

DOMESTIC VIOLENCE SAFETY AND ACCOUNTABILITY AUDIT

FINDINGS AND RECOMMENDATIONS FOR PROSECUTION AND PROBATION RESPONSES

City of Bellingham Prosecutor's Office
Whatcom County District Court Probation
Whatcom County Prosecutor's Office

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EXECUTIVE SUMMARY

A morning in the life of Jean Jones:¹

Jean Jones was getting dressed to go to her class...Her husband, John Jones, did not want her to go...[he] grabbed Jean by the hair and twisted her head around. He also punched her in the head and then left taking their car... [and] Jean's wallet that contained...currency and change as well as her ID, bank card, and Social Security card...she has always been afraid of what John would do if she reported the assaults... She is sure John will come after her when he gets out of jail. She told me "you don't know John like I do"...she would put her hands over her face and repeat, "I'm so afraid, I'm so afraid"...she needed the cash as she was trying to rent an apartment...Told me she is beaten often, usually on Friday or Saturday...[Officer:] I spent some time trying to convince Jean that John was not going to stop assaulting her and that her best hope was to tell me what he had done to her...I believe her fear is well founded.

An evening in the life of Susan Smith:

*Susan Smith was crying uncontrollably and did not want to speak to the police at first...she said she was fearful that Steve Smith would harm her if she reported anything to the police...Steve became enraged, yelling and threatening her...pulled her by the hair and held up his fist to her face threatening to hit her...pushed her several times...Susan was crying uncontrollably and had her face hid behind her hands and was shaking her head back and forth, like she couldn't believe the police were there...kept saying that she is scared to say anything because of what Steve might do to her...she is scared to death of him... he has always gotten away with crimes in his past and she doesn't see how anything she reports will do any good because Steve will just get off again...he has been very possessive and controlling...called her several foul names, including "c***" and "b****" and he threatened to kill her...grabbed her by the hair...told her that he has nothing to lose...told her "when you die, you'll go to f***in hell"...*

Jean and Susan's experiences became cases in different jurisdictions with different prosecutors, but they have much in common. Each woman is trying to manage her life in and around a persistent, unwavering batterer. Each woman's day and night is steeped in doubt that any criminal legal intervention is going to help. Asking questions from the standpoint of a victim of battering² is a key principle of the Safety Audit design. An Audit team is constantly asking how practitioners and processes take into account her³ whole experience. Jean and Susan's "cases"

¹ From case files reviewed during the safety audit. Names and other identifying details have been changed. Material is quoted directly from case file documents.

² *Battering* describes a pattern of physical, sexual, and emotional violence, intimidation, and coercion used to establish or maintain control over an intimate partner. A wide range of behavior gets lumped under the category of "domestic violence," particularly as the criminal legal system response has changed over the past thirty years. Battering is distinctive for the variety of coercive tactics used by batterers and the level of fear it produces for adult victims and their children, as well as its potential lethality. For a brief discussion of the distinction between battering and other acts of domestic violence, see "Effective Interventions in Domestic Violence Cases: Context is Everything," Loretta Frederick and Julie Tilly, 2001; available at <http://www.bwjp.org>.

³ Both men and women use violence in intimate relationships, although how that occurs and the consequences differ greatly. Information from police reports, emergency room visits, counseling centers, divorce courts, and community social service agencies points to a significant gender disparity in who initiates violence, who is more physically

helped the Audit team keep the real lives and experiences of victims of battering at the center of its work. They raised many questions about safety, risk, and danger, and the ways in which those who responded were organized and prepared to act.

How do prosecution and probation recognize and respond to the complexities of risk and safety for all victims of domestic violence in the City of Bellingham and Whatcom County?

The City of Bellingham and Whatcom County have been very willing to ask “how are we doing?” in building a fabric of community safety and accountability around battering. In 2002, under the guidance of the Bellingham-Whatcom County Commission Against Domestic Violence, the communities completed a Safety Audit of their response to domestic violence cases from the point of a 911 call to law enforcement response and jail booking and release. Its findings were made widely available within the community and the state.⁴ They have collaborated again to take a close look at prosecution and probation.

That Bellingham and Whatcom County decided to step into the Safety Audit process again speaks to the connection, dedication, and strengths of the community and the agencies involved. Victims of battering who encounter prosecution and probation in Bellingham and Whatcom County start with a response that emphasizes victim support, a commitment to safety, and an understanding of why many victims may be reluctant to be drawn into the criminal legal system. There is also a reliable community framework of attention to systemic and policy changes that increase safety for victims and accountability for batterers.

Methodology

The Domestic Violence Safety and Accountability Audit, developed by Praxis International, Inc., uses a local team to look at how work routines and ways of doing business strengthen or impede safety for victims of battering.⁵ By asking **how** something comes about, rather than looking at the individual in the job, an Audit discovers systemic problems and produces recommendations for longer-lasting change. The Safety Audit is designed to leave communities with new skills and perspectives that can be applied in an ongoing review of its coordinated community response. It is built on a foundation of understanding 1) institutional case processing, or how a victim of battering becomes “a case” of domestic violence; 2) how a response to that case is organized and coordinated within and across interveners; and, 3) the complexity of risk and safety for each victim of battering.

Three agencies offered their policies, practices, and case files for review during this Audit, as well as contributed members to the local team: City of Bellingham Prosecutor’s Office,

harmed, and who seeks safety. Women are far more likely to be victims of battering and men more likely to be the perpetrators. Some of the language in this report reflects that reality.

⁴ *A Report from the 2002 Domestic Violence Safety and Accountability Audit*, available at <http://www.dvcommission.org/>.

⁵ Praxis International, Inc., (218) 525-0487; www.praxisinternational.org. Communities nationwide have used the Safety and Accountability Audit to explore criminal and civil legal system response to domestic violence, the intersection of domestic violence and child abuse, and the role of supervised visitation and exchange in post-separation violence.

Whatcom County Prosecutor's Office, and Whatcom County District Court Probation. The team completed its data collection between April and October 2006. Its findings are based on information gathered via two community focus groups (one with survivors and one with victim advocates), thirty-five individual interviews, forty observations of court hearing and related activities, and analysis of documents from forty-four prosecution and probation case files.

Discovering gaps in safety and accountability

The Audit Team's findings center on thirteen aspects of criminal legal system response, and prosecution and probation in particular, that need additional attention in order to provide the most safety-driven and victim-oriented response possible. It is important to note that the focus of the report is not to document what is working well, but rather to address those institutional practices that can be retooled to better serve the goal of victim safety.

1. Victim safety is compromised by direct contact and exposure to the defendant and the defendant's family and friends in the Whatcom County Courthouse in-custody viewing room and in the Bellingham Municipal Court Building.
2. Victims of domestic violence have little direct communication with City of Bellingham or Whatcom County prosecutors.
3. Charging and consequences related to violations of no-contact orders and orders for protection are not fully explored and applied in cases brought to the City of Bellingham Prosecutor's Office.
4. The proactive and victim-centered daily activities of the Bellingham Prosecutor's Office Victim Witness Advocate are not integrated into agency practices in ways that would maintain this level of support across personnel changes.
5. Attention to the presence, impact, and evaluation of substance abuse is inconsistent in domestic violence cases that reach Whatcom County District Court Probation.
6. Domestic violence perpetrator treatment evaluations and progress reports lack standardization, detail, and in some cases, timeliness.
7. Whatcom County District Court Probation does not have access to all law enforcement data bases in the jurisdictions it serves.
8. Whatcom County District Court Probation is not represented at the weekly multidisciplinary Domestic Violence Team meeting.
9. There is limited contact and communication between victims and probation officers in domestic violence cases that reach District Court Probation.
10. Victims of domestic violence do not receive timely and consistent contact by and access to victim support services in the Whatcom County Prosecutor's Office.

11. Whatcom County Prosecution domestic violence case files lack documentation regarding victim contacts and concerns, case progression, and decision-making.
12. Victims' individual risk and safety needs are not consistently accounted for in domestic violence cases that reach the Whatcom County Prosecutor's Office.
13. Alternative prosecution strategies are not routinely utilized to their fullest potential in cases that reach the Whatcom County Prosecutor's Office.

Caveats and cautions

Exploring prosecution and probation responses to domestic violence cases is a tall order. The Audit team had much ground to cover and many paths that it took and could have taken. Each of the three work groups – city prosecution, district court probation, and county prosecution – defined its own inquiry and followed certain trails that caught its attention. It is important in reviewing the list of gaps or reading the report to not assume that an identified gap is necessarily exclusive to city or county prosecution or to probation. Because of the uniform ways that the United States' criminal legal system is structured, there is potential for considerable cross-over and similarity in the gaps that each work group discovered. Readers are also cautioned to remember that the gaps identified are not the only paths that could be pursued in examining the community response to battering and domestic violence. A Safety and Accountability Audit raises as many questions as it answers. It is meant to be a dynamic process. It is as much an ongoing way of looking at and asking questions about how we intervene, as it is a time-limited, defined inquiry. Readers are also reminded that the focus of the report is to document practices that need improvement and attention.

As the team worked through its analysis of the information gathered it also identified aspects of the prosecution and probation responses that it was less certain about than the areas that became gaps. It developed a “need more information” list in order to keep track of them and encourage further inquiry. It includes:

- links between victim services in the prosecution and probation offices and community-based advocacy;
- supervision of felony domestic violence offenders;
- the mission, purpose, and function of the weekly multidisciplinary domestic violence team meeting (the “Wednesday DV Meeting”); and,
- use, modification, and rescission of criminal no-contact orders.

Next steps

Victims of battering are at the center of this Safety Audit. The thirteen gaps were discovered by asking: Does this practice or policy make it safer for victims of battering? Is there a gap between

a particular practice or policy and what a victim of battering needs in order to be safe from ongoing abuse and violence? The criminal legal system has not been well organized historically to account for battering and its impact. A Jean or Susan who is drawn into this large and complicated institution can easily become the “unsupportive victim” or “victim problem,” as the Audit Team sometimes heard victims described in different and particularly difficult cases. Yet buried in the pages and forms of many case files there was much detail and context to reinforce a victim’s skepticism that having a prosecutor’s office involved would necessarily improve her safety or provide timely and reliable sanctions for the abuse, violence, and threats she had experienced. There was often much to reinforce the focus groups’ identification of accessibility, communication, access to information, timeliness, and ongoing support as weak points in the fabric of safety.

As the Audit Team identified gaps, it developed an understanding of how each gap was created by the ways that work processes are currently organized, while also pointing to the kinds of change that would help close the gaps in prosecution and probation responses. This report offers a starting point, a guide for where to begin in changing policy, administrative procedures, conceptual practices, linkages within and across agencies, and other aspects of the ways in which the work of prosecutors, probation officers, and victim support specialists is organized to respond to domestic violence cases. The team also identified who should be involved in the design of those changes. The report presents each gap in a way that an ad hoc work group or committee could initiate the discussion and craft solutions for closing the gap.⁶

The three participating agencies and the Bellingham-Whatcom County Commission Against Domestic Violence will carefully review this Audit report and its recommendations. Implementation will require a commitment and willingness to explore the questions and issues raised in its pages. It will also require the involvement of community-based domestic violence agencies and survivors of battering in many of the discussions and problem-solving.

The findings and recommendations in the report are linked with and continue the inquiry that began with the 2002 Bellingham-Whatcom County Safety Audit. It reinforces the recognition of the need and commitment to: 1) strengthen the overall criminal legal system and community understanding of risk and danger in the context of battering; 2) strengthen the coordinated community response; 3) expand ongoing victim advocacy, support, and access to community services; 4) continue to examine and define the meaning of victim safety and batterer accountability, including their meanings for culturally and racially distinct communities; and, 5) ground policy and practice in the expertise of victims of battering.

It is a bold step for any agency to examine its own work and publicly share the results with others. It is with this courage that the City of Bellingham and Whatcom County will move forward to launch the next steps. The Bellingham-Whatcom County Commission Against Domestic Violence will do all it can to support the discussions and problem-solving that will refresh the mission, purpose, and function of each system, agency and worker that is part of the community response to battering and abuse.

⁶ The complete report is available from the Bellingham-Whatcom County Commission Against Domestic Violence, (360) 312-5700; or, <http://www.dvcommission.org/>.

Key Findings from the Bellingham-Whatcom County Domestic Violence Safety & Accountability Audit

COB - City of Bellingham
 WC - Whatcom County
 WCSO - Whatcom County Sheriff's Office
 DV - domestic violence

<i>Discovering gaps</i>	Rules & regulations	Administrative practices	Resources	Concepts & theories	Linkages	Mission, purpose, & function	Accountability	Education & training	<i>Who should be involved ? (But not limited to..)</i>
	What kind of change might close this gap?								
1) Victim safety is compromised by direct contact and exposure to the defendant and the defendant's family and friends in the Whatcom County Courthouse in-custody viewing room and in the Bellingham Municipal Court Building.		✓	✓		✓	✓		✓	COB and WC Courts judicial officers and court administrators; COB and WC prosecuting attorneys; WC DV Case Specialist; COB Victim Witness Advocate; WCSO; Bellingham Police Department, community-based DV advocates; survivors of DV; defense attorneys
2) Victims of domestic violence have little direct communication with City of Bellingham or Whatcom County prosecutors.		✓	✓	✓		✓		✓	<u>City of Bellingham Prosecutor's Office</u> Prosecuting attorneys, Victim Witness Advocate, City Attorney, Survivors of DV <u>Whatcom County Prosecutor's Office</u> Prosecuting attorneys, DV Case Specialist, misdemeanor and felony case supervisors, WC Prosecutor, clerical staff, survivors of DV
3) Charging and consequences related to violations of no-contact orders and orders for protection are not fully explored and applied in cases brought to the City of Bellingham Prosecutor's Office.		✓	✓	✓			✓	✓	COB prosecutors, COB judicial officers, WC Jail administration, COB Police Department, COB Victim Witness Advocate, community-based advocates, survivors of DV
4) The proactive and victim-centered daily activities of the City Prosecutor's Office Victim Witness Advocate are not integrated into agency practices in ways that would maintain this level of support across personnel changes.		✓					✓		COB Victim Witness Advocate, COB prosecutors, City Attorney, community-based DV advocates, survivors of DV
5) Attention to the presence, impact, and evaluation of substance abuse is inconsistent in domestic violence cases that reach WC District Court Probation.	✓	✓			✓		✓	✓	Probation officers and supervisor, prosecutors, judicial officers, defense attorneys, DV perpetrator treatment providers, substance abuse treatment providers, law enforcement officers, community-based advocates

Key Findings from the Bellingham-Whatcom County Domestic Safety and Accountability Audit

<i>Discovering gaps</i>	Rules & regulations	Administrative practices	Resources	Concepts & theories	Linkages	Mission, purpose, & function	Accountability	Education & training	<i>Who should be involved ? (But not limited to..)</i>
	What kind of change might close this gap?								
6) Domestic violence perpetrator treatment evaluations and progress reports lack standardization, detail, and in some cases, timeliness.	✓	✓			✓		✓	✓	WC District Court probation officers and supervisor, WC judicial officers, DV perpetrator treatment providers, Bellingham-Whatcom County Commission Against DV, community-based DV advocates
7) Whatcom County District Court Probation does not have access to all law enforcement data bases in the jurisdictions it serves.		✓	✓		✓		✓	✓	COB Police Department, Cities of Lynden, Sumas, Everson, and Nooksack Police Departments, WC District Court Probation, information technology offices within the COB and WC governments
8) Whatcom County District Court Probation is not represented at the weekly multidisciplinary Domestic Violence Team meeting.		✓	✓		✓		✓		WC District Court presiding judge, lead representatives (prosecution and law enforcement) to the DV team weekly meeting, WC District Court probation officers and supervisor
9) There is limited contact and communication between victims and probation officers in domestic violence cases that reach WC District Court Probation.	✓	✓	✓		✓	✓	✓		WC District Court Probation, city and county prosecution victim support specialists, WC District Court presiding judge, community-based DV advocates, survivors of DV
10) Victims of domestic violence do not receive timely and consistent contact by and access to victim support services in the Whatcom County Prosecutor's Office.		✓	✓	✓	✓	✓	✓	✓	WC DV Case Specialist and supervisor, Criminal Justice Advocate volunteer supervisor, WC Prosecutor, District and Superior Court judicial officers (regarding first appearance and other hearings), community-based advocates, survivors of DV
11) Whatcom County Prosecution domestic violence case files lack documentation regarding victim contacts and concerns, case progression, and decision-making.		✓	✓	✓	✓	✓			Deputy prosecuting attorneys, DV Case Specialist, supervisors, administrative staff, WC Prosecutor
12) Victims' individual risk and safety needs are not consistently accounted for in domestic violence cases that reach the Whatcom County Prosecutor's Office.		✓		✓	✓	✓	✓	✓	Prosecuting attorneys, WC DV Case Specialist, Criminal Justice Advocate volunteer supervisor, WC Prosecutor, survivors of DV, community-based DV advocates, judicial officers (regarding no-contact order rescission process)
13) Alternative prosecution strategies are not routinely utilized to their fullest potential in cases that reach the Whatcom County Prosecutor's Office.		✓			✓	✓		✓	Law enforcement officers, prosecuting attorneys, WC DV Case Specialist, WC Prosecutor, community-based DV advocates, survivors of DV, judicial officers

INTRODUCTION

A morning in the life of Jean Jones:⁷

Jean Jones was getting dressed to go to her class...Her husband, John Jones, did not want her to go...[he] grabbed Jean by the hair and twisted her head around. He also punched her in the head and then left taking their car... [and] Jean's wallet that contained...currency and change as well as her ID, bank card, and Social Security card...she has always been afraid of what John would do if she reported the assaults...She is also afraid of other family members' retaliation...She is sure John will come after her when he gets out of jail. She told me "you don't know John like I do"...she would put her hands over her face and repeat, "I'm so afraid, I'm so afraid"...I could see her begin shaking when she looked at the caller ID...Jean was too afraid to go into the yard to get her car...She kept repeating that she was "so afraid"...she needed the cash as she was trying to rent an apartment...Told me she is beaten often, usually on Friday or Saturday...[Officer:] I spent some time trying to convince Jean that John was not going to stop assaulting her and that her best hope was to tell me what he had done to her...I believe her fear is well founded.

Jean sent a note to school with her ten-year old child: *Please call Betty at DSHS 111-1111 Call 911.* That set in motion events that brought law enforcement officers to her home. John was arrested after he jumped out of a window and ignored officers' commands as he ran away from the house. He stopped only after struck with a Taser. He was charged with three misdemeanors: 4th degree assault, 2nd degree theft and resisting arrest. After two postponed trial dates and a third scheduled, John pled guilty to one charge of disorderly conduct. The sentence included two years probation, a \$150 fine, ninety-day suspended jail sentence, and a domestic violence assessment and compliance with recommendations. The resisting arrest and theft charges were dismissed. The prosecutor did not file a felony drug possession charge that was considered after jail officers found a pipe and residue during booking. Over the next sixteen months there was another arrest and disorderly conduct charge, two revocation actions filed (and contested by John) for failure to comply with domestic violence evaluation and treatment, and another arrest and revocation: *Failure to maintain future good behavior...the defendant was arrested for Unlawful Imprisonment/Assault 4 DV.*

An evening in the life of Susan Smith:

Susan Smith was crying uncontrollably and did not want to speak to the police at first...she said she was fearful that Steve Smith would harm her if she reported anything to the police...Steve became enraged, yelling and threatening her...pulled her by the hair and held up his fist to her face threatening to hit her...pushed her several times...Susan was crying uncontrollably and had her face hid behind her hands and was shaking her head back and forth, like she couldn't believe the police were there...kept saying that she is scared to say anything because of what Steve might do to her...she is scared to death of him...he threatens to kill himself and/or her because he has nothing else to live for...he is not worried about Restraining Orders because that will not stop

⁷ From case files reviewed during the safety audit. Names and other identifying details have been changed. Material in *italics* is quoted directly from case file documents.

*him...he has always gotten away with crimes in his past and she doesn't see how anything she reports will do any good because Steve will just get off again...he has been very possessive and controlling...called her several foul names, including "c****" and "b*****" and he threatened to kill her...grabbed her by the hair...told her that he has nothing to lose...told her "when you die, you'll go to f***in hell"...threatened to take her truck...pushed and shoved her...[14 year-old] was scared that her mother was being hurt...Steve threatens to beat [child] if she doesn't do what he says...[6 year-old] "my daddy uses a belt on me"...he thought his daddy hit his mommy...Steve repeatedly tells her that he has nothing to lose and feels his life is not worth living and would take anyone with him...is intimidating all of the time and threatens her on and off, about once a week...Steve said "you want the police called, go ahead...when I get out I will find you, you know I will...he was angry and extremely aggressive. [In the two years prior to this evening] Steve choked and slapped her ...She quit her job, took her daughter from another relationship out of school, packed her belongings and moved into a women's shelter...sexually assaulted her...when she told him she did not want to have sex with him...arrested in King County for breaking her nose...She later dropped the charges because he threatened and intimidated her into doing so...would pin her up against the walls or floors by her neck, slap her, push her against things, pull her by the hair, tell her she is fat and not feminine enough...chipped her teeth...told Susan that he would kill her if she ever cheated on him...she did not want any contact with Steve because she is afraid for her and her [children's] safety. She does not want him to know where she is at and she does not want to deal with law enforcement back where the alleged incidents occurred.*

Susan went to a neighbor's and asked to spend the night. When Steve came after them, the neighbor called 911 and left the phone line open, initiating the police response. Steve *would not come to the door after repeated knocking, would not answer the phone, and would not come to the door once the door was opened with [Susan's] key...did not comply with repeated requests to put his hands up and surrender...the Taser was deployed.* Steve was arrested for Assault 4th Degree – DVPA. Four months later the case was dismissed after Susan withdrew her statement and her neighbor was unavailable to testify. Resisting arrest charges were not pursued.

Jean and Susan's experiences became cases in different jurisdictions with different prosecutors, but they have much in common. Each woman is trying to manage her life in and around a persistent, unwavering batterer. Each woman's day and night is steeped in doubt that any criminal legal intervention is going to help: *You don't know John like I do*, as Jean tried to convey; *he has always gotten away with crimes in his past*, as Susan emphasized. Asking questions from the standpoint of a victim of battering⁸ is a key principle of the Safety Audit design. An Audit team is constantly asking how practitioners and processes take into account

⁸ *Battering* describes a pattern of physical, sexual, and emotional violence, intimidation, and coercion used to establish or maintain control over an intimate partner. A wide range of behavior gets lumped under the category of "domestic violence," particularly as the criminal legal system response has changed over the past thirty years. Battering is distinctive for the variety of coercive tactics used by batterers and the level of fear it produces for adult victims and their children, as well as its potential lethality. For a brief discussion of the distinction between battering and other acts of domestic violence, see "Effective Interventions in Domestic Violence Cases: Context is Everything," Loretta Frederick and Julie Tilly, 2001; available at <http://www.bwjp.org>.

her⁹ whole experience. Jean and Susan’s “cases” helped the audit team keep the real lives and experiences of victims of battering at the center of its work. They raised many questions about safety, risk, and danger, and the ways in which those who responded were organized and prepared to act.

How do prosecution and probation recognize and respond to the complexities of risk and safety for all victims of domestic violence in the City of Bellingham and Whatcom County?

It is a brave act for systems and communities to examine their own work and share the results with others. Those intervening in battering and domestic violence want to believe that their good intentions and commitment make all victims safer and all offenders more accountable. Peoples’ lives are complex, however, as are the elements of risk and safety for any victim of battering. Prosecution and probation, along with most of the institutions that intervene in domestic violence, were not designed with the unique characteristics of battering in mind. The legal system reform work that has been underway since the 1970s seeks a better fit between what people need to stay safe and what institutions provide. The Safety Audit process complements this inter-agency reform work. The process of analyzing what is happening within different aspects of institutional response frequently points to the solutions for gaps in safety. The City of Bellingham and Whatcom County have been very willing to ask, ‘how are we doing?’ In 2002, under the guidance of the Bellingham-Whatcom County Commission Against Domestic Violence, the communities completed a Safety Audit of their response to domestic violence cases from the point of a 911 call to law enforcement response and jail booking and release. Its findings were made widely available within the community and the state.¹⁰ They have collaborated again to examine and refresh their coordinated response, this time taking a close look at prosecution and probation.

Methodology

The Domestic Violence Safety and Accountability Audit, developed by Praxis International, Inc., uses a local team to look at how work routines and ways of doing business strengthen or impede safety for victims of battering.¹¹ By asking *how* something comes about, rather than looking at the individual in the job, an Audit discovers systemic problems and produce recommendations for longer-lasting change. The Safety Audit is designed to leave communities with new skills and perspectives that can be applied in an ongoing review of its coordinated community response.

⁹ Both men and women use violence in intimate relationships, although how that occurs and the consequences differ greatly. Information from police reports, emergency room visits, counseling centers, divorce courts, and community social service agencies points to a significant gender disparity in who initiates violence, who is more physically harmed, and who seeks safety. Women are far more likely to be victims of battering and men more likely to be the perpetrators. Some of the language in this report reflects that reality.

¹⁰ *A Report from the 2002 Domestic Violence Safety and Accountability Audit*, available at <http://www.dvcommission.org/>.

¹¹ Praxis International, Inc., (218) 525-0487; www.praxisinternational.org. Over forty communities nationwide have used the Safety and Accountability Audit to explore criminal and civil legal system response to domestic violence, the intersection of domestic violence and child abuse, and the role of supervised visitation and exchange in post-separation violence.

The Safety Audit is built on a foundation of understanding 1) institutional case processing, or how a victim of battering becomes “a case” of domestic violence; 2) how response to that case is organized and coordinated within and across interveners; and, 3) the complexity of risk and safety for each victim of battering. To learn about victims’ experiences and institutional responses, the Audit team conducts interviews, including victim/survivor focus groups; observes interveners in their real-time-and-place work settings; and, reads and analyzes forms, reports, case files, and other documents that organize case processing. Over a series of debriefing sessions, the team makes sense of what it has learned in order to articulate problem statements, support them with evidence, and frame the kinds of changes that need to occur.

Since the Safety Audit focuses on institutional processes rather than individual workers, there are no systematic sampling procedures. Instead, interviews, observations, and text analysis sample the work process at different points to ensure a sufficient range of experiences. Interviews and observations are conducted with practitioners who are skilled and well-versed in their jobs. They are co-investigators with the Audit team. Their knowledge of the institutional response in everyday practice and their first-hand experience with the people whose cases are being processed supply many of the critical observations and insights of the audit.

Safety Audit data collection and analysis pay attention to eight primary methods that institutions use in standardizing actions across disciplines, agencies, levels of government, and job function. These “Audit trails” help point the way to problems and solutions.

1. Rules and Regulations: any directive that practitioners are required to follow, such as policies, laws, memorandum of understanding, and insurance regulations.
2. Administrative Practices: any case management procedure, protocols, forms, documentary practices, intake processes, screening tools.
3. Resources: practitioner case load, technology, staffing levels, availability of support services, and resources available to those whose cases are being processed.
4. Concepts and Theories: language, categories, theories, assumptions, philosophical frameworks.
5. Linkages: links to previous, subsequent, and parallel interveners.
6. Mission, Purpose, and Function: mission of the *overall process*, such as criminal law, or child protection; purpose of a *specific process*, such as setting bail or establishing service plans; and, function of a worker in a *specific context*, such as the judge or a prosecutor in a bail hearing.
7. Accountability: each of the ways that processes and practitioners are organized to a) hold abusers accountable for their abuse; b) be accountable to victims; and, c) be accountable to other intervening practitioners.

8. Education and Training: professional, academic, in-service, informal and formal.

In a Safety Audit, the constant focal point is the *gap* between what people experience and need and what institutions provide. At the center of the interviews, observations, and case file analysis is the effort to see the gap from a victim's position and to see how it is produced by case management practices. In locating how a problem is produced by institutional practices, team members simultaneously discover how to solve it. Recommendations then link directly to the creation of new standardizing practices, such as new rules, policies, procedures, forms, and training. For these reasons, a Safety Audit report does not highlight what is working well, but rather, what could be working better to fill that gap.

Audit question, scope, and data collection

The Safety Audit explored this question:

How do prosecution and probation recognize and respond to the complexities of risk and safety for all victims of domestic violence in the City of Bellingham and Whatcom County?

This question continued the examination of case processing that began with the previous Bellingham-Whatcom County Safety Audit. Three agencies offered their policies, practices, and case files for review during this audit, as well as contributed members to the Audit team. They include:

City of Bellingham Prosecutor's Office (City Prosecutor/Prosecution): three prosecutors and one general crime victim support position. In 2005 the office filed 462 misdemeanor domestic violence related charges, representing approximately 355 cases.

Whatcom County Prosecutor's Office (County Prosecutor/Prosecution): seventeen prosecutors assigned to district (4), juvenile (2), and superior (11) courts. The victim/witness unit includes a domestic violence case specialist, victim/witness coordinator, sexual assault case specialist, and legal secretary. The office filed 482 misdemeanor domestic violence charges in District Court in 2005, representing approximately 369 cases, and handled 276 felony domestic violence cases in Superior Court.

Whatcom County District Court Probation (DC Probation): eleven probation officers, including two assigned to the domestic violence unit (DV Unit), and one probation officer supervisor. In 2005 probation officers supervised approximately 350 domestic violence cases involving approximately 815 domestic violence charges (most at the misdemeanor level). DV Unit caseloads average about 80 probationers per officer, while other officers have a caseload of 250-300, of which twelve to forty may be domestic violence cases.¹²

¹² The 815 domestic violence charges represent new charge referrals and are duplicated counts, as a charge may be counted once if referred for pre-trial supervision and counted a second time if referred post-sentence.

The Audit team completed a two-day training in April 2006 and conducted its data collection over the next six months. The local Audit coordinator and another domestic violence commission staff member attended a week-long training institute prior to the audit. Three of the team members, including the coordinator, participated in the 2002 audit. To organize its work, the team split into three smaller groups: city prosecution, county prosecution, and district court probation. The work groups met individually and the team came together for eight debriefing meetings. Its findings are based on information gathered during the following activities.

- ✓ 2 Community focus groups, one with survivors and one with victim advocates, with a total of sixteen participants.
- ✓ 35 Individual interviews, including prosecutors (misdemeanor and felony), prosecution-based victim advocates, victim support volunteers, legal assistants, community advocates, probation officers, and agency supervisors.
- ✓ 40 Observations, including First Appearances (Bellingham Municipal, District, and Superior Courts), Bellingham Municipal domestic violence court, the Wednesday DV meeting, prosecution-based advocates, Whatcom County District domestic violence court (probation hearings, revocations and no-contact order (NCO) rescission requests), NCO rescission group meeting, Superior Court criminal calendar, non-DV Unit probation intake, DV Unit probation intake, and, probation volunteer victim advocate.
- ✓ Text analysis of 11 City of Bellingham prosecution case files, 9 Whatcom County prosecution misdemeanor case files, 7 Whatcom County felony case files, 12 District Court Probation case files, and 12 sets of probation chronological notes.

Cues from the focus groups

I just don't feel safe in this world.

He gets out of jail, gets all kinds of services and programs, and I don't have the money to change the locks on the door. They suggest I move, change my phone number, and get a new identity. I live here; my kids go to school here. Why should I have to go through all these changes and uproot my life in order to feel safe?

I don't know what I need to know!

Focus groups help ground a Safety Audit in the actual experiences of victims of battering. They open questions for the team about how people experience different practices and provide cues about where to dig deeper in other interviews and in the observations and text analysis. The survivor and community advocate focus groups conducted early on in this Audit contributed first-hand accounts of interactions with intervening systems and the perspectives of advocates who work with women in many settings, including prosecution and probation.

All survivors emphasized the importance of timely information about case procedures and processes, as well as ready access to someone within the prosecutor's office who could keep them apprised of their case. Those who had not received this type of response felt victimized by the lack of follow up and information. Survivors' need for information was urgent and many stated they would be more willing to work with a prosecutor's office if they felt more informed. For example, two women described how their willingness to work with prosecutors was compromised by requests to take certain kinds of tests (e.g., DNA and polygraph), without first receiving clear information about the purpose of the tests. Others articulated the challenges of navigating a complex legal system, the need for processes to be explained without professional jargon, and the importance of the prosecutor's office understanding that their lives were filled with daily challenges to their safety and well-being. All of these obstacles made regular contact and communication from the prosecutor's office important. Several participants indicated that immediate, personal contact from the prosecutor's office following the incident was critical to their trust that this intervention was worth supporting. All agreed that when a knowledgeable domestic violence advocate was present *things changed* and they received more *respect and response*. All agreed with a survivor who suggested that an advocate be with them at all times during their interaction with the prosecutor's office and the court proceedings.

These cues of accessibility, communication, access to information, timeliness, and ongoing support were also reinforced by the community advocates' focus group. From their experiences in working with battered women, it creates a *disconnect* or gap between what the prosecution *worked for* and what the victim *hoped for* when these elements are missing from the prosecution response.

Findings and Recommendations

Each team member had several opportunities to participate in framing the findings and to review and comment on this report. As a result of this collective effort it has been rewritten, clarified, and expanded, and problem statements have been set aside. The goal was to produce an account of gaps and changes that the team as a whole could agree on, while making note of questions that required further inquiry or fell outside of the immediate scope of the audit.

Design and purpose

This report provides a summing up of the Audit team's work and identifies gaps to address in the ongoing intervention in domestic violence in Bellingham and Whatcom County. It uses quotes and excerpts from focus groups, individual interviews, case files, policies, and Audit team observations to support the findings. Each gap is presented in a way that an ad hoc work group or committee could initiate the discussion and craft solutions for closing the gap.

- Statement of the gap
- How is it a problem? For which victims of battering?
- What contributes to the gap?
- How do we close the gap?

- Who should be involved?

The team has made suggestions for how to close each gap, highlighting the type of changes that may need to occur. It has also identified who might be involved in that process, with an emphasis on contributions by victims of battering and the practitioners most directly responsible for safety and intervention. Again, the focus of the report is not to document what is working well, but how institutional practices can be retooled to better serve the goal of victim safety.

Recognizing a strong foundation

This is the second Safety and Accountability Audit for Bellingham and Whatcom County. That they decided to step into the process again speaks to the connection, dedication, and strengths of the community and the agencies involved. Their ongoing curiosity about the impact of their collective efforts – ‘Are we making it safer for victims of battering or inadvertently making it worse? Are we making it less possible for a batterer to cause harm or inadvertently reinforcing that harm?’ – reflects their commitment to staying with the complex tasks required in designing a meaningful response to domestic violence.

Victims of battering who encounter prosecution and probation in Bellingham and Whatcom County start with a response that emphasizes victim support, a commitment to safety, and an understanding of why many victims may be reluctant to be drawn into the criminal legal system. As expressed in the Whatcom County Prosecutor’s *Domestic Violence Protocol*, “she may be in hiding due to the fear of further assaults. She may refuse to assist or testify due to fear of retaliation by the defendant against her, her property, or her child. She may genuinely believe that this type of incident will never happen again.”

There is also a reliable community framework of attention to systemic change, such as the work of the Bellingham-Whatcom County Commission Against Domestic Violence, the Coordinated Judicial Response to Domestic Violence Subcommittee of the Whatcom County Law and Justice Council, and the Child Protection Services-Domestic Violence-Court Protocol Committee. These organizations and committees work together with local domestic violence agencies, community members, and criminal justice system personnel to implement systemic and policy changes to increase victim safety and offender accountability.

It is critical to recognize this strong foundation. A community without this base and commitment does not bother to ask how things are working for victims of battering.

Discovering gaps

The team also discovered gaps in the fabric of safety that the City of Bellingham and Whatcom County have tried to weave. Its findings center on thirteen aspects of criminal legal system response, and prosecution and probation in particular, that need additional attention in order to provide the most safety-driven and victim-oriented response possible.

1. Victim safety is compromised by direct contact and exposure to the defendant and the defendant's family and friends in the Whatcom County Courthouse in-custody viewing room and in the Bellingham Municipal Court Building.
2. Victims of domestic violence have little direct communication with City of Bellingham or Whatcom County prosecutors.
3. Charging and consequences related to violations of no-contact orders and orders for protection are not fully explored and applied in cases brought to the City of Bellingham Prosecutor's Office.
4. The proactive and victim-centered daily activities of the Bellingham Prosecutor's Office Victim Witness Advocate are not integrated into agency practices in ways that would maintain this level of support across personnel changes.
5. Attention to the presence, impact, and evaluation of substance abuse is inconsistent in domestic violence cases that reach Whatcom County District Court Probation.
6. Domestic violence perpetrator treatment evaluations and progress reports lack standardization, detail, and in some cases, timeliness.
7. Whatcom County District Court Probation does not have access to all law enforcement data bases in the jurisdictions it serves.
8. Whatcom County District Court Probation is not represented at the weekly multidisciplinary Domestic Violence Team meeting.
9. There is limited contact and communication between victims and probation officers in domestic violence cases that reach District Court Probation.
10. Victims of domestic violence do not receive timely and consistent contact by and access to victim support services in the Whatcom County Prosecutor's Office.
11. Whatcom County Prosecution domestic violence case files lack documentation regarding victim contacts and concerns, case progression, and decision-making.
12. Victims' individual risk and safety needs are not consistently accounted for in domestic violence cases that reach the Whatcom County Prosecutor's Office.
13. Alternative prosecution strategies are not routinely utilized to their fullest potential in cases that reach the Whatcom County Prosecutor's Office.

Caveats and cautions

Exploring prosecution and probation responses to domestic violence cases is a tall order. The Audit team had much ground to cover and many paths that it took and could have taken. Each of the three work groups – city prosecution, district court probation, and county prosecution – defined its own inquiry and followed certain trails that caught its attention. It is important in reading this report to not assume that an identified gap is necessarily exclusive to city or county prosecution or to probation. Because of the uniform ways that the United States' criminal legal system is structured, there is potential for considerable cross-over and similarity in the gaps that each work group discovered. For example, the challenges of responding to the impact of Crawford v. Washington, as addressed under Gap #13, are not limited to the Whatcom County Prosecutor's Office. Readers are encouraged to consider how any one gap might also be present in their own agency practices.

Readers are also cautioned to remember that the gaps identified are not the only paths that could be pursued in examining the community response to battering and domestic violence. A Safety and Accountability Audit raises as many questions as it answers. It is meant to be a dynamic process. It is as much an ongoing way of looking at and asking questions about how we intervene, as it is a time-limited, defined inquiry.

Lastly, readers are reminded that the focus of this report is not to document what is working well, but how institutional practices can be retooled to better serve the goal of victim safety.

Gap #1 Victim safety is compromised by direct contact and exposure to the defendant and the defendant's family and friends in the Whatcom County Courthouse in-custody viewing room and in the Bellingham Municipal Court Building.

How is it a problem? For which victims of battering?

To the public, a courthouse seems an environment where personal safety can be assured. While this may generally be the case, a courthouse is also the arena in which complicated and emotion-laden civil and criminal cases are heard and resolved. Plaintiffs and respondents, victims and offenders; people are very often in the same physical space. This is recognized in Washington state law under the "Crime Victims' Bill of Rights," which sets the expectation that victims will have *a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants* [RCW §7.69.303(6)].

For victims of domestic violence, bringing a private matter for which they may feel fear, shame, and blame into the courthouse and courtroom may be a difficult step in and of itself. When compounded by close proximity to the abuser or his friends and family, that victim may be even more afraid to appear. What if the abuser's family insists that the victim forgive him or verbally chastises her for calling the police? For domestic violence victims who may be reluctant to participate in criminal legal proceedings, proximity to the abuser may further convince them that a criminal outcome is not in their best interest. What if the abuser casts a look at the victim that carries familiar threats? Or whispers as he passes by, "Just wait till this is all over!" How can this victim be supported to speak freely in court in front of the defendant?

Victims and defendants will be in the same courtroom during different phases of a criminal or civil case. This is a reality and part of the legal process. However, when the court environment does not thoroughly take into account the dynamics of battering and how ongoing threats and intimidation can easily play out in an environment where the abuser has access to the victim, the victim is inadvertently placed at risk. Without placing victim safety first, our community's efforts to hold domestic violence offenders accountable may be jeopardized.

What contributes to the gap?

Team members completed fifteen observations of First Appearances in the in-custody viewing room at the Whatcom County Courthouse. The room is used in many ways, with different judicial officers presiding depending upon the court. First Appearances are held throughout the day, for example, by Bellingham Municipal Court (8:30 a.m.), Whatcom County District Court (1:30 p.m.), and Whatcom County Superior Court (3:00 p.m.). The room is ten by twelve feet (120 square feet). Two rows of chairs sit behind a table with a microphone and the viewing screen, where people can observe court proceedings in the jail. There are four chairs to a row, with three to four more chairs lining the wall. Everyone is visible to everyone else in the room. During one observation, the defendant's family verbally accosted the victim in the viewing room. The Victim Witness Advocate (VWA) from the City Prosecutor's Office was present and escorted the victim outside the room and assisted with safety planning.. One Whatcom County Deputy Sheriff is assigned to rotate through the Whatcom County Courthouse between 8:30 a.m.

Gap #1 Victim safety is compromised by direct contact and exposure to the defendant and the defendant's family and friends in the Whatcom County Courthouse in-custody viewing room and in the Bellingham Municipal Court Building.

and 4:30 p.m. and is not readily available in any one area, such as the viewing room. The VWA has the cell phone number of the deputy programmed into her cell phone. There is no separate area for victims to sit in the in-custody viewing room, so it is very likely they may be present in this small space along with family members or friends of the defendant. If present in the room, someone such as the Victim Witness Advocate or Domestic Violence Specialist can serve as a buffer, as demonstrated by the situation described above.

Team members also observed Domestic Violence Court in the Bellingham Municipal Court on four occasions. They noted the following safety concerns for victims:

- There is no law enforcement presence in Bellingham Municipal Court.
- The open hallway outside the courtroom gives the defendant and/or their family access to the victim.
- A defendant was observed addressing a victim in court when there was a no-contact order in place. The defendant made statements to the victim on two occasions, once when the victim walked by the defendant to enter the courtroom and the other when the defendant returned to his seat after addressing the court.
- The defendant and victim are both in the same areas, with opportunity for contact. Although there appeared to be no rules about who sits where, through interviews the Audit team learned that the VWA encourages victims to sit on the right hand side of the courtroom in the front row, which places the victim right behind the VWA and prosecutor. Regardless of whether the victim is supportive of prosecution, the VWA will suggest the victim sit away from the defendant as the defendant could be charged with violating a no-contact order.

Via their observations, team members also found that the setting and conditions within the courtrooms sometimes made it very difficult to hear what was being said and to understand what was happening. For example, one courtroom was very noisy, with side conversations that made it difficult to hear the proceedings and limited the ability of the judicial officer to have an impact on everyone in the courtroom. One victim that a team member had subsequent contact with in another setting reported that she had to call someone after the hearing to find out what had happened because she was unable to hear and understand the actions in the courtroom.

The setting of and conditions within the in-custody viewing room, in particular, contributed to victims' confusion and uncertainty about what was happening. For example:

- There is no room number assigned to the in-custody viewing room, in contrast to other offices and rooms within the courthouse. This makes it difficult to give directions to the room and difficult for victims to find it.
- Information on the signs in the in-custody viewing room is not current or correct regarding the court schedule and when and how to address the court. The sign only provides information about how to address the court on behalf of a defendant. If a victim wanted to speak on her own behalf or raise questions about her safety she would not

Gap #1 Victim safety is compromised by direct contact and exposure to the defendant and the defendant's family and friends in the Whatcom County Courthouse in-custody viewing room and in the Bellingham Municipal Court Building.

know whether or how she could do that.

- There is no information about community-based advocacy or victim services available from the prosecutors' offices.¹³
- A woman in the viewing room asked what the microphone on the table was for – “does anybody know?” – then, “I hope I'm in the right spot.” Five minutes later two other women entered the room and asked “am I in the right place?” and “can I wait in the hall?” No one was present from the county prosecutor's office and a bail bondsperson present tried to answer the questions.
- In a case involving a father's assault on his eight year old child, the child's mother and defendant's wife was in the viewing room, along with two minor children, including the child who was the victim of the assault. When a no-contact order was imposed and the mother was named as a protected party she expressed confusion as to why she was being named on the order. The bail bondsperson present attempted to explain the process to her.
- Rarely did the judge or commissioner ask if there was anyone in the viewing room who wanted to speak for or on behalf of the victim, or if there was anyone in the viewing room wanting to address the court regarding bail and/or release conditions.
- During one observation, ten women were in the viewing room, with four domestic violence cases on the Superior Court First Appearance calendar. No one checked in with any of the women to determine whether or not they were present because of the domestic violence cases. None of the women had an opportunity to speak with the Domestic Violence Specialist, who was in the room for a brief period of time.

Audit team members noted that the victim advocate for the City of Bellingham Attorney's Office was present for all of the city cases and had contact with any victims who came to the viewing room. Victim support from the prosecutor's office was more uneven for Whatcom County cases, resulting in confusion for victims, as illustrated in the above examples.

How do we close the gap?

While this gap is an issue for the courts and those providing oversight of its facilities, the team recommends that prosecutors take a leadership role in helping to create a safe environment for the victims they are serving. By increasing safety in the courtroom and addressing the safety needs of victims, prosecutors may be more likely to find that victims are willing to work with them on criminal matters. As safety is prioritized, offender accountability can be addressed in new ways.

¹³ Among the recommendations in the December 2006 Washington State Domestic Violence Fatality Review, *If I Had One More Day...*, is this: “Courts should have domestic violence resource information available throughout the court-house (e.g., in bathrooms, waiting areas, clerks' offices, Protection Order offices),” Recommendations #5.26 and 6.4. Many of the findings and recommendations in the fatality review mirror the findings of the Bellingham-Whatcom County Domestic Violence Safety Audit. The report is available from the Washington State Coalition Against Domestic Violence, <http://www.wscadv.org/index.htm>.

Gap #1 Victim safety is compromised by direct contact and exposure to the defendant and the defendant's family and friends in the Whatcom County Courthouse in-custody viewing room and in the Bellingham Municipal Court Building.

1. Make immediate changes to the in-custody viewing room to make it easier to find, minimize the close proximity of victims and defendants' families and friends, provide clear instructions about how to address the court, and provide information about community-based advocacy.
2. Ensure that the Victim Witness Advocate, Domestic Violence Specialist, or an alternate is present at all First Appearances.
3. Explore long-term changes in size, location, instructions, and function of the in-custody viewing room that better account for the dynamics of battering and safety considerations in domestic violence cases.
4. Increase ready access to law enforcement personnel at Whatcom County Courthouse in the event security is needed during First Appearance and other domestic violence related proceedings.
5. Increase law enforcement presence in Bellingham Municipal Court.
6. Explore the availability of the Bellingham Police Department Warrant Officer to provide security during the weekly Domestic Violence Court, at a minimum.
7. Conduct training and discussions with court personnel and judicial officers on safety issues and concerns for domestic violence victims in the courtroom and courthouse setting.
8. Explore procedures to ensure victim safety in the courtroom, such as seating protocols and staggered departures.
9. Involve survivors of battering in reviewing and developing courthouse and courtroom safety planning strategies.

Requires changes in:

- Administrative Practices
- Resources
- Linkages
- Education and Training
- Mission, Purpose, and Function

Who should be involved?

- √ City of Bellingham and Whatcom County Courts judicial officers and court administrators
- √ City of Bellingham and Whatcom County prosecuting attorneys
- √ Whatcom County Domestic Violence Case Specialist
- √ City of Bellingham Victim Witness Advocate
- √ Whatcom County Sheriff's Department
- √ Bellingham Police Department
- √ Community-based domestic violence advocates
- √ Survivors of domestic violence
- √ Defense attorneys

Gap #2 Victims of domestic violence have little direct communication with City of Bellingham or Whatcom County prosecutors.

How is it a problem? For which victims of battering?

Prosecutors and the victim support specialists in their offices both have important roles in supporting safety for victims of battering. It is the prosecutor, however, who is ultimately responsible for making decisions about case processing and legal outcomes. Prosecutors therefore need to be well informed about the status of the witnesses, victim, and evidence available to the case. A victim's experience of domestic violence is captured in the police report, which forms the basis of information available to a prosecutor. As police reports have improved, particularly in the area of risk assessment, prosecutors often have a clearer picture of the risk that a particular defendant poses to a particular victim. When prosecutors rely heavily on internal advocates to inform them of the victim's needs and concerns, they lose an opportunity to put a "face" to the story. Without a picture of and connection with the real person at the center of the case, prosecutors may inadvertently proceed in ways that do not reinforce victim safety.

Victims are well aware that prosecutors make decisions on their cases, even when victims have a close relationship with a victim specialist. This is not the same as having a conversation and connection with the prosecutor, however brief. It is important for victims to know that the prosecutor has heard their concerns and fears, just as it is important for them to hear from the prosecutor why certain actions and decisions are being made. Victims who are disconnected from the prosecutor may feel neglected and distrustful of the prosecutor and the system in general. Prosecutors who are disconnected from victims will be less likely to recognize when a particular prosecution strategy may put a victim of battering at more risk. Maintaining some form of communication between the prosecutor and victim adds another check and balance to the overall response if the victim advocate or specialist does not clearly communicate a victim's concerns or is poorly linked with the prosecutor. Communication with the prosecutor is especially essential for those victims who may not connect with the agency's victim support specialist. It is important that a victim not be left with the impression that the prosecutor is the "enemy."

What contributes to the gap?

The importance of the prosecutor and victim link is acknowledged in the language and various requirements of Washington law governing crime victims' rights [RCW §7.69.030] and sentencing and plea agreements [RCW §9.94A, Sentencing Reform Act of 1981]: *to be informed by the prosecuting attorney...with the assistance of the prosecuting attorney...the prosecutor shall make reasonable efforts to inform the victim.* The prosecutor is expected to be able to report to the court whether a victim has objections to or comments on the nature of and reasons for a plea agreement [§9.94A.431(1)]. Victims have the right *to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available* [§7.69.030(4)]. To meet these expectations requires communication between prosecutors and victims.

Gap #2 Victims of domestic violence have little direct communication with City of Bellingham or Whatcom County prosecutors.

Bellingham and Whatcom County, like many communities across the country, have worked hard to strengthen support for victims of battering and meet the requirements of victims' rights legislation. A paradox of this enhanced attention to victim's needs is that it can put more distance between victims and prosecutors as prosecutors have turned to crime victim advocates to meet the letter of the law. The presence of a victim advocate position can mean that most contact with victims shifts away from prosecutors and to the specialists. In combination with heavy caseloads overall and the absence of a specialized domestic violence prosecution unit, the distance between prosecutors and victims can become enormous and difficult to breach. If there is a further disconnect between victims and designated advocates, a victim can be left navigating the criminal legal process with little information and help.

Practices in the City of Bellingham Prosecutor's Office

The team identified strong victim-centered practices by the Victim Witness Advocate (VWA) in the city prosecutor's office. The VWA provides ongoing relevant information to the prosecutors as cases progress. From interviews and observations, team members found that the Victim Witness Advocate was almost solely responsible for victim contact, with the exception of prosecutor interviews with victims in preparation for trial or on occasion a request to rescind a no-contact order.

Multiple interviews with the prosecutors revealed that the prosecutors expect and rely on the Victim Witness Advocate to fulfill the various contacts with victims, including providing recommendations on no-contact order rescission requests, setting up interviews, and preparing victims for trial. Prosecutors also rely on the information gathered by the VWA to help make decisions on how to proceed with a case, such as whether the victim is supportive of prosecution and the history of violence, victim's support network, and availability of witnesses.

During interviews and observations with the Victim Witness Advocate, team members observed prosecutors stop by her office frequently to ask the VWA about a certain victim's perspective on a case. The VWA provides an important level of support for prosecutors, but their reliance on the position for information about victims also demonstrates that they have limited direct contact with victims. The bulk of the contact between the office and a victim occurs and is documented by the victim witness advocate.

In its review of eleven case files, the team found two interviews with the victim or conversations with a separate witness that were documented by the prosecutor. Other references to victims in the prosecution files were primarily in terms of how victim status impacted case decision making, such as "victim not supportive" (B-20). In another file, the prosecutor's notes indicated extensive but ultimately unsuccessful attempts to reach the victim.

Practices in Whatcom County Prosecutor's Office

Focus group participants prompted a closer look at the relationship between victims and prosecutors as they described their experiences in Whatcom County. One described

Gap #2 Victims of domestic violence have little direct communication with City of Bellingham or Whatcom County prosecutors.

circumstances where “I couldn’t find out what it meant so I was finally able to talk to the public defender, my husband’s attorney, who told me that a trial date had been set, but thought that my husband would plead out to lesser charges. I called the prosecutor’s office to find out more but no one could tell me anything. I made sure they had my work number and I’m at work at 7:30 a.m. When I made my third call the following day, after still having had no response, I was told that my husband had pleaded and been sentenced. I was so upset and mad; I wanted to be there. They had my number; why didn’t they let me know?” From another participant: “I called so many times and no one returned my calls. I nagged the public defender’s office and got more information from them. I really felt alone through this whole thing.” Their comments were echoed later during a team member’s observation of a no-contact order rescission hearing when a victim told the court, “the prosecutor won’t call me back.” At another court observation an Audit team member sat next to a victim whose case was on the calendar and asked her if she planned to give a victim impact statement to the court. The victim had not been informed by the prosecutor that she could do so.

The *Domestic Violence Protocols* for the Whatcom County Prosecutor’s Office provide limited direction to the deputy prosecuting attorneys (DPA) on the level of direct contact with victims. For example: *In the event the settlement negotiations are unsuccessful by the time of the Omnibus Hearing, the prosecutor should contact the DVS for assistance in preparing the victim and witness for trial.* The Statement of Charging Philosophy advises: *where the victim is an essential witness, additional efforts will be made to make the victim available as a witness.* In another section, suggestions are made on ways to work with a victim who is an *uncooperative* witness. The first suggestion is *face to face contact*.

Based on case file review of fifteen cases, team members noted a general lack of documentation regarding the victim, and prosecutor to victim communication. A quick read of a case file would provide a deputy prosecuting attorney with no or very limited information on the status of a victim in relation to the case, i.e., whether she is supporting or resisting prosecution, and no information as to the victim’s wishes regarding a plea or sentencing agreement. It was unclear to team members whether anyone was communicating with victims about provisions of the Crime Victims’ Bill of Rights, charging decisions and changes or dismissals, plea agreements, the final status of cases, or their rights to present a statement at the sentencing hearing for felony convictions. Of the fifteen cases, the one exception was a felony case, W-9, where the prosecutor emailed the Domestic Violence Specialist and asked her to notify the victim of the terms of the plea agreement.

Two case files included an interview synopsis from the defense counsel, based on an interview with the victim, but little or no documentation of the prosecutor’s contact with the victim or whether the victim was available to testify. In Case W-8, other than the interview synopsis from the defense attorney and copies of some medical records, the only reference to the victim was in a copy of correspondence between the prosecutor and defense in which the prosecutor states, “recognize V is recanting at this time.” The case involved a long-term relationship in which the defendant had been charged with six prior domestic violence offenses and several related order violations. The risk assessment in the police report stated that the defendant had threatened to kill

Gap #2 Victims of domestic violence have little direct communication with City of Bellingham or Whatcom County prosecutors.

the victim three times in the past two months. No other information was included in this case file indicating why the victim may be recanting or whether prosecution had made any contacts with her.

W-4 is a case that spanned ten months and ended in a dismissal after numerous trial dates were set and rescheduled. A subpoena dated two and a half months before the dismissal date included a sticky note: “V has no way there – no ride,” with an accompanying phone number. It is not clear who wrote this note. Around the same date there is also a note in the prosecutor case sheet: “V has back surgery, agree to continue.” The case was dismissed “no V’s” noted as the reason. There are no other references to the victim in this case file to indicate if anyone followed up on the transportation issue, or why there was “no V” when the case was dismissed.

In the No-Contact Order (NCO) Rescission Questionnaire filled out by the victim in W-1, the victim wrote at the bottom of the form: “Please help me with my family.” There are three other references to the victim in the prosecutor’s files: a note that the victim requested and was denied a NCO rescission; a note written by the prosecutor that the victim was not living in the home where the defendant had been prohibited; and, a note without a date or author listing the victim’s new address. There is no indication of any follow up with the victim on her stated need and request.

In an interview with the Domestic Violence Specialist, the team learned that when victims respond to either the first or second letter sent by the office, the DVS sends an email to the deputy prosecutor relaying that the victim called and the nature of the call, such as asking questions or providing new information. The team found only two case files that included email between the DVS and the DPA. Case W-9 was a felony level case with five emails between the DVS and the DPA. This case also provided an example of a felony prosecutor using the Domestic Violence Specialist to maintain regular contact with the victim.

In interviews with several prosecuting attorneys, Audit team members learned that prosecutors assume that the Domestic Violence Specialist or someone else is contacting the victims, or are unsure whether any victim contact has been made in a particular case. One deputy prosecutor noted, “the sooner the contact with the victim, the better,” but was unsure about whether and how that would happen. Another prosecutor tries to call victims and notify them if the office declines to file charges or accepts a plea. Two felony prosecutors indicated that they did not use the DVS, but made the victim contacts themselves or had their clerical staff make the contacts. W-9 was an example of a case where the felony DPA did utilize the DVS in maintaining regular contact with the victim. This raises the question of whether clerical staff have been trained to provide safety planning and resource referral associated with victim support services. Audit team members learned that a deputy prosecutor was most likely to have personal contact with a victim as part of preparing the victim for trial. In District Court cases the DVS assists in setting up the interviews, whereas in Superior Court most prosecutors use their clerical staff to set up victim interviews.

Gap #2 Victims of domestic violence have little direct communication with City of Bellingham or Whatcom County prosecutors.

How do we close the gap?

Strengthening communication between prosecutors and domestic violence victims does not mean abandoning the role of victim advocates or requiring prosecutors to make personal contact with all victims in all cases. It requires:

- Seeking guidance from survivors of domestic violence who have had experience with prosecution across diverse settings, circumstances, and charges. What was most helpful? What was harmful? When was it important that you have direct communication with the prosecutor, and why?
- Exploring and articulating the respective roles of the prosecutor and victim advocate and reinforcing the linkage between the two positions.
- Identifying circumstances where direct prosecutor to victim contact is always a priority and developing administrative practices to guide those decisions.
- Developing skills to strengthen dialogue and communication with victims.

Beyond this overarching response, the Audit team work groups had these recommendations for each prosecutor's office.

To close the gap for victims in city cases:

1. Explore the prosecutor's role in relationship to victims of battering and redefine assumptions if needed. Develop reasonable expectations of this role considering resource and time constraints.
2. Supplement the victim communication initiated by the activities of Victim Witness Advocate by increasing prosecutor contact with victims. Clarify roles and responsibilities.
3. Develop a more consistent practice of documenting victim contact and information in prosecutor files, as is reasonable and without compromising victim safety.

Requires changes in:

- Administrative Practices
- Resources
- Concepts and Theories
- Mission, Purpose, Function
- Education & Training

Who should be involved?

- √ City of Bellingham prosecuting attorneys
- √ City of Bellingham Victim Witness Advocate
- √ City Attorney
- √ Survivors of domestic violence

Gap #2 Victims of domestic violence have little direct communication with City of Bellingham or Whatcom County prosecutors.

To close the gap for victims in county cases:

1. Review the *Domestic Violence Protocol* and prioritize and clarify the prosecutor's role regarding victim contact and compliance with RCW requirements related to crime victims' rights, with attention to any differences between misdemeanor/gross misdemeanor and felony level cases.
2. Train all prosecuting attorneys on the updated *Domestic Violence Protocol*.
3. Document victim contact information, needs, and wishes as appropriate and with sensitivity to discovery, in order to provide pertinent information to all prosecutors who might handle the case.
4. Provide training to prosecutors on working with victims of domestic violence.
5. Review allocation of resources and practices to ensure that victims who are seeking case status information receive that information.

Requires changes in:

- Administrative Practices
- Concepts and Theories
- Linkages
- Mission, Purpose & Function
- Accountability
- Education and Training

Who should be involved?

- √ Whatcom County prosecuting attorneys
- √ Whatcom County Domestic Violence Case Specialist
- √ Misdemeanor and felony case supervisors
- √ Whatcom County Prosecutor
- √ Whatcom County prosecution clerical staff
- √ Survivors of domestic violence

Gap #3 Charging and consequences related to violations of no-contact orders and orders for protection are not fully explored and applied in cases brought to the City of Bellingham Prosecutor's Office.

How is it a problem? For which victims of battering?

Approximately one-third of the misdemeanor domestic violence charges adjudicated in 2005 in the Bellingham Municipal Court involved violation of a civil protection order or a criminal no-contact order.¹⁴ During the case file reviews, Audit team members noticed that order violations seemed to lack “teeth” and defendants did not take them seriously; they were often used as leverage in a plea. The team asked, “What is the impact on safety and accountability for using order violations as a bargaining chip in the resolution of a criminal domestic violence case?” Defendants were quoted as saying that an order is “just a piece of paper”. Might no-contact and civil protection orders only be as good as the criminal justice system’s capacity to enforce violations and create consequences that have real meaning to offenders? While it will not work for all offenders, closer application and enforcement of order violations will improve safety for some victims. Victims of domestic violence rely on stay-away type orders to help ensure a sense of safety.

When a woman who is being threatened, coerced, and beaten in her home sees the person who is harming her violate orders with no or minimal consequences, how might that affect her confidence in her efforts to build safety and the willingness of interveners to reinforce that safety? If batterers learn that an order violation may be readily dismissed or used in a plea negotiation, how might that impact their fear of consequences or repercussions for violations? Abusers already act with a sense of entitlement towards their victims. As one of the focus group participants reported, the person abusing her repeatedly violated a criminal no-contact order during the time his original domestic violence charge was still in process. These violations felt like an “on-going slap in the face” to her.

Order violations are an issue that courts and prosecutor’s offices around the country struggle with, and the following examples from the City of Bellingham’s experience demonstrate the complexity of the issue and the factors that can influence charging and prosecution of order violations. There is no one right way to handle these violations, however the multiple dynamics at play and the risk to safety make it worthy of exploration.

What contributes to the gap?

Data available from the State of Washington Judicial Information System (JIS) raised questions about the response to the small number of offenders that account for multiple order violations. In 2005 just 4.36% (13/298) of defendants accounted for 40% of all protection and no-contact order violation charges filed by the city prosecutor’s office. These thirteen defendants had between three and twenty order violations charged. Such patterns suggest possible stalking behavior,

¹⁴ This is similar for cases in Whatcom County District Court. In 2005 about one- third of the domestic violence charges adjudicated in district court were related to order violations.

Gap #3 Charging and consequences related to violations of no-contact orders and orders for protection are not fully explored and applied in cases brought to the City of Bellingham Prosecutor's Office.

which is perhaps getting lost under multiple order violations and warrants a closer look.

In its review and analysis of case files, the team found examples of order violations that raised questions about charging and enforcement. In two of these cases the order violation was apparently used as a bargaining chip in a larger plea agreement. In case B-21 there were four order violations; the defendant was found guilty on two charges and two were dismissed. In B-25 there was one order violation charge and an assault charge; the order violation was dropped. Through interviews, prosecutors stated that "the best strategy is to get a plea." Although team members agreed that this strategy has validity, the team was also concerned that when an order violation was dismissed it had the potential to minimize the importance of the order, especially for serial offenders.

In B-21 the defendant was charged with four order violations during a three-month period, all while under a \$50,000 bond and \$5,000 cash bail. The defendant pled to two of the order violations and two were dismissed. In this case, the team wondered what type of consequences would make a difference to this defendant.

In B-22 the prosecutor pursued an order violation after dismissing (on the victim's request) additional assault and harassment charges without prejudice due to inability to use excited utterances per the Crawford ruling.¹⁵ This case went to a jury trial and the defendant was found not guilty on the order violation. This particular case demonstrates an added issue, which is that juries may not fully understand why violations of no-contact and protection orders that may appear inconsequential or minor to them, and hence not meet the burden of proof, have serious implications for victims of battering and their continued safety.

In B-23 the defendant violated a no-contact order and harassed and pursued the victim. The police report quoted the victim as saying, "He tracked me down," and "I just want to be left alone." This victim expressed frustration with what the victim perceived as "lack of teeth" in the order.

In B-25 both parties had previously filed protection orders against each other. The person who seemed more at risk, from information available in the file, reported that the defendant filed protection orders against her so that her credibility would be compromised. Batterers can be very adept at obtaining civil protection orders as a way to retaliate against and control their victims, making enforcement and prosecution more problematic.

During one court observation an Audit team member witnessed a defendant with a pending domestic violence charge and no-contact order in place speak to the victim, who was sitting in the courtroom with a friend. The prosecutor informed the defendant that he could file an additional charge of a no-contact order violation, but that he would not if the defendant would

¹⁵Crawford v. Washington (2004) changed the standard for determining when hearsay statements are admissible in criminal cases and introduced new challenges in pursuing "evidence-based" prosecution

Gap #3 Charging and consequences related to violations of no-contact orders and orders for protection are not fully explored and applied in cases brought to the City of Bellingham Prosecutor's Office.

plead to the original charge for which he was in court. The defendant agreed and no new charges were filed for the no-contact violation.

Through interviews with prosecutors, the team learned that limited jail space in the Whatcom County Jail also impacts what a prosecutor might request for consequences of no-contact and protection order violations.

These examples demonstrated to the team that there are many aspects at play in a prosecutor's ability to create serious consequences for order violations. Any blanket practice – i.e., always charge or never charge in this circumstance, or always dismiss or never dismiss – will be inadequate in accounting for the complexity of risk and safety in specific cases.

The absence of documentation of the reasons for dismissal, modification or amendment of charges made it more difficult for the team to see how decisions were made regarding order violations.

How do we close the gap?

As this discussion of order violations in cases handled by the city prosecutor's office illustrates, a Safety Audit is as much a process of teasing out new questions as it is revealing sharply defined (and easily corrected) problems. What would charging and enforcement look like, for example, if there was a way to ask each victim of battering what would need to be in place for a criminal no-contact order to be effective, and for the prosecutor's office and community to act accordingly?

1. Review data in the Prosecutor's Office to track actual disposition outcomes of order violations and determine whether there is some problematic pattern.¹⁶
2. Explore strategies to address any patterns or issues that emerge where lack of importance of order violations may be "assumed" by either victims or defendants.
3. Explore sentencing recommendations from prosecutors to judicial officers on order violations.
4. Increase practices that keep victims and the court more informed on decisions regarding order violations, especially when dismissed.
5. Develop and deliver training to strengthen investigation and prosecution of no-contact order violations that is less directly reliant on victims.
6. Consult with survivors of domestic violence and community-based advocates about what needs to be in place for orders of protection and no-contact orders to be most protective in the broadest variety of circumstances.

¹⁶ The 2006 Washington State Fatality review includes several recommendations related to no-contact orders and improved attention to stalking.

Gap #3 Charging and consequences related to violations of no-contact orders and orders for protection are not fully explored and applied in cases brought to the City of Bellingham Prosecutor's Office.

Requires changes in:

- Administrative Practice and Policies
- Resources
- Concepts and Theories
- Education and Training
- Accountability

Who should be involved?

- √ City of Bellingham prosecutors
- √ City of Bellingham judicial officers
- √ Whatcom County jail administration
- √ City of Bellingham Police Department
- √ City of Bellingham Victim Witness Advocate
- √ Community-based advocates
- √ Survivors of domestic violence

Gap #4 The proactive and victim-centered daily activities of the City Prosecutor's Office Victim Witness Advocate are not integrated into agency practices in ways that would maintain this level of support across personnel changes.

How is it a problem? For which victims of battering?

Victims of battering who become involved with the city prosecutor's office have support available through the Victim Witness Advocate (VWA). This support emphasizes victim contact, up-to-date case information, and consideration of what the "victim hopes for."¹⁷ Focus group participants reinforced the importance of this kind of timely information about case procedures, ready access to and communication with the prosecutor's office, respect for their fears and difficulties related to involvement in a criminal case, and input into case charging and disposition.

The current level and quality of victim support has evolved primarily through the specific activities of the individual in the position. Through interviews and observations of the Victim Witness Advocate at work, team members noticed a consistent set of activities performed by the VWA that centered on immediate and ongoing efforts to build relationships and communication with victims and other witnesses, as well as with the prosecutors. The team recognized that these activities went well beyond the duties included in the general job description for the position. What would happen to the current practices if there was a change in staffing or the Victim Witness Advocate was unable to work for an extended period of time due to an illness or emergency? How would the current standard of practice and quality of service be maintained?

What contributes to the gap?

The City of Bellingham has a comprehensive job description for the Victim Witness Advocate that outlines the general expectations for the position in seven broad areas, with a short list of additional duties as assigned. It was last revised in December 2000. As described in interviews with team members, the VWA has developed the daily activities and practices of the position with support and backing from the City Attorney, who supervises the position and provides the philosophical framework and leadership for the City Prosecutor's Office. The VWA informs new prosecutors about her role and works with personnel in Bellingham Municipal Court so that they know what to expect from the position.

The team learned that many of the VWA's daily and standard activities are not written down, but remain "in her head." At this time there are no written, detailed descriptions of these individualized daily practices and procedures. This is not an unusual dynamic in any office or for any position. Because the team found so many practices that were proactive and appeared to be

¹⁷ Determining what the "victim hopes for" includes learning whether the victim supports prosecution; wants counseling, and what kind; wants domestic violence, alcohol, and other types of treatment for the defendant; wants a no-contact order issued, extended, or rescinded; wants jail time and restitution; hopes to remain with the defendant; wants the case dismissed or charges dropped; wants to attend the sentencing; and, wants to provide an impact statement to the court.

Gap #4 The proactive and victim-centered daily activities of the City Prosecutor’s Office Victim Witness Advocate are not integrated into agency practices in ways that would maintain this level of support across personnel changes.

working for victims, however, it wants to ensure that these practices are documented, memorialized, and adopted as daily practices and activities of the Victim Witness Advocate within the City of Bellingham Prosecutor’s Office, regardless of the individual who occupies the position.

For example, under “Essential Functions of the Job,” the Victim Witness Advocate’s official duties are listed as: “Conducts victim assessment interviews to collect and analyze the information involving the immediate crime and any prior history of domestic violence. Effectively documents observations and recommendations for further reference, preparing and maintaining intake forms and activity logs. Makes recommendations that are reviewed and utilized by prosecutors when assessing the ability of victims and witnesses to assist in the prosecution.” Through its observations and interviews, the team learned that the Victim Witness Advocate engages in numerous specific, individualized activities in most every domestic violence case as a way to implement this one series of general responsibilities.

- Checks the Bellingham Police Department’s Long Arm report database to review police reports for any cases that occurred the previous day or weekend, before attending the First Appearance.
- Attends all First Appearances at the in-custody viewing room for Bellingham Municipal Court cases. If the victim is present, the VWA asks about her needs and desires and communicates that information to the judge and prosecutor if relevant. If the victim is not present the advocate notes the outcome of the case and the defendant’s demeanor and attempts to make phone contact with the victim immediately upon returning to the office.
- Contacts What Comm to request a tape of the 911 call if it appears the case is unlikely to be resolved at the pretrial. This request must be made within ninety days; after that the tapes are destroyed. She also requests a tape for cases where a warrant is issued, in case the arrest occurs beyond the ninety-day limit. The VWA reviews the requested tapes, saves them in a database, and provides pertinent information to the prosecutor and defense attorney, if the tape contains information that could be considered discoverable.
- Maintains a form for every case with detailed information on the incident and defendant, as well as pertinent information based on interviews with the victim, including information about what the victim hopes for with the case. All contacts and attempted contacts with victims are noted. When the case has been referred to probation, information is kept on the defendant’s status with probation conditions. Team members found that with the exception of the section titled “summary of case,” the back page of this form was not filled out as completely as the front. Sections about the victim’s support network, access to and concerns about weapons, and prior incidents were largely blank, along with this question: “Have you been put under any pressure to drop these charges?” This is all information that the VWA may have about the case, but it remains ‘in her

¹⁸ The victim will not know that the VWA may have made an entirely different recommendation to the prosecutor, although the VWA tells the victim what the prosecutor will recommend. See the discussion under “More trails, more questions,” regarding the link between prosecutor-based victim services and community-based advocacy.

Gap #4 The proactive and victim-centered daily activities of the City Prosecutor's Office Victim Witness Advocate are not integrated into agency practices in ways that would maintain this level of support across personnel changes.

head.'

- Shares pertinent information such as victim concerns, prior history, or how a victim feels about prosecution with the prosecutor on a regular basis. This happens verbally and occasionally via e-mail.
- Reports back to the victim after each hearing and informs the victim of upcoming court dates.
- Interviews any victim who requests modification or rescission of the no-contact order and completes the Motion to Rescind No-Contact Order form. The VWA keeps this form and makes a verbal recommendation to the prosecutor as to whether or not to rescind or modify the order. The VWA attends court with the victim to represent and state the victim's wishes, regardless of the recommendation the VWA may have made to the prosecutor.¹⁸ (Footnote on previous page)
- Attends weekly Domestic Violence Team meetings.
- Coordinates and attends victim interviews with prosecutors and/or with defense attorneys.
- Processes restitution requests.
- Prepares victims for court. Victims receive information appropriate to the trial (very few cases go that far) or kind of hearing (e.g., First Appearance, pretrial, no-contact order rescission, probation revocation). Depending on the event, this includes an explanation of what victims can expect, what they can speak about and when, what the judge will be doing, and a tour of the courtroom.

None of these specific steps and strategies has been documented in any protocol governing the Victim Witness Advocate's role. If someone new had to step into the position tomorrow they would have to build much of the response from the ground up. There would be a generic job description, but the why and how of the attention to victims and fulfillment of providing assistance with "priority given to the safety of victims" would be missing. Prosecutors would be left much less informed about the risk and safety needs of the victims in their caseload, as this is a strong component of the incumbent's activities. As noted in the discussion under Gap #2, prosecutors have become reliant on the VWA position at the expense of their own direct communication with victims.

How do we close the gap?

1. Identify all individualized routines and actions that contribute to the goal of "priority given to safety of victims," but are not currently captured in the Victim Witness Advocate job description. This could also provide an opportunity to carry this discussion across the agency.
2. Integrate the proactive and victim-centered daily activities of the Victim Witness Advocate into agency practices. This could happen via a daily procedure and practices manual or via other formats. For example: a checklist corresponding to each step of case processing within the city prosecutor's office and the VWA's actions at each step. Or, an annotated version of the VWA case cover sheet that explains in detail why and how the

Gap #4 The proactive and victim-centered daily activities of the City Prosecutor's Office Victim Witness Advocate are not integrated into agency practices in ways that would maintain this level of support across personnel changes.

VWA gathers incident and case information, makes and documents victim contact, enters pre-trial release and sentencing conditions, establishes what the victim hopes for, and obtains information necessary to address other aspects of the case.

3. Use the processes outlined in #1 and #2 as an opportunity to evaluate victim support practices to ensure that they address the complexities of risk and safety for all victims, and make any changes as needed. Consultation with community-based domestic violence service agencies and survivors could provide additional perspective.
4. Review and update any forms currently in use as a way to guide a VWA in identifying where and how prosecution may impact a victim's risk and safety.
5. Update the City of Bellingham job description for the Victim Witness Advocate position to ensure that it accurately reflects the range of routines and activities identified.

Requires changes in:

- Administrative Practices
- Accountability

Who should be involved?

- √ City of Bellingham Victim Witness Advocate
- √ City of Bellingham prosecutors
- √ City Attorney
- √ Community-based domestic violence advocates
- √ Survivors of domestic violence

Gap #5 Attention to the presence, impact, and evaluation of substance abuse is inconsistent in domestic violence cases that reach Whatcom County District Court Probation.

How is it a problem? For which victims of battering?

In the December 2002 report, *Findings and Recommendations from the Washington State Fatality Review*, 64% of the domestic violence fatalities reviewed involved substance abuse. Of those cases, 27% of the victims and 54% of the perpetrators struggled with chemical dependency. While substance abuse does not cause domestic violence, the presence of both can increase the severity of injuries as well as lethality. When an abuser is drunk every day or almost every day, for example, there is an increased risk of homicide.¹⁹ When potential drug and alcohol problems are not thoroughly identified and evaluated, probation officers cannot structure supervision that maximizes victim safety and offender accountability. For example, one batterer may be increasingly violent toward the victim and others, such as police or neighbors, when using a particular drug, yet without a court-ordered assessment or intervention the potential for ongoing violence may not change. For another, alcohol or drug use increases his aggression toward the victim, but has little impact on his interactions with others. Domestic violence perpetrator treatment is compromised without appropriate alcohol/drug evaluation and treatment. Where accountability is predicated on success in domestic violence perpetrator treatment, an offender's success in meeting sentencing conditions may be undermined if his substance abuse is not addressed. While staying clean and sober does not necessarily mean that battering behavior stops, any benefit that perpetrator treatment offers cannot be realized if a participant is drunk and/or high.

Victims of domestic violence may also have substance abuse problems which have been exacerbated by the violence they experience, including the stress of ongoing threats and coercion, as well as cognitive damage from beatings to the head and strangulation. Chemical dependency increases a victim's overall vulnerability. It limits the willingness and ability of friends and family to provide support and limits her access to help from community agencies. Most domestic violence shelters, for example, provide very limited, if any, services to women who are actively using drugs. "In addition, most services tend to address either domestic violence or substance abuse, but fail to take into account how an abusive relationship can interfere with one's recovery or how substance use can interfere with one's ability to safety plan."²⁰

Probation caseloads include victims of battering who have been arrested after using violence toward their abuser, as well as victims who are similarly vulnerable, but have reached probation under non-domestic violence convictions, such as passing bad checks, retail theft, or drunk driving. For these victims, addressing the substance abuse may be an essential strategy for safety and survival.

¹⁹ See the discussion in *Assessing Risk Factors for Partner Homicide*, Jacquelyn C. Campbell, et al., NIJ Journal, No. 250.

²⁰ "Every life lost is a call for change": *Washington State Domestic Violence Fatality Review*, December 2004, Washington State Coalition Against Domestic Violence.

Gap #5 Attention to the presence, impact, and evaluation of substance abuse is inconsistent in domestic violence cases that reach Whatcom County District Court Probation.

What contributes to the gap?

The team found that sentencing conditions not did consistently address substance abuse. In its case file review, the team saw that courts did not always order a drug/alcohol assessment when an offender's alcohol or drug involvement was documented in the law enforcement report. When asked about issues that they find frustrating regarding their ability to hold domestic violence offenders accountable, one probation officer replied: "Drug and alcohol issues. Assessments are not always ordered by the court. The A/D [alcohol/drug] screening and assessment provided during a domestic violence perpetrator treatment provider evaluation is not comprehensive enough to catch everyone that needs substance abuse treatment."

In one set of chronological notes it appeared that alcohol and drug issues were present for the defendant and were of concern to the victim, but probation could not do anything about it as it was not a condition of probation. In this case, the victim contacted probation because they believed the defendant was living in a "drug house", and the victim did not want to leave her children with the defendant.

Audit team members also learned that in pre-trial supervision, monitoring for alcohol and drug use is an important tool for probation. In pre-trial supervision the court does not generally order as many conditions for probation to supervise, compared to the numbers of conditions that may be ordered for supervision post-sentencing. But more importantly, the team learned that particularly in pre-trial supervision, monitoring for substance abuse is one of the few, if only, verifiable conditions probation monitors. In addition, during pre-trial supervision, defendants are monitored more frequently than at post-sentencing. "Abstinence and UAs [urinalysis] help in monitoring, especially during pretrial. Pretrial generally has less conditions for monitoring, which impacts plea bargains and convictions...we have less leverage, so it is good to have something to monitor, such as alcohol/drug use." Probation officers are well equipped to monitor alcohol use as the Whatcom County District Court Probation office has access to a portable breath test machine.

Case P-1 illustrates the different leverage that probation can have depending upon the court's pretrial and sentencing conditions. Pretrial release conditions on an initial charge of violating a no-contact order did not include any alcohol or drug prohibition. The chronological notes [chrono notes] show that the victim called the probation officer ten days after the incident: "V is concerned about D using meth. Probation has no ability to monitor." One month later the defendant was arrested again for violating the no-contact order. This time there were "new conditions of no alc/drug use" and "random testing," clearly authorizing probation to act. He failed the first urinalysis, which indicated multiple illegal drugs. Two weeks after the failed drug test the probation officer left a message for the victim "about D with Pos UA's for

Gap #5 Attention to the presence, impact, and evaluation of substance abuse is inconsistent in domestic violence cases that reach Whatcom County District Court Probation.

methamphetamine. D stated that he is providing care for children and I believe the mother/victim needs to be aware that D is not complying.”²¹

Probation officers who are concerned about a defendant’s alcohol or drug use sometimes try to work around the lack of a specific sentencing condition by working with a domestic violence perpetrator treatment program if the defendant has been referred for a domestic violence evaluation. One officer noted a case where probation specifically asked the domestic violence perpetrator treatment provider to more thoroughly assess alcohol and drug issues and to recommend an evaluation to the courts if appropriate.

According to state domestic violence perpetrator treatment program standards (Chapter 388-60 WAC), a treatment program must “assess whether a participant should be required to engage in drug and alcohol, mental health, or other treatment services while they are participating in a treatment program.” Generally, this is not based on a comprehensive drug and alcohol assessment, however. In order to receive referrals from Whatcom County District Court Probation, state-certified providers must sign an agreement to conduct a substance abuse screening, which is not considered a comprehensive drug/alcohol assessment.

Team members made particular mention of examples, such as P-10 and P-5, where probation officers attempted to take into account the ways in which chemical dependency can make victims of battering vulnerable to criminal legal convictions and sanctions. In P-5, for example, a team member noted: “When reading the case history it was very clear that drug and alcohol addiction was perhaps the primary issue. Probation worked very hard to get her into treatment and keep her in compliance although they never cut any corners... What was interesting is that eventually it became a non-dv charge. It has to go through the court to do that. The probation officer presented this information to the prosecutor, who then initiated the request for the change in the charge. It struck me that work was being done to address the real issues.” In P-10 there was acknowledgement that “D has chronically been a victim of Mr-X,” although it was not clear what if anything had been put in place around her alcohol use and treatment needs.

The case file review also suggests that there is little contact or conversation with victims that would help probation officers gauge the impact of drug or alcohol use on the risk to individual victims (see discussion under Gap #9). Is this defendant more physically violent toward this victim when he or she has been drinking, for example?

²¹ The children are middle and high-school aged. The victim had contacted the probation officer early on saying that she “is concerned about D using meth.” He is caring for the children because they are “sharing custody” and she is “concerned that D has skipped town because their [child] was not in school today.” This illustrates the bind that many victims of battering encounter: required to share custody with someone whose actions endanger her children’s safety, as well as her own. “Probation is concerned about ability to effectively monitor this individual,” yet there is the expectation in many quarters that a mother will somehow be able to control her battering partner’s behavior as it affects their children.

Gap #5 Attention to the presence, impact, and evaluation of substance abuse is inconsistent in domestic violence cases that reach Whatcom County District Court Probation.

How do we close the gap?

Probation officers recognize the importance of accurate information about, and appropriate treatment for, alcohol and drug use in domestic violence cases. The case file review demonstrated that with the court's authorization they will readily monitor probationer's substance abuse use, in particular, and recommend some form of accountability when not in compliance. Probation officers also recognize that many defendants are likely to fail such conditions, because of the nature of addiction and the circumstances of their lives, which may include mental illness, unemployment, and homelessness. The chrono notes in one case, for example, outlined how the defendant had been "saving money to get the AE [alcohol evaluation]," although she was homeless and had been admitted to a psychiatric facility. Two months later her probation was revoked because she "still has not gotten the DV assessment or the CD assessment...Earning \$927. Rent is \$650." Communities across the country are paying attention to the presence and impact of alcohol and drug use on battering and domestic violence. The insight and expertise of probation officers should be included in any legislative and public policy efforts to address chemical dependency assessment and treatment.²²

1. Develop a better understanding with prosecution and the courts as to how it comes about that some cases with involvement of alcohol/drugs do not come with a sentencing requirement for a full drug/alcohol assessment or do not involve pre-trial requirements for abstinence.
2. Work with the judiciary, prosecution and defense bar to recommend and adopt consistent practices that more completely take into account alcohol/drug issues, and the need for monitoring and/or a full assessment in order to better ensure offender success and victim safety.
3. Work with domestic violence perpetrator treatment providers to find ways to enhance the alcohol/drug screen in cases where the court did not order an assessment. Revise the agreement with Whatcom County District Court Probation if needed.
4. Educate judges, prosecutors, defense attorneys, probation officers, and domestic violence perpetrator treatment providers on the co-occurrence of domestic violence and substance abuse and the difference between "cause and effect" and "co-occurrence."
5. Encourage more consistent use of practices within Probation that allow probation officers to request a drug/alcohol assessment if certain conditions and information are brought to their attention.

Requires changes in:

²² While it did not emerge as a point of emphasis for the team, a related issue is the intersection of domestic violence, chemical dependency, and mental illness. The 2002 state fatality review includes analysis and recommendations ("Tell the world what happened to me: Washington State Domestic Violence Fatality Review, Findings and Recommendations from the Washington State Domestic Violence Fatality Review, December 2002," Washington State Coalition Against Domestic Violence). The 2006 report renewed this theme, with a series of recommendations (3.1-3.15) for mental health, chemical dependency, and batterer's intervention professionals.

Gap #5 Attention to the presence, impact, and evaluation of substance abuse is inconsistent in domestic violence cases that reach Whatcom County District Court Probation.

- Rules and regulations
- Administrative practices
- Linkages
- Accountability
- Education and training

Who should be involved?

- √ Probation officers and supervisor
- √ Prosecutors
- √ Judicial officers
- √ Defense attorneys
- √ Domestic violence perpetrator treatment providers
- √ Substance abuse treatment providers
- √ Law enforcement officers
- √ Community-based advocates

Gap #6 Domestic violence perpetrator treatment evaluations and progress reports lack standardization, detail, and in some cases, timeliness.

How is it a problem? For which victims of battering?

Attendance and successful compliance with domestic violence perpetrator treatment is one of the core sentencing conditions in domestic violence-related crimes. Batterer intervention can provide a period of time in which a batterer's behavior is closely scrutinized and perhaps lead to a respite from physical violence, help a victim determine what level of promised change is or is not occurring, and open a path for a batterer who wants to change abusive behaviors. Whatcom County courts usually begin with an order for a domestic violence evaluation (assessment), with the condition that the defendant complies with the treatment provider's recommendation. This evaluation is also an important tool to probation as it provides an overview of the individual's dangerousness, as well as their treatment needs. Probation officers rely on treatment providers to keep them informed of the results of the assessment and the defendant's subsequent attendance and progress, if ordered. When probation does not receive timely and thorough information from treatment providers, the officer may not be aware of pending risk and safety needs for the victim. A brief communication that says little more than "compliance is good" is helpful to the extent that the probation officer knows that a defendant is showing up, but does not help gauge whether someone's attitude has changed or if there are indications of troubling behavior. Victims who are most at risk are those victims who believe that domestic violence perpetrator treatment is the solution to a battering partner's coercion and control, and who may trust that the violence and abuse will stop with treatment. Victims at risk are also those who are counting on interveners such as probation officers to monitor abusers' progress in complying with sentencing conditions, including progress in domestic violence perpetrator treatment.

What contributes to the gap?

In reviewing twelve complete probation case files, the Audit team observed brief progress notes from treatment providers, such as "in compliance" or "doing great" or "good in group" that provided little information about a defendant's actual level of engagement and change in abusive behavior. Such statements are at the level of opinion, versus specific facts that a probation officer can use to gauge a probationer's actions. "Doing fine" says little about actual compliance with a treatment program, in contrast to "John appeared on time for Monday's group meeting. He did not participate in any discussions, and when invited to do so, remained silent." The progress reports as well as some of the evaluations were written in very similar language, as if reporting on a universal defendant. In one instance, the treatment provider progress report noted "in compliance" when the probationer was reporting that he had not attended any classes in the last month.

There is little independent verification of these general and vague descriptions of compliance with domestic violence treatment. Probation officers have limited contact with victims (see discussion under Gap #9) and therefore have little direct information from them about the impact of a defendant's behavior on a victim's safety. While probation officers check periodically for new arrests, without victim contact they will not be aware of ongoing threats and abuse that do

Gap #6 Domestic violence perpetrator treatment evaluations and progress reports lack standardization, detail, and in some cases, timeliness.

not lead to police intervention, unless the information happens to reach a victim advocate who is authorized to share it with probation.

Case P-4 illustrates the disconnection between what gets reported by a domestic violence treatment provider and contact between a probation officer and victim that could provide some measure of its accuracy. The chronological notes span almost three years and the case involves repeated domestic violence-related charges (Assault 4, protection order violations, and no-contact order violations) and two different victims. The account of DV treatment, most of it self-reported by the defendant, reads in part:

“Because of money problems he has rescheduled...has new appt...due to start tx tonight...was given until [four months later] to begin treatment...says he will either start tomorrow or next week...Received tx report from [provider]...says he will be going to class tomorrow...missed last week.....has been to 8 classes in a row now...Tx reports indicate compliance...Tx reports look good...Tx reports show compliance...Tx reports look good...Attending group regularly...one tx left...

The chrono notes available to the team conclude with the defendant “re-risked at minimum” by the probation officer after being “re-risked at high” nine months prior. Over the nearly three years of chronological notes, the only documented victim contact includes: two letters sent from the probation office (one to each victim), two attempts to leave a voice mail with the first victim, and one call from the second victim when the probation officer was unavailable. She “wanted to know why he was released so soon.” There is no information from the victim about whether treatment has had a “good” effect on her safety (see discussion under Gap #9).

In three sets of chronological notes it was apparent that the probation officer was having difficulty receiving information from the treatment provider in a timely manner and was therefore in a position of not knowing whether to believe the defendant’s claim that he had completed his domestic violence evaluation. The probation officer documented the multiple times they contacted the treatment provider asking for the information. In two observations of compliance review hearings, the probation officer had to report that they had not received information from the domestic violence treatment provider and therefore did not know anything about the defendant’s attendance or progress. In one of the cases the judicial officer’s responded: “I cannot tell from the report (the DV treatment provider’s report) if the defendant is in compliance. These reports are not current to provide input to decisions... I’m not clear what this notation in this report means.”

The chrono notes in P-4 provide an example of the value of regular reporting to the probation officer. Between July 2004 and the last noted entry in February 2006, the defendant struggled with compliance, first in obtaining an evaluation and then in attending the domestic violence perpetrator treatment program. Probation was soon revoked and the defendant was charged with a new offense for violating a no-contact order. Over the next sixteen months the defendant was sporadic in attending treatment and the probation officer recorded the defendant’s explanations in the chronological notes, while receiving updates from the treatment provider to ensure that the

Gap #6 Domestic violence perpetrator treatment evaluations and progress reports lack standardization, detail, and in some cases, timeliness.

information the defendant was sharing was correct. Both probation and the treatment provider worked with this defendant to allow for make-up on missed classes and the probation officer wrote: "X treatment provider is really making D tow the line. No misses or he will be terminated." The defendant violated the conditions of probation again and had to serve jail time in the spring of 2005. Starting in July 2005, the defendant appeared to be complying with treatment, as monthly notes indicate "Tx reports look good" and "Attending group regularly."

Whatcom County courts have agreed that they will only make referrals to state-certified domestic violence treatment providers that have signed an agreement with the courts. The agreement specifies the areas to include in the standard evaluation, as well as the format of the evaluation report and monthly progress reports. Through interviews, Audit team members found that there has not been a recent dialogue between the partners on the content of this agreement and the concerns noted above, such as timeliness and thoroughness of reports, as well as what "doing great" means in the context of ongoing risk to a particular victim.

Domestic violence treatment providers are currently in the position of both conducting the initial evaluation or assessment, as well as operating the treatment program. There is no avenue for conducting the assessment via an independent agency.

How do we close the gap?

1. Review the current agreement between District Court Probation and domestic violence perpetrator treatment providers regarding the content of evaluations, evaluation reports, progress reports, and timelines.
2. Develop a "wish list" for the format of evaluations and progress reports. Define what it means to be in compliance with treatment.
3. Explore other ways District Court Probation can impact the quality of evaluations and reports and/or increase communication with domestic violence treatment providers.
4. Explore ways that local stakeholders can give input into the biannual state recertification process for domestic violence treatment providers.
5. Explore avenues for conducting the initial domestic violence perpetrator evaluation independent of providers of ongoing treatment programs.
6. Create a process to monitor any changes in practice that are recommended.

Requires changes in:

- Rules and Regulations
- Administrative Practices
- Linkages
- Accountability
- Education and Training

Who should be involved?

- √ Whatcom County District Court probation officers and supervisor
- √ Whatcom County judicial officers

Gap #6 Domestic violence perpetrator treatment evaluations and progress reports lack standardization, detail, and in some cases, timeliness.

- √ Domestic violence perpetrator treatment providers
- √ Bellingham-Whatcom County Commission Against Domestic Violence
- √ Community-based domestic violence advocates

Gap #7 Whatcom County District Court Probation does not have access to all law enforcement data bases in the jurisdictions it serves.

How is it a problem? For which victims of battering?

District Court Probation is active in collecting ongoing information on probationers, including their progress in therapy and treatment, urinalysis and portable breath tests, and new arrests. It relies heavily on probationers' self-reporting of law enforcement contacts, supplemented by daily review of booking sheets from the Whatcom County Jail. Many probationers have contacts with law enforcement, are cited with crimes, or are arrested without entering the county jail. These contacts, citations, and non-booking arrests are recorded in individual law enforcement databases. Law enforcement contacts that result in citations or arrests are entered into a statewide database generally within 24 hours of the incident. However, contacts that do not result in an arrest are not entered into this statewide database and can only be found in the local law enforcement database. Additionally, the details and circumstances of the incident are only available from the local law enforcement database. District Court Probation does not have immediate and ready access to a number of local Whatcom County law enforcement databases. If the information in these local databases were more readily available, probation officers would be better informed prior to meeting with probationers, have to rely less on self-reporting, be in a position to prevent further criminal activity, and be able to proceed to court on a more expedited basis. Although probation officers can request a copy of the local law enforcement report once they have learned of an incident from the statewide database, this is an extra step probation must take due to the fact that they do not have ready access to certain law enforcement databases. Lack of access is especially problematic for defendants who may be contacting victims in ways that are not readily assessed as criminal and may be coded as verbal domestics. These victims are at increased risk as probation may not receive information in a timely manner and the defendant may be engaged in surveillance or stalking behavior.

What contributes to the gap?

Whatcom County District Court Probation provides probation services for the following courts in Whatcom County: Whatcom County District Court, City of Bellingham Municipal Court, City of Everson-Nooksack Municipal Court, City of Sumas Municipal Court, and the City of Lynden Municipal Court. On January 1, 2006, its domestic violence caseload represented referrals from the following courts: 70% Bellingham Municipal, 23% Whatcom County District Court, and 7% all other municipal courts. This percentage breakdown appears to have been consistent for the past few years.

The probation staff has access to the law enforcement data base of the Whatcom County Sheriff's Office (AS-400), however they do not have access to those of any of the other law enforcement jurisdictions they serve. Long Arm, the system utilized by the Bellingham Police Department, includes current information on all law enforcement activities of that department. Because of the volume of Bellingham Municipal court cases that reach District Court Probation, this represents the bulk of the probation caseload. Through interviews, Audit team members

Gap #7 Whatcom County District Court Probation does not have access to all law enforcement data bases in the jurisdictions it serves.

were unable to conclusively assess the reasons why Long Arm is not available to District Court Probation.

In their interviews with team members, probation officers emphasized the value of this information to their work:

“With access to Long Arm I could research all law enforcement contacts with my probationer between our last meeting and our next meeting. Access to this current information affords me credibility and influence with my probationer. With or without an arrest, any law enforcement contact with presence of drugs or alcohol can allow me to take some action.”

“We know Long Arm exists and is valuable to us; currently we have to use the phone to call someone else with access for this new information, if we even know it’s there.”

“With an active caseload between 100 and 200, we don’t have time for field investigations when simple databases could meet our needs.”²³

Access to the law enforcement data bases from the Cities of Lynden, Everson-Nooksack and Sumas do not seem to be of the same concern, based on an interview with a probation supervisor. Referrals from these courts are generally sent to the same probation officer who stays in close contact with the three law enforcement agencies. As noted earlier, they represent less than 10% of the domestic violence caseload for District Court Probation.

How do we close the gap?

1. Provide Long Arm access to Whatcom County District Court Probation and address all training and funding needs required to do so.
2. Explore the need and resources for access to other Whatcom County small city law enforcement databases.
3. Ensure that Whatcom County District Court Probation is included in any expansion of relevant criminal justice system databases.

Requires changes in:

- Administrative Practices
- Resources
- Linkages
- Accountability
- Education and Training

²³ There are two probation officers in the specialized Domestic Violence Unit; these officers each have a caseload of 80. All other probation officers have a general caseload that averages 250-300 clients. Within that caseload, these officers have from 12-40 probationers who are being monitored for domestic violence offenses.

Gap #7 Whatcom County District Court Probation does not have access to all law enforcement data bases in the jurisdictions it serves.

Who should be involved?

- √ City of Bellingham Police Department
- √ Cities of Lynden, Sumas, Everson, and Nooksack Police Departments
- √ Whatcom County District Court Probation
- √ Information technology offices within the City of Bellingham and Whatcom County governments

Gap #8 Whatcom County District Court Probation is not represented at the weekly multidisciplinary Domestic Violence Team meeting.

How is it a problem? For which victims of battering?

The Whatcom County Domestic Violence Team meets each Wednesday between 10:30 and 11:30 a.m. Representatives from law enforcement, prosecution (prosecutors and victims services, city and county), community-based domestic violence programs, and the Department of Social and Health Services – Division of Children and Family Services, attend the meetings. District Court Probation is the only agency dealing with domestic violence offenders that is currently not represented at this meeting. Lists of recent arrests, upcoming trials, and law enforcement contacts are distributed at this meeting. The absence of probation means that other agencies do not receive information regarding the probation status of defendants in cases under discussion and District Court Probation is unable to readily access information that may pertain to their probationers. This gap in information sharing can have a significant impact on the quality and integrity of monitoring domestic violence offenders and safety planning for victims, which is an ongoing priority for the community, the weekly DV Team Meeting, and Whatcom County District Court Probation.

What contributes to the gap?

Although the Domestic Violence Team has been meeting for over ten years, Whatcom County District Court Probation only began sending representatives after the Domestic Violence Unit was created, which was about three years ago. Audit team members learned through the interviews they conducted that about one year ago the presiding judge of Whatcom County District Court, of which Whatcom County District Court Probation is an arm, asked that probation officers no longer attend these weekly meetings. This decision was apparently related to a concern that probation officers, as representative of the court, could be privy to information on pretrial cases that might raise a conflict of interest and the potential for undue influence on ongoing (unresolved) cases.

Interviews with Probation Officers highlighted their ongoing efforts to collect as much pertinent information on their probationers as possible in the most efficient way, considering their caseloads. They expressed the following: “We wish we had time to attend, the exchange would be valuable for us.” “It is not quite clear to us why we can’t attend; it seems to be perceived as some type of conflict. However, we receive and collect information on probationers in many other arenas and we aren’t sure how this is different.” “We have lost our connection/network with other agencies.”

A prosecutor who attends the weekly Domestic Violence Team meeting offered the following example of how a stronger link between probation and the weekly team meeting would be beneficial: “I recently had a case which involved the beating, kidnapping, and sexual assault of a young mother by her domestic partner. She was placed in a secure location with round the clock protection for her safety and extensive efforts were underway to locate the offender.

Gap #8 Whatcom County District Court Probation is not represented at the weekly multidisciplinary Domestic Violence Team meeting.

Unbeknownst to law enforcement, the suspect was under active District Court Probation for several misdemeanors and was in regular contact with their probation officer. This case was widely discussed at the DV Team meeting. Had probation been in attendance, the suspect may have been apprehended within hours instead of two weeks, which would have saved expense to the community and great anxiety to the victim.”

Audit team members who also happen to attend the weekly meeting, provided other examples of the value of the probation officers’ presence when they had been able to attend. “Probation officers were often helpful in coordinating arrests as they would report that a probationer had an upcoming court date or appointment.” “Their input was invaluable to our community based advocates in our safety planning efforts with victims.”

How do we close the gap?

1. Review the purpose of the Domestic Violence Team meetings.
2. Meet with Whatcom County District Court Presiding Judge to review the current restrictions on probation involvement in the Domestic Violence Team meeting.
3. Develop an understanding that permits Probation Officers to attend the meeting.

Requires changes in:

- Administrative Practices
- Resources
- Linkages
- Accountability

Who should be involved?

- √ Whatcom County District Court presiding judge
- √ Lead representatives (prosecution and law enforcement) to the Domestic Violence Team weekly meeting
- √ Whatcom County District Court probation officers and supervisor

Gap #9 There is limited contact and communication between victims and probation officers in domestic violence cases that reach Whatcom County District Court Probation.

How is it a problem? For which victims of battering?

In conducting outreach for focus groups at the beginning of the Safety Audit process, it was very difficult to find victims of domestic violence who had contact with Whatcom County District Court Probation, or even knew whether their abusive partner was on probation. Even when a case is on probation, a victim may have needs for safety, resource referral, and information on where to turn if there is a violation. A probationer may be allowed to have contact with his victim, and these victims in particular are at risk as they may be reluctant to report any future violence or know what to do. For all these reasons, it is essential that probation build in strategies to contact and build relationships with the victims of the probationers they supervise. Victims may have vital information pertaining to the probationer's compliance with pretrial release and sentencing conditions. If a probation officer learns of escalating or concerning behavior, having a relationship with the victim will ensure that victims are notified and are able to plan for their safety. Probation is one more link for the victim and one more resource if they have not chosen to utilize any other community services. Probation officers can help direct victims to services. Contact and communication with the victim also helps probation officers maintain an ongoing understanding of the dynamics of domestic violence and how victims are impacted. Without this foundation, they may miss clues of abusive or escalating high risk behavior, such as stalking.

What contributes to the gap?

Through the Audit process the team learned that many victims had not received a copy of the Judgment and Sentence form and therefore did not know the conditions of the abuser's probation. They had questions about whether or not they should report anything, and who they should report it to, and whether it would be confidential. While a letter is automatically sent to all victims when the abuser starts probation, the letter does not include information on the conditions of probation.

As illustrated in the example provided previously in the discussion under Gap #6, probation officers have limited contact with the victim of a probationer's crime. For "Jean" and "Susan" (Cases W-1 and B-3), the letter was the only communication between the probation office and each woman. Interviews with Probation Officers and supervisors indicated a number of challenges in reaching and developing a relationship with victims.

Current contact information for the victim was not always readily available. This was especially true if many months had elapsed between the incident and the sentence. This also resulted when the probation officer did not have a relationship with the victim advocate from the respective prosecutor's office, who might be able to provide contact information if they had worked with the victim in a particular case. Currently, probation officers obtain victim contact information from the law enforcement report, unless the victim advocate from the prosecutor's office that handled the case provides any updated information. If the information in the report is missing or

Gap #9 There is limited contact and communication between victims and probation officers in domestic violence cases that reach Whatcom County District Court Probation.

inaccurate it will be difficult for a probation officer to proceed. If mail and phone contacts are unsuccessful, the probation officers (or volunteer, as per below) may search additional data bases to see if more current contact information can be secured.

In the past the Domestic Violence Unit probation officers were able to conduct limited field work and were often able to contact victims in person. “We used to do field work; it made a difference.” This is not the current practice, due to high caseloads, a transition in personnel in the DV Unit; and a re-evaluation of field work. Probation is currently reviewing the goal of field work and before resuming the practice they want to ensure that there are more consistent guidelines and structure. Probation also wants to ensure that field visits do not create safety issues for probation officers.

The caseload for the DV Specialized Unit remains at about 80-100 (80 is the preferred goal), which is much lower than the caseload of a regular probation officer (See Note 23 under Gap #8). Through interviews, officers noted that it was difficult to contact victims by phone and/or to visit in the field. As a result, victim contacts were sporadic and not readily visible in the chrono notes, especially notes prior to 2006. Prior to 2006, the only notation in chrono notes about the victim was “Victim letter sent,” except for a few isolated cases where the victim initiated contact with the probation officer.

In January 2006 Whatcom County District Court Probation implemented a program utilizing a trained volunteer to ensure that as many domestic violence victims as possible were contacted by telephone as soon as possible after the defendant started probation. A Victim Contact Dialogue Script was created, along with a DV Victim Referral Sheet form. This program increased the agency’s contacts with victims, although the volunteer only filled the position for eight months. Audit team members observed these phone contacts with victims and were told by the volunteer that about 50% of victims were reached via the phone, with a greater success rate with residents in the City of Bellingham. The volunteer also stated that they were most likely to be successful in reaching a victim if the call was made between 3:30 p.m. and 5:00 p.m. The volunteer left District Court probation in August and no replacement had been found by the end of the Audit process in late September.

A Probation supervisor informed the team that with the loss of this volunteer and the knowledge that volunteer based services will not always be consistent, the office has directed the two DV Unit probation officers to make their own contacts with victims. When volunteers are available, their emphasis will be to contact the victims for the probationers who are supervised by the non domestic violence unit. In checking the domestic violence caseload on April 2006, the DV Unit monitored less than 50% of the domestic violence probationers.²⁴

While reading multiple chronological notes, Audit team members noted missed opportunities for probation officers to follow up with victims. For example, in one case (P13) the defendant was quoted as saying “I got a letter from victim.” In another (P12), the defendant “reports V is

²⁴ Other probation officers also have a domestic violence case load. See Note 23.

Gap #9 There is limited contact and communication between victims and probation officers in domestic violence cases that reach Whatcom County District Court Probation.

contacting him.” In both cases, the probation officer did not use this as an opportunity to contact the victim to ask “How are things going?” It is very likely that most defendants can provide the probation officer with the correct and current contact information of their victim, although that kind of request should proceed with a clear understanding of the safety considerations in a particular case.

From text analysis and reading chrono notes, it was not always apparent if the probation officer was linked with the victim advocate from either the City of Bellingham or Whatcom County Prosecutor’s Office. In interviews, however, the probation officers in the DV Unit indicated that they had regular communication with the victim advocate from the City of Bellingham Prosecutor’s Office, although less so on the county side. The chrono notes in P-1, for example, showed that the probation officer was in contact with the victim advocate from the City Prosecutor’s Office and how this provided support and advocacy for the victim’s safety. In this case the victim had reported an order violation to another law enforcement agency and the response of that jurisdiction was “this is just a divorce thing.” The probation officer contacted the victim advocate where the order originated, who then followed up with the victim and the prosecutor from the jurisdiction where the order violation occurred. The victim called the probation officer a day later regarding another safety concern²⁵ and the officer discussed safety strategies with the victim and contacted law enforcement. The probation officer wrote that a patrol officer from that jurisdiction “told me that the victim seems to be the instigator of the order violations. Reminded the officer that there is no order against the victim.”

Probation Officers indicated they were interested in Whatcom County having a Victim Impact Panel for domestic violence offenders that could be ordered as part of the sentence. The DV Unit probation officers shared information from the panels they have observed in neighboring counties, where the local community-based domestic violence service agency coordinates presentations involving law enforcement, domestic violence treatment providers, and survivors. They stated that the involvement of the domestic violence service agency as the coordinator of the panel was essential to ensuring safety and respect for any survivors that may chose to speak. The officers stated that this was one way to show offenders the impacts of their actions from someone who was “not their victim.” Other commentators have questioned the benefit that Victim Impact Panels and similar approaches have in changing battering behavior.²⁶

²⁵ “Says he is pressuring her through daughter to drop charges. Has made suicidal comments. Has children with him out of school. D told [her] he delayed appt today to give him time to leave town...Many safety concerns.”

²⁶ For example: “At least for now, there is a dearth of empirical evidence to suggest that those who have deliberately chosen to employ violence or the threat of violence in their intimate relationships, so as to ultimately maintain dominance within those relationships, will undergo a change in their believe systems through engaging in restorative justice practices...The proposition that domestic violence offenders would change their behaviors if they better understood the impact of their actions on the people around them contrasts starkly with the prevailing understanding within the battered women’s movement that most batterers have a strong understanding of the impact of their violence. From the perspective of many who work with batterers, batterers realize there is a causal relationship between using or threatening violence and the accomplishment of a certain goal.” *The Role of Restorative Justice in the Battered Women’s Movement*, Loretta Frederick and Kristine C. Lizdas, Battered Women’s Justice Project, September 2003.

Gap #9 There is limited contact and communication between victims and probation officers in domestic violence cases that reach Whatcom County District Court Probation.

Through interviews and observations it did not appear there was a clear process or protocol for maintaining ongoing contact with victims, especially if the victim did not request follow up contact. No chrono note entries were found to this effect. When the volunteer was making victim contacts, it was only the initial contact. In a follow-up interview with a probation supervisor, the team learned that the DV Unit does conduct some ongoing victim contact, but there are no protocols and policies in place. Other probation officers most likely do not make ongoing contact. It did not appear through interviews or chrono notes that victims are contacted when there is a probation compliance review or violation hearing scheduled.

Interviews with probation staff indicated that a dilemma can arise when a victim discloses information that is technically a violation of probation, yet the victim indicates they do not want the information to be shared. Probation officers stated that this does happens and makes it difficult for them when they are trying to hold the offender accountable and build a relationship with the victim. “What do you do with this information? It puts us in a hard place.”

How do we close the gap?

1. Maintain, at minimum, a process for regular victim contacts at the initial phase of a probation case (whether through volunteers or probation officers) and continue development of reasonable practices to maintain contact with victims over time. Include attention to victim follow-up when probationer gives information, notice on probation review hearings, etc. Develop protocols for both the DV and non-DV Units.
2. Increase access to current contact information for victims, and in particular, develop a relationship with the victim advocate in the Whatcom County Prosecutor’s Office. (Access to additional databases as per Gap #7 may also assist in this recommendation.)
3. Explore the feasibility of re-instituting targeted field contact.
4. Explore the establishment of Victim Impact Panels, coordinated by community based domestic violence service agencies, for the purpose of bringing the victim’s voice into post-sentencing. Include attention to cautions and concerns that Victim Impact Panels raise in the context of battering.
5. Document victim contacts in chronological notes without disclosing any confidential information.
6. Review the Letter to Victim to see if any changes need to be made. Include a copy of the probation agreement in the letter so that the victim is aware of conditions of probation.
7. Explore ways to better utilize relationships with local domestic violence programs as a way to reach victims confidentially.
8. Pursue training, discussion, and protocol development on issues of victim safety and victim confidentiality as they relate to victim contact and victim disclosure of probation violations.

Requires changes in:

- Rules and Regulations
- Administrative Practices
- Resources

Gap #9 There is limited contact and communication between victims and probation officers in domestic violence cases that reach Whatcom County District Court Probation.

- Linkages
- Mission, Purpose and Function
- Accountability

Who should be involved?

- √ Whatcom County District Court Probation
- √ City and county prosecution victim support specialists
- √ Whatcom County District Court presiding judge
- √ Community-based domestic violence advocates
- √ Survivors of domestic violence

Gap #10 Victims of domestic violence do not receive timely and consistent contact by and access to victim support services in the Whatcom County Prosecutor's Office.

How is it a problem? For which victims of battering?

An advocate within a prosecutor's office is an essential first link for a victim in a criminal domestic violence case. Access to victim services means access to basic information on the legal process and victims' rights, a response to individual needs and concerns, and connections with other community services. Access to victim services requires initial and ongoing contact between the prosecutor's office and victims. Participants in the focus group recommended that the initial contact should happen as soon as the case reaches the office and continue throughout and possibly beyond sentencing. Not only do victims have questions about the legal process, they face personal challenges that impact their ability to participate in the legal process, from intimidation by batterers to the loss of economic support, fears for their children's well-being, and transportation to and from the courthouse. As emphasized by focus group participants, when victims are left out of the legal process they are less likely to trust that the response will be helpful and more reluctant to call the police again and/or support prosecution. A prosecution-based advocate helps prosecutors proceed in ways that take into account a victim's unique safety needs.

Timely contact and information can help reduce a victim's fear and uncertainty, counteract pressure from a batterer, and build credibility that the prosecutor's office will do its best to ensure that the process enhances rather than diminishes her safety. Timely contact also provides the opportunity to obtain the most up-to-date address, phone numbers, and alternative ways of communicating with a victim about the case, trial dates, plea offers, and disposition.

Many victims and survivors do not support prosecution and do not see it as contributing to their safety and well-being. Although they may be less interested in ongoing communication with the prosecutor's office than the focus group participants, victims who are opposed to prosecution can nevertheless benefit from a prosecution-based advocate's attempts to communicate with them. Each attempt can carry a message that the prosecutor's office cares about their safety. Without this link victims may be even less likely to avail themselves of other resources and services.

Timely and consistent contact between a prosecution-based advocate and victims of domestic violence crimes builds an essential foundation for a prosecutor's office to address both the safety needs of victims and increased accountability for offenders. Without timely and consistent contact, access, and information, the risk and safety needs of victims go unaddressed and the case progresses without vital information and vital links to the victim.

What contributes to the gap?

The Domestic Violence Case Specialist (DVS) is the primary position with the Whatcom County Prosecutor's Office responsible for initiating and maintaining contact with victims and thereby providing access to victim services. Here are excerpts from the job description, dated March 21, 1997:

Gap #10 Victims of domestic violence do not receive timely and consistent contact by and access to victim support services in the Whatcom County Prosecutor's Office.

Coordinates and conducts assessment interviews of victims of domestic violence to obtain information helpful in making case assessments....prepares recommendations to aid prosecutors in determining the viability of prosecution; and familiarizes victims with the legal process in an effort to clarify options and minimize anxiety. ...Makes or arranges direct contact with victims of domestic violence to provide support, referral and comprehensive information regarding victim's rights, available options, community resources and the legal system. Maintains ongoing contact with victims in order to provide court date and case status information and to assist in their preparation as a witness. ...Makes recommendations that are reviewed and utilized by prosecutors when assessing the victim's ability to assist in the prosecution....Provides information to the court as is appropriate throughout the litigation process...May act as legal advocate, thereby, being required to accompany victim to court.

The Whatcom County Prosecutor's Office *Domestic Violence Protocol* (last revised on April 5, 2006) more specifically articulates the duties of the DVS from intake through sentencing to referral and continuing support. The protocol includes the following:

The DVS is responsible for the intake procedure for all domestic violence cases...The DVS should perform an initial review of the report (police) to assess the victim's safety.....Preliminary contact with the victim should be attempted at this point (at least one phone contact should occur within 24 hours of receipt of the case report)...Follow up contact should occur within 48 hours of the initial contact and no later than 5 days after the initial contact. This contact is best as a face-to-face contact...The DVS and Court Advocates should continue to support and update the victim on the progress of the case, including trial dates and possibility of and terms of settlement.

Criminal Justice Advocate Volunteers (CJA; also referred to as Court Advocates) are volunteers who are trained and placed in the Whatcom County Prosecutor's Office to assist the DVS.²⁷ A training manual has been developed for CJA's and their responsibilities include: *provide contact to victims of domestic violence & sexual assault (within 24 hours of a report being filed). Assessing safety of the victim is of primary concern. Provide community resource and referral information to victims. Assess need for follow up. Maintain ongoing contact with victims throughout the criminal process. Act as a liaison between the prosecutor and victim.*

All of the advocacy and victim support-related functions described above occur within an atmosphere of multiple cases with varying degrees of complexity and risk, varying expectations among different prosecutors about what determines the "viability of prosecution," incomplete or inaccurate initial contact information for victims, and the challenges of making "face-to-face" or other contact in ways that fit victims' fears, reluctance, and varying work schedules and availability.

²⁷ Under a federal S.T.O.P grant from the Washington State Office on Crime Victims' Advocacy, Domestic Violence and Sexual Assault Services trains community volunteers to provide victim support services to criminal legal system agencies in Whatcom County. There is a written job description for the "Prosecution Court Advocate."

Gap #10 Victims of domestic violence do not receive timely and consistent contact by and access to victim support services in the Whatcom County Prosecutor's Office.

Drawing on interviews with the Domestic Violence Specialist and a Criminal Justice Advocate Volunteer, observations of court appearances and related advocacy, and reading of prosecution case files and other records, the Audit team found several gaps in victims' ready and consistent contact with and access to victim support services within the county prosecutor's office.

Criminal Justice Advocate Volunteers are under-utilized as a key component of potential and promised victim support. The pool of trained and available CJAs is small, ranging from one to five at any one time. The number available to the Whatcom County Prosecutor's Office went from four to one during 2006. This limits the availability of the kind of ongoing contact and support offered in the letters that go from the prosecutor's office to victims. The CJA's primary responsibilities are to contact victims by letter or by phone and to compile data on these contacts, with some involvement in the group no-contact order rescission meetings before that practice changed (see discussion under Gap #12). The Audit team found that CJA volunteers did not attend or make contact with victims at First Appearance, no-contact order rescission, and probation review hearings, nor was the Domestic Violence Specialist consistently available to victims at these hearings.

For example, in observations in the in-custody viewing room of eleven first appearances (nine Superior Court; two District Court), the team found that the DVS was present at one of the eleven hearings, while victims were present in at least six hearings. There was no CJA at any of the first appearances. In one of the District Court cases a domestic violence victim was present, asked the court to release the defendant on personal recognizance, and was confused as to where to go after the hearing.

The DVS was present at two of the four no-contact order rescission hearings that team members attended, but did not make contact with the victim who was present in either case. One of the victims told the Court that "the DVS and prosecutor will not call me back."

Audit team members observed six probation review hearings. Neither a Court Advocate nor the DVS attended the hearings. At two of the hearings the judicial officer asked, "Is the victim present or has there been any contact with the victim?" The probation officer present answered the question with "no" (see related discussion under Gap #9).

The position of Domestic Violence Specialist is currently not well organized to require contact with any victims who attend first appearances or to require ongoing contact with victims at other hearings. The DVS's work has been prioritized by the office to emphasize contact via telephone and mail rather than face-to-face contact, as an effort to distribute limited victim support resources over the greatest number of cases. Until changes were made the no-contact order rescission process (see discussion under Gap #12), the emphasis was on group contacts and meetings rather than individual appointments. Among the additional duties listed in the job description is this general provision: *may act as legal advocate, thereby, being required to*

²⁸ RCW §7.69.030 (1) requires that "victims of violent or sex crimes" receive "at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter." See the discussion under Gap #2 regarding crime victims' rights and prosecution responsibilities.

Gap #10 Victims of domestic violence do not receive timely and consistent contact by and access to victim support services in the Whatcom County Prosecutor's Office.

accompany victim to court. There is no further definition in the job description or the *Domestic Violence Protocol* of what that advocacy would consist of, how to set it in motion, or how to determine that it is meeting victims' needs.

In its interviews, the team also found confusion over expectations about what level of individual contact the DVS should have with victims and how that work is directed, as well as uncertainty about the role of the DVS, particularly across misdemeanor and felony cases. For example, different personnel within the office have given contradictory directions to the DVS about seeing individual victims, although neither person was a direct supervisor of the position. Three different prosecutors had three different expectations for the position: 1) make victim contacts; 2) coordinate interviews between victims and prosecutors; 3) play no active role with victims in felony cases. As noted in the discussion under Gap #2, two felony prosecutors are making victim contacts themselves or using their clerical staff to do so.

One of the letters that victims receive offers considerable support in conjunction with a domestic violence case that goes to trial: *A Court Advocate can provide information about the legal system, referrals for appropriate means of support, travel and child care vouchers...advocacy for you in the courtroom...available for attorney interviews, depositions, pre-trial preparation and courtroom support.* The capacity and authority of the DVS and Court Advocates to provide this level of support seems limited, however. Their advocacy role is not a well-defined or particularly strong feature of the *Domestic Violence Protocol*.

The first appearance is an opportunity to make an early initial contact with some victims that is not being used to its full potential. Most contact currently occurs via letter and telephone, with delays resulting from inaccurate or missing telephone numbers and addresses on law enforcement reports to delays in mail delivery. Victim contact is also hindered by the DVS not receiving police reports until at least noon each day. While there were some databases (specifically Long Arm) she could query earlier to obtain police reports, the DVS has not received training on how to access that information. High risk victims are the DVS's priority for contact. Some victims may receive a letter only if it has been difficult to reach them because of inaccurate contact information or the DVS does not have time to contact them by phone.

A victim receives the first of two letters from the prosecutor's office "as soon as the volunteers get to it," or within two weeks. The second letter informs the victim of a tentative trial date and the help available through the Court Advocates, and emphasizes the importance of responding to any subpoena. The second letter also offers childcare vouchers, although an Audit team member noted that they are no longer available. Because trial dates are set immediately and automatically, and very few cases are settled within a week, all victims receive both letters. The content and format for the letters was created by a deputy prosecutor and not the victim advocate. Team members noted that one or both of these letters could be an opportunity to provide more specific information on victim's rights.²⁸ (Footnote on previous page)⁹

The limited contact with victims of domestic violence crimes was a reoccurring theme in the team's interviews and case file review in the prosecutor's office. The DVS stated that not many

Gap #10 Victims of domestic violence do not receive timely and consistent contact by and access to victim support services in the Whatcom County Prosecutor's Office.

victims respond to the letters, but that some will call if they have questions. The DVS estimated that only approximately one-third of attempts to contact victims are successful. Four of ten prosecution case files that the team reviewed closely for victim contact showed at least one in-person or phone contact, as documented on the DV Case Checklist that the Domestic Violence Specialist completes. Three of the four cases were felony level cases.

In reviewing a sample of files specific to the DVS, which consisted primarily of the DV Case Checklist with an attached law enforcement report, it did not appear that attempted, actual, and follow-up contacts with victims, both via phone and mail, were well-documented. It was difficult to assess how many attempts had been made and how many had been successful. Team members estimated that about 25% of the files documented a contact with the victim. (See the discussion under Gap #11.)

The team's work also brought forward questions about whether the link between the Domestic Violence Specialist and prosecutors was well-defined and integrated into the overall functions of the prosecutor's office. Three different deputy prosecuting attorneys provided examples of a lack of connection with the DVS. One would like to have victim assistance available in the courtroom, but assumed that the DVS was unavailable and consequently did not ask for it. Two felony prosecutors said that they typically did not use the DVS for victim contact, but either made the contact themselves or assigned it to their clerical staff.

The job description available to the Audit team contains the following "special understanding" for the position of Domestic Violence Case Specialist: "Continuation...is contingent upon and tied directly to continuation of STOP Grant and other funding availability. The loss of funding at any time automatically terminates the position." This language raises concerns about the stability of the position and the extent to which it is viewed by and integrated within the organization as an essential role in domestic violence case processing. If the DVS position is tied so exclusively to grant funding and can be readily and "automatically" terminated on the loss of that funding, is the related work taken as seriously as that of more permanent positions? Does this temporary quality have an impact on the position's standing and authority among the more permanent legal staff?

How do we close the gap?

1. Identify priorities for services to domestic violence victims in cases that reach the Whatcom County Prosecutor's Office. Consider issues such as: the value of immediate and on-going victim contact; the value of face-to-face contact; strategies for identifying high risk cases; support to victims during court proceedings; the role of victim support in case processing; and, input from survivors.
2. Revise and clarify the role of Domestic Violence Case Specialist (and related job description) in light of these priorities.
3. Revise and clarify the role of Criminal Justice Advocate in light of these priorities.
4. Review the standard letters (first and second) sent to victims and revise for any updates,

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corrections, and overall message.

5. Provide training and access to Long Arm for DVS and CJA volunteers. Explore and provide any necessary training on multiple avenues to access victim contact information.
6. Expand the available pool of trained Criminal Justice Advocates.
7. Establish a protocol to provide on-site victim support at District and Superior Court First Appearances and other hearings, such as no-contact order rescissions and probation reviews. Take into consideration the possible roles of prosecution-based support and community-based advocates.
8. Continue to consult with survivors of domestic violence and community-based advocates about ways in which a prosecutor's office can best structure and provide victim support services.

Requires changes in:

- Administrative Practices
- Resources
- Concepts and Theories
- Linkages
- Mission, Purpose & Function
- Accountability
- Education and Training

Who should be involved?

- √ Whatcom County Domestic Violence Case Specialist and supervisor
- √ Criminal Justice Advocate Volunteer Supervisor
- √ Whatcom County Prosecutor
- √ District and Superior Court judicial officers (regarding First Appearance and other hearings)
- √ Community-based advocates
- √ Survivors of domestic violence

Gap #11 Whatcom County Prosecution domestic violence case files lack documentation regarding victim contacts and concerns, case progression, and decision-making.

How is it a problem? For which victims of battering?

One of the primary ways that institutions organize and direct the work of employees is through “text.” Text can be forms, computer screens, sticky notes, and any of the ways that information about a particular case gets documented and shared among workers. As workers do not have the time to retell and relay all the information about a case from one person to the next, each player utilizes forms and practices that determine what gets documented and shared. For example, prosecutors rely heavily on the documentation from a police report as the basis on which to evaluate charging decisions and dispositions. Police, in turn, are trained to document certain information in reports, such as evidence supporting an arrest, predominant aggressor considerations, and the names, addresses, and phone numbers of witnesses and the parties involved in the incident. When a case reaches the prosecutor’s office, how does that institution ensure that important information about the needs, wishes, and safety concerns of victims is communicated from the advocate to the prosecutor, from the prosecutor to the advocate, from prosecutor to prosecutor, and from the prosecutor to the courts? When an advocate talks with a victim and learns certain information, how is that information documented and who has access to it? If the information is not documented and other staff get involved, how will they be able to act in the best interest of victim safety and offender accountability? Police reports alone cannot and do not tell the full story. They may not tell us that a particular victim relies on the defendant for income and that this dynamic will directly influence her response to criminal prosecution. The police report will not tell a prosecutor what has happened to the victim in the forty-eight hours since the report was written. Has the victim moved out to live with her brother? Posted bail for the defendant? Moved into a shelter? If the mission of a prosecutor’s office is to reduce domestic violence through prosecution strategies that protect victims and hold offenders accountable, it should do all it can to work with victims on the best way to fulfill this mission. Documentation of those efforts is an essential strategy to that end.

When information about victims and their needs are not documented, it is as if the prosecutor’s office has no contact with the victim and that voice goes missing. A victim can inadvertently and too easily become invisible in case processing. When efforts to contact victims are not documented, it can create confusion and delay as practitioners are left not knowing who has been contacted and whether they should make another attempt. When a case file carries limited information on the case and a sketchy account of actions taken and information gathered, a prosecutor who needs to cover for another will not have full information to know how to proceed and may simply ask for more time, increasing the risk that a victim will become disillusioned with the criminal justice system or no longer support prosecution.

Case files in the Whatcom County Prosecutor’s Offices are organized by defendant. If the defendant is charged again, the same case file will be used. Prosecutors would be in a better position if there were readily accessible and comprehensive information on decision making from the previous case. Particularly for a busy office with a large prosecutorial staff,

Gap #11 Whatcom County Prosecution domestic violence case files lack documentation regarding victim contacts and concerns, case progression, and decision-making.

documentation of pertinent case information is important to efficient and effective decision making.

What contributes to the gap?

The Whatcom County Prosecutor's Office has developed several domestic violence related forms for use within the office:

- Domestic Violence (DV) Case Checklist. The form is completed by the domestic violence specialist or criminal justice advocate. It includes sections to record contact with the victim, support offered, previous history, incident information, victim names, charges, trial information, and follow up needed, such as a victim statement, evidence, and medical records.
- Domestic Violence – Prosecutor's Checklist: Portions of this form mirror the case checklist completed by the DVS, under the heading "Victim Assistance Evaluation." It has boxes and spaces for information related to a prosecutor's case evaluation, such as the status of the victim, witnesses, injuries, evidence, contact with victim, risk assessment, follow up needed, and disposition.
- Attorney Information Sheet/DV Cases: This is a new form, introduced in conjunction with changes in the no-contact order rescission process that occurred during the Safety Audit (see discussion under Gap #12). It covers essentially the same information as the former Rescission Questionnaire, but arranged in a slightly different order, consolidating the questions from seven items to three and expanding victim contact information. The form asks victims to provide written answers to two key questions: "What has changed with the defendant since the date of the incident?" (particularly with respect to counseling, alcohol treatment, and other help) and "What are your reasons for wanting the no contact order rescinded."

The team analyzed fifteen prosecutor files (seven of which were felony cases), completed a more cursory review of multiple files kept by the domestic violence specialist, and conducted interviews with a range of personnel in the prosecutor's office. Across the fifteen cases, team members noticed that multiple prosecutors were involved in over 50% of the cases. Two cases (W-1 and W-8) involved four different prosecutors. This reinforces the importance of clear, consistent documentation of victim information and case details that can be readily understood as workers involved in the case might change.

The team found the following inconsistencies and gaps in how case file information was constructed, maintained, and relayed between different practitioners.

- All but one of the fifteen prosecution files included a copy of the DV Case Checklist. It appears that this form reaches the file within days after the case is opened, and sometimes

Gap #11 Whatcom County Prosecution domestic violence case files lack documentation regarding victim contacts and concerns, case progression, and decision-making.

within a day of the arrest incident, but little happens with it from that point on. The form begins with minimal and very initial case information, such as domestic violence history (check boxes for same/other victim and number of arrests, convictions, pending, and prior/current no-contact orders), names of victim and defendant, charges, and trial date, but that information is never updated or expanded. The sections on incident information (which includes presence of child victims and witnesses, injuries, strangulation, and weapons) and needed follow-up are often blank. The information completed was generally from the police report and criminal justice system databases and rarely included any information from a personal contact with the victim. As noted in the discussion under Gap #10, victim services has direct contact with less than 40% of victims. When the DV Case Checklist noted that telephone contact had been made, there was little additional information about the victim. The team found a similar lack of ongoing attention to the checklist in its review of copies kept by the domestic violence specialist. Here too, the form was generally not updated and it was difficult to know whether or not any follow-up contact had been made or additional information about the case and the victim's situation had been obtained. Sometimes a sticky note was attached to the form – e.g., “pretrial condition – no alc/no drugs – D has device which helps him pass drug tests” – but it was not clear who had provided the information, or when. One deputy prosecutor commented, “I don't use the DV Checklist much, but if it were updated regularly, it could be really useful.”

- The most current information about a victim's name, address, and phone number, tended to appear on the NCO rescission questionnaire.
- At the beginning of the audit, the prosecutor's office provided the team with a blank copy of the prosecutor's checklist. The *Domestic Violence Protocol* guides deputy prosecutors to “complete the Prosecutor's portion of the checklist.” None of the prosecution case files that the team reviewed included a completed form. Audit team members did not ask DPA's about their use of this form and were therefore unable to determine why it was not being utilized.
- The text that proved to be the most informative to team members in gleaning the status and progress of a case was the case file facing sheet, or “case notes” as it was commonly referred to by prosecutors. The *Domestic Violence Protocol* states that “Initialed notes to the case file facing sheet should be legible and fully reflect any significant discussions and actions.” In the files the team reviewed it was consistently completed by the DPA, although the amount of information varied from prosecutor to prosecutor. The case notes are handwritten, with abbreviations and symbols familiar to prosecutors. A typical series of entries reads like this:
 - 1/1/05 – D[defendant] requests cont. Rest: omni: 2/1 trial: 2/14
 - 1/21/05 – Victim mot. to rescind NCO. Denied.
 - 4/28/05 – Agree to Dis Con [disorderly conduct] – DV \$250, DV Educ & Tx, NCO, Probation

Gap #11 Whatcom County Prosecution domestic violence case files lack documentation regarding victim contacts and concerns, case progression, and decision-making.

10/16/05 - PV [probation violation] hearing: D admits not going to Tx, but says he is starting again in Dec. Judge says 45 days in abeyance, finds violation but no jail this time. (Prob. Dept. asked for 3 days & 45 in abeyance).
Review hearing 11/17/05 @ 2:30.

The case notes include disposition and sentencing actions in District Court cases and this information was always completed. It was often the only way to know the disposition for a misdemeanor level case. (Felony cases use a different face sheet, which do not have a place for dispositions, however, these files include a copy of the Superior Court Judgment and Sentence.) The case notes appear in tandem with the “case detail” generated from the prosecutor’s office data base. Domestic violence cases carry a large, prominent “DOM VIOL” stamp on the case detail. The sheet lists all of the parties involved and officers who might be subject to subpoena; includes a case history of events related to prosecution and the DPA involved; and, lists all of the scheduled trial dates.

- Prosecutors’ case notes about disposition were inconsistent; a few provided thorough notes, while others were too brief to clearly understand what had happened. Audit team members had difficulty understanding the basis on which cases were dismissed or amended and wondered how another prosecutor in the office would know how to proceed based on the limited information. Some examples from District Court cases include: “No V’s” and “x per plea” and “complaining witness has completely recanted.” The case note forms in the Superior Court cases do not have an area for recording reason for dismissal; in those cases, more detailed prosecutor notes had to be read in order to understand what may have contributed to the final disposition. None of the District Court case files reviewed, i.e., none of the misdemeanor cases, included a copy of the Judgment and Sentence form, while all of the felony or Superior Court case files reviewed contained a copy.
- Prosecutors and the victim specialist indicated in interviews with team members that they communicate with one another via e-mail. Copies of emails were not generally found in case files that the team reviewed, however. For example, one Audit team member reviewed six case files and in one file found a copy of an e-mail regarding the victim’s desires in the case.
- Sticky notes were found at various places in some of the case files with victim-related information. These notes were not dated and the source of the information was not provided. Who had reached the victim and was it in person, by phone or a voice mail message?
- Multiple prosecutors were involved in over half of the cases the team reviewed. Several different deputy prosecuting attorneys may appear in court for the same case. As one prosecutor commented, although a main prosecutor is generally assigned, his or her goals and decisions regarding the case are not consistently communicated. Other prosecutors

Gap #11 Whatcom County Prosecution domestic violence case files lack documentation regarding victim contacts and concerns, case progression, and decision-making.

may make different decisions about the same case.

- Prosecutors commented that they did not use the current internal database for case management because it was cumbersome and not user friendly. Two prosecutors have created their own individual databases to manage their cases. In these instances, other staff in the office would not have access to their database to retrieve and share case information.
- No Victim Impact Statements were found in any of the fifteen case files reviewed, seven of which were felony cases.

How do we close the gap?

When forms or sections of forms are blank it often suggests that they are not truly part of or useful to case processing. Sometimes even the best intentions for documentation go unfulfilled if routines are not reorganized to follow through or as workers take short cuts, receive contradictory instructions, or stick with more familiar approaches.

1. Review the two domestic violence checklists and determine why portions of the form, or the prosecutor's checklist form itself, are not being used. Revise and develop a form that is useful and relevant to victim services and to prosecutors in domestic violence cases. Consider using one form that will stay with the case file.
2. Review and revise as needed the process for gathering and sharing victim information between and across victim services and prosecutors, taking into account discovery issues.
3. Create a user-friendly case management information system within the Whatcom County Prosecutors Office that can be shared by multiple users for both input and access to victim contact and case processing/decision making information.
4. Establish processes within victim services that more consistently document ongoing contacts and attempted contacts with victims, as well as the issues and concerns raised by those contacts for victim safety and other aspects of prosecution response.
5. Implement revised documentation practices.
6. Keep up-to-date and accurate victim contact information and case status information. Conduct periodic case file reviews to determine whether documentation practices are consistent, maintained, and promote communication across all staff and steps in case processing.

Requires changes in:

- Administrative Practices
- Resources
- Concepts & Theories
- Linkages
- Mission, Purpose & Function

Gap #11 Whatcom County Prosecution domestic violence case files lack documentation regarding victim contacts and concerns, case progression, and decision-making.

- Accountability
- Education & Training

Who should be involved?

- √ Deputy prosecuting attorneys
- √ Domestic Violence Case Specialist
- √ Supervisors
- √ Administrative staff
- √ Whatcom County Prosecutor

Gap #12 Victims' individual risk and safety needs are not consistently accounted for in domestic violence cases that reach the Whatcom County Prosecutor's Office.

How is it a problem? For which victims of battering?

From an officer's report in W-1: "I asked her if she had any other marks or injuries on her body from the assault. She nodded yes and then said I'm not going to show you. I asked her if we went to the hospital and had someone there look at her. She said she would not go. She said "you don't know D [Defendant] like I do, you don't know what D can do...she continued to be fearful that anything she put down would only provoke D more."

From a report in W-6: "She said that if we didn't find D right away and he knew that the police were looking for him she'd be in trouble with him." [This was after the defendant was released from jail and the victim reported he had been violating the NCO.] "She does not answer D's calls from the jail. V said she just wanted to get on with her life with D out of it so she could concentrate on raising her kids. For that reason she no longer wanted to press charges because of the complications it would bring. She refused to write a written statement. I heard W (roommate) say D calls up to twenty times a day from the jail."

From a report in W-8: "D has intimidated her in the past by stating that he would kill her and he also said that he would blow her head off with a shotgun...V stated she did not have a local support network and she is concerned because D has a job and supports the family...six arrests for D for domestic assault and several violations of no contact orders."

A call to 911 and intervention by the criminal justice system does not always resolve the risk and safety needs for all victims of domestic violence. Sometimes it does, but the three voices above are not atypical. When such cases reach a prosecutor's office it is essential that the complex safety needs of victims are addressed. This does not mean that a prosecutor's office is solely responsible, but if prosecutors' actions are not informed by victims' needs and circumstances, and the full extent of the risk posed by each defendant, our very desire and efforts to increase safety may backfire. Without a sound understanding of who is at risk to whom and under what conditions, prosecutors and victim advocates have no way to prioritize which cases should receive the most urgent attention. We may end up with repeat and "uncooperative" victims because our responses have not been based on the full story.

Risk and safety needs change over the course of a case, reinforcing the importance of ongoing victim contact and communication between victim advocates and prosecutors. Cases take an average of five to seven months to reach disposition. In this interval much can happen to affect risk and safety.

Gap #12 Victims' individual risk and safety needs are not consistently accounted for in domestic violence cases that reach the Whatcom County Prosecutor's Office.

What contributes to the gap?

The Audit team found that victims and the ways in which they are at risk are often invisible in criminal case processing. A prosecutor's attention is inherently focused on the defendant, as the broader crime victims' rights movement has emphasized in its efforts to increase victim voice in criminal proceedings. Victims of battering are often doubly invisible because of the nature of the crime and the complexity of ongoing risk from a batterer, from life circumstances, and from the intervention itself. As one prosecutor noted, it is difficult for prosecutors to take victim safety into account because "it doesn't fit with the prosecutor's needs" to move a case forward and obtain a guilty plea or decision.

During observations of seven Superior Court First Appearances, the prosecutor did not mention the victim during the hearing except in reading the probable cause (PC) statement. Prosecutors did not refer to the risk factors included by law enforcement on the PC statement.²⁹ On one occasion the commissioner asked the prosecutor whether or not any risk factors were documented in the PC statement. It was unclear whether prosecutors were using the information to make recommendations for bail and release conditions, without specifically referencing it.

During this same series of observations, it did not appear that the victim had been contacted by victim services or anyone else from the prosecutor's office; the DVS was not present, and none of the victims made a statement on their own behalf. It was unclear whether any victim input or information had been considered in the bail and release conditions requested by the prosecutor.

Victim reluctance to support prosecution is an ongoing challenge for all prosecutors. Many factors can contribute to that reluctance, from the chaos and financial hardship that separation from a batterer can involve to the fear generated by ongoing threats or a desire to just get on with life. That reluctance often takes the form of withdrawing or changing – "recanting" – initial statements about what happened during the incident that lead to the arrest. According to the domestic violence specialist, a victim who withdraws or changes her account of events is dealt with on a case by case basis. The DVS stated that if she or a deputy prosecuting attorney feels the victim "lied," the victim is sent to law enforcement to give a new statement. It did not appear that this time is used to further assess safety needs and confirm that a victim is connected with or referred to community-based advocacy and other services. If the DPA and DVS do not think the victim lied, they use their best judgment on how to proceed.

The *Domestic Violence Protocol* includes numerous directions to the DVS to inquire about and assess the safety needs of the victims, both at the twenty-four hour and five-day contact. The

²⁹ The identification of risk factors by responding officers is a change that grew out of the first Bellingham-Whatcom County safety audit. In the case file review team members found that the risk factors were often though not universally included in law enforcement reports. The risk questions include: 1) Do you think he or she will seriously injure or kill you or your children? What makes you think so/think not? 2) How frequently and seriously does he or she intimidate, threaten, or assault you? 3) Describe the most frightening event/worse incidence of violence involving him/her.

Gap #12 Victims' individual risk and safety needs are not consistently accounted for in domestic violence cases that reach the Whatcom County Prosecutor's Office.

protocols indicate that at the second contact (within forty-eight hours or a five-day maximum), a risk assessment list should be completed. Based on interviews and case file reviews, the team found a lack of documented contact with victims and it seemed that previous criminal history and information in the police report formed the basis for assessing risk, rather than direct conversation with and information from victims. Overall, team members noted minimal documentation on the victim's risk and safety needs in the prosecution files. (See also the discussion of victim support services under Gap #10.)

Interviews that the team conducted suggested inconsistency across deputy prosecuting attorneys regarding different aspects of risk and safety. For example, one prosecutor noted that weapons restrictions were not a standard release condition, while another cites weapons restrictions as a standard release condition. One prosecutor's understanding was that cases involving children are not to be treated any differently than cases that did not involve children. This prosecutor was unaware of procedures in the *Domestic Violence Protocol* requiring that "the Sexual Assault Specialist should be notified as soon as practical when a child is the victim of, or a significant witness to, an incident of Domestic Violence."

No-contact order rescission and modification

Midway through the Safety Audit the Whatcom County Prosecutor's Office changed the process by which a victim could request that a no-contact order be rescinded. The prosecutor's office has become an even more active gatekeeper of rescission and modification requests and of a victim's access to the court to make such requests. As described by the deputy prosecuting attorney most directly involved in shaping the change, the current emphasis is that the "victim has no standing, is not a party to the case" and the decision to modify or rescind a no-contact order is a matter of the State of Washington versus the defendant. A prosecutor will only file a motion when he or she supports the victim's request to modify or drop the order. If the prosecutor agrees, a formal motion is drafted and set for a hearing, with the required notice to the defendant. This replaces the more informal process of adding rescission requests to the court calendar upon a victim's request, as had been the practice. The procedure varies depending upon whether the NCO is part of pretrial release or sentencing conditions, as summarized in the following comparison.

Pretrial no-contact orders

1. Victim contacts prosecutor's office to request that NCO be dropped or modified
2. Victim meets with Domestic Violence Specialist and is required to complete the "Attorney Information Sheet/DV Cases"
3. Information sheet goes to the Deputy Prosecuting Attorney
4. DPA agrees with victim's request: drafts a motion and gets it on the court calendar
5. Or, DPA rejects the victim's request: contacts the defense attorney or defendant if pro se
 - a. DPA essentially tells defendant, "let's get this resolved; she wants the order to go away."

Gap #12 Victims' individual risk and safety needs are not consistently accounted for in domestic violence cases that reach the Whatcom County Prosecutor's Office.

- b. DPA offers plea agreement. Will not support a motion to rescind until the defendant "does A, B, C, which puts the ball back in his court."
- c. Motion to rescind or modify must come from defendant

Post-conviction no-contact orders

1. Victim contacts prosecutor's office to request that NCO be dropped or modified
2. Victim meets with Domestic Violence Specialist and is required to complete the "Attorney Information Sheet/DV Cases"
Emphasis is on victim providing details about what the defendant was ordered to do and what he has actually done
3. Information sheet goes to the Deputy Prosecuting Attorney
4. DVS confirms information that the victim has provided with District Court Probation (misdemeanors) or Department of Corrections (felonies)
5. DPA agrees with the victim's request and puts the rescission or modification request on the court calendar
6. Or, DPA rejects the request and tells the victim that she must go to the defense attorney and ask for the case to be put on the calendar

The domestic violence specialist role has also shifted under the new process. The DVS is now meeting with victims one-on-one rather than in group sessions to prepare requests to drop or modify no-contact orders. The DVS indicated that group sessions do not work well because victims want to tell their story, to provide an account of why they want the no-contact to change, because they can no longer go to court to do so.

Team members learned that prosecutors are unlikely to pursue NCO rescissions in pretrial cases because Whatcom County District Court judges have said that they will not remove pretrial no-contact orders. From the perspective of the DPA who directed the change, "it has been a very good thing" and "the focus is on the defendant and his actions" and whether or not the defendant can establish that conditions of release and sentencing have been met. Defendants are now asking for rescission hearings instead of victims and the new process helps move cases along. "The DPA is trying to call victims early, when they get the reports; for victims to establish a rapport with the DPA is important."

These are evolving changes and the team found that it was unclear how thoroughly the new no-contact order rescission process has been implemented and its impact on victims. At one point, for example, the DVS did not know the changes were occurring, in spite of the impact on that position and its relationship with victims. Deputy prosecuting attorneys were not consistently aware of the new protocol. All assertions about the change's benefits need to be examined from the standpoint of diverse victims of battering in order to gauge its impact. Many questions remain both specific to the recent change and more broadly in the use of no-contact orders. No-contact orders have become almost automatic, applied to all cases lumped under the heading "domestic violence." Victims' requests to change or modify orders, as the team found in the case files it reviewed, reveal the difficult circumstances that victims find themselves in. There was little evidence in the case files that suggested that victims' are promptly connected with outside

Gap #12 Victims' individual risk and safety needs are not consistently accounted for in domestic violence cases that reach the Whatcom County Prosecutor's Office.

and ongoing advocacy that might help address these very real needs and perhaps lessen the pressure to request rescission or modification of a no-contact order. It is not always clear the extent to which a victim requesting a change genuinely wants it or feels that she has no alternative under the realities of economic hardship and/or ongoing threats of abuse. The new process was developed and implemented without input from community-based advocates and other members of the wider coordinated community response in Whatcom County. Nor did it involve consultation with survivors of battering. These are important perspectives that can help account for the complexity of risk and safety for different victims of battering. Does this new practice inadvertently put more pressure on some victims, for example, or further compromise their safety by pushing them into more contact with the defense attorney?

The new practice raises several concerns that need to be more fully examined in order to gauge their impact on victim safety. For example, it is not uncommon for a victim to ask that the NCO be dropped because the abuser has pressured her, while making it clear to the prosecutor's office that she really does not want it dropped, but needs to make it look like she tried. She may be at greater risk of harm if the prosecutor refuses to file a motion; the abuser may think she just did not try hard enough. Any universal practice that does not account for the complexity of individual risk and circumstances is very likely to put different victims at increased risk.

How do we close the gap?

1. Evaluate current forms and practices for risk assessment and revise them based on recent research and usefulness to victim services and prosecutors.
2. Ensure procedures and processes are in place to evaluate and share ongoing and current risk information between victim services and prosecutors.
3. Train prosecutors on strategies for using the risk information in police reports and probable cause statements to recommend bail and release conditions and make case processing decisions.
4. Develop a consistent practice that easily highlights risk factors in prosecutor case files.
5. Review the Whatcom County Prosecutor's Office philosophy on individualized contact with victims, especially those who are requesting NCO rescissions.
6. Review and explore the agency's philosophy on its role in addressing the complex safety needs of victims and how it can assist in linking victims with community services.
7. Train prosecutors and victim services staff, including volunteers, on identifying and responding to domestic violence risk factors. Include attention to strategies for communicating and working with victims who are reluctant to participate in prosecution and/or may underestimate the level of risk.
8. Monitor and evaluate the new no-contact order rescission process for its impact on victim safety.
9. Consult with survivors of domestic violence and community-based advocates about how to best account for individual risk and safety needs in prosecution practices.

Gap #12 Victims' individual risk and safety needs are not consistently accounted for in domestic violence cases that reach the Whatcom County Prosecutor's Office.

Requires changes in:

- Administrative Practices
- Concepts & Theories
- Linkages
- Mission, Purpose & Function
- Education and Training
- Accountability

Who should be involved?

- √ Whatcom County prosecuting attorneys
- √ Whatcom County Domestic Violence Case Specialist
- √ Criminal Justice Advocate Volunteer Supervisor
- √ Whatcom County Prosecutor
- √ Survivors of domestic violence
- √ Community-based domestic violence advocates
- √ Judicial officers (regarding no-contact order rescission process)

Gap #13 Alternative prosecution strategies are not routinely utilized to their fullest potential in cases that reach the Whatcom County Prosecutor's Office.

How is it a problem? For which victims of battering?

As noted previously, many factors contribute to a victim's reluctance to support or participate in prosecution, from the chaos and financial hardship that separation from a batterer often involves to the fear generated by ongoing threats or a desire to just get on with life. That reluctance can take the form of withdrawing or changing – “recanting” – initial statements, as well as refusing to testify or contradicting earlier statements once on the witness stand.

These fears and reluctance leave prosecutors with the challenge of trying to obtain some type of offender accountability without the full availability of the victim in the crime, or without placing a victim's ongoing safety in further jeopardy. Prosecution strategies that rely heavily or solely on the victim can put victims in a bind if they fear that prosecution will make the situation worse, especially if previous efforts have failed, i.e., the case was dismissed or the sentencing conditions were not upheld. Reliance on victim testimony can communicate to a defendant that the victim is the source of “successful prosecution” and thereby encourage the defendant and/or defense attorney to pressure the victim to recant, leave town, or otherwise be unavailable to the prosecution. Forcing a victim to testify can also put a prosecutor in the role of using coercive tactics against someone who has already been subject to considerable coercion.

The realities of battering-related crimes require that prosecutors be as creative as possible in exploring alternative strategies for prosecution and case processing, including utilization of witnesses, consideration of the broadest and least victim-dependent array of charges, expediting prosecution, and ensuring that victims have the strongest prosecution-based support and community-based advocacy as possible.

What contributes to the gap?

In their case file review, Audit team members found examples of prosecutors using a variety of charging strategies, as supported by the law enforcement investigation and documentation. In W-1, for example, the DPA successfully used the possibility of an additional drug charge to secure a plea agreement for an assault charge. The practice was inconsistent across the case files, however, and the team found other examples where follow-up and charging alternatives did not appear to be utilized, although information in the law enforcement report suggested that possibility. In this same case (W-1), for example, prosecutors filed but did not pursue a charge of resisting arrest, even though officers used a Taser after the defendant jumped out of a bedroom window, ran toward the street, and ignored officers' commands to stop. The defendant had a long, ongoing history of battering the victim, who repeatedly voiced her fear to officers: “She said, ‘you don't know what D will do you don't know what he can do’...she continued to be fearful that anything she put down would only provoke D more.” The resisting charge was dismissed and the Assault 4 charged reduced to disorderly conduct. From their experience in the community, team members anecdotally cited other cases where a charge of resisting an officer

Gap #13 Alternative prosecution strategies are not routinely utilized to their fullest potential in cases that reach the Whatcom County Prosecutor's Office.

could have been used by a prosecutor as a strategy to shift the emphasis away from the victim as a witness.³⁰

Several case files (W-3, W-4, W-14) included examples of damage to property, but it did not appear that there was follow-up with law enforcement to determine whether this might be a route to prosecution that would be less reliant on the victim.

In both W-1 and W-14, witnesses to some aspect of the incident were noted in the police report. In W-1, the witness list for trial did not include a child and two professionals who had worked with the victim. In W-14, a no-contact order was violated in the presence of the victim's parent. A written statement from this witness was in the case file as part of the police report, but there was no documentation of further communication with the witness, no interview notes, and no indication whether or not this witness was available to testify at trial. The case was ultimately dismissed because the victim did not appear at the trial.

In text analysis and interviews, there was no indication that expert witnesses were utilized in any cases. Although photographs were included in some case files, in one file the police report stated that photos had been taken at the scene, however photographs were not found in the case file. Returning to the earlier discussion in Gap #11, the team did not find prosecutors making use of the checklist, which is structured to provide a one-page snapshot of key factors in the case, including available evidence and needed follow-up, such as photographs, the 911 tape, and medical reports.

All fifteen case files reviewed contained copies of the police report. Of the ten files that the team analyzed most closely, however, only four included copies of a written victim statement. Five of the ten cases involved felony charges and only one had a copy of a written victim statement. There was no documentation in the file to note whether or not the statement had simply not been included, whether the victim had refused to complete one (which should be documented in the police report), or whether the prosecutor or DVS had asked the law enforcement agency to follow up and obtain a written statement.

In its case file analysis, the team did not see consistent attention to determining whether or not the defendant had made calls from jail or indications that 911 calls were widely reviewed or

³⁰ "Susan's" case (B-3), handled by the City of Bellingham Prosecutor's Office, raised similar questions about whether prosecutors consistently utilize the broadest range of charges, and particularly those that may be less victim-reliant. The defendant "did not comply with repeated requests to put his hands up and surrender...the X-26 Taser was deployed." He was not charged with resisting arrest and the Assault 4 charge was ultimately dismissed when the victim provided a letter as the case was going to trial (about three months after the incident) saying "once things calmed down, I had a chance to review what had happened and realized that the prior statement was exaggerated." The initial incident report described her as "crying uncontrollably...kept saying she is scared to say anything because of what D might do to her...she has been down this path before with D and she is scared to death of him...D has always gotten away with crimes in his past and she doesn't see how anything new she reports will do any good." The defendant had a history of multiple domestic violence-related charges with multiple victims and two rape charges. There was no indication that any attempt was made to determine whether or not he was intimidating her while he was in jail, such as monitoring outgoing phone calls or making inquiries of jail personnel.

Gap #13 Alternative prosecution strategies are not routinely utilized to their fullest potential in cases that reach the Whatcom County Prosecutor's Office.

used. No such measures were evident in “Jean’s” case (W-1), for example, even though the arresting officer, prosecutor, and victim-witness specialist all made written notes regarding the defendant’s dangerousness: *I believe her fear is well-founded...John is violent and will someday really hurt her...This couple has a long history of DV with Jean as the victim. She is terrified of John and his family.* Both of these avenues offer possible strategies for dealing with the implications of Crawford v. Washington (2004), which changed the standard for determining when hearsay statements are admissible in criminal cases and introduced new challenges in pursuing “evidence-based” or less victim-reliant prosecution.³¹ Other jurisdictions, for example, have had success in utilizing jail tapes as evidence of witness tampering and intimidation and as a way of showing that defendants had forfeited their right to confront the witness against them.

The team’s interviews provided further insight into the range of factors that influence utilization of alternative strategies. While the protocol emphasizes proceeding in ways “which are not directed or influenced by the ability of the victim to assist or cooperate,” some prosecutors acknowledged that the reality is they depend on the victim for case processing. If the victim is unavailable, alternative strategies may not be considered, or it may be too late to pursue them. Prosecutors also encounter obstacles in the courtroom when trying to use creative strategies to address victim fear and reluctance. For example, one prosecutor described a case where the judicial officer did not allow the prosecutor to bring into account prior history and convictions in order to illustrate why a victim might recant. Prosecutors cited other conditions that limit their ability to pursue certain conditions of sentencing that might help enhance victim support for prosecution, such as the lack of jail space and the need for alternative, less severe sentencing options for first time offenders.

Other aspects of case processing that create problems for victims and their ability to “stay” with the case include repeated continuances and the overall length of time the case is open. For example, minimal and shorter continuances of court dates, and prosecutors objecting to continuance motions, can show a victim that they are working to resolve the case sooner rather than later, and lessen overall disruption to the victim’s life, as well as diminish opportunities for a batterer to intimidate and harass.

The Whatcom County Prosecutor’s Office reports that in 2005 the average time from charging to adjudication for felony domestic violence cases was 157 days, or five months. Data on average time from charging to adjudication for misdemeanor domestic violence cases is not available, however, a review of eleven misdemeanor files showed an average of seven months. Two cases were resolved in less than one month and two cases that went to trial (an infrequent occurrence) took fourteen months and eighteen months respectively. In the case file review the team found that it was common for trial dates to be continued multiple times, and each time the file included copies of subpoena’s sent to witnesses, including the victim. *The Domestic Violence Protocol*

³¹ See, for example, *Prosecuting Witness Tampering, Bail Jumping, and Battering From Behind Bars*, Vera Institute of Justice, 2004. This describes strategies developed by the Milwaukee County (WI) District Attorney’s Office. The 2006 Washington State Fatality Review recommends that statewide guidelines be developed for the admissibility of 911 tapes and victim statements (5.8); and, “policies and mechanisms for preventing inmates from calling victims or witnesses listed in police reports and/or civil and criminal protective orders” (5.9).

Gap #13 Alternative prosecution strategies are not routinely utilized to their fullest potential in cases that reach the Whatcom County Prosecutor's Office.

sets the expectation that "continuance in DV cases should be avoided, except where appropriate."

How do we close the gap?

The Whatcom County Prosecutor's Office *Domestic Violence Protocol* encourages prosecutors to "work under objective, consistent and articulate policies which are not directed or influenced by the ability of the victim to assist or cooperate." Section 4.5 of the policy, "Trial of DV Cases Where Victim is Unavailable" and Section 4.6, "Making the Uncooperative Victim Your Witness," anticipate the challenges that a reluctant victim might present and provide prosecutors with suggestions and cues for identifying alternative sources of evidence and encouraging victim participation in the case. This is a good foundation from which to build on and expand knowledge and skills related to alternative prosecution strategies.

Prosecutors' actions do not stand alone and success in applying alternative prosecution strategies is closely linked to the thoroughness of the initial law enforcement response and investigation, as well as to the nature of available victim support and advocacy.

1. Continue training and discussions with law enforcement on investigating and recommending all possible charges, with an emphasis on less victim reliant charges whenever appropriate.
2. Explore and train on the impact of the Crawford decision and how to account for it in investigation and charging. Emphasize strategies that provide alternatives to victim-centered prosecution.
3. Build prosecutors' skills in working with victims who are reluctant to testify or recant their initial account.
4. Build prosecutors' skills in using witnesses and expert witnesses in domestic violence cases.
5. Explore disposition and sentencing options for first time domestic violence offenders, taking into account clear guidelines about risk and safety and which cases would be considered.
6. Review average days to adjudication for misdemeanor domestic violence cases and investigate the impact on victims and witnesses. Strategize and develop new practices as appropriate.
7. Review and revise *Domestic Violence Protocols* per discussions and training related to creative charging strategies and enhanced victim support.
8. Confer and conduct training with judicial officers on issues related to alternative prosecution strategies in domestic violence cases, as appropriate.

Requires changes in:

- Administrative Practices
- Concepts & Theories
- Linkages
- Education and Training

Gap #13 Alternative prosecution strategies are not routinely utilized to their fullest potential in cases that reach the Whatcom County Prosecutor's Office.

Who should be involved?

- √ Law enforcement officers
- √ Whatcom County prosecuting attorneys
- √ Whatcom County Domestic Violence Case Specialist
- √ Whatcom County Prosecutor
- √ Community-based domestic violence advocates
- √ Survivors of domestic violence
- √ Judicial officers

More trails, more questions

As the team worked through its analysis of the information gathered, a “need more information” and a “not sure about this” kind of list emerged. The items include aspects of the prosecution and probation response that the team was less certain about, still wondering about, or needed to know more about. These are included in the findings in order to not lose track of them and to suggest areas for further inquiry.

- **Links between victim services in the prosecution and probation offices and community-based advocacy**

The case file review and court observations raised questions about the links between these important sources of help for victims of battering. While we were told that the prosecutors' offices routinely ask about the need and refer victims to other community services, that link was not visible in the case files. Nor did team members see community-based advocates present in the courtroom. Each approach to victim support has its own role and strengths and it is important that victims are aware of and can make use of both. Prosecution-based services can help victims navigate the often frightening and frustrating criminal legal system process. At the same time, a victim's needs may be in opposition to a prosecutor's course of action and advocacy in its full meaning – to speak, plead, or argue in favor of – is limited. Community-based domestic violence services are available beyond the brief time that a case stays in the prosecutor's office and they are equipped to provide ongoing support around many aspects of a victim's life, such as housing, employment, and post-separation legal issues, as well as direct advocacy.

- **Supervision of felony domestic violence offenders**

Supervision of felony probationers occurs under the Washington State Department of Corrections. This agency was not within the scope of the current audit, but it will be important to more fully understand how supervision in felony cases occurs, with attention

to the nature of links and communication between the district court probation and state probation, role of domestic violence treatment providers, and ongoing communication with and support for victims. This is particularly important to overall victim safety since more dangerous behavior is likely to be involved in felony-level cases (though not universally).

- **Mission, purpose, and function of the “Wednesday DV Meeting”**

The discussion under Gap #8 explored the absence of district court probation officers at the weekly multidisciplinary Domestic Violence Team meeting. It raised further questions for team members about the overall role of the meeting in the community response to domestic violence. Is it smoother case processing? To share information? To strategize on the most dangerous cases? To understand the context and reality of a victim’s life and the implications for safety? Its role is currently defined in the Whatcom County Prosecutor’s *Domestic Violence Protocol*: “The Domestic Violence Team consists of Advocate agency representatives, Prosecutors, Detectives and Victim-Witness specialists. They meet each Wednesday for 1 hour to staff DV cases. A list of the most recent cases and those pending trial is used to set the agenda for the meeting each week.” The team has been meeting for ten years without a major examination of its work. Team members’ observations during the Safety Audit raised questions about the ways in which participants identify, talk about, and intervene in cases, and whether the complex risk and safety needs of victims are always respected and taken into account.

- **Criminal case no-contact orders**

Issues around whether and how to modify or rescind no-contact orders are a constant aspect of the prosecution response to domestic violence cases (as illustrated in Gap #12). No-contact orders have become an almost universal condition of pretrial release and sentencing, without necessarily considering the impact and unintended negative consequences for victim safety. The team’s case review and court observations produced many examples of victims’ frustration with and resistance to no-contact orders, usually because of the economic hardship posed by the abrupt loss of a family’s wage earner or child care provider. Continuing as-is and shutting off avenues for victims to request that an order be dropped or modified does not enhance safety. The team’s work suggests that it is time for a thorough exploration of all practices related to no-contact orders.

Next steps

How do prosecution and probation recognize and respond to the complexities of risk and safety for all victims of domestic violence in the City of Bellingham and Whatcom County?

The City of Bellingham and Whatcom County, with leadership and guidance from the Bellingham-Whatcom County Commission Against Domestic Violence, have again collaborated

to examine and refresh their coordinated response to domestic violence. This report articulates thirteen gaps in the prosecution and probation response to domestic violence identified by the Audit Team.

Victims of battering are at the center of this Safety Audit. The thirteen gaps were discovered by asking: Does this practice or policy make it safer for victims of battering? Is there a gap between a particular practice or policy and what a victim of battering needs in order to be safe from ongoing abuse and violence? While “Jean” and “Susan’s” experiences and fears are distinctive to their individual lives, they mirror the experiences and fears of others who must navigate their days and nights around the realities of living with a batterer.

*[B-4] she was walking...I could hear her sobbing and she appeared to be very upset...he started calling her a whore and other names...she went into the bedroom and she locked the bedroom door to get away from him...he forced open the door and he damaged the door jamb and the locking instrument...she appeared distraught and she was crying. She stated that she was in trouble because he hates the police...she probably should not have called the police...he has made threats that he has no reason to live...she has been trying to end her relationship...She told me that she just wanted this to go away... [W-3] She refused the kiss, and he placed his hand in her pants...she refused that advance and he shoved her out of the bed with his hands and feet...hard enough that she hit the wall...he stood over her and said “F*** you, you’re not leaving me!” ...when she stood up he pushed her into the corner of the bedroom and held her there by her wrists, which he held at approximately shoulder height...she tried to break away several times...he threw her on the bed and straddled her chest while holding her wrists...he punched the closed door and broke it... [B-5] She does not want the NCO lifted, but she wants the defendant and his family to think she tried...she is so fearful of him...should he know that she disclosed this information she would face serious harm...she said ‘I’m afraid he’s going to kill me’...As we approached the house she began to shake and started to cry again. She appeared to be very scared that something bad was about to happen...advised her that he was under arrest and would not be allowed to return to her house as there would be a no-contact order issued upon his release. She became upset and stated, ‘He’s going to kill me’...She asked several times if he would be let out of jail tonight, fearful that he would return. She said several times, ‘He’s going to kill me’...she said he is going to be really mad at her... [W-6] Her husband had been released from jail today and he had called the house...she showed me the caller ID showing a history of calls (10)...she does not answer these calls from the jail. She just wanted to get on with her life with him out of it so she could concentrate on raising her two kids. For that reason she no longer wants to press charges because of the complications it would bring...he calls up to twenty times a day...had called and threatened to come and burn down the house and everyone in it...she said that if we didn’t find him right away and he knew that the police were looking for him she’d be in trouble with him.*

The criminal legal system has not been well organized historically to account for battering and its impact. A Jean or Susan who is drawn into this large and complication institution can easily become the “unsupportive victim” or “victim problem,” as the Audit Team sometimes heard victims described in different and particularly difficult cases. Yet buried in the pages and forms

of many case files there was much detail and context to reinforce a victim's skepticism that having a prosecutor's office involved would necessarily improve her safety or provide timely and reliable sanctions for the abuse, violence, and threats she had experienced. There was often much to reinforce the focus groups' identification of accessibility, communication, access to information, timeliness, and ongoing support as weak points in the fabric of safety.

As the Audit Team identified gaps, it developed an understanding of how each gap was created by the ways that work processes are currently organized, while also pointing to the kinds of change that would help close the gaps in prosecution and probation responses. This report offers a starting point, a guide for where to begin in changing policy, administrative procedures, conceptual practices, linkages within and across agencies, and other aspects of the ways in which the work of prosecutors, probation officers, and victim support specialists is organized to respond to domestic violence cases. The team also identified who should be involved in the design of those changes.

The three participating agencies and the Bellingham-Whatcom County Commission Against Domestic Violence will carefully review this Audit report and its recommendations. Implementation will require a commitment and willingness to explore the questions and issues raised in its pages. It will also require the involvement of community-based domestic violence agencies and survivors of battering in many of the discussions and problem-solving.

The findings and recommendations in this report are linked with and continue the inquiry that began with the 2002 Bellingham-Whatcom County Safety Audit. It reinforces the recognition of the need and commitment to 1) strengthen the overall criminal legal system and community understanding of risk and danger in the context of battering; 2) strengthen the coordinated community response; 3) expand ongoing victim advocacy, support, and access to community services; 4) continue to examine and define the meaning of victim safety and batterer accountability, including their meanings for culturally and racially distinct communities; and, 5) ground policy and practice in the expertise of victims of battering.

It is a bold step for any agency to examine its own work and publicly share the results with others. It is with this courage that the City of Bellingham and Whatcom County will move forward to launch the next steps. The Bellingham-Whatcom County Commission Against Domestic Violence will do all it can to support the discussions and problem-solving that will refresh the mission, purpose, and function of each system, agency and worker that is part of the community response to battering and abuse.