

**DOMESTIC VIOLENCE SAFETY AND  
ACCOUNTABILITY AUDIT**

**FINDINGS AND RECOMMENDATIONS FOR THE  
CITY OF BLAINE:**

**POLICE, PROSECUTION,  
PROBATION AND COURT RESPONSES**

*October 2007*

Bellingham-Whatcom County Commission Against Domestic Violence  
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## EXECUTIVE SUMMARY

### **Nancy's Story:**<sup>1</sup>

*I attempted to contact Nancy who was inside the residence. As I walked up to the door Nancy shut the door and locked it. Joe was steadily becoming agitated with us and started telling us we needed to leave. He said nothing happened and Nancy never hit him. After a few minutes Nancy opened the door. She was crying and I could see blood on her right cheek and right ear... They started to argue because Joe is worried Nancy is going to leave him... He said he was going to leave and take the pets... She became upset and did not want him to drive as he had been drinking... When she went to get the pets he shoved her. She slapped him at that time. He then kicked the fender of her car... I asked Nancy if he hit her and she said yes. I asked her where he hit her and she would not tell me. I believed she had been slapped on the right side of her face. She then started begging me not to arrest him. She begged me to arrest her as well. I asked her how many times she had been hit and she said she had no idea. I asked her how her ear got injured and she said she didn't know. She did not want to tell me what happened because she doesn't want him charged. She said she does not want him prosecuted... It appeared she was trying to protect him and not tell me everything that happened tonight or in the past. She stated she knew this was a dangerous time for her because she is planning on leaving him.*

### **Jane's Story:**

*Jane stated she is sick and tired of David because he is mentally very abusive and always threatens to kill himself when she tries to leave him, or he will pick on her pets... Jane said David has punched her pets before, and punched a hole in the dining room. I noticed a four-inch in diameter area in the wall, which appeared to have been repaired lately... Jane told me she did not want to get David in trouble, but she can't take it anymore.*

*From a second officer at scene: Jane would continue that she had tried numerous times to end the relationship, but David would repeatedly return and stay at the apt. without permission. She was in fear that he would become upset and violence would ensue... She often felt like a prisoner in her own home, fearing that anger or violence would escalate. He would always tell her that he may kill himself if she left him. This had an obvious impact on Jane as she repeatedly felt guilty and did not want him in trouble.*

Nancy and Jane's experiences became criminal cases in the City of Blaine. Each woman is trying to manage her life in and around a persistent, unwavering batterer. Each woman was reluctant to ask for a criminal legal intervention for a variety of reasons, unique to Nancy and Jane, but yet common among many victims of battering. Asking questions from the standpoint of a victim of battering<sup>2</sup> is a key

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<sup>1</sup> From case files reviewed during the Safety Audit. Names and other identifying details have been changes. Material is quoted from case file documents.

<sup>2</sup> *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

principle of the Safety Audit design. An Audit team is constantly asking how practitioners and processes take into account her<sup>3</sup> whole experience. Nancy and Jane'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 does the criminal justice system recognize and respond to the complexities of risk and safety for all victims of domestic violence in the City of Blaine?*

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. Then in January 2007, the Commission Against Domestic Violence completed another Safety Audit, examining the response of prosecution and probation in the City of Bellingham and Whatcom County. Both reports were made widely available within the community and the state.<sup>4</sup>

This time the community has collaborated again to take a close look at the police, probation, prosecution and court response to domestic violence cases in the City of Blaine. The City of Blaine (population 4,500) is one of six incorporated municipalities in rural Whatcom County, situated 25 miles from the City of Bellingham, which is the seventh and largest municipality in Whatcom County (population 73,000). This audit takes into consideration the unique dynamics of a criminal legal system response in a small community.

The fact that the City of Blaine decided to step into the Audit process speaks to the connection, dedication, and strengths of the community and the agencies involved. 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. As evidenced by introductory comments to the Audit team from the City of Blaine Police Chief: "One case being worked out among our prosecutors, police and probation really brought home the realization that there are systemic problems that need to be addressed." It is with this spirit and foundation that this Audit was able to move forward.

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violence, see "Effective Interventions in Domestic Violence Cases: Context is Everything," Loretta Frederick and Julie Tilly, 2001; available at <http://www.bwjp.org>.

<sup>3</sup> 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.

<sup>4</sup> *A Report from the 2002 Domestic Violence Safety and Accountability Audit and Domestic Violence Safety and Accountability Audit: Findings and Recommendations for Prosecution and Probation Responses, January 2007*, are both available at <http://www.dvcommission.org/>.

***City of Blaine Domestic Violence Safety & Accountability Audit – Final Report 2007  
Bellingham-Whatcom County Commission Against Domestic Violence***

## ***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.<sup>5</sup> 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 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.

Four systems in the City of Blaine criminal legal response offered their policies, practices and case files for review during this Audit, as well as contributed members to the local team: City of Blaine Police Department, City of Blaine Prosecutor, City of Blaine Probation, and City of Blaine Municipal Court. The team completed its data collection primarily between January and June 2007. Its findings are based on information gathered from four interviews with survivors of domestic violence, twenty-one individual interviews with criminal justice personnel, nine observations of court hearings and police ride-alongs, and analysis of documents from thirty-one police reports, eight prosecution files, six probation files, and 11 court forms.

### ***Discovering gaps in safety and accountability***

The Audit team discovered gaps in the fabric of safety that the City of Blaine has tried to weave. The team’s findings center on sixteen aspects of the criminal legal system response 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. The gaps are listed in general order of priority as determined by the Audit team.

1. A dedicated system-based domestic violence advocate is not available for victims who are involved in domestic violence cases with the City of Blaine.
2. Enforcement of order violations is inconsistent among Blaine law enforcement personnel.
3. Domestic violence risk assessment protocols are not used and documented consistently in police reports.
4. Judicial review hearings (compliance reviews) are not standard practice in domestic violence cases in Blaine Municipal Court.

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<sup>5</sup> Praxis International, Inc., (218) 525-0487; [www.praxisinternational.org](http://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.

5. Police reports reflect a lack of consistency in investigating and documenting cases of verbal (non-arrest) domestic violence incidents.
6. Safety and support considerations for victims in Blaine Municipal court are minimal.
7. There is little evidence that follow-up investigation by law enforcement is occurring where further information seems needed.
8. Officers responding to domestic violence calls lack sufficient information regarding the situation.
9. Probation and prosecution contacts with victims are inconsistent and largely undocumented.
10. Police reports do not consistently provide a) thorough documentation of contact with and information from witnesses and children, and b) comprehensive information on how to reach victims.
11. Closed domestic violence case files remain with the contracted city prosecutor when the prosecutor's contract with the city ends.
12. There is no current standard practice for documentation or presentation of victim impact statements.
13. There is no clear and consistent policy throughout the system regarding the forfeiture, surrender and removal of firearms and dangerous weapons in domestic violence cases.
14. Police reports contain limited information on prior history of involved parties and do not always indicate if prior history was reviewed.
15. Probation has limited access to information that would corroborate a defendant's self reporting on probation compliance.
16. Community-based domestic violence services do not appear to be consistently utilized or accessed by the criminal justice system and are assumed to be unavailable.

## Caveats and cautions

Exploring the police, prosecution, probation and court 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. The team 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 the City of Blaine. 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 the Audit team discovered. Readers are encouraged to consider how any one gap might also be present in their own agency or jurisdiction 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.

As the team worked through its analysis of the information gathered it also identified aspects of the criminal legal response 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. The list includes:

- Dialogue and information sharing between criminal legal system personnel and state
- certified domestic violence perpetrator treatment providers;
- Explore whether contracts between the city and contracted criminal justice personnel can
- address a statement of philosophy on the handling of domestic violence cases;
- Ensure that changes initiated during the Audit process are memorialized; and
- Ensure that Audit recommendations regarding probation are carefully reviewed if the city
- returns to in-house probation services.

### *Next steps*

Victims of battering are at the center of this Safety Audit. The sixteen 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 Jane or Nancy 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 the criminal legal system 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 victim/survivors’ identification of appropriate responses, access to information, and ongoing advocacy and 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 police, prosecution, probation and court 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 police, prosecutors, probation officers, and court staff are organized to respond to domestic violence cases. The team also identified who should be involved in the design of those changes.

The City of Blaine 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 and 2007 Bellingham-Whatcom County Safety Audits. 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 Blaine 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.

## Introduction

### Nancy's Story:<sup>6</sup>

*I attempted to contact Nancy who was inside the residence. As I walked up to the door Nancy shut the door and locked it. Joe was steadily becoming agitated with us and started telling us we needed to leave. He said nothing happened and Nancy never hit him. After a few minutes Nancy opened the door. She was crying and I could see blood on her right cheek and right ear... They started to argue because Joe is worried Nancy is going to leave him... He said he was going to leave and take the pets... She became upset and did not want him to drive as he had been drinking... When she went to get the pets he shoved her. She slapped him at that time. He then kicked the fender of her car... I asked Nancy if he hit her and she said yes. I asked her where he hit her and she would not tell me. I believed she had been slapped on the right side of her face. She then started begging me not to arrest him. She begged me to arrest her as well. I asked her how many times she had been hit and she said she had no idea. I asked her how her ear got injured and she said she didn't know. She did not want to tell me what happened because she doesn't want him charged. She said she does not want him prosecuted... It appeared she was trying to protect him and not tell me everything that happened tonight or in the past. She stated she knew this was a dangerous time for her because she is planning on leaving him.*

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*Jane stated she is sick and tired of David because he is mentally very abusive and always threatens to kill himself when she tries to leave him, or he will pick on her pets... Jane said David has punched her pets before, and punched a hole in the dining room. I noticed a four-inch in diameter area in the wall, which appeared to have been repaired lately... Jane told me she did not want to get David in trouble, but she can't take it anymore.*

*From a second officer at scene: Jane would continue that she had tried numerous times to end the relationship, but David would repeatedly return and stay at the apt. without permission. She was in fear that he would become upset and violence would ensue... She often felt like a prisoner in her own home, fearing that anger or violence would escalate. He would always tell her that he may kill himself if she left him. This had an obvious impact on Jane as she repeatedly felt guilty and did not want him in trouble.*

*Jane stated that she believes David is capable of killing her and then himself.*

Nancy and Jane's experiences became criminal cases in the City of Blaine. Each woman is trying to manage her life in and around a persistent, unwavering batterer. Each woman was reluctant to ask for a criminal legal intervention for a variety of reasons, unique to Nancy and Jane, but yet common

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<sup>6</sup> From case files reviewed during the Safety Audit. Names and other identifying details have been changed. Material is quoted from case file documents.

among many victims of battering. Asking questions from the standpoint of a victim of battering<sup>7</sup> is a key principle of the Safety Audit design. An Audit team is constantly asking how practitioners and processes take into account her<sup>8</sup> whole experience. Nancy and Jane'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 does the criminal justice system recognize and respond to the complexities of risk and safety for all victims of domestic violence in the City of Blaine?*

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. Police, prosecution, probation and courts, 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. Then in January 2007, the Commission Against Domestic Violence completed another Safety Audit, examining the response of prosecution and probation in the City of Bellingham and Whatcom County. Both reports were made widely available within the community and the state.<sup>9</sup>

This time the community has collaborated again to take a close look at the police, probation, prosecution and court response to domestic violence cases in the City of Blaine. The City of Blaine (population 4,500) is one of six incorporated municipalities in rural Whatcom County, situated 25 miles from the City of Bellingham, which is the seventh and largest municipality in Whatcom County

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<sup>8</sup> 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.

<sup>9</sup> *A Report from the 2002 Domestic Violence Safety and Accountability Audit and Domestic Violence Safety and Accountability Audit: Findings and Recommendations for Prosecution and Probation Responses, January 2007*, are both available at <http://www.dvcommission.org/>.

(population 73,000). This audit takes into consideration the unique dynamics of a criminal legal system response in a small community.

## ***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.<sup>10</sup> 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.

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.

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<sup>10</sup> Praxis International, Inc., (218) 525-0487; [www.praxisinternational.org](http://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.

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 does the criminal justice system respond to the complexities of risk and safety for all victims of domestic violence in the City of Blaine?*

This question continued the examination of case processing that began with the previous Bellingham-Whatcom County Safety Audits. The City of Blaine offered their policies, practices, and case files for review during this audit, as well as contributed members to the Audit team. The specific systems reviewed include:

City of Blaine Police Department: Fourteen (14) paid commissioned officers, 3 administration support staff and 10 reserve officers form the Blaine Police Department, which reported 66 domestic violence offenses in 2006. (Offenses are generally defined as one incident in which a domestic violence related crime was alleged to have occurred. There may be more than one charging event within an offense.) In that same time period, the Blaine Police Department responded to 75 domestic violence verbal incidents, where a determination was made that no crime was committed.

City of Blaine Prosecutor: The City of Blaine contracts with a part time prosecutor to handle all matters that are charged by Blaine Municipal Code. This includes all misdemeanor criminal offenses. In 2006, according to Judicial Information Services of the State of WA Administrative Office of the Courts, 55 misdemeanor domestic violence charges were filed in Blaine Municipal Court. In that same year, 59 misdemeanor domestic violence charges came to the following resolution: 29 dismissed, 10 amended, and 20 guilty. These 59 disposed charges involved approximately 41 incidents, which means that 10 incidents had multiple charges. Of the 29 dismissed charges noted above, 11 occurred in an incident where there were other charges and at least one of those other charges was disposed of as guilty or amended. (Meaning that despite a charge dismissal in 11 incidents, there was another accompanying charge that resulted in a conviction.)

City of Blaine Probation: A full time employee with the City of Blaine has served as the probation officer, in addition to other roles, including serving as a victim advocate for domestic violence victims. (Please see discussion in Gap #1.) In 2006, approximately 30 domestic violence charges (not cases) were referred to the Blaine Probation Officer. The exact number of individuals on probation is not available, however it is estimated that at least 20 to 25 individuals were on probation for domestic violence offenses during 2006. As of July 1, 2007, the City of Blaine temporarily contracted out probation services to Whatcom County District Court Probation. This decision was prompted by the retirement of the current probation officer.

Blaine Municipal Court: The City of Blaine contracts with a part time judicial officer who serves as the Blaine Municipal Court Judge. Court is held one morning each week. A City Clerk assists with paperwork associated with court matters.

The Audit team completed a two-day training in April 2006 in conjunction with the Audit team that conducted the prosecution and probation audit of Bellingham and Whatcom County. The Blaine Audit team initiated its work in late summer 2006 with an all day “refresher” training in September. Due to an Audit team member injury, the team did not begin its work in earnest until January 2007. From January through June 2007 the team conducted its data collection. The team came together for 9 debriefing meetings. Its findings are based on information gathered during the following activities.

- ✓ 4 Individual interviews with victim/survivors of domestic violence who had utilized the criminal justice system in the City of Blaine.
- ✓ 21 Individual interviews, including police, victim advocate, prosecutor, probation officer, judicial officer, court staff and agency supervisors.
- ✓ 9 Observations, including Blaine Municipal Court and police ride-alongs.
- ✓ Text analysis of 31 City of Blaine Police Department case files (16 domestic violence arrest and 15 domestic violence verbal or non-arrest), 8 prosecution case files, 6 probation

case files, and 11 Judgment and Sentence forms issued by Blaine Municipal Court. (The time period for files reviewed was generally between June 2006 and February 2007.)

## Cues from victim/survivors

*One of the reasons I finally spoke up during the last incident was the support I received from the 2 attending officers.*

*If the police would change their demeanor, and if there was an advocate present, it would make me feel safe and supported; it would make me want to be more cooperative.*

*I was scared to call anyone in the system to get information for fear it might make things worse.*

*There are women who keep domestic violence to themselves, and maybe if they knew there was help locally, they might ask for it.*

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 interviews, observations and text analysis. Yet organizing a focus group of victim/survivors of domestic violence in a small community is not an easy task. In fact, despite two attempts, it was not possible. Instead four individual women who contacted the Audit coordinator agreed to participate in individual interviews to discuss their experiences with the criminal justice system in the City of Blaine.

All survivors emphasized the importance of the law enforcement response, and how that initial response affected their sense of safety and willingness to provide information about the incident. The experiences varied from negative to positive, indicating that there did not appear to be consistency in the law enforcement response. The tone of voice and choice of words contributed to some survivors feeling like the police officer was “not really there for me”. Another survivor stated that the officer explained how the actions of the defendant were illegal, provided resource information, and asked about her safety, all of which she found helpful. All survivors expressed a desire to have more information about the legal process.

All survivors expressed a need for an advocate to work with and for them throughout the legal process. They were not aware there was a victim advocate working on behalf of the City of Blaine, with the exception of one survivor who was confused about the fact that the victim advocate was also the probation officer. The women reporting feeling isolated both as victims of battering and in regards to their criminal case.

These women stated a need for more involvement and input with both prosecution and probation. Two women stated that they were not informed about court dates. Another stated that she wished she had regular contact with probation as all she knew about the case once it had been resolved was through the defendant. In another instance a survivor wanted to give the court information about the defendant’s non-compliance, yet did not know how to proceed.

Regardless of the circumstances around each of these cases, it is clear that at least these survivors want to be assured that a law enforcement response will increase their sense of safety and support. They want to understand the basics of the legal process, they want to know who to call, and they want an advocate to be available for them.

## **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 a few areas that required further inquiry.

### ***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 the City of Blaine. It uses quotes and excerpts from victim/survivors, individual interviews, case files, 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 third Safety and Accountability Audit for Whatcom County, however this time a new jurisdiction has stepped forward: the City of Blaine. That they decided to step into the process speaks to the connection, dedication, and strengths of the community and the agencies involved. The 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 throughout Whatcom County.



Victims of battering in 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 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. As evidenced by introductory comments to the Audit team from the City of Blaine Police Chief: “One case being worked out among our prosecutors, police and probation really brought home the realization that there are systemic problems that need to be addressed.” It is with this spirit and foundation that this Audit was able to move forward.

### ***Unique features in a small city audit***

The structure of a criminal justice system in a city with a population of 4,500 is very different from a system serving a community with a population of 73,000. Obviously, there will be a smaller police force and the caseload of criminal cases will not require full time personnel in the areas of prosecution, probation or judicial officers. Consequently, criminal justice system personnel may be part-time, wear multiple hats, or be contracted out. As a result of this personnel structure, it is less likely there will be policies directing the work of contractual positions as well as other part time personnel.

Due to caseload, positions may lack specialization in domestic violence. Individuals may be supervised by people who have little familiarity with the criminal justice system. Consequently, individual practitioners develop specialization and expertise on their own initiative and interest, unless the jurisdiction has given specific direction. These examples were all evidenced during the Audit process in the City of Blaine. This is not a criticism, but rather a fact and dynamic that impacted some findings and recommendations. For example, the probation officer is also a victim advocate, among other positions. The probation officer is supervised by the City Finance Director who does not have expertise in either domestic violence or the criminal legal system. The part-time prosecutor and judicial officer are each hired through an annual contract. Fortunately for the City of Blaine, the probation officer and the current contracted prosecutor and judicial officer all hold a strong interest in learning about domestic violence and implementing best practices. However, there are no policies or directives in place for how any of these positions should respond to domestic violence cases.

At the same time, the smallness of a community and the limited number of personnel create opportunities for closer working relationships and the potential for better information sharing. In addition, it can be easier for personnel to quickly improve practices in response to situations as the “bureaucracy” is minimal, except where there are multiple practitioners such as in a police

department. When a “quick fix” is well-informed and coordinated it can result in systemic improvements, however, the opposite can also occur when professional discretion is not guided by good understanding and collaboration. As a result of the Audit process, the City of Blaine was able to initiate some positive changes immediately. These examples can be found in *Next Steps* on page 75.

## ***Discovering gaps***

The Audit team also discovered gaps in the fabric of safety that the City of Blaine has tried to weave. Its findings center on sixteen aspects of criminal legal system response that need additional attention in order to provide the most safety-driven and victim-oriented response possible. These gaps are listed in general order of priority as determined by the Audit team.

1. A dedicated system-based domestic violence advocate is not available for victims who are involved in domestic violence cases with the City of Blaine.
2. Enforcement of order violations is inconsistent among Blaine law enforcement personnel.
3. Domestic violence risk assessment protocols are not used and documented consistently in police reports.
4. Judicial review hearings (compliance reviews) are not standard practice in domestic violence cases in Blaine Municipal Court.
5. Police reports reflect a lack of consistency in investigating and documenting cases of verbal (non-arrest) domestic violence incidents.
6. Safety and support considerations for victims in Blaine Municipal court are minimal.
7. There is little evidence that follow-up investigation by law enforcement is occurring where further information seems needed.
8. Officers responding to domestic violence calls lack sufficient information regarding the situation.
9. Probation and prosecution contacts with victims are inconsistent and largely undocumented.
10. Police reports do not consistently provide a) thorough documentation of contact with and information from witnesses and children, and b) comprehensive information on how to reach victims.
11. Closed domestic violence case files remain with the contracted city prosecutor when the prosecutor’s contract with the city ends.
12. There is no current standard practice for documentation or presentation of victim impact statements.

13. There is no clear and consistent policy throughout the system regarding the forfeiture, surrender and removal of firearms and dangerous weapons in domestic violence cases.
14. Police reports contain limited information on prior history of involved parties and do not always indicate if prior history was reviewed.
15. Probation has limited access to information that would corroborate a defendant's self reporting on probation compliance.
16. Community-based domestic violence services do not appear to be consistently utilized or accessed by the criminal justice system and are assumed to be unavailable.

### Caveats and cautions

Exploring the police, prosecution, probation and court 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. The team 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 the City of Blaine. 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 the Audit team discovered. Readers are encouraged to consider how any one gap might also be present in their own agency or jurisdiction 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 A dedicated system-based domestic violence advocate is not available for victims who are involved in domestic violence cases with the City of Blaine.**

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

As clearly stated by the survivors who were interviewed prior to the Audit: “advocacy needs to be a solid thing in Blaine and people need to know it exists.” All victims of domestic violence are impacted by the lack of access to a dedicated system-based domestic violence advocate. In addition, they are impacted by the lack of access to community-based domestic violence advocates, which is discussed further in Gap # 16.<sup>11</sup> Without a dedicated advocate, victims are left to fend for themselves and must navigate the criminal justice system alone. They miss opportunities to be connected to community resources. Without support and information, they are less likely to cooperate with police and prosecution. Because many victims do not willingly enter the criminal justice system (i.e., a neighbor may have initiated the call to 911), it is even more critical that the system do its part to include the victim in the process. Even those victims who are reluctant to work with a prosecutor’s office potentially benefit from an advocate who makes contact with them. At least that victim knows someone is concerned for her safety and is willing to hear out her fears about proceeding with a criminal case.

A dedicated system-based advocate is often known as a victim witness specialist/advocate who works on behalf of the criminal justice system, and in particular, on behalf of prosecution. The role of such an advocate is to link with the victim as soon as possible after the incident and to maintain regular contact and communication throughout and even after the criminal case has been resolved. Although the actual duties of a system-based advocate may vary, generally this individual provides the victim with information about the status of the case, the criminal and civil legal system, and provides support and referral to community resources as needed. The system-based advocate can attend first appearances, accompany the victim to all court proceedings, present a victim’s request for no contact order changes to the court and prosecutor, and prepare the victim for trial. Such an advocate serves as a vital “bridge” between the victim’s needs, fears and concerns and the actual case processing of that victim’s case. Without it, victims can feel “done to” rather than view themselves as an integral and important witness to the criminal case.

***What contributes to the gap?***

Approximately two years ago the probation officer realized there was a significant gap in Blaine’s response to domestic violence cases as there was no system-based advocate. This was exacerbated by the fact that community-based advocates were located 25 miles away and viewed as

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<sup>11</sup> System-based advocates, sometimes referred to as prosecution-based victim witness staff, help victims navigate the criminal legal system process. Although they listen to, hear out and may speak for the victim, this advocate ultimately works within a criminal legal system. Confidentiality cannot be assured if the victim discloses information pertinent to the case. Community-based domestic violence advocates are “true” advocates in that their role is to speak, plead, or argue in favor of the victim’s needs. Communication is confidential unless reporting is mandatory. Community-based advocates also provide services that are available beyond the brief time that a case stays in the criminal legal system. 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.

**Gap #1 A dedicated system-based domestic violence advocate is not available for victims who are involved in domestic violence cases with the City of Blaine.**

inaccessible. The part time contracted prosecutor was left with the responsibility to contact victims. The prosecutor stated: “I have to fill in as the social worker for some victims and refer them to services I am not familiar with. I am not set up to provide support and information, but being the only one, I will do it if I can.” The prosecutor also knew that the defense was more successful at reaching the victim and stated, “If I can’t find the victim I know the defense will have contacted them.” With this backdrop, the probation officer made the decision to serve as a part time victim advocate for domestic violence cases. A card was designed and law enforcement officers were instructed to give this card to victims. The victim advocate<sup>12</sup> receives all police reports and makes attempts to contact the victim as soon as possible after the incident. No job description was developed for this new responsibility.

Due to the fact that the probation officer has other duties as a passport officer and provides assistance with court finance, the time spent as a victim advocate is limited. After initial attempts to contact the victim, the victim advocate did not initiate any other contact with the victim unless there were serious safety concerns. If a victim wanted to change the status of the no-contact order, they were instructed to contact the victim advocate, who would then make a recommendation to the court. This recommendation was not always what the victim wanted, but what the victim advocate determined was “best”. The team identified this as problematic as the victim advocate was not truly representing the victim’s wishes to the court. (The team recommended that the prosecutor should make the recommendation to the court and the victim advocate should state the victim’s request to the court.) However, the more problematic issue was the fact that the victim advocate would “become” the probation officer for the defendant if there was pre-trial supervision or if the defendant was found guilty and ordered on probation. Although the team learned that the probation officer did not initiate victim contact as a standard practice in domestic violence cases and therefore had limited contact with victims in the probation officer role, it was concerning to the team that victims would be confused by this dual role. In fact, this confusion was validated in one of the victim interviews.

In reviewing prosecutor files, the team noted two cases where a dedicated system-based advocate might have made a difference. In P-4 the defendant was charged with a violation of a no contact order and two assault charges on minor children living in the home. Child Protective Services was contacted and two children were removed. In the police report the victim was quoted as saying she had no food or money, no place to move to, no support network and was not able to handle the children. She had been living with the defendant, even though there was a no contact order, because he had no where to go and she needed help with the children. When the case was resolved approximately four months later the prosecutor noted: “Advised Court I had contacted CPS and tried to locate victim for Victim Impact Statement but to no avail.” This victim was clearly in need of support and was asking for help, yet it appears no one from the City of Blaine followed up with her.

In another example, P-8, the case was resolved at the first appearance when the defendant plead

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<sup>12</sup> From here on in, when reference is made to the victim advocate, unless otherwise noted, it will imply that this individual is the probation officer serving in a dual role as the victim advocate.

**Gap #1 A dedicated system-based domestic violence advocate is not available for victims who are involved in domestic violence cases with the City of Blaine.**

guilty. No contact had been made with the victim to determine their needs or concerns or to assess if there might be further information that may have impacted whether the prosecutor would have accepted a guilty plea. There was no information to note whether the victim had been present at the first appearance. Although one might initially think a guilty plea is a good outcome, without victim input and contact, their voice and perspective is missing.

During court observations, a team member, who is also a community-based domestic violence advocate, made the following observations. In one case there was a victim sitting in the courtroom right across the aisle from her abuser. She obviously didn't understand the NCO (no contact order) and no one was there to support her during the court process. When the defense attorney asked the defendant to follow him out into the hallway, the victim rose to follow them out and the attorney had to explain the NCO at that point. Both the judge and prosecutor asked the Audit team member who was observing to speak with the woman who was obviously very distraught. She was an immigrant woman with no support and was having a very hard time understanding the court process.

In another case the judge expressed concerned for the well-being and the safety of the victim and her children. The victim stated at the hearing that she was homeless since the domestic violence incident occurred and that the abuser/defendant was living in the family home with their children. The judge said his intention at the last hearing was for the defendant to leave the home instead of the victim, but she stated that she could not afford to stay in the family home because she was unemployed and the defendant was employed. The judge asked if she had accessed any support from agencies in Bellingham. She said no, that transportation was an issue. The judge then asked the observing Audit team member to meet with the victim, discuss options and make referrals.

On several other occasions this same team member observed that there was no process in place for victims in the courtroom. There was no one to sit with them or explain the process, and no process in place to ensure victim safety. (See further discussion in Gap #6.)

Although the City of Blaine identified a gap and made a good faith effort to close the gap by having the probation officer serve as a very part time victim advocate, this decision came with limitations. Gaps continue to exist in the amount of time the victim advocate can give to victims, as victim contact is only at the beginning of a case or when no contact order rescissions are requested. In addition, having one person serve as both a victim advocate and probation officer is problematic for everyone in the system. Victim advocates and probation officers have separate roles and as such should have separate relationships with victims. Although this system was better than nothing, as of July 1, 2007, the City of Blaine eliminated the probation officer position due to a retirement. Probation services are now contracted to Whatcom County District Court Probation. This leaves no victim advocate in the City of Blaine, leaving it up to the prosecutor to try and fill the gaps. A prosecutor does not serve the same function as a victim advocate; a prosecutor must make decisions on how to move forward with a case, contrary to what a victim may wish. Without a victim advocate to serve as a buffer, a listening ear and a voice for the victim, the gap is further widened.

**Gap #1 A dedicated system-based domestic violence advocate is not available for victims who are involved in domestic violence cases with the City of Blaine.**

***How do we close the gap?***

1. Educate senior staff and City Council about the need for a dedicated system-based advocate for domestic violence victims.
2. Support, pursue and secure funding to cover such a position, based on creating a position description and determining the resources needed. Clarify the role of the system-based victim advocate in relation to police, prosecutor and probation.
3. Build and improve relationships with community-based domestic violence agencies so that victims receive referrals to advocacy services, at minimum, from community-based providers.
4. Create an oversight group, such as a Domestic Violence Council, that includes both community based and criminal justice system personnel. This group to provide leadership on the development of the position and the securing of resources.

Requires changes in:

- Resources
- Administrative Practices
- Linkages
- Accountability

***Who should be involved?***

- √ City of Blaine City Manager
- √ City of Blaine Police Chief
- √ City of Blaine contracted Prosecutor
- √ City of Blaine Finance Director
- √ Community-based domestic violence agencies
- √ Victim/survivors of battering

**Gap #2 Enforcement of order violations is inconsistent among Blaine law enforcement personnel.**

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

According to data from Judicial Information Services, Administrative Office of the Courts, WA State, approximately 30% of domestic violence related charges filed in Blaine Municipal Court were for no-contact or protection order violations. This is consistent with findings from both Whatcom County District Court and Bellingham Municipal Court. Protection orders are a civil order issued by the court in response to a petition from a victim. Criminal no-contact orders are issued by the court at the request of a prosecutor in the context of a criminal domestic violence related charge and/or conviction. The purpose of both orders are to limit or restrain the defendant (or respondent) from having contact with the victim as a way to ensure safety. According to WA State RCW 10.99.040(2)(a) “Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim.” WA State RCW 26.50.110 also states that: “A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020....”

The state of WA has clearly identified the critical importance of enforcing order violations. Victims of domestic violence who are protected by such orders rely on the criminal justice system to follow through and enforce any violations of the order. Although it is true that many victims ask to have no contact orders dropped, there are just as many victims who hope the order will be one more message to her abuser to stay away, or there will be consequences. Each time an abuser violates the order, a victim can feel like her sense of safety has been chipped away. Each violation is a statement of the abuser’s belief that he is beyond the law, or that he believes he is entitled to contact her despite the law.

Even when no contact orders are in place, some victims will have contact with their abuser. Sometimes this contact is coerced and manipulated by the abuser, at other times the victim may need financial assistance from the abuser or may need help with childcare. If the court has not agreed to rescind an order upon the victim’s request, the victim may need to be in contact with the abuser for a variety of reasons. WA State RCW 10.99.040(4)(b) clearly states that “you (defendant) have the sole responsibility to avoid or refrain from violating the order’s provision.” This language recognizes the complexity of domestic violence and the reasons in which a victim might initiate contact, yet at the same time, places responsibility solely with the defendant to not respond to the initiation.

When order violations are not consistently enforced by law enforcement as per RCW, victims lose their confidence in the ability of the system to offer protection. Abusers are given a message that their behavior was either “not bad enough” or excusable considering the



## **Gap #2 Enforcement of order violations is inconsistent among Blaine law enforcement personnel.**

circumstances. Whether or not a victim is in support of a no contact order, all victims are at risk when order violations are not consistently enforced because their abusers are not held accountable.

### ***What contributes to the gap?***

Statements made by law enforcement officers, text analysis of prosecutor file P-1, review of state laws and the volatile nature of domestic violence led the Audit team to identify and prioritize this gap. Police reports were not able to be specifically analyzed to determine if there was a consistent practice of not enforcing or arresting for order violations. However, the following statements by law enforcement officers raised concern for Audit team members:

- “Problems with NCO violations occur when the victim contacts the abuser. The abuser is arrested even though it is the victim that encouraged/sought contact.”
- “Communications violations should be at officer discretion.”
- “We need more clarification in orders regarding arrest and non-arrest situations.”
- In a staffing, an officer was reported as stating: “I won’t arrest when the victim initiates contact.” The supervisor in the staffing did not disagree.

Based on these statements there appears to be some officers within the Blaine Police Department who may not be enforcing NCO violations in the spirit of RCW 26.50.110.

Case file P-1 was an example where on two occasions within one week, officers did not book the defendant for violating first a protection order, followed one week later by a violation of a no contact order. Instead, the defendant was issued a citation and ordered to appear in court the following week. This defendant appeared to have substance abuse issues and the victim had initiated a divorce, all factors that can contribute to a high risk situation. Although it can be argued that order violations can be difficult to prove, in both instances the officer chose to issue a citation, indicating they had probable cause. In fact, in the first instance, a witness was present. In one case the defendant had called the victim and in the other he had driven by the home.

During the Audit process the team learned that the Blaine Police Department does not have specific written policies and procedures for a domestic violence response, other than a policy on officer involved domestic violence and domestic violence by a public trust position. Team members were told that state law provides direction for the law enforcement response to domestic violence.

In interviews and ride-alongs, officers did note that orders can be difficult to enforce. They spoke for the need to have consistent language with specifics that are clearly enforceable. There are clearly times when officers will use discretion to determine whether or not a violation has occurred. However, if contact has been made and verified, regardless of who initiated the contact, an order has been violated. State law requires that a person should be taken into custody when there is probable cause.

## **Gap #2 Enforcement of order violations is inconsistent among Blaine law enforcement personnel.**

A careful review of police reports might reveal that order violations are generally consistently enforced. However, based on comments by officers noted above and the one case file reviewed, the Audit team was concerned that there appears to be a philosophical underpinning of minimizing order violations when victims initiate contact. It is not clear why in P-1 the defendant was not booked and why a supervisor did not follow up.

Order violations, especially when repeated, suggest possible stalking behavior. As recommended in the WA State Domestic Violence Fatality Review: “Law enforcement officers should routinely ask victims and other witnesses reporting protective order violations about previous reported and unreported violations in order to help assess danger and to identify patterns. When the respondent of an order is repeatedly contacting the petitioner, officers should investigate and document the violations as a stalking crime.”<sup>13</sup> Reference to stalking behavior was only noted in one case file, which was the case file noted above, P-1. The officer wrote: *she feels Mr. A is stalking her.* As noted earlier, this was a case where the defendant had violated an order on multiple occasions. No further notations were made in the report as to whether further investigation was done on the victim’s concern, or whether the victim was given information on how to track and document potential stalking behavior. Because 30% of criminal domestic violence charges in Blaine Municipal Court are related to order violations, a closer look and understanding of stalking may be in order.

### ***How do we close the gap?***

1. Review RCW and issue memo/directive on law enforcement response to order violations.
2. Conduct department wide training on enforcement of order violations, including exploration of attitudes around victim initiated contact.
3. Identify any problems in orders that create difficulty in enforcement and work with prosecution and judiciary as needed to address any identified problems.
4. Consider development of written domestic violence policy, to include response to order violations as well as other issues addressed in this report.
5. Supervisor to review police reports, including verbal non-arrest reports, for attention to response to order violations.
6. Receive training on stalking in the context of domestic violence for both law enforcement and prosecution.

Requires changes in:

- Rules and Regulations (review)
- Administrative Practices
- Concepts and Theories
- Accountability
- Education and Training

<sup>13</sup> *If I had one more day...Findings and Recommendations from the Washington State Domestic Violence Fatality Review*, December 2006, Kelly Starr and Jake Fawcett for the WA State Coalition Against Domestic Violence

**Gap #2 Enforcement of order violations is inconsistent among Blaine law enforcement personnel.**

***Who should be involved?***

- √ Blaine Police Chief
- √ Blaine Prosecutor
- √ Blaine Police Department Supervisors
- √ All Blaine Police Department personnel

**Gap #3 Domestic violence risk assessment protocols are not used and documented consistently in police reports.**

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

From a police report in B-5: *She stated they got into a verbal argument about her leaving for the evening when it escalated on the part of her spouse and he began to strike her with a closed fist to her head, causing a large bump to her forehead... She also stated that he took his belt and hit her with the buckle end causing her hand to hurt and her elbow to swell... She stated she picked up the phone to call the police and he began beating her more aggressively telling her “to die” ...She escaped and fled to the parking lot where she called the police.”* On the Victim Complainant form she states this type of incident has happened before.

From a police report in B-8: *I haven't reported the domestic abuse because I was afraid of being alone, not having money to send my daughter to college, no medical... He always told me he would lose his job and I could forget having any support. He was going to make me sell the house... I thought he would get better when he went to treatment, but he has not. I finally have to do something because I feel my spirit is stronger now.*

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. In fact, the incident that prompted the 911 call may be one small incident in a pattern of coercive and violent behavior that the victim has been experiencing at the hands of the abuser. The voices above are not atypical. Victims may fear the consequences of an intervention based on their history of violence. An incident of domestic violence viewed in isolation fails to give criminal justice system interveners an accurate picture of the level of risk. It is only by asking about history and context that we can begin to understand the potential danger that an abuser poses to their victim. Without a sound understanding of who is at risk to whom and under what conditions, police, 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.

It was with this understanding that Whatcom County's 2002 Safety and Accountability Audit recommended that both the Whatcom County Sheriff's Office and Bellingham Police Department develop a more consistent and complete domestic violence risk assessment. As a result of the audit, both agencies instituted a standard domestic violence risk assessment protocol, which includes a specific set of risk questions to ask the victim and documentation of their response in both the police narrative and the Probable Cause statement.<sup>14</sup> In March 2006

<sup>14</sup> 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. In addition, officers are instructed to document responses to the following 7 risk factors in the Probable Cause Statement: 1) Does the suspect own or have access to weapons? 2) What is the likelihood suspect would use a weapon against others? 3) Threats of suicide or to kill others? 4) Escalation of violence- Is it getting more severe or frequent? 5) Does the victim believe suspect could injure or kill them? 5) Suspect employment? 6) Divorce or separation? 7) Does the victim have a local support network?

### **Gap #3 Domestic violence risk assessment protocols are not used and documented consistently in police reports.**

training was provided to all other Whatcom County law enforcement agencies on domestic violence risk factors and all agencies committed to adopt the same domestic violence risk assessment protocol. Feedback from prosecutors, judges, victim advocates and probation officers indicate that this risk information has been critical in guiding decision-making and interventions with victims.

Nine key recommendations were prioritized from the nearly one hundred recommendations in the WA State Domestic Violence Fatality Review. One of those nine key recommendations echoes the importance of history and context in danger assessment. “Law enforcement officers, prosecutors, judges, and probation officers should routinely examine histories and patterns of behavior in domestic violence cases and make full use of the resources available to do this when assessing for danger and how to proceed.”<sup>15</sup>

By asking victims for this history and context, their full range of experiences in that abusive relationship are validated. When an officer only wants to know about the incident, victims are frustrated because for them the meaning of the incident lies in the history and pattern of their abuse experience. By understanding the specific incident within the broader history of the relationship, the criminal justice system is better able to keep victims safe.

#### ***What contributes to the gap?***

After attending the countywide domestic violence risk assessment training in March 2006, a verbal order was issued by a Blaine Police Department Sgt. for all officers to use the domestic violence risk assessment protocol. Officers were provided with a laminated card with the risk questions, which include 3 open-ended questions to ask the victim and seven specific risk factors to be summarized in the Probable Cause statement. (See footnote #14 on previous page.) When the Audit process began the Police Department Management Assistant noted that the risk assessment protocol (questions and documentation) were not being used consistently. There appeared to be no follow up by supervisors reviewing police reports. Mid way through the Audit process a new form was developed by the Police Department Management Assistant to trigger risk assessment questions and documentation on a standard form. This form is still under development and has not been officially adopted.

As team members conducted text analysis of police reports, inconsistencies in documentation and use of the standard risk questions were noted. One team member found that in a quick review, only 4 of 12 police reports included the domestic violence risk assessment. Another found that 6 in 11 reports included risk assessments. A careful and thorough review of 10 police files found that 3 files had no domestic violence risk assessment information, 1 file had the risk information in the police narrative and not the Probable Cause statement, 1 file had the risk information in the Probable Cause statement but not the police narrative, and 5 files had

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<sup>15</sup> *If I had one more day...Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2006, Kelly Starr and Jake Fawcett for the WA State Coalition Against Domestic Violence

**Gap #3 Domestic violence risk assessment protocols are not used and documented consistently in police reports.**

thorough documentation of responses to the standard risk questions in both the police narrative and the Probable Cause Statement. Even among these five files, the officers had organized and summarized the risk information in a variety of ways. The fact that 3 audit team members found differing results may be due in part to the finding that responses to the risk questions were not documented in standard way.

Case B-2 is an example where a completed risk assessment demonstrated the value of placing the incidence into a larger context. In this case the defendant had thrown a remote control across the room and in the process had broken a jar on the counter. The defendant had not hit the victim with the object, but it had been thrown in the context of the defendant accusing her of stealing something from him and yelling at her. The defendant was arrested for domestic violence malicious mischief. Here were the victim's responses to the risk questions. *He has access to weapons and ammunition in the house. He is suicidal and depressed and not on medication. Violence is escalating...we are back together and things are worse. We are in the process of divorce...although he initiated it. He could hurt me...he has cut off relationships with the children. His anger and paranoia are increasing. Last week he threw coffee in my face. He frequently intimidates me by verbal abuse and accusations. The worst incidence was in another state when he was arrested for assaulting me.*

Criminal justice system personnel, such as judges, prosecutors, and probation officers, will all benefit from information gathered by conducting a thorough risk assessment such as the one above. Accurate, relevant and concise information on the violence or risk posed by a particular defendant is crucial for a judge in determining such things as bail, conditions of release and probation. As stated by the Blaine Municipal Court Judge, "The more information that is provided to a judge before a decision is made, the better the decision will be." Police reports are used by non-criminal justice personnel, such as domestic violence perpetrator treatment providers or Child Protective Services, who will also be able to conduct better assessment and interventions by having access to this risk information.

In the example above, what appeared to be a "minimal" incident of throwing a remote, occurred in the context of a defendant who has apparently assaulted the victim in the past and carries a variety of risk factors for more serious violence and potentially a domestic violence homicide. Although it is not clear if the officer had made the decision to arrest prior to conducting the risk assessment, it is very likely that the risk assessment information contributed to the officer's decision. The risk information will clearly benefit other criminal justice system decision-makers.

Consistent documentation of the risk factors in the police report and the Probable Cause statement make it easier for other criminal justice system personnel to easily locate this important information. Based on the team's review of police reports and the observations by the Police Department Management Assistant, more consistency is needed within the Blaine Police Department in the utilization and documentation of the domestic violence risk factors.

**Gap #3 Domestic violence risk assessment protocols are not used and documented consistently in police reports.**

***How do we close the gap?***

1. Police administration should determine the best method to implement standard use and documentation of risk assessment protocols. This could include adoption of the draft form mentioned above.
2. Police administration to implement mandatory utilization of domestic violence risk assessment protocol and/or form.
3. Officers should be provided refresher training on the domestic violence risk assessment protocols.
4. Police Department Supervisors to review all police reports for utilization and follow up with officer when risk assessment is not conducted.
5. A small sample of police reports should be reviewed 6 months after implementation of above to determine if use is consistent.

Requires changes in:

- Administrative practices
- Concepts and Theories
- Accountability
- Education and training

***Who should be involved?***

- √ City of Blaine Police Chief
- √ City of Blaine Police Department Supervisors
- √ City of Blaine Police Department Management Assistant
- √ All Blaine Police Department personnel

**Gap #4 Judicial review hearings (compliance reviews) are not a standard practice in domestic violence cases in Blaine Municipal Court.**

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

“Judicial review – the practice of requiring a defendant to appear before the judge at a post-conviction review hearing to demonstrate that he or she is complying with the conditions of probation – is believed to improve offender compliance and victim safety. Under this practice, probation agents are expected to maintain contact with offenders and their victims. Victim input is sought prior to each review session, compliance by the defendant is valued and rewarded, and violations, when found, result in prompt, graduated sanctions....When judicial review is in place, offenders see that they are being held accountable, and victims and the community see the court is serious about its orders. Judicial review hearings help send an important, consistent message: domestic violence is a crime that will not be tolerated in our community.”<sup>16</sup>

“Judicial review hearings are regularly scheduled court appearances – most are held at intervals of 30, 60, 90, or 120 days after sentencing – in which judges publicly evaluate how well individuals convicted of a crime against an intimate partner are adhering to the terms of their sentence. Judges base their reviews on comprehensive reports provided by probation agents who monitor the individual offenders and who seek input from victims. Depending on the content of these reports, judges use the influence of the court and graduated sanctions and rewards to encourage those who are doing well and to assure that those with poor compliance either change or are held accountable....’Judicial review hearings let victims know that the court is actively involved in supervising this person who has caused them pain in the past, and that’s a good message’, explains Timothy Gailey, a judge in the Dorchester Division of the Boston Municipal Court.”<sup>17</sup>

When a regular judicial review process is not in place, probationers are only brought before the court if there has been notice of an alleged probation violation. This notice is generally brought forward at the request of the probation officer. Without regular judicial review, or compliance hearings, defendants can delay taking action on conditions of probation, such as signing up for domestic violence perpetrator treatment or a substance abuse evaluation. The probation officer is left without the ability to take action on non-compliance if the court has not given a specific date for such compliance. Whereas with regular reviews, the pace at which a defendant is complying with conditions can be more closely monitored. Victims are generally left out of the loop in the model where only probation violations prompt a court hearing, unless the victim was involved in the violation. Without regular compliance reviews, victims are not necessarily encouraged to report to the court or the probation officer on their assessment of the defendant’s compliance. Regular judicial review encourages victim contact on the part of the probation officer and

<sup>16</sup> Introductory comments from Judge Elizabeth Hines, District Judge, 15<sup>th</sup> District Court Ann Arbor, Michigan in the publication *Judicial Review Hearings: Keeping Courts on the Case* released in 2006 by the Vera Institute of Justice, [contactvera@vera.org](mailto:contactvera@vera.org). This publication was one of a series of publications from a five-year Judicial Oversight Demonstration Initiative conducted in partnership between the Department of Justice’s Office on Violence Against Women and the National Institute of Justice.

<sup>17</sup> *Judicial Review Hearings: Keeping Courts on the Case*, Vera Institute of Justice, 2006 See previous footnote



**Gap #4 Judicial review hearings (compliance reviews) are not a standard practice in domestic violence cases in Blaine Municipal Court.**

provides a known time for the victim to attend the review hearing.

***What contributes to the gap?***

Through court observations and interviews with the probation officer and prosecutor, the Audit team learned that Blaine Municipal Court does not conduct *regular* judicial review hearings. However, both the judge and the probation officer noted that the smallness of Blaine does allow for close monitoring of the defendant. The probation officer stated that they did not bring every single “violation” before the court depending on the circumstances. The officer stated that alleged violations would have to meet a certain threshold before requesting a hearing and that it was not uncommon to hold violations until there were several before bringing the probationer before the court. Audit team members noted this in review of two probation case files. At the same time, the probation officer also stated that they considered domestic violence probationers high risk and monitored these probationers very closely.

The probation officer and prosecutor both stated in interviews that they were very aware that defendants delayed taking action on sentencing conditions. The prosecutor stated: “People delay appointments to do an evaluation because they are not given a timeline. Probation has to wait. Whereas if there was a standard time to report to court, they would be held to a tighter timeline.” The probation officer echoed this concern with: “This [regular compliance reviews] would help me a lot. When they know there is a hearing in a few weeks, I can tell the probationer that they don’t have any time to delay in meeting the requirements of the court. And when the victim calls and asks, ‘Is he in compliance?’, I can tell them they can come to the compliance review hearing to find out.”

In review of probation file P-9, Audit team members identified another example of the need for regular judicial review hearings. This case involved an individual who had been brought before the court for numerous probation violations. He had been ordered to attend domestic violence perpetrator treatment. He had delayed entering treatment, and once he had entered, he had not been attending group regularly. In the progress report received from the domestic violence treatment provider, the probationer was noted as “in compliance” with treatment, even though some sessions had been missed. The probation officer stated they did not feel they could bring this before the court, yet, if there had been a regular review scheduled during this time, the probation officer could have informed the court of the lack of attendance and the judge could have made a determination whether or not there should be a sanction. The probation officer stated that they needed to wait for the treatment provider to indicate someone was out of compliance with treatment before the probation officer would bring that before the court.

Two victim/survivors who were interviewed prior to the audit stated that they wished they had had regular contact with probation and wanted to know how the defendant was doing. In one instance, the victim had information that she believed was a violation of probation and she did not know how to proceed or who to give the information to.

**Gap #4 Judicial review hearings (compliance reviews) are not a standard practice in domestic violence cases in Blaine Municipal Court.**

The Blaine Municipal Court Judge stated that over the past few years he has been scheduling review hearings in many domestic violence cases, especially those cases where risk is high or history indicates a need for regular monitoring. The judge acknowledged that review hearings are not ordered consistently, and suggested that a check box in the Judgment & Sentence form would be an effective way to implement more consistent use of compliance review hearings. The judge also stated that if there were issues of non-compliance “the probation officer will bring it forward to me. If someone has a dirty UA or violates an order, I know within a few days and will bring them into court.”

The prosecutor affirmed that the Blaine Municipal Court Judge has ordered some defendants to return to court within a month or two to report on compliance. These were generally done in cases where the judge noted that the defendant had not complied with court conditions in the past. Even though the court clerk stated that both victims and defendants can request a hearing to talk to the judge if they feel they are having problems with compliance, it did not appear that victim input was solicited by the probation officer for scheduled review hearings. As noted earlier, Audit team members found that some victims did not know how to access the court to either learn about or report on their abuser’s probation compliance.

The Audit team learned that compliance reviews in domestic violence cases are considered valuable by all criminal justice system personnel in the City of Blaine. The smallness of the community has provided Blaine Municipal Court with opportunities to monitor compliance in a fairly responsive manner and to set compliance review in select cases. Yet interviews, best practice research and case files indicate that tightening the judicial review process for domestic violence offenders will bring increased and more consistent safety and accountability. This should include efforts to solicit victim input prior to the review hearing.

***How do we close the gap?***

1. Form a work group to review and discuss the concept and practice of regular judicial review hearings.
2. Discuss feasibility of implementing regular judicial review hearings for domestic violence cases and develop strategies and guidelines for implementation. The guidelines should include efforts to solicit victim input.
3. Revise the Judgment & Sentence form to include a check box for judicial review hearing(s) at select dates.
4. Implement regular judicial review hearings and evaluate after six months.

Requires changes in:

- Administrative Practices
- Linkages
- Accountability

**Gap #4 Judicial review hearings (compliance reviews) are not a standard practice in domestic violence cases in Blaine Municipal Court.**

***Who should be involved?***

- √ Blaine Municipal Court Judge
- √ Blaine Municipal Court Prosecutor
- √ Probation Officer (Whatcom County District Court Probation)
- √ Victim Advocate
- √ Domestic Violence Perpetrator Treatment Providers
- √ Input from victim/survivors of battering

**Gap #5 Police reports reflect a lack of consistency in investigating and documenting cases of verbal (non-arrest) domestic violence incidents.**

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

The Blaine Police Department reported that in 2006, out of 141 domestic violence related calls for service, 75 were classified as domestic violence verbals, or non-arrests. In these incidents the responding officer(s) determined that no offense had been committed, therefore no one was cited or arrested. Typically these types of incidents involve yelling and arguing and are verbal in nature.

As commonly known, battering involves a pattern of behaviors that include emotional, physical and sexual abuse. Emotional and psychological abuse, which can include put downs, threats, yelling and screaming, do not necessarily violate the law. Yet, they can be precursors to a violent incident or can be a constant backdrop to behavior that escalates to violence on an infrequent basis. For that reason, dispatch calls to a “domestic dispute” or a domestic verbal come with potential for violence. Law enforcement takes these calls seriously.

Even when no arrest is made, law enforcement agencies generally provide direction to officers to write a brief narrative documenting the reasons for a non-arrest. These reports become part of the law enforcement history with a particular family or individual, and provide red flags on those households where frequent verbals may indicate something more serious that is either not being reported or is about to happen. Many victims will state that police have come to their home many times, but they were too afraid to report what really happened, or they knew that their abuser had controlled themselves just enough to not commit a crime.

Not all verbals are missed opportunities, but some are. Because many victims will remain at risk when an arrest is not made, it is critical for law enforcement to thoroughly investigate all domestic violence incidents even if the initial dispatch is for a “verbal domestic”. “Victims” may provide cues to an officer that may be overlooked if the response is “oh, its just another verbal.” Even in domestic verbals, officers can use discretion to provide resource information to the party that they believe may be a victim of domestic violence and ask about safety.

***What contributes to the gap?***

The Blaine Police Department does not have a domestic violence response policy, therefore there is no written directive for officers on the expectation for the investigation and documentation in domestic violence verbals. Among police departments there are differences in practice on response to verbals. Some agencies require thorough documentation and give both parties victim rights notification. Differences have been expressed in how to interpret 10.99.030 as it relates to domestic violence verbals. (RCW 10.99.030(6)(b) *A peace officer responding to a domestic violence call shall take a complete offense report including the officer’s disposition of the case.*) Regardless, each department must set its own standard for the investigation and documentation of verbals.

**Gap #5 Police reports reflect a lack of consistency in investigating and documenting cases of verbal (non-arrest) domestic violence incidents.**

Through review of 15 police reports on verbals, the team determined that there was not a standard and consistent response among Blaine officers. The supervising Sergeant, who is responsible for reviewing all police reports, indicated that officers typically try to check on the welfare of those in the residence when responding to a verbal domestic. Until very recently law enforcement officers were unable to enter a residence without permission to check on the welfare of residents. However, if officers were concerned they usually found a way in by reason of an “exigent circumstance” clause under warrantless searches, as long as the warrantless entry was well documented. Recent case law allows officers to enter a residence to search for possible victims and /or suspects in domestic violence cases. As stated by the supervising Sergeant, this allows officers to check out risk and safety concerns more easily. The Sergeant stated that the response to verbal domestics, including entering the residence and speaking with all parties, will vary based on the assessment of risk by the individual officer and is incident dependent.

Although the majority of reports reviewed provided a brief summary of the situation and a statement to the effect that the incident did not involve a crime, two primary concerns were raised by Audit team members. One, it did not appear that both parties were interviewed separately in all verbals and two, it was not clear if checks (i.e., wants and warrants) were done on the parties. Interviewing parties separately is essential and a standard practice in domestic violence calls. The Blaine Police Department is challenged by having a small staff and it was evidenced that on many occasion, only one officer was able to respond to the scene. However, even in these situations, there was backup provided by a US Border Patrol Agent. (This is common practice in Blaine, which lies on the Canadian border. The federal and city law enforcement agencies provide assistance to each other if able.) With Border Patrol backup, an officer is able to conduct separate interviews with both parties.

In a careful review of 10 verbals, team members found that in 6 instances both parties were interviewed separately, and in four instances they were not interviewed separately, or it was not documented that they were interviewed separately. Of those same 10 files, only in 2 cases was there an indication that some type of history had been checked (i.e., driving records, vehicle, presence of orders.) It is possible there had been checks, but there was no documentation of that check. No risk assessments were conducted in any of the cases. Although using risk questions in verbals is not typical, risk questions can help an officer make a determination about level of future risk. Documenting history can alert other criminal justice system personnel reading the report, even if a crime had not been committed at this time.

B-29 and B-22 were two examples where team members were concerned that one of the parties remained at risk, yet the police narrative indicated all was fine. In B-22 a female called 911 after a loud verbal argument with her husband. Police and Border Patrol arrived on the scene and the husband was reported to be outside cooling off and waiting for police. In the short narrative the husband referred to his wife as his Asian bride and wanted her to leave the residence. The wife said her husband had removed money from her purse without her permission. The husband said she had scratched him previously. The report reads: *“Blaine and BP agent stood by while the couple resolved their immediate problem. Both were informed about DV resources and given Victim Rights Card and the Victim Advocate card. The couple discussed their options and*

**Gap #5 Police reports reflect a lack of consistency in investigating and documenting cases of verbal (non-arrest) domestic violence incidents.**

*decided to return to the residence in peace.”* It was not clear if the couple was interviewed separately. Team members were concerned about the male’s reference to his “Asian bride”. In this case a check was conducted. The responding officer must have had some concern for the female, as he gave her Victim Rights information.

In B-25, an individual came to the Blaine Police Department to report that they had heard the following within the last two hours: *“I recently returned from vacation to find a young couple with young children moved in upstairs. The last few days several events have awakened me.. yelling and screaming between the young man and woman, profanity, they are upset at losing car, money problems. Today awakened again to yelling and screaming, profanity, slamming of doors, blows to the walls. Young man screaming at kids, kids crying and screaming from blows I could hear through the floor. Young woman screams What are you doing? and hear her screams as she was being hit. All this audible through the floor and all that followed was crying, the young man out of control.”*

The accompanying police narrative in B-25 stated: *“On arrival, along with officer A, we contacted male and his wife who told us a cleaner was left on the floor and female hit her toe on it and she screamed at him for leaving the item on the floor. I advised them that they live in an apartment building and they should be more quiet.”* It is not apparent whether both parties were interviewed separately, nor was there any indication that the presence and welfare of the children were checked. The contrast between the information from the reporting party and the accompanying police narrative is great. There may be a valid reason for this, but it is not apparent from reading the report.

B-25 was a domestic verbal where the responding officer made many attempts to ask one of the parties if any violence had occurred. The officer asked if there had been any history of violence, if the man had ever assaulted, pushed or shoved her, or had broken anything. Had he hit her before? This provided good documentation of a thorough separate interview with a party even though the call to dispatch was “male and female arguing.”

Four domestic violence verbal reports were reviewed that did not include a narrative, but only the incident summary sheet. It was not clear why these incidents did not have an accompanying narrative.

One interesting notation in review of these 10 cases is that 4 of the calls were initiated by a third party, 3 calls by one of the parties involved in the verbal, two were hang up calls, and in one report it was not stated who had initiated the request for a law enforcement response.

As a result of the Audit process, Blaine has instituted a practice where the prosecutor and probation officer receive copies of all domestic violence verbals. This was done in recognition of the fact that verbals can be indicators of ongoing risk and safety concerns. In an interview, the probation officer stated: *“Assessing to make sure it really isn’t a DV verbal is important...if someone is on probation and I think more has happened and it comes in as a verbal...the probation officer can’t do anything because probation hasn’t been violated.”*

**Gap #5 Police reports reflect a lack of consistency in investigating and documenting cases of verbal (non-arrest) domestic violence incidents.**

A police officer stated that it might be useful to receive some refresher basic training on responding to domestics. “We don’t get training on the dv basics. We just get advanced training. Sometimes I think we would benefit from training on the basics.”

***How do we close the gap?***

1. Blaine Police Department to review its response to domestic violence verbals, including a review of RCW 10.99.030.
2. Blaine Police Department to consider development of a Domestic Violence Response Policy, to include response and documentation for domestic verbals.
3. Provide refresher training and expectations to Blaine Police Officers on response and documentation for domestic verbals.

Requires changes in:

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

***Who should be involved?***

- √ City of Blaine Police Chief
- √ City of Blaine Police Department Supervisors
- √ All Blaine Police Department personnel
- √ City of Blaine Prosecutor

**Gap #6 Safety and support considerations for victims in Blaine Municipal Court are minimal.**

***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?***

Blaine Municipal Court is held once a week on Wednesday mornings. Court is held in City Hall, which houses other city services such as probation, finance, the city manager and clerk. It is located next door to the Blaine Police Department. The room used for court is also used by other city staff for public meetings, City Council meetings, and other city related meetings. There is a small waiting area outside the “courtroom” and the courtroom has two sections of three to four rows of seating on the left and right side of the center aisle. Due to the small number of cases there is no specialized docket on the court calendar. There is no law enforcement presence during court, no metal detectors, no “registration” for those who enter the courtroom, and limited space to separate defendants and victims. These features are not uncommon to a courtroom setting in a small municipality.



**Gap #6 Safety and support considerations for victims in Blaine Municipal Court are minimal.**

Examples from court observations were provided in Gap #1, indicating that victims and defendants are in close proximity and sometimes in contact even when NCO's are in place. Some of the concerns raised by the Audit team relate to the absence of a dedicated victim advocate for the City of Blaine. If the prosecutor had not reached the victim prior to a hearing, court personnel appeared to have no idea whether or not a victim was present. If a victim attended court, it is unlikely the victim would know where to go, what to do and what was about to happen. If her abuser was sitting in front or behind her, her discomfort and fear may be heightened. In fact, many victims may appear in court because their abuser has asked them to drop the NCO. The prosecutor stated: "I have no idea if a victim might be present if we have not had a prior conversation. I do let the judge know if the victim is present and the judge will ask the victim to come forward. If it is a NCO rescission, the court will ask if the victim is present."

The team's primary concern was the physical and emotional safety for victims during court proceedings. Based on interviews and observations, team members found the Blaine Municipal Court Judge to be concerned about victim safety, in particular, their access to community resources. However, criminal justice practitioners in Blaine stated that there have not been any focused conversations about how to improve and address issues of safety for domestic violence victims who come to Blaine Municipal Court.

There are space and resource constraints in the City of Blaine. However, through awareness and a few meetings, simple measures at no additional cost can address gaps in safety and support for victims in Blaine Municipal Court.

***How do we close the gap?***

1. Form a work group to evaluate current Blaine Municipal Court environment, including review of RCW Crime Victim's Bill of Rights.
2. Develop strategies to enhance safety in the Blaine Municipal Court environment, including options such as separate waiting areas for victims, directions for seating, law enforcement presence if available, domestic violence resource material, and/or handouts on court process.
3. Educate all City of Blaine personnel in court building on domestic violence and risk and safety issues.
4. Implement strategies identified above.
5. Utilize victim advocate (see Gap #1) and community-based domestic violence advocates (Gap # 16) as part of strategy.

Requires changes in:

- Administrative Practices
- Resources
- Linkages
- Accountability

**Gap #6 Safety and support considerations for victims in Blaine Municipal Court are minimal.**

- Education and Training

***Who should be involved?***

- √ Blaine Municipal Court Judge
- √ Blaine Court Clerk
- √ Blaine Prosecutor
- √ Blaine Chief of Police or other law enforcement representative
- √ Victim Advocate
- √ Community-based Advocates
- √ Input from victims/survivors of battering
- √ Public Defender

**Gap #7 There is little evidence that follow-up investigation by law enforcement is occurring where further information seems needed.**

***How is it a problem?***

A police report is by far one of the most important documents in a criminal case. It provides the basis for an arrest (or non-arrest) decision; identifies and documents the circumstances, evidence and witnesses; and notes history and context when a risk assessment is conducted. Officers are trained to collect as much evidence as possible at the scene, however, there are times further investigation and follow up are warranted. These include situations where injuries and bruising will be better documented the following day, when a witness was not available to make a complete statement, or when a victim needed medical care prior to giving a statement. Short staffing may require an officer to leave one incident in order to respond to another higher-level emergency call, resulting in an inability to thoroughly document and investigate. It is up to the reviewing supervisor to determine whether any follow-up investigation is needed, unless the officer has made a notation in the report. It is also not uncommon for a prosecutor to request follow-up based on review of the initial report.

Even with the best of training and the luxury of ample time, an officer may miss certain cues or forget to collect a piece of information, such as a witness phone number. Follow-up investigation is an important check and balance in the case processing of domestic violence cases. A prosecutor is able to make better charging decisions with full information and can determine whether they can substantiate testimony, decide about jury trial, or amend or drop a charge. Follow up can also include a check-in with a victim where there is a high risk for future violence. Not all law enforcement agencies have the resources to do this type of follow-up, however, when possible, it gives the victim an added sense of safety. In a follow-up visit officers may learn additional information about the incident, or see injuries that were not visible the day before. The victim may have decided she is moving in with a relative the next day, so new contact information can be obtained to pass on to the prosecutor.

Ultimately, batterer accountability can be compromised when consistent procedures for careful report review and follow-up investigation are not in place.

***What contributes to the gap?***

Through interviews with the supervising Sergeant, the team learned that there is no documented procedure regarding what cases do or do not necessitate follow-up investigation. As noted above, a supervising officer is responsible for assigning follow-up. Instances noted for follow-up, as stated by the supervisor, include the collection of additional biographical data, updated addresses, grammatical errors, and other non-specified additional information. There is no specific criterion related to risk or severity of injury that directs officers to follow-up and take photos of additional injuries. Again, this is at the discretion of the supervisor, who noted that resource issues, including numbers of personnel available to perform follow-up duties and time constraints, are major barriers to follow-up investigation. There is current discussion in the Blaine Police Department regarding the establishment of a process for assigning follow-up

**Gap #7 There is little evidence that follow-up investigation by law enforcement is occurring where further information seems needed.**

photographs within two to three days of the incident.

The team also learned that the Blaine Police Department has been trying different systems to address what was defined as “inconsistencies in follow through when officers were requested to conduct follow up investigations.” Requests for follow up are made to officers either through Justice (the Blaine law enforcement database and report writing tool) or through the use of paperwork in red folders. As noted earlier, resource constraints have made it difficult for the supervisor to follow up on these requests for follow up investigation.

Of the 30 police reports reviewed (both arrest and non-arrest/verbal), the Audit team found only a few examples where follow-up was documented. In one case the victim came to the department the following day for additional photographs and to provide medical records. In another case, B-1, the prosecutor asked an officer to follow-up to see if they could locate the individual who called 911. In this case the officer had interviewed a witness, but the prosecutor was quick to identify that the caller to 911 had witnessed the assault, whereas the witness interviewed had witnessed yelling but no assault. It turned out the prosecutor’s hunch and request for follow-up led to better evidence for the case. It is possible that requests for follow up were made for some of the other cases reviewed by the team. Because the requests for follow up are not documented in the paper file, the team would not have known if a request had been made. However, whether or not there were requests for follow-up, there were only the two cases noted above where follow up was completed and documented in the case file.

The Audit team included this gap as an “overarching” gap that particularly relates to Gaps #5 and #10. The team recognizes that follow up investigation is not warranted in all cases. However, through case review the team found incidents where further information seemed warranted, such as documentation on the presence and welfare of children, witness interviews, additional victim contact phone numbers, and separate interviews with parties in verbals. Overall, the team did find that almost all files included photographs with good documentation of the scene and the evidence collected.

B-7 was a case that led a number of team members to wonder whether further follow-up was warranted. In this incident three children were present and partially witnessed multiple assaults on the victim, including attempted strangulation. One child was quoted as saying: “daddy grabbed mommy and choked her on the bed. Mommy tried to call me but I could not get back into the bedroom.” There was no elaboration on how the child was able to witness the assault and then could not get back into the room to help. Photos were taken at the scene, however, the Audit team wondered if better photographs of the attempted strangulation, including other possible side effects, might be visible the next day. The team also wondered if further questioning of the children, with follow-up support, would have been helpful.

This same case illustrated one of the challenges of responding to domestics. Many of the incidents involved the use of alcohol and other drugs by either or both the victim and defendant. Getting accurate statements and information is clearly more challenging in these circumstances as evidenced in some of the reports. Follow-up interviews when the parties (victim in particular)

**Gap #7 There is little evidence that follow-up investigation by law enforcement is occurring where further information seems needed.**

are sober might reveal additional information.

Very few police reports documented safety planning discussions and strategies with victims. Some cases concerned the Audit team, especially those where mental health concerns and suicide were noted. Team members asked, “What will happen when the defendant is released from jail?” All victims were given the Domestic Violence Victim Rights card, however, nothing was documented beyond that. Team members wondered if follow-up with certain victims in high risk situations might be something the Blaine Police Department could consider. These select follow up interviews could include further investigation (i.e., photographs) as well as address safety planning. Again, this is another example where access to a dedicated system-based advocate would be helpful.

***How do we close the gap?***

1. Blaine Police Department to review current practice for follow-up investigation, including report review process by supervisors.
2. Revise and clarify follow-up investigation practices to ensure comprehensive information and evidence is collected in domestic violence cases and that follow up requests are completed.
3. Determine feasibility of providing follow-up to victims in high-risk cases, and establish criteria for those cases.
4. Select a dedicated investigator to conduct domestic violence follow-up investigations as determined above, including victim follow-up for high risk cases.
5. Provide refresher training or memo to officers on above.
6. Prosecutor to continue to request follow up as needed, and to report to Police Chief if any gaps are noted in evidence collection.

Requires changes in:

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

***Who should be involved?***

- √ City of Blaine Police Chief
- √ City of Blaine Prosecutor
- √ All Blaine Police Department personnel (supervisors, officers)

**Gap #8 Officers responding to domestic violence calls lacks sufficient information regarding the situation.**

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

It is important for both officer, victim and public safety that law enforcement responds to a domestic with as much information as possible. Have we been to this household before? Are there any weapons? Is the assault in progress? Is there a history with either party on order violations? Are there children at the scene? Are there any injuries? Who called 911? Answers to these questions help officers anticipate the incident they are responding to. It is common practice for law enforcement to send more than one officer to respond to domestics. Law enforcement has learned that domestics can be serious, volatile, and occasionally lethal.

Information that comes through a 911 dispatch center is the basis for the law enforcement response. The call may be relayed as a “domestic dispute”, or “verbal”, or “male and female arguing” or “domestic in progress”. These words and codes have meaning to a responding officer. Additionally, dispatch relays information to the officer as provided by the caller and resources and time permitting, dispatch may access information on warrants and orders or previous law enforcement activity at that address. Hang up calls also prompt an automatic response from law enforcement if the address of the call location can be determined. This is due to the fact that many victims are interrupted while attempting to contact 911, the phone is disconnected by the batterer, or they reconsider their decision to ask for help.

Quick and accurate information from dispatch are essential to ensuring that officers are fully prepared to respond to a domestic and that the officers and all parties at the scene stay as safe as possible.

***What contributes to the gap?***

Blaine is located on the Canadian border in close proximity to two major interstate border crossings. As noted in Gap #5, the US Border Patrol and the Blaine Police Department work closely together to support each other when appropriate. The City of Blaine, and two other small municipalities in Whatcom County also located near other border crossings, do not utilize What-Comm, the centralized 911 center for Whatcom County. Instead, when a caller from the City of Blaine calls 911 for assistance, as soon as the call taker learns the caller is from Blaine, one of two events occur. The caller is either automatically transferred to US Border Patrol Dispatch, or, if Border Patrol Dispatch is not immediately available, relevant information is obtained from the caller and What-Comm relays the information to Border Patrol Dispatch as soon as possible. Border Patrol Dispatch calls the Blaine Police Department with the information it receives from either the caller or What-Comm.

Each law enforcement agency that uses What-Comm is charged a fee based on a specific formula. The US Border Patrol does not charge for its dispatch services to the City of Blaine. Resource constraints are the primary reason the Blaine Police Department does not use the

**Gap #8 Officers responding to domestic violence calls lacks sufficient information regarding the situation.**

services of What-Comm. The Blaine Police Chief stated that it would cost more than the equivalent of one patrol officer to use the services of What-Comm. There are additional issues around radio frequency and the ability of the Blaine Police Department to have immediate access to back-up support from the US Border Patrol due to the use of the US Border Patrol Dispatch rather than What-Comm. This arrangement has been in place since 1950.

What-Comm has trained call takers and dispatchers who are also able to access local law enforcement activity, warrants and order status. The training of What-Comm personnel includes specialized training in responding to domestics. The Audit team did not learn what type of training US Border Patrol dispatchers receive. The US Border Patrol offers this service to the City of Blaine, yet Audit team members learned that this service comes with limitations and concerns on the part of many Blaine Police Department officers. At the same time, the team learned that by using the US Border Patrol for dispatch, the Border Patrol is made aware of all calls coming into the Blaine Police Department through 911 and, consequently, the potential need for back up support from the Border Patrol.

In interviews, police officers consistently expressed concern for the lack of information they are able to receive from Border Patrol Dispatch. One officer stated that what they have to “work with” is whether it is a verbal or physical domestic. Some noted a time delay in receiving information from dispatch. This concerns officers as a timely response to domestics can be essential. Others stated that the information they receive is the equivalent to “possible domestic dispute in progress”, which greatly limits their ability to anticipate the level of danger and safety precautions needed. As one officer stated, “Very rarely will I get a report from dispatch that says ‘somebody says their boyfriend is hitting on them’. There is no information about prior contacts, or weapons, no history about warrants or NCO’s. In essence we show up knowing nothing.”

In B-5 officers were told by US Border Patrol dispatch that there was a report of a past domestic dispute, possibly verbal. The use of the word past prompted the officers to assume parties were separated and no one was in immediate danger. Upon arriving at the scene, two officers found a pregnant female sitting in her car in the parking lot where she had run to escape the assault and report the incident via her cell phone after the offender had prevented her from using the phone inside. She had been beaten repeatedly in the head by the defendant’s closed fist and had a visible welt. The victim reported mental health issues regarding her husband, which was information not obtained by dispatch. A third officer was on duty that night but because of the way the call had been reported by dispatch, had not immediately attended the call. After officers on the scene further assessed the situation, the third officer was called to the scene to improve safety for all.

In a careful review of 20 police reports, it appeared there are occasions when US Border Patrol Dispatch is able to secure ongoing information and convey it to the officer. There were a few examples where Border Patrol provided an update on the status of the offender (i.e., had fled the scene). In contrast, B-4 stated: “Officer A advised he had just received a call from dispatch. Male had called reporting his wife had destroyed property. I called dispatch to get details and inquired if it was in progress. They did not know.” As noted earlier, this could have been a

**Gap #8 Officers responding to domestic violence calls lacks sufficient information regarding the situation.**

situation where Border Patrol did not talk directly to the caller, but instead received basic information from What-Comm.

US Border Patrol Dispatch does not have access to the Blaine Police Department database (Justice). Officers can only access this local law enforcement activity during Police Department business hours, or if they return to the station. This gap is currently being addressed as all police officers will soon be equipped with laptops in their vehicles that will allow them access to Justice and to statewide databases that check wants, warrants and vehicle and driver license checks. In the near future, they will also be able to access law enforcement activity for all law enforcement agencies in Whatcom County. This will definitely address a portion of the gap that is currently created by the use of US Border Patrol as dispatch.

***How do we close the gap?***

The Audit team recognizes the important relationship between the City of Blaine Police Department and the US Border Patrol, as well as the service provided by US Border Patrol Dispatch. Resource limitations are significant and play a role in the City’s choice to not use What-Comm. However, the team learned there are limitations to the information relayed to police officers from US Border Patrol Dispatch, at times creating safety concerns. At the same time, use of US Border Patrol Dispatch provides immediate access to back up support from the Border Patrol, which is important to public safety. There are clearly costs and benefits for the City of Blaine to weigh in addressing this gap.

1. Continue with current efforts to equip all patrol cars with laptops and access to pertinent criminal histories.
2. Identify if there are other strategies for Blaine police officers to secure additional incident information from US Border Patrol Dispatch.
3. Educate Blaine City Council on the importance of the service of What-Comm, but not at the expense of losing law enforcement coverage.
4. If resources and circumstances allow, the Blaine Police Department should be dispatched by What-Comm and this should be a funding priority for the City of Blaine.

Requires changes in:

- Resources
- Linkages
- Education and Training

***Who should be involved?***

- √ City of Blaine Police Chief
- √ City Manager, City of Blaine
- √ Blaine City Council
- √ Input from Blaine law enforcement personnel



**Gap #9 Probation and prosecution contacts with victims are inconsistent and largely undocumented.**

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

Prosecutors have an important role in supporting safety for victims of battering. It is the prosecutor who is ultimately responsible for making decisions about case processing and legal outcomes. Prosecutors 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. However, without a 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. 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.

Communication with the prosecutor is especially essential for those victims who are involved in a system where there are either limited or no system-based victim advocacy services. It is important that a victim not be left with the impression that the prosecutor is the "enemy."

Likewise, victim safety can be enhanced when probation officers establish and maintain communication and contact with victims either during pre-trial supervision or 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.

"The importance of periodic contacts to check in on victims cannot be overemphasized. All victim contacts must be recorded, because probation needs to be able to document its actions with victims. We informed victims that as officers of the court we could not withhold

**Gap #9 Probation and prosecution contacts with victims are inconsistent and largely undocumented.**

information from the court. Victims did not seem deterred from communicating with us. We had a much higher rate of victim participation in revocation hearings around charges of new abuse than the prosecutor did.”<sup>18</sup>

Documentation of victim contact, with care for confidentiality and discovery, is especially important when there are multiple practitioners in an office. Even when caseloads are small and one staff is filling the duties of a prosecutor or probation officer, documentation ensures that essential information about the victim is noted and memorialized. In the event of staff turnover, documentation ensures new practitioners have access to the information.

***What contributes to the gap?***

The Audit team learned that the prosecutor and the probation officer had different practices for victim contact. In conducting text analysis, the team found documentation of victim contact in 5 of 8 prosecution files. In one of the 5 cases, victim contact was not documented in the first series of charges, but was made and documented many months later when the defendant violated a NCO and new charges resulted. In interviewing the prosecutor about this case, the team learned that victim contact was attempted initially, but was unsuccessful. In fact, the victim had contacted the Court Clerk for information, had not been aware there was a victim advocate, and had not wanted to contact the prosecutor as she thought it would make things worse. The Court Clerk did not inform the prosecutor of this call until many months later. In two of the cases where there was no victim contact, the prosecutor noted that attempts had been made to no avail. The prosecutor stated that lack of good contact information is the primary reason victims cannot be contacted, however, other factors contribute to this gap as noted above. Because a dedicated system-based advocate does not exist in the City of Blaine, the current prosecutor has made it a priority to attempt victim contacts. The prosecutor also stated that recently they have made it a practice to inform the judge whether or not contact has been made with the victim and whether the victim is supportive of the action the prosecutor is recommending.

Documentation by the prosecutor was difficult to navigate in case files as the standard Case Summary sheet was utilized in a little over half of the files reviewed. The Case Summary sheet was provided to the team by the prosecutor, early on in the Audit process, as an example of a standard form used in a prosecutor case file. The prosecutor stated that the Case Summary sheet was designed for an office where multiple practitioners were responsible for different aspects of follow-up. The prosecutor indicated that with time, use of the sheet has discontinued as it was not proving helpful in a “one-person” office. This would explain why team members found some files where notes were written in borders of other documents, such as on the Probable Cause Statement.

The nature of a contracted prosecutor working very part time as a solo practitioner for a small

<sup>18</sup> *Lessons Learned About Supervising Domestic Violence Offenders on Probation*, Andrew Klein, Perspectives, Winter 2004

**Gap #9 Probation and prosecution contacts with victims are inconsistent and largely undocumented.**

municipality creates additional challenges around documentation. Although team members recommended the creation of a new Case Summary Sheet that would be more useful to the prosecutor and specific to domestic violence cases, the prosecutor stated that the small caseload and the working conditions make documentation difficult. “I live and work in the same county as the victims; when I run into them on the street, I take that time to talk to them. I do not have my files with me to document that contact. Also, my office line is a cell phone, and as a contracted prosecutor, I work from a variety of settings. I have spoken to victims while driving down the interstate, while sitting outside of another courtroom, and while eating dinner after hours. The truth is that most of my victim contact is made without the benefit of the file before me. The reality is that conversations and notes don’t always get documented. However, the judge is always advised of victim contact and the content of the contact is always considered in the prosecution of a case.”

The probation officer did not view regular victim contact as part of their practice, even as part of an initial intake of a new probationer. Victim contact was made if there were high safety concerns, or if the victim initiated contact. In the probation officer’s dual role as victim advocate, the probation officer would occasionally have contact with a victim in the context of interviewing the victim regarding NCO rescission requests. Victims were not sent any information when the defendant began probation. In review of probation files, team members noted very minimal or no documentation of victim contact.

Victim contact is not documented in probation case files and the team concluded that this is due to the fact that victim contact is not a standard practice or priority for probation. In the case of the prosecutor, victim contact is a priority and standard practice. Inconsistent victim contact information in prosecutor files appeared to be the result of many factors, including the absence of a dedicated system-based advocate, lack of good contact information provided to the prosecutor, and the challenges around documentation due to the working conditions of the prosecutor.

***How do we close the gap?***

1. Prosecutor to develop and utilize a new Case Summary sheet to better document victim contact and victim information.
2. If probation services are no longer contracted out to Whatcom County District Court, victim contact should be considered an essential responsibility of the probation officer. Whatcom County District Court Probation should be used as a resource in the development of the practice. Safety Audit Report of January 2007 has specific recommendations for probation. (see footnote #4 on bottom of page 4)
3. As per Gap #1, secure funding for a dedicated system-based victim advocate so that the prosecutor is no longer solely responsible for victim contact.
4. As per Gap #10, law enforcement to improve collection of alternate victim contact information.
5. City of Blaine to develop an orientation packet for the contracted prosecutor specific to domestic violence case processing. The packet could contain sample forms, such as

**Gap #9 Probation and prosecution contacts with victims are inconsistent and largely undocumented.**

those recommended in this audit, and a statement of philosophy.

Requires changes in:

- Administrative practices
- Resources
- Concepts and Theories
- Accountability

***Who should be involved?***

- √ City staff responsible for contract with prosecutor
- √ City of Blaine Prosecutor
- √ City staff responsible for supervision of probation officer
- √ Probation Officer
- √ Input from victim/survivors of battering

**Gap #10 Police reports do not consistently provide a) thorough documentation of contact with and information from witnesses and children, and b) comprehensive information on how to reach victims.**

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

As previously noted in Gap #7, information contained in the police report is essential to criminal case processing, batterer accountability and victim safety. Witnesses, including children, can provide critical information to substantiate issues such as primary aggressor determination and whether or not a crime occurred. Law enforcement will commonly encounter a domestic where each party will articulate a different version of the incident, leading to “he said, she said” in some cases. Although many domestic violence related crimes occur in private, many do occur in the presence of children, and other household and family members. Neighbors can be witnesses, either to sounds or actual acts. Of the 10 police reports reviewed involving an arrest, 2 calls were made by a third party, 6 by the victim, 1 by the defendant, and 1 was a hang up call. As noted previously, 4 of the 10 verbal reports were initiated by third party callers. The ability to use information from a third party witnesses is especially important when victims are reluctant to participate in the criminal case. This alleviates the need to rely so heavily on the victim as a witness.

Documentation of the presence and welfare of children is not just considered a “best practice”, it also enhances the ability to keep children safe, to support and assist them in the trauma they have experienced, and it can increase the ability of the community (criminal and civil justice system) to hold offenders accountable. “The goals of an effective response include assessing whether children have been harmed, minimizing the impact and repercussions to children who are present, and empowerment of children within the process as much as possible. Finally, the achievement of an effective response to children at the scene would enhance adult victim and child safety, promote offender accountability and expand the community response to domestic violence.”<sup>19</sup> Documentation of the presence of children assists other criminal justice system personnel to assess level of risk posed by a defendant and may increase the ability of a prosecutor to add other charges, such as reckless endangerment. Documentation can assist decision making and case planning by the Division of Children and Family Services when allegations of child abuse or maltreatment are involved.

Victim contact information is needed in order for criminal justice system practitioners to maintain communication with victims. Victim contact information may frequently change if the victim is feeling unsafe and needs to move to another location. Victims may be unwilling to give information as they may be concerned the defendant will discover their whereabouts. Therefore, in seeking this important information, law enforcement should inform the victim how this information will be used and by whom. The primary reason prosecutor’s offices cite for their inability to reach victims is lack of good contact information.

<sup>19</sup> Vermont’s Model Protocol: Law Enforcement Response to Children at the Scene of a Domestic Incident, VT Criminal Justice Training Council, VT Department for Children and Families, VT Network Against Domestic and Sexual Violence, Revised August 2007

**Gap #10 Police reports do not consistently provide a) thorough documentation of contact with and information from witnesses and children, and b) comprehensive information on how to reach victims.**

*What contributes to the gap?*

All police reports follow a standard format (based on a drop down menu utilized by officers completing the form on-line) typically listing information on the victim, arrestee, and witnesses. Occasionally a fourth category of “contact” was noted. The person’s name, date of birth, address and phone number were generally filled in. With victims, the team found that there was documentation for only one phone number. The narrative never indicated if there had been a conversation with the victim about whether they might be at another location, or who could be contacted in the event the victim could not be reached. It may be that officers asked that information, but it was not documented. In a few instances the victim was employed, but their work number was not listed even though there appeared to be a space for that information. In one instance the workplace was noted, but not the victim’s phone number there. The team did learn that there was an additional drop down menu for “victim” for the category of “nondisclosed”, meaning that this information would be kept confidential. The team was told that victims would need to request that the information be kept confidential in order to be entered into the “nondisclosed” section. No examples were found of nondisclosed contact information. The police report does not have any other area for alternate or additional victim contact information. The supervising Sergeant stated that this type of information, if collected, would be found within the narrative. This supervisor suggested that the lack of documentation of this additional information may be a training issue.

Of the 10 police reports reviewed, 7 did not make any mention of whether there were children in common or children present at the incident. In one of those cases, the victim made reference to her children, but there was no further information in the report. Of the three cases where a notation was made, one noted there were 2 children in common but did not indicate if they were present. A second report noted that no children were present or in common. The third report included information on the three children present as well as information from brief interviews with the three children. Team members noted this missing information and could not tell if the issue was lack of documentation, or if officers were not trained or directed to document presence and welfare of children. As a reader of a police file, it is helpful to read a statement such as “no children present or in common” rather than wonder if the children were overlooked. In addition, because of the high correlation between domestic violence and child maltreatment, it is important for law enforcement officers to ensure that children are safe.

Witness information appeared to be more consistently documented, however the Audit team did find cases where further witness interviews might have been helpful. Five of the 10 reports noted presence and contact information of witnesses. Even in these reports there was inconsistency. In B-3 a roommate was a witness to the assault. A written statement was included in the report, but there was no notation of the information provided by the witness in the police narrative. In B-7 child witnesses were interviewed, however, team members noted that additional information may have been learned with further interviews with the children. One example was noted previously in Gap #7. A child witness was quoted as saying: “daddy

**Gap #10 Police reports do not consistently provide a) thorough documentation of contact with and information from witnesses and children, and b) comprehensive information on how to reach victims.**

grabbed mommy and choked her on the bed. Mommy tried to call me but I could not get back into the bedroom.” There was no elaboration on how the child was able to witness the assault and then could not get back into the room to help, causing team members to wonder if further interviews would have been helpful. In this same report, a second child witness was quoted as saying: “they fell on the bed and closed the door...heard a slam into the wall.” There was no further information or apparent questioning regarding the slam into the wall. Team members did not learn the extent to which Blaine police officers are trained to interview children.

In another report it was noted that 5 people lived in the resident, but the report did not verify who was present for the incident. In B-9 the victim stated that she might leave to go stay with friends, however, no contact information was provided on her friends. Her friend had accompanied her to make the police report. Five other reports had no information about whether or not there were witnesses, nor did they indicate that neighbors had been contacted as potential witnesses. Only in one police report did it appear an officer had actively sought out potential witnesses, other than those that were obvious.

Due to lack of a written policy on domestic violence response in the Blaine Police Department, team members were unable to determine the standards by which officers are trained and directed to document the information and issues noted in this gap statement. As noted by the supervising Sergeant in Gap #5, missing witness information and victim contact information may be a reason for follow-up investigation. However, since the team did not have an opportunity to review any requests for follow-up, it is not known if any follow-up was requested in the incidents noted above. Regardless, even if follow-up had been requested, no follow-up results were documented in the cases reviewed by the team.

***How do we close the gap?***

1. Review and develop a standard practice around witnesses and children, including investigation (i.e., seeking out additional witnesses), interviewing, taking written statements, and documentation. Documentation to include statements that verify lack of presence, such as “no children present” or “no witnesses present or interviewed”.
2. Review and develop a standard practice on obtaining comprehensive victim contact information. Ensure confidentiality of this information if appropriate. Incorporate a prompt for additional victim contact information on report form.
3. Consider development of a written domestic violence response policy, to include items noted above.
4. Inform all law enforcement personnel either through training, or written and/or oral directives, on standard practices as per above.
5. Supervisors to review all reports to ensure practices are followed.
6. Prosecutor to be consulted in development of standard practice.

**Gap #10 Police reports do not consistently provide a) thorough documentation of contact with and information from witnesses and children, and b) comprehensive information on how to reach victims.**

Requires changes in:

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

***Who should be involved?***

- √ City of Blaine Police Chief
- √ City of Blaine Prosecutor
- √ City of Blaine law enforcement personnel: supervisors and patrol



**Gap #11 Closed domestic violence case files remain with the contracted city prosecutor when the prosecutor's contract with the city ends.**

***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? 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 one essential strategy to that end.

When jurisdictions contract for prosecution services, what happens to the case files that are handled and created by a prosecutor when their contract ends and another prosecutor is hired? Unless the case remains open, those case files may no longer be the property of the jurisdiction, leaving no institutional memory of either the defendant or the victim. Particularly for domestic violence crimes, which may reoccur with the same victim or with new victims, a previous case file provides for more effective and efficient prosecutorial case management. It is not uncommon for the individual who has historically been the victim to occasionally be charged with a domestic violence offense. Previous case files of charges against the other party would provide a prosecutor with full information to make a determination on how to proceed with this case. Losing access to previous prosecutor case files creates a safety risk for victims and could lead to missed opportunities for holding batterers accountable.

***What contributes to the gap?***

The City of Blaine has a part time prosecutor who is hired on an annual basis by contract. The City of Blaine has contracted with the current prosecutor since January 2005. Prior to the current prosecutor, team members were told that a new prosecutor was contracted with every one to two years. Prosecutor case files that are closed and not eligible for appeal, do not remain with the City of Blaine, but are kept by the prosecutor. During the Audit process the prosecutor did not initially have a clear notion of who the files belonged to. The prosecutor stated that nothing was written into the contract, nor was a protocol in place. It seemed to be a historical practice that files were kept by the prosecutor once the contract had ended.

**Gap #11 Closed domestic violence case files remain with the contracted city prosecutor when the prosecutor's contract with the city ends.**

There was also no protocol or standard set by the City as to the contents of the prosecutor files. Apparently each prosecutor determines what type of documentation to keep. Assuming that files are rarely viewed by other prosecutors, this practice is not particularly problematic. However, if open case files must be turned over to a new prosecutor, or if there is a new charge with a previous defendant, a new prosecutor would benefit from having access to previous files that contained helpful and thorough case documentation.

Although this gap is stated primarily as a concern about access to historical prosecutor case files, team members did identify additional concerns around comprehensive documentation in prosecutor files, which are also addressed in Gaps #9 and #12.

***How do we close the gap?***

1. The City of Blaine and Blaine Prosecutor should discuss and develop a protocol for "ownership", storage and destruction of prosecutor case files.
2. The protocol should include a recommendation to turn closed domestic violence cases over to a new prosecutor if there are changes in the contracted prosecutor position. (Within certain time limits)
3. City of Blaine to include language in contract with prosecutor to address protocol developed as per above.
4. City of Blaine to develop an orientation packet for the contracted prosecutor specific to domestic violence case processing. The packet could contain sample forms, such as those recommended in this audit, and a statement of philosophy

Requires changes in:

- Rules and Regulations
- Administrative Practices
- Linkages
- Accountability

***Who should be involved?***

- √ City of Blaine Finance Director
- √ City Manager, City of Blaine
- √ City of Blaine Prosecutor
- √ City of Blaine Attorney (civil)

**Gap #12 There is no current standard practice for documentation or presentation of victim impact statements.**

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

Victim rights are an essential component of Washington State law. WA State RCW 7.69.030 lists the rights of victims, survivors and witnesses. *There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crime have the following rights, which apply to any criminal court and/or juvenile court proceeding.* Specifically, one of these rights, section (13) of RCW 7.69.030, reads: *To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution.*

Providing a victim impact statement to the court honors the experience of the survivor and provides information to the court on some of the impacts of the batterer's behavior. For victims who have not needed to testify during the case, this may be the one and only time to address the court. For many, it is an important process in their journey to healing. Even if a victim expresses a wish that is contrary to the prosecutor's recommendation or to the final sentence, the victim knows they have had a voice. Victim impact statements provide the court with a context in which to understand the incident. The statements help the court and the community understand the full range of impacts of battering and control on the victim, their children, and friends and family.

Standard practices and documentation for victim impact statements help assure that prosecutors and system-based victim advocates are consistent in their efforts to give victims the opportunity to submit a victim impact statement to the court.

***What contributes to the gap?***

Audit team members reviewed 8 prosecutor files. No victim impact statements were found in the files. This is somewhat consistent with the prosecutor's practice that once the case was closed, no additional documentation was collected. For this reason, no Judgment and Sentence forms were found in any prosecutor files. Although there was victim contact in 5 of these 8 files, there was no documentation that the prosecutor had requested a victim impact statement prior to the closure of the case. (One of the cases was dismissed, requiring no need for a victim impact statement.) In P-4 the prosecutor did note: "Advised court I had contacted CPS and tried to locate victim for Victim Impact Statement (VIP) to no avail."

The prosecutor stated that it is disappointing to report to the court that the victim was not able to be contacted to obtain a victim impact statement. The primary reasons for not being able to reach victims was the lack of good victim contact information, as well as the lack of a dedicated system-based victim advocate in the City of Blaine.

**Gap #12 There is no current standard practice for documentation or presentation of victim impact statements.**

The prosecutor stated that asking for a victim impact statement in writing has not been a standard practice. In addition, the prosecutor does not have a standard form for the victim to complete. The judge typically does not ask whether there is a victim impact statement, but rather the prosecutor will initiate whether or not a victim impact statement has been received.

In a review of 11 Judgment and Sentence forms for domestic violence related charges, the prosecutor recalled that victims made victim impact statements to the court in 5 cases and in 2 cases the victim could not be located. The prosecutor could not recall the other 4 cases.

Although through text analysis it appeared the prosecutor made little effort to obtain victim impact statements, based on interviews with the prosecutor, the team concluded that efforts were being made. However, the efforts were not documented and a standard form was not available to help guide the victim in the development of the statement.

***How do we close the gap?***

1. Design a victim impact statement form for use by the prosecutor and court.
2. Adopt a consistent practice for giving the form to the victim early on in the case, possibly along with Victim Rights Information.
3. Ensure a copy of the form is filed with the Court and included in the prosecutor case file.
4. Include a copy of the Judgment and Sentence in the prosecutor case file.
5. Review process for presenting victim impact statements with judge.
6. Continue education with law enforcement on importance of thorough victim contact information.
7. As per Gap #1, securing funding for dedicated system-based victim advocate. If no funding is secured, consider utilizing community-based advocates to assist in this capacity.

Requires changes in:

- Administrative Practices
- Accountability
- Education and Training

***Who should be involved?***

- √ City of Blaine Prosecutor
- √ City of Blaine Judicial Officer
- √ City of Blaine law enforcement personnel
- √ Input from victim/survivors of battering
- √ Community-based advocates

**Gap #13 There is no clear and consistent policy throughout the system regarding forfeiture, surrender and removal of firearms and dangerous weapons in domestic violence cases.**

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

The majority of domestic violence homicides in Washington State have been committed with firearms. Between 1997 and June 2006, batterers used firearms to kill 56% (n= 200) of domestic violence homicide victims. The second most frequently used weapon was a knife, used in 18% of domestic violence homicides during that same period.<sup>20</sup> According to a 2002 Bureau of Justice Statistics Report, guns were used in almost two-thirds of domestic violence homicides that occurred in the United States.

For at least a decade there has been an enactment of both federal and state laws designed to prevent domestic violence offenders from purchasing or possessing firearms, and in some cases, dangerous weapons. “There are major holes that undermine the system. These come in the form of loopholes in legislation; lack of complementary and enforcing legislation at the state level; little or no implementation of available laws by police, prosecutors, and judges; and confusion and complexity in putting tools to work.”<sup>21</sup> As echoed by Casey Gwinn, J.D., while chair of the CA Attorney General’s Task Force on Domestic Violence, he was “dumbfounded at how poorly the system operated when taking guns away from convicted batterers; in both criminal and family law cases, ‘We rely on the offenders to come forward with their weapons.’”<sup>22</sup>

Progress is being made in communities to address these loopholes, and in particular, to educate all criminal justice system personnel on the respective roles and responsibilities in enforcing and upholding allowable firearms prohibitions. In Whatcom County, a Domestic Violence Firearms Work Group has been meeting for the past two years to develop recommended practices that will increase consistency in the response to firearms prohibitions for law enforcement, advocates, prosecutors, defense, judges, probation and domestic violence perpetrator treatment providers. As the committee conducted its work, it became clear that enforcement and utilization of existing laws was not consistent among practitioners.

This same conclusion was made in the December 2006 Washington State Domestic Violence Fatality Review released by the Washington State Coalition Against Domestic Violence. One of many recommendations in the report, also noted in previous Fatality Reviews, is: “Police, prosecutors, judges and probation officers should consistently make every effort to identify and remove abusers’ guns possessed in violation of the law at each step of the criminal or civil legal process.” (See footnote #20 at bottom of page)

Because firearms, dangerous weapons and domestic violence are a lethal combination, ineffective implementation of the laws put victims of battering and the broader community at

<sup>20</sup> *If I had one more day...Findings and Recommendations from WA State Fatality Review*, December 2006, Kelly Starr and Jake Fawcett for the WA State Coalition Against Domestic Violence

<sup>21</sup> *Removing Firearms from Domestic Violence Perpetrators*, December 2003, Prepared by Kennedy Conder for the City of Seattle Human Services Department, Domestic and Sexual Violence Prevention Office

<sup>22</sup> Domestic Violence Report, Vol. 12, No. 3, February/March 2007

**Gap #13 There is no clear and consistent policy throughout the system regarding forfeiture, surrender and removal of firearms and dangerous weapons in domestic violence cases.**

risk for death or serious injury.

***What contributes to the gap?***

The Audit team identified two areas of concern. The first is in the initial response by law enforcement, including documentation, and the second area is in the enforcement of court orders that restrict possession of weapons and firearms. The team found inconsistent practices in the law enforcement response to firearms removal and a general lack of follow up practices among all practitioners to ensure that there is compliance with court orders.

In a careful review of 10 police reports resulting in a domestic violence related arrest, 8 files made no mention of weapons in the narrative. There was no information to indicate whether or not the officer asked if any weapons were present in the household. (No weapon had been used in any of these offenses.) In four of these eight reports with no information in the narrative, the victim was asked the risk question “Does the suspect own or have access to weapons? What is the likelihood suspect would use a weapon against others?” Victim responses to this question were documented in the Probable Cause statement, however no other statements regarding weapons were in the police report. In B-2 the victim made the following statement when asked the risk questions about weapons. “He has weapons and my son may have them. I think there is ammunition in the house.” The defendant was described by the victim as having mental health problems. There was no follow-up information documented in the report. Another Audit team member reviewed 12 police reports (some are included in the 10 noted above), and this team member found 6 files with no mention of weapons, 3 cases where weapons were confiscated, and 3 cases where the report documents no weapons were present.

Law enforcement officers are authorized to seize weapons when warranted (prohibition or instrumentality of the crime), or to seek and accept surrender when there are safety considerations. As stated by the supervising Sergeant, “If a firearm is used or is threatened to be used in the commission of the crime, or the respondent has firearms and the victim is fearful the suspect may use them in the future, our officers will take those firearms into protective custody pending release by the court.” In addition, the team learned that if the suspect is a law enforcement officer, the Blaine Police Department has a policy that the firearm will be collected and taken into custody at the scene by the investigating officer, or by the command officer of the agency that the officer works for.

When a Blaine patrol officer was asked about a standard practice on asking about the presence of weapons the officer stated, “it doesn’t make sense to ask about firearms if we can’t take them anyway.” This officer believed they could not remove weapons at the scene, other than when they were used in the crime and “would stand up in front of the Judge.” Another officer told a team member that they were reluctant to confiscate guns as firearms were considered a constitutional right. A third officer stated they would remove weapons if it was determined the weapons or firearms presented a serious safety risk. Team members were not able to assess if these range of responses were related to differences in training, lack of a department policy, or

**Gap #13 There is no clear and consistent policy throughout the system regarding forfeiture, surrender and removal of firearms and dangerous weapons in domestic violence cases.**

differences in concepts and theories about weapons and firearms. Along with the variety in practices, team members were also concerned that police reports did not consistently document whether or not weapons and firearms were present.

B-8 involved an incident where the defendant fled the scene with their service weapon ( a weapon for use in employment). The defendant was arrested, booked and released. A follow up report in the file indicates an officer returned to the home to remove two additional firearms for safekeeping. However, nowhere in the report is there mention of the status of the service weapon. B-10 was an example of an officer using discretion to ensure safety by impounding a weapon. In this incident the victim reported that two months prior the defendant had loaded a weapon in front of the victim and her children, saying he was going to shoot an individual who had just called the victim.

Although judges and prosecutors should routinely inquire about access to weapons and firearms, information in the police report is a helpful reminder. The Blaine Municipal Court Judge stated that he assumes law enforcement is doing an evaluation at the time of an arrest to see if firearms are an issue. He stated that a review of the police report is the basis on which he will make a decision to remove firearms at the first appearance/arraignment. If a defendant denies access to weapons at a court appearance, yet the police report noted that the victim stated the defendant owns hunting rifles, a judge has a basis for posing further questions.

The Audit team learned that the Blaine Municipal Court Judge does order “no possession of weapons” when appropriate. However, the team learned that there is very little in place to monitor and follow up, unless a violation is observed. The probation officer stated it is not common practice to routinely follow up with surrender of firearms even when it was ordered. Probationers are not asked if they have surrendered firearms, nor are they asked for any proof of surrender. The probation officer also noted concerns when defendants indicated they will turn firearms over to a unknown friend or family member.

As stated earlier, there are no regular judicial review hearings; therefore the judicial officer does not have an opportunity to ask the defendant if they have complied with the order to possess no firearms. It is not known if defendants are given a time period in which to comply. The court does not ask for any paperwork from the defendant to verify surrender, nor is the defendant asked to sign documentation to verify they do not possess or have access to firearms, such as a Declaration of Non-Surrender.

Although standard practices may be in place, the Audit team did not learn how law enforcement is notified about individuals who are not allowed to possess firearms. The team also did not learn how an officer would respond if they had probable cause to believe an individual was in violation of weapons possession. Would law enforcement seek a search warrant from the court and would the court readily issue a warrant if appropriate?

**Gap #13 There is no clear and consistent policy throughout the system regarding forfeiture, surrender and removal of firearms and dangerous weapons in domestic violence cases.**

***How do we close the gap?***

The Whatcom County Domestic Violence Firearms Work Group will soon be releasing a list of recommendations (Plan to Disarm Domestic Violence Defendants in Whatcom County) for criminal justice system practitioners. The City of Blaine should ensure that it reviews these recommendations and that all practitioners (law enforcement, probation, prosecutor and judicial officer) adopt the practices to the extent possible. Some of the recommendations are noted below.

1. Blaine Police Department to review statutory authority with weapons removal and develop standard practice/protocol for response. This should include a standard practice to ask about, locate and neutralize weapons; seek and accept surrender; seize weapons when warranted; document presence, allegation of presence and/or removal in the narrative and PC statement; and seek search warrant where probable cause exists.
2. Blaine Prosecutor to review and adopt practices as recommended by Domestic Violence Firearms Work Group.
3. Blaine Probation Officer (if part of City of Blaine) to review and adopt practices as recommended by Domestic Violence Firearms Work Group.
4. Blaine Judicial Officer to review and adopt practices as recommended by the Domestic Violence Firearms Work Group.
5. All above personnel meet to discuss collaborative implementation of the practices, including an evaluation of implementation in 6 months.
6. Training provided to all personnel (law enforcement emphasis) as per adopted practices.
7. Blaine Police Department to develop process and paperwork for storage and/or return of surrendered weapons.

Requires changes in:

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

***Who should be involved?***

- √ City of Blaine Police Chief
- √ City of Blaine Prosecutor
- √ City of Blaine Probation Officer (if relevant)
- √ City of Blaine Judicial Officer
- √ City of Blaine law enforcement personnel



**Gap #14 Police reports contain limited information on prior history of involved parties and do not always indicate if prior history was reviewed.**

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

There are many types of checks available to criminal justice system personnel, from a vehicle license check, to a drivers license check, an NCIC check or a local law enforcement database check. Each criminal justice system player will check certain databases as this information is important to decision making, safety planning for victims, and risk assessment. A judicial officer may want to check JABS to ensure there are no conflicting orders. A probation officer may want to check criminal records in outlying states to ensure they have full information on the defendant's criminal history. The prosecutor may want to review every call related to the defendant to see if there is any pattern of behaviors or to assess the defendant's compliance regarding court orders.

A history check by law enforcement is conducted for multiple reasons. One is for safety planning as the officer approaches the scene. Is there a current order in place? Have we been to this household before? Has this person been charged with any crimes related to resisting an officer? A second reason to check history is to assess if there might be additional charges that could be filed, such as unlawful firearms possession or an order violation. A third reason is for documentation in order to provide an accurate picture for the prosecutor and others who utilize the police report. This documentation provides cues for the prosecutor on risk level, on additional history checks that could be conducted, and on any history and pattern of battering behaviors. As noted previously in this Audit report, the police report is the basis for case processing and decision-making.

A fourth reason for law enforcement to check history is to aid in decision making. Police frequently arrive at an incident to find that both parties have used some form of violence. Once an officer has determined whether or not a crime has been committed, the next steps are to determine if any acts were committed in self defense, and if not, to then determine primary aggressor. WA State RCW 10.31.100 (2) (c) *The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.*

The purpose of this RCW was to eliminate the practice of dual arrests; the RCW understands that although "mutual" violence can occur in battering, not everyone is at equal risk. Knowing that one of the parties has been the victim of domestic violence in the past is important information in decision-making at the scene.

If checks have been run and nothing has been found, documenting this information will help practitioners further along in case processing. For example, the prosecutor can be assured that certain checks have already been made, rather than run a check again because there was no documentation that it had been done.

**Gap #14 Police reports contain limited information on prior history of involved parties and do not always indicate if prior history was reviewed.**

*What contributes to the gap?*

Blaine law enforcement officers currently have limited access to history checks when responding to an incident, but this is changing, as noted in Gap #8. Justice, the local Blaine law enforcement database and report writing tool, will soon be available to all officers via laptops in their vehicles. This change was initiated towards the end of the Audit process. This will give officers ready access to local domestic violence and other history background. According to the supervising Sergeant all officers are expected to check Justice and “run wants checks through WACIC/NCIC at the time of the contact with the parties to determine if protection orders are in affect or if either party is wanted on warrants. Some officers will run a criminal history and attach them to a report, but it is not required.” The supervisor stated that any missing information in a report regarding histories “would indicate no history exists or a training/paperwork issue”.

Through text analysis team members found limited information on prior history and could not determine if history checks had been made by reading the report. According to the above statement by the supervisor, lack of notation may imply that no history was found. The only way to know that a check had been made was if there was some reference in the police report or if there was a copy of a check in the file. In a review of 10 domestic verbals (non-arrest), history checks were documented in 2 of the 10 files. The other 8 files made no mention as to whether or not checks of any sort had been made.

In a careful review of 10 police files where a domestic violence related arrest was made, history checks were noted in 5 of the 10 files. Team members determined some check had been made in the five files due to the following:

- In two files a copy of a driver and/or vehicle check was attached.
- In one file a witness was arrested, indicating that someone had conducted a check on all parties, or perhaps had earlier knowledge of an outstanding warrant.
- In one file the victim told the officer she was afraid there were warrants out on her and the officer checked on the status of those warrants.
- In one file the second responding officer conducted a warrant check on the defendant and this was noted in the police report.

In the 5 files where no documentation was found on history checks the Audit team found the following:

- In B-6 and B-5 the victim indicated there has been prior history in the Domestic Violence Complaint/Victim Statement. This was in answer to a question on the form “Has this person ever done this type of thing to you before? If yes, when and where? Have you ever reported previous incidents of domestic violence?” In B-5 the victim indicated she had reported the incident before. There was no follow up documentation in the police report.
- In B-3 the Whatcom County Jail identified another outstanding warrant on the defendant.
- In B-4, the officer reported that one of the parties stated they had just been released from jail. There is no information in the report as to why that individual had been in jail and

**Gap #14 Police reports contain limited information on prior history of involved parties and do not always indicate if prior history was reviewed.**

whether it was related to domestic violence.

Domestic violence risk assessment questions were asked in 7 of these 10 files. Victim responses to those questions indicate whether or not the victim had previously been assaulted or intimidated by the defendant, but their responses will not necessarily provide information that is available from history checks.

Based on review of police reports, it does not appear to be a standard practice to note that history checks have been done and to document the results of the check. Team members were left wondering how another reader of the file would be able to make that assessment.

Issues with access to history checks were noted in Gap #8, as a result of the Blaine Police Department's utilization of US Border Patrol Dispatch. During non-business hours of the Blaine Police Department, patrol officers have limited access to history checks. Team members could not determine whether the lack of documentation was related to lack of access or simply lack of standard practice to document. The team believes that both contribute to this gap.

As stated previously in Gap #8, the Audit team learned that efforts are currently underway to increase the ready access of Blaine Police Department personnel to thorough local law enforcement history checks via laptops in the patrol cars. This will ensure that officers have access to history of involved parties, however, the team recommends that documentation practices of these checks be improved.

***How do we close the gap?***

1. Blaine Police Department to review and develop standard practice on history checks.
2. At minimum, police reports should contain information on prior domestic violence history of either involved party including incidents where there was no arrest and/or the existence of any orders. Reports should also document when no history was found.
3. Training or written/verbal directive should be given to all law enforcement personnel on standard practice.
4. Supervisors to review reports to ensure practice is followed.
5. Continue efforts to enhance ability of patrol officers to access history checks 24/7.

Requires changes in:

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

**Gap #14 Police reports contain limited information on prior history of involved parties and do not always indicate if prior history was reviewed.**

***Who should be involved?***

- √ City of Blaine Police Chief
- √ City of Blaine Management Assistant
- √ City of Blaine law enforcement personnel
- √ Blaine City Council (if resource issue)

**Gap #15 Probation has limited access to information that would corroborate a defendant's self reporting on probation compliance.**

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

In order to effectively monitor an individual on probation or pre-trial supervision, a probation officer must be active in collecting ongoing information on the probationer's status with the conditions set by the court. Probation officers look to information such as progress in treatment, results of urinalysis or portable breath tests, law enforcement activity, reports from victims, and new offenses. Probation officers also meet routinely with probationers to ask about their status with compliance. This one-on-one meeting is essential, however without information from corroborating sources, probation officers can inadvertently rely too heavily on probationers' self-reporting. In order to have full access to corroborating information, probation officers need some of the following:

- quick and easy access to local law enforcement databases;
- agreements with substance abuse, mental health and domestic violence treatment providers to provide timely and thorough progress reports;
- relationships with victims to determine if defendants are violating conditions or engaging in high risk behavior; and
- tools to check for use of prohibited drugs or alcohol.

Most probation offices would agree that their primary responsibility is to hold the offender accountable and ultimately help keep victims safe. This is done by recognizing the significance of implementing and enforcing probation conditions. Probation officers must be linked to other community partners, including victims, in order to most effectively achieve this responsibility.

***What contributes to the gap?***

Through interviews with the probation officer and review of 6 case files, Audit team members found little or no victim contact. This was noted in Gap #9 and will not be repeated here, other than to say that victim contact is an essential aspect of assessing probationers' compliance.

The probation officer does not have ready access to many of the local law enforcement data bases. The probation officer receives a daily log each morning from the Blaine Police Department and a daily booking sheet from the Whatcom County Jail. The officer does not have access to the database for the Whatcom County Sheriff's Office (AS-400) or the Bellingham Police Department (Longarm), however the Blaine Police Department does have access to the AS-400.

The probation officer expressed some concern with the quality of progress reports received from domestic violence perpetrator treatment providers, particularly when a defendant was missing class and was still considered in compliance. The team noted one case where the defendant was ordered to attend mental health treatment and no progress reports had been obtained or requested by the probation officer.

**Gap #15 Probation has limited access to information that would corroborate a defendant's self reporting on probation compliance.**

The probation officer reported and documented regular and frequent contact with probationers. Team members recommend that this be supplemented by outside corroboration whenever possible, with an emphasis on victim contact and easy access to all local law enforcement databases.

***How do we close the gap?***

1. If probation services will be offered directly by the City of Blaine, probation officer should develop standard practice for victim contact. (See Gap #9)
2. If probation services will be offered directly by the City of Blaine, probation officer should gain access to all local law enforcement data bases.
3. If probation services will be offered directly by the City of Blaine, probation officer should meet with domestic violence treatment providers to discuss strategies to improve information in progress reports.
4. If probation services will be offered directly by the City of Blaine, probation officer should ensure that all treatment providers serving domestic violence defendants provide regular progress reports and that the reports are documented in the file.

Requires changes in:

- Administrative Practices
- Resources
- Linkages
- Accountability

***Who should be involved?***

- √ City of Blaine Finance Director (probation officer supervisor)
- √ City of Blaine Probation Officer (if appropriate)
- √ Domestic Violence Perpetrator Treatment Providers
- √ Input from victim/survivors of battering

**Gap #16 Community-based domestic violence services do not appear to be consistently utilized or accessed by the criminal justice system and are assumed to be unavailable.**

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

As pointed out in Gap #1, system-based and community-based advocates each work to support victims of battering and increase their safety. 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. System-based advocates 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 advocates and services are available beyond the brief time that a case stays in the criminal legal system 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. Another important distinction is the higher level of confidentiality a community-based advocate can ensure.

In the ideal world, both system-based and community-based advocates should be made available to victims and survivors of battering. Rural and isolated communities, and those without the resources for a system-based advocate, especially need to work to ensure that victims are given opportunities to be linked with local domestic violence organizations. One of the tactics of a batterer is to isolate their victim and convince them that the abuse is the victim's fault. This isolation and "brainwashing" compounds other abusive tactics and immobilizes victims. Learning they are not alone, that someone is there to listen and link them with needed services is an essential aspect of a coordinated community response to domestic violence. Victim safety requires a network of criminal justice and community-based services working together.

***What contributes to the gap?***

In recognition of the need to link victims with services, WA State RCW 10.99.030 (7) articulates the responsibility of law enforcement to advise victims of services, legal rights and remedies available. Police officers are mandated to give each victim a statement as per the RCW and a list of services. The team found that police officers consistently give victims what is known as the Domestic Violence Victim's Rights. This was also consistently documented in each of the 10 police reports reviewed. However, the resource information in the handout was not current. During the Audit process the Blaine Police Department Management Assistant corrected and updated this form.

The team learned that the victim advocate informed victims about community-based services if appropriate, such as a weekly support group offered in Bellingham. However, the victim advocate stated local domestic violence agencies were quoted as saying they would not come to Blaine to provide services. Another criminal justice system practitioner stated that "community-based domestic violence services just aren't available in Blaine." Yet, in interviews with two

**Gap #16 Community-based domestic violence services do not appear to be consistently utilized or accessed by the criminal justice system and are assumed to be unavailable.**

domestic violence agencies, team members were told that many victims from Blaine have been served and that the agencies would provide services in Blaine with adequate notice. In a ride-along, one police officer stated he would like to learn more about community services and domestic violence services.

Referrals to community-based domestic violence services was rarely documented in prosecutor files except on one occasion. It was never documented in probation files. No documentation on the contact between the victim advocate and the victim was made available to the team and the team did not determine if any documentation was kept.

Gap #1 demonstrated examples from Court observations where victims needed, yet had not had contact with community-based domestic violence advocates. In another case not mentioned in Gap #1, a victim appeared before the judge to request a NCO rescission. The judge asked if the victim had contacted a community-based domestic violence agency. The victim had not. The judge denied the rescission until the victim met with a victim service agency. It is not known whether this victim had been contacted by the Blaine victim advocate and/or if in that contact referrals were made to community-based domestic violence services. In this same case, both the prosecutor and victim advocate advised the court to not drop the NCO, in opposition to the victim's request. Because the victim consequently viewed both the prosecutor and victim advocate as adversaries, linking the victim with a community-based domestic violence advocate would provide her with a "true" advocate.

This gap is especially important due to the fact that Blaine does not have a dedicated system-based advocate. Community-based advocates could serve as a vital link and resource to victims, reducing the burden on the prosecutor to fill those gaps, as was stated in Gap #1. The judicial officer, who is clearly concerned that victims are linked to services, will be assured that those linkages have been made.

The team learned that through a federal grant a new service will be available to the City of Blaine in the near future. An on-call domestic violence advocate will be available to provide immediate phone contact with victims after law enforcement has left the scene. Once the MOU is signed between the City of Blaine and a local domestic violence agency, Blaine police officers will be able to contact a hot line to request that an advocate immediately call back the victim. The team is hopeful this new service will help address this gap.

***How do we close the gap?***

1. If MOU is not signed, City of Blaine should proceed as quickly as possible to sign MOU and initiate new 24 hour on-call program as per above.
2. Community-based domestic violence agencies should provide training and education to criminal justice system personnel in the City of Blaine, including prosecutor, court clerk and judicial officer.



**Gap #16 Community-based domestic violence services do not appear to be consistently utilized or accessed by the criminal justice system and are assumed to be unavailable.**

3. Community-based domestic violence agencies should consider having a presence at the weekly Blaine Municipal Court.
4. Community-based domestic violence agencies should provide outreach and distribute resource information throughout the City of Blaine.
5. Blaine Police Department should review the contact numbers on the Victim's Rights Form annually.
6. Other local community services should be accessed by the criminal justice system, such as the Family Resource Center at the Blaine School District.
7. If there is a dedicated system-based victim advocate for the City of Blaine, referrals and linkages to community-based domestic violence services should be a standard practice.

Requires changes in:

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

***Who should be involved?***

- √ City of Blaine Police Chief
- √ City of Blaine Police Department Management Assistant
- √ City of Blaine law enforcement personnel
- √ Community-based Domestic Violence Agencies
- √ City of Blaine Prosecutor
- √ City of Blaine Court Clerk
- √ City of Blaine Judicial Officer
- √ City of Blaine Probation Officer and Victim Advocate (if appropriate)

## ***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 criminal legal 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.

- **Blaine judicial officer, probation and prosecutor should engage in regular dialogue (annually) with Whatcom County state certified domestic violence perpetrator treatment providers.**

During the Audit process the team heard information from both the judicial officer and probation officer that led them to wonder if domestic violence perpetrator treatment evaluations were ordered on all domestic violence related convictions. This is a practice that has generally been adopted by judicial officers throughout Whatcom County.<sup>23</sup> The Blaine Municipal Court Judge indicated that he had concerns that agencies conducting domestic violence perpetrator treatment evaluations are the same agencies providing treatment. The probation officer shared this concern. The Judge stated that whenever he referred someone for an evaluation, the defendant was always ordered to do full domestic violence perpetrator treatment routinely. “I am more apt to send someone for an evaluation if I know they are getting a real evaluation.” He stated that on some occasions he does not order an evaluation for domestic violence perpetrator treatment if he believes that person does not need domestic violence perpetrator treatment.

Team members were concerned that the judicial officer was making a determination about who needs domestic violence treatment, when that is something that should be determined by a professional. The team was also concerned that the judicial officer may not have full information about domestic violence perpetrator treatment provider practices.

Upon review of 11 Judgment and Sentence forms, the team found that in 9 of the 11 domestic violence related convictions, the judicial officer did order a domestic violence evaluation. In the two other cases, one conviction was for a NCO violation and it was assumed that the defendant had already been ordered for an evaluation. In the last case the defendant was ordered to obtain an alcohol and drug evaluation and not a domestic violence perpetrator treatment evaluation.

The team did not identify this issue as a gap, but instead, encourages regular and ongoing dialogue between Blaine court personnel and domestic violence perpetrator treatment providers so that issues and concerns such as these can be addressed.

- **The City of Blaine should review its contract with the prosecutor and judicial officer to determine if any specific language should be added around the handling of domestic violence related cases.**

Although contract language was not reviewed, the team assumed that the respective contracts between the City and the prosecutor and judicial officer do not specify any expectations around handling of domestic violence cases. This may or may not be appropriate to include in a contract. Another option would be for the City to consider the development of a statement of philosophy regarding the criminal legal response to domestic violence that all contracted positions would be asked to uphold to the extent possible. As noted earlier, this could be

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<sup>23</sup> Upon conviction of a domestic violence related offense, most courts in Washington state order the defendant to attend a state certified domestic violence perpetrator treatment program. The program conducts an intake to determine if the defendant is eligible and appropriate for the program. In Whatcom County, judicial officers have generally chosen to first order an evaluation for domestic violence perpetrator treatment on conviction, followed by orders to comply with the evaluation recommendations. State certified domestic violence treatment providers have agreed to conduct a standard evaluation and only receive referrals from the court if they comply with this expectation. This additional step of an evaluation is somewhat unique to Whatcom County.

included in an orientation packet for contracted personnel. The issue in Gap #11 (“ownership” of closed domestic violence case files) should also be reviewed in this context.

- **The City of Blaine should ensure that any changes initiated during the Audit be “memorialized” if proven to enhance victim safety and batterer accountability.**

About the time the Audit initiated, and throughout the Audit process, criminal justice system personnel in the City of Blaine began initiating some changes. This is an advantage of a small community, where changes can be implemented quickly. The following are some examples of those changes, all of which demonstrate how an Audit process can begin to change how practitioners think about institutional case processing.

- Resource information in the Victim’s Rights Form was corrected and updated.
  - A “Criminal Justice Communications Team” was organized for any criminal justice system practitioner (police, prosecutor, probation, court) in order to address problematic domestic violence cases, especially those where the system is not doing an adequate job of holding the offender accountable or ensuring victim safety.
  - Copies of verbal (non-arrest) reports are sent regularly to the probation officer and prosecutor.
  - The prosecutor receives a copy of any domestic violence arrest (Probable Cause Statement and full report, if available) shortly after 7:00 a.m. each week-day morning so that the prosecutor can be aware if they need to attend a First Appearance hearing (in-custody appearance) at the Whatcom County Courthouse that morning. This required changing the hours of administrative staff so that someone was in the office at 7:00 a.m. to fax or email the information to the prosecutor.
  - A standard form for documenting domestic violence risk questions was developed and is currently under review, due to the fact that officers were not consistently asking risk questions as noted in Gap #3.
  - The court clerk knows to tell the prosecutor or victim advocate if a victim has contacted them or provided them with any contact information.
- **If the City of Blaine decides to return to in-house probation services, rather than contract out, the following recommendations are offered by the Audit team.**
    - See recommendations related to probation in Gaps #1, #9, #13, #15.
    - The probation officer should not serve in a dual role as victim advocate.
    - The probation officer should develop new intake forms that are more relevant to domestic violence risk factors and history.
    - In addition to the recommendation on victim contact in Gap #9, victims should receive, at minimum, a letter from the probation officer when the defendant has started probation. This letter should include information on the conditions of probation, domestic violence resource information, and the role of the probation officer in supporting victims.

## Next steps

*How does the criminal justice system recognize and respond to the complexities of risk and safety for all victims of domestic violence in the City of Blaine?*

The City of Blaine, with leadership and guidance from the Bellingham-Whatcom County Commission Against Domestic Violence, has collaborated to examine and refresh their coordinated response to domestic violence. This report articulates sixteen gaps in Blaine's criminal legal response to domestic violence identified by the Audit team.

Victims of battering are at the center of this Safety Audit. The sixteen 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 "Nancy" and "Jane'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.

*[P-9] She said that he was cursing her and calling her names continuously...She said that he started shoving and pushing her. She said she yelled at him to stop, but that he would not. She said that she shoved him back in an attempt to get him away from her. She said that she tried several times to walk away from him, but that he followed her throughout the house, sometimes pushing her and threatening her and other times just yelling at her. At one point he yelled at her that she 'deserved to get punched'... [P-3] She stated he has done this before and always at home...She asked 'What do I need to do in order to get away from the abuse?'...He had disabled her car – she tried to call someone to get her... [B-11]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*

The criminal legal system has not been well organized historically to account for battering and its impact. A Jane or Nancy 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 the criminal legal system 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 victim/survivors' identification of appropriate responses, access to information, and ongoing advocacy and 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 police, prosecution, probation and court 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 police, prosecutors, probation officers, and court staff are organized to respond to domestic violence cases. The team also identified who should be involved in the design of those changes.

The City of Blaine 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 and 2007 Bellingham-Whatcom County Safety Audits. 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 Blaine 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.