsel time and thus had implications for legal aid.⁵⁹

Funding for IDACs

Mazur and Aldrich⁶⁰ argue that IDACs have the opportunity of attracting non-state funding, i.e. charity and grant funding and/or public-private partnerships, due to the cross-jurisdictional work of IDACs (community building; women's rights work etc.). In addition, statutory funding is not only limited to justice departments. The evaluation of the Vermont Court, for example, was joint-funded by the Vermont Department of Health, Office of Alcohol and Drug Abuse Programs and by the Office on Violence Against Women, U.S. Department of Justice.⁶¹

Staff costs of IDACs

The role of the domestic abuse court coordinator would be an additional cost. The coordinator is a fulltime position that requires a significant level of legal knowledge and administrative experience. The advocate in the Caerphilly SDVC was a role with similar duties to that of the IDVC coordinator, the cost of this role was £40,000 annually in 2004-5.⁶² In Vermont, the coordinator was paid somewhere between \$20,000 – 30,000.⁶³

Practical considerations for Scotland

There are certain, specific implications for Scotland regarding the implementation of IDACs that are highlighted in the literature.

Not guilty and not proven verdicts

The first relates to instances in which not guilty or not proven verdicts are given in criminal trials. A not guilty or not proven verdict does not preclude a case's entry into the IDAC, however it may prejudice it. MacDowell (2011) contends that IDACs present a problem of "all eggs in one basket" for victims, i.e. in cases where an

⁵⁸ Part of the motivation for this is the high rate of litigants without legal representation in US and Canadian courts, which causes significant delays to the process.

⁵⁹ Birnbaum *et al.* (2014) p.157

⁶⁰ Mazur and Aldrich (2003)

⁶¹ VCFJR (2013) p.1

⁶² Vallely *et al.* (2004) p.9

⁶³ Interview with David Suntag 06/07/18

accused person had been found not guilty, it may be in the victim's favour to have a different judge for the civil case, who might be more inclined to hear the circumstances of the domestic abuse, rather than the judge presiding at the criminal case who won't allow time for further evidence they deem as irrelevant following a not guilty verdict.⁶⁴ If the abuser is found not guilty in the criminal proceeding, MacDowell expresses that the judge would be predisposed – or perceived by the victim as predisposed – towards the accused.⁶⁵

Legal prejudice, burdens of proof and rights of audience

There are also implications with regard to legal prejudice.⁶⁶ The establishment of the Croydon IDVC was complicated by concerns around a single judge hearing all matters being prevented by existing human rights legislation.⁶⁷ Two stated cases from England further guide this issue. In the cases of *Hammerton v Hammerton* (2007) ruling found that hearing a criminal contempt of court charge alongside a child contact case “placed the defendant in an impossible position”.⁶⁸ In *Morris v Morris* (2016), it was decided that a judge hearing both a criminal case of unpaid child maintenance alongside a civil case on application to vary the maintenance again prejudiced the defendant, specifically in relation to an accused's right to remain silent in a criminal case.⁶⁹ It was identified that the issue of legal prejudice presents a barrier to the use of ‘one family, one judge’ and the further establishment or expansion of IDVCs in England.⁷⁰

Defence counsel in Toronto expressed concerns around the different burdens of proof in the Toronto IDVC.⁷¹ A family law solicitor stated “I worry about saying something in family court that the criminal court will hear and use”.⁷² A criminal lawyer pointed out that, regardless of plea, complainers will be present at criminal trials (because they will be present at the IDAC for the civil matter) and their presence may unduly influence the prosecution.⁷³ A judicial representative in New York stated: “I found the appearance of a man in handcuffs one minute (when his criminal case was called) and then not the next (when his family case was called) rather jarring in terms of information seepage”.⁷⁴ Some research from the New York

⁶⁴ MacDowell, E. L., (2011) ‘When Courts Collide: Integrated Domestic Violence Courts and Court Pluralism’ Scholarly Works, Paper 682, p. 113, available at: <http://scholars.law.unlv.edu/facpub/682>

⁶⁵ *ibid.*

⁶⁶ Transferability is particularly difficult with regard to legal prejudice due to differences in the human rights contexts of comparison jurisdictions.

⁶⁷ Burton (2018) p.539; Hester *et al.* (2008)

⁶⁸ Burton (2018) p.540

⁶⁹ *ibid.*

⁷⁰ Burton (2018);

⁷¹ Birnbaum *et al.* (2014) p. 157

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ Koshan (2014) p.1024, footnote 199

IDVCs evidenced that cases were more likely to settle – by means of a guilty plea or dismissal – in the integrated court compared to the traditional criminal court.⁷⁵ Research from New York indicated that there was a perceived pressure to settle amongst victim and offender advocates within the court.⁷⁶

With regard to jurisdiction within the Scottish court, there are implications for solicitors' rights of audience within the court. This would be of particular concern in cases where there are cross-border contact disputes, as there are a number of examples of English barristers being refused rights of audience in Scottish civil cases. In addition, there may be concerns regarding the capacity of Scottish sheriffs to preside over both civil and criminal cases.

Consent and information-sharing

Consent and information-sharing provide an additional challenge. One desired outcome of IDACs is to allow information between the civil and criminal courts to be free-flowing.⁷⁷ The process of information-sharing is necessary to facilitate effective decision-making within IDACs, however there are implications related to consent and data protection that result from this process. The scope of this project does not allow for the full implication of information sharing between courts to be explored, however it is likely that the process would be complex. In the Ontario IDVC, the IDVC originally required consent from all parties in the process to be involved - including the prosecutor's and family court judge's to initially transfer the case from the criminal court to the IDVC. The process was "cumbersome and confusing" and prevented some cases from accessing the IDVC at all, thus it was subsequently abandoned and all cases transferred without the consent of the parties involved.⁷⁸

This analysis is a non-exhaustive list and wider consultation with relevant partners and further research would be required to better inform this section. Other practical considerations for Scotland could include the provision of additional specialist training for those involved with IDACs working in civil and criminal law; and standardised and augmented court advocacy provision. There is also the potential that the introduction of IDACs may lead to an increased demand for independent representation and a possible increase in the demand for an integrated approach to addressing men's domestic abuse i.e. an increase in demand for court-mandated programmes such as the Caledonian System.

The available evidence on IDACs

⁷⁵ Rempel, M. and Katz, S. (2011) 'The Impact of Integrated Domestic Violence Courts on Case Outcomes: Results for Nine New York State Courts' *Center for Court Innovation* available at <https://www.courtinnovation.org/publications/impact-integrated-domestic-violence-courts-case-outcomes-results-nine-new-york-state> accessed 26/04/18

⁷⁶ Koshan (2014)

⁷⁷ except when it relates to establishing criminal responsibility

⁷⁸ Birnbaum *et al.* (2014) p.146; Interview with Rachel Birnbaum 05/07/18

This final section considers the evidence base on IDACs and the conclusions that may be drawn regarding the effectiveness of IDACs.

Considering first the quantity of empirical evaluations of IDACs, the number of empirical evaluations of IDACs over all existing jurisdictions is relatively small. Based on examinations of the existing literature and reference lists, and following consultation with key informants, it is probable that the majority of relevant empirical evaluations on IDACs (as per the narrowed definition offered above) have been reviewed. The evidence base is, in fact, smaller than it first appears as much of the literature is cyclical, with multiple articles conducting literature reviews and drawing conclusions from the same data.⁷⁹

Next, considering the quality of empirical evaluations, there are a number of significant limitations. A number of single- and multiple-case evaluations have been conducted on the existing IDACs in the US, Canada and England. Inconsistencies around control groups, research design and outcome variables mean that comparison is extremely difficult.

Some of the available research is unreliable, with poor quasi-experimental comparison groups or poor pre- and post-design.⁸⁰ Many of the evaluation studies focus on single sites, and because court models vary so widely – even within jurisdictions – conclusions cannot be generalised across multiple cases.⁸¹

The identified empirical studies, (plotted in appendix 2) provide contradictory evaluation outcomes, from which it is difficult to draw consistent conclusions. Differences in outcomes may result as much from the differences in context, research design, and samples as from participation in the IDAC compared to the traditional two-court system. This limitation is recognised in some of the recent evaluation literature.⁸² Using court conviction rates in New York state as an example: three studies evidenced higher conviction rates in the IDVC compared to the traditional two-court process, and two studies evidenced that conviction rates were equal between IDVC and the traditional court. This pattern of contradictory results between studies can be observed relating to the number of attendances at

⁷⁹ see for example Birnbaum *et al.* (2014); Centre for Justice Innovation (2016); Cissner, A. B., Picard-Fritsche, S., and Rempel, M., (2014) 'New York State's Integrated Domestic Violence Court Model: Results From Four Recent Studies'. *Domestic Violence Report*, 19: 4, pp. 51-63.; Lawton (2017); Lee (2015); Parkinson (2016); Peterson (2014)

⁸⁰ Reliable baseline equivalence is rarely established

⁸¹ Cissner, A. B., Labriola, M., Rempel, M. (2013) 'Testing the effects of New York's domestic violence courts: A statewide impact evaluation' New York: Center for Court Innovation, p. 2 available at:

<https://www.ncjrs.gov/pdffiles1/nij/grants/242583.pdf>; It should also be noted when considering jurisdictions within the USA (namely Vermont and New York), justice is devolved to states to the extent that they can be considered as entirely separate jurisdictions. IDVCs operate at the equivalent level of summary procedure. The law, legal processes and judicial authority vary between states to the extent that there are very few commonalities. Thus, it must be noted that Vermont and New York cannot be considered any more comparable than, for example, Canada and England, due to the level of variance.

⁸² Birnbaum *et al.* (2014); (2017)

court, case processing times, recidivism rates, and reconviction rates (see appendix 2).

Some literature, from both academic and grey sources, has tended to draw generalised conclusions about the value and benefits of IDACs. The Centre for Justice Innovation, for example, conclude that the available evidence proves IDACs can “increase convictions and witness participation, lower re-offending, enforce protection orders more effectively and reduce case processing time”.⁸³ Such statements should be approached with caution: the evidence has been presented selectively⁸⁴ and without the depth of analysis required to guide conclusions on effectiveness.

There is also a significant disconnect between the desired outcomes of IDACs and what is being measured. Very few studies include qualitative analyses of victim experience, and there are no identified studies which have produced longitudinal outcomes for victims or perpetrators. Judge Suntag provided that this is, in part, due to funding implications, i.e. a court model that is seen to reduce reoffending will be politically popular and more likely to gain funding, thus this becomes the evaluation focus of many courts.⁸⁵ Evaluation studies which use reliable research designs have tended to focus exclusively on quantitative criminal outcomes. In particular, despite the majority of the literature not identifying recidivism as a challenge of the family and criminal court systems,⁸⁶ many studies focus on recidivism as a measurable outcome.⁸⁷

There is a further gap in literature that evaluates the outcomes of the civil component of IDACs. Of the existing evaluation studies, all but one⁸⁸ evaluate criminal outcomes only. Conclusions on the civil court outcomes of IDACs are therefore not possible.

⁸³ Centre for Justice Innovation (2016) p. 13

⁸⁴ The statement in this report, for example, is footnoted as follows: “We have looked at this model in operation in the USA and have also reviewed the lessons learnt from its poor implementation in a pilot in Croydon in 2007” with no recognition of the limitations of this comparisons nor the studies themselves.

⁸⁵ Interview with David Suntag 06/07/18

⁸⁶ Recidivism is mentioned in Picarde-Fritshce *et al.* (2011) p.5 in “Table 1.1. The Integrated Domestic Violence Court Model: Hypothesized Impacts and Benefits”.

⁸⁷ see Cissner *et al.* (2014); Coll, K.M., and Stewart, R. (2007) ‘Ada county family violence court grant project: comprehensive evaluation report’ *Ada county family violence grant project: Comprehensive evaluation report* available at: http://www.isc.idaho.gov/dv_courts/FVC_Comprehensive_Eval_Report.pdf; Mennerich, A., Rempel, M., Farole, D. J., and Kralstein, D. (2005). *The potential cost-effectiveness of trial court restructuring in New York State*. John Roman: Urban Institute; Peterson 2014 Picard-Fritsche *et al.* (2011); Rempel and Katz (2011); Schluetter, M., Wicklund, P., Adler, R., Owen, J., and Halvorsen, T., (2011) ‘Bennington County integrated domestic violence project: outcome evaluation final report’ Northfield Falls: The Vermont Centre for Justice Research.

⁸⁸ Birnbaum *et al.* (2017), this 2017 study found that participation in the IDAC increased the involvement of fathers and there was a higher rate of co-parenting orders granted in IDACs compared to the traditional civil system. Improving fathers’ access is inconsistent with the aim of some feminist critics of the judicial system.

Conclusions

There are a number of different ‘One Family, One Judge’ court models

A literature review and interviews with key informants in the US and Canada highlighted a variety of different court models that use the mechanism of ‘One Family, One judge’. Three categories of ‘One Family, One Judge’ court models were identified based on their jurisdictional remit and handling of contested criminal trials. For the purposes of comparison, this review focused on the simple IDAC model, in which a single judge rules on summary-level domestic criminal charges (though does not hear contested criminal trials) and family court cases involving child contact.

There are a number of commonalities across integrated domestic abuse courts in different jurisdictions

Despite the different ‘One Family, One Judge’ models, there were similar motivations for the establishment of integrated courts across jurisdictions, and they share a number of desired outcomes. IDACs have emerged in response to identified shortfalls in the interface between the criminal and civil justice system. IDACs tend to follow the establishment of specialised domestic abuse courts in jurisdictions, tend to be championed by a grassroots actors, and their successful establishment has tended to depend on the interest and support of the judiciary or a specific judge. IDACs’ desired outcomes have been to provide a coordinated response to victim safety and offender accountability, broaden and streamline access to victim advocacy, improve efficiency of the court process and schedule court hearings consecutively, and ensure a specially trained court staff and judiciary.

There are a number of cost considerations related to IDACs, however the evidence base on cost is weak.

There are very few empirical assessments of the cost of IDACs, however the literature and interviews with key informants highlighted a number of cost considerations. The literature tends to assume that less appearances for courts will entail a reduced cost. However, the creation of an IDAC coordinator staff role, the doubling-up of staff time (as prosecutors and legal representatives attend both court processes) and the wider provision of legal aid imply higher costs. Some IDACs have, however, sourced funding from alternative sources, such as statutory health grants or third sector sources. In the case of Vermont, the judge was able to negotiate multiagency staff resources without additional funding, by persuading partner agencies that the work associated with the IDAC was work being carried out anyway.

In relation to the introduction of IDACs, there are a number of significant practical considerations for Scotland.

The process of scheduling criminal and family court matters together to be heard by one judge in Scotland entails a number of practical considerations. There are issues of legal prejudice, rights of audience, consent and information sharing. One practical issue highlighted by key informants was the process of case identification, which has been entirely manual in all cases to date. Other practical considerations for Scotland could include the provision of additional specialist training; court advocacy provision; demand for independent representation; and the need for an integrated approach to addressing men's domestic abuse, such as the Caledonian System. The analysis is a non-exhaustive list and wider consultation with relevant partners and further research would be required to better inform this section.

The evidence base on IDACs is limited

The available evidence on IDACs is weak. There are few empirical studies of IDACs outside of the USA. There are issues of comparison and transferability from the USA, as models differ between counties and states, and it is difficult to establish causality in many of the US models as the courts' jurisdictions include numerous other factors, such as drugs, child protection, and property disputes. The available empirical studies tend to focus on recidivism as a measurable outcome, and outcomes are highly varied across the existing research (see appendix 2). There exists only one study that examines civil outcomes from IDACs.⁸⁹ Perhaps the most comparable empirical study, from the Croydon IDVC, was extremely limited due to the very small number of cases that entered the court during the period of review.⁹⁰

⁸⁹ Birnbaum *et al.* (2017)

⁹⁰ Hester *et al.* (2008)

Appendix 1: The New York IDVC components

From Picard Fritsche *et al.* (2011) available at:

https://www.courtinnovation.org/sites/default/files/documents/Erie_IDV.pdf

INTEGRATED DOMESTIC VIOLENCE COURT

MODEL COURT COMPONENTS

1. *Jurisdiction*

a. *Jurisdiction of the IDV courts.* Because the supreme court is the only trial-level court in New York State with jurisdiction over criminal cases, (civil) family court cases, and (civil) supreme court matrimonial actions, all IDV courts are created as supreme court parts, and are presided over by supreme court justices.

b. *Jurisdiction of the IDV court Cases.* Cases are governed by the substantive and procedural law of the courts in which they originated. The cases are not combined or consolidated in any legal sense.

c. *Family Eligibility for IDV courts.* Families are eligible for the IDV court if they have both a criminal domestic violence case and at least one family court or matrimonial case pending.

2. *Planning, Staffing and Technical Assistance*

a. *Planning and Implementation.* IDV courts should undergo a comprehensive sixmonth

planning process, to be followed by a six-month implementation period.

b. *Staffing.* All IDV courts should be staffed by a supreme court justice; a court attorney/law clerk; and a dedicated courtroom clerk. IDV courts must also designate a staff person to liaise with community service providers; identify personnel to screen for eligible cases; and locate security personnel with training in domestic violence for the court room and offices.

c. *Technical Assistance.* Technical assistance to individual IDV courts is provided collaboratively by the then Office of the Deputy Chief Administrative Judge for

Court Operations and Planning and the Center for Court Innovation.

3. *Case Identification and Screening and Court Calendaring*

a. *Case Identification and Screening.* All IDV courts must develop procedures to screen cases in all three courts for eligibility, and transfer eligible families' cases to the IDV court part.

b. *Court Calendaring.* While IDV courts are expected to calendar all of a family's cases on a single day, it is recommended that each case type (criminal, family court, matrimonial) be called separately, with criminal cases being heard first. The courts are also asked to reserve a designated compliance monitoring calendar (meaning that all cases being monitored for compliance with court orders will be heard at once). Under the recommended model, although all of the family's cases are heard on the same day, they are not all heard consecutively. This separate calendaring is recommended in order to maintain the integrity of each individual case.

4. *Legal Representation* IDV courts are expected to "identify all potential sources of legal

representation...and facilitate litigants' access to [them] (NYS Unified Court System 2004, p. 9)." However, "IDV courts do not create a right to counsel where none existed

before"—that is, in the originating court.

5. *Judicial Monitoring and Offender Accountability* IDV courts are expected to develop

protocols for supervising and monitoring offenders, preferably in collaboration with local

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departments of probation and service providers. Imposition of program mandates in criminal domestic violence cases is encouraged, as is the use of graduated sanctions and

other proactive responses to non-compliance with court orders.

6. *Judicial and Non-Judicial Training* Judges, court staff and local agencies receive training on domestic violence, relevant legal issues and case law, and IDV court operations.

7. *Technology* IDV courts must enter data into all information systems used in individual cases' courts of origin, as well as into a specialized "IDV application" and the state Domestic Violence Registry.

8. *Courthouse Safety* In planning, IDV courts must address safety issues, including provision of security personnel and safe waiting areas.

9. *Case Integrity, Confidentiality and Record Keeping* Confidentiality requirements are the same as those of the case's originating court.

10. *Domestic Violence Services* IDV courts are expected to connect victims with advocacy as early in the court process as possible. Protocols should be developed to support existing victim-advocate relationships (i.e., relationships formed prior to the victim's transfer to the IDV court).

11. *Use of Community Resources* Collaboration with community providers in order to provide all parties with comprehensive services is recommended.

12. *Assessment* "IDV courts should consider evaluation a critical part of their mission (NYS Unified Court System 2004, p. 16)." All IDV courts participate in on-going data collection by the then Office of the Deputy Chief Administrative Judge for Court Operations and Planning, and individual courts will be the subject of more in-depth evaluation by Center for Court Innovation research staff.

Appendix 2: Evaluation outcomes from existing IDAC research

Evaluation outcome	Details of Research	Jurisdiction
IDACs result in less attendance at court for participants than the traditional two-court system	Picard-Fritsche <i>et al.</i> 2011 Peterson 2014 Birnbaum <i>et al.</i> 2017	New York, USA Brooklyn, USA Toronto, Canada
IDACs result in more attendance at court for participants than the traditional two-court system	Mennerich <i>et al.</i> 2005 ⁹¹ Rempel and Katz 2011	New York, USA New York, USA
Case processing takes longer in IDAC than in traditional 2-court process.	Rempel and Katz 2011 ⁹² Cissner <i>et al.</i> 2014 ⁹³ Peterson 2014	New York, USA New York USA Brooklyn, USA
Case processing takes longer in traditional 2-court process than in IDVC.	Schluetter <i>et al.</i> 2011 Vermont Center for Justice Research 2011; 2013 Cissner <i>et al.</i> 2014	Vermont, USA Vermont, USA New York, USA
Higher conviction rates in IDVCs (compared to traditional 2-court process)	Picard- Fritsche <i>et al.</i> , 2011 Peterson 2014 Cissner <i>et al.</i> 2014 ⁹⁴	New York, USA Brooklyn, USA New York, USA
Similar/equal conviction rates between IDVC and traditional 2-court process	Mennerich <i>et al.</i> 2005 Rempel and Katz 2011 Schluetter <i>et al.</i> 2011 ⁹⁵	New York, USA New York, USA Vermont, USA

⁹¹ More appearances overall, but especially in relation to civil court matters in the IDVC.

⁹² Transfer time to the court delayed proceedings for around 6 weeks which may explain the delay.

⁹³ In a comparison of New York Courts, 2 of 3 studies evidenced that case processing takes longer in IDVC than traditional 2-court process, the third study showed no impact.

⁹⁴ Conviction rates in the IDVC were higher but the evidenced differences were not statistically significant.

⁹⁵ For all (domestic and non-domestic) crimes

Lower conviction rates in IDVC (compared to traditional two-court process)	Schluetter <i>et al.</i> 2011 ⁹⁶	Vermont, USA
Lower recidivism rates in IDVC (compared to traditional two-court process)	Schluetter <i>et al.</i> 2011 Coll and Stewart 2007	Vermont, USA Idaho, USA
Equal recidivism rates (between IDVC and traditional two-court process)	Mennerich <i>et al.</i> 2005 Rempel and Katz 2011 Peterson 2014 Cissner <i>et al.</i> 2014	New York, USA New York, USA Brooklyn, USA New York, USA
Higher recidivism rates in IDVC (compared to traditional two-court process)	Peterson 2014 ⁹⁷ Picard-Fritsche <i>et al.</i> 2011 ⁹⁸	Brooklyn, USA New York, USA
Longer time to obtain a protective order in IDVC (compared to traditional 2-court process)	Rickard 2011	New York, USA
Equal number of protective orders issued by IDVC as in traditional two-court system	Rickard 2011	New York, USA
Settlement (dismissals and guilty pleas) more likely in IDVC than criminal court comparison	Rempel and Katz 2011 Picard-Fritsche <i>et al.</i> 2011	New York, USA New York, USA
Decrease in family conflict for IDVC participants (compared to those in the traditional two-court process)	Coll and Stewart 2007	Idaho USA

⁹⁶ For domestic crimes only.

⁹⁷ Peterson (2014) highlights that the higher rates of recidivism may be attributed to victims' increased awareness of risk.

⁹⁸ In relation to breaches of protective orders only.

More changes in parenting arrangements following conclusion of IDVC case compared to traditional 2-court process ⁹⁹	Birnbaum <i>et al.</i> 2017	Toronto, Canada
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⁹⁹ Decrease in number of mothers who had sole custody; increase in joint decision-making between parents.



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This document is also available from our website at www.gov.scot.

ISBN: 978-1-83960-088-3

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for
the Scottish Government
by APS Group Scotland
PPDAS626550 (09/19)
Published by
the Scottish Government,
September 2019



Social Research series
ISSN 2045-6964
ISBN 978-1-83960-088-3

Web and Print Publication
www.gov.scot/socialresearch

PPDAS626550 (09/19)