

# DEVELOPING POLICIES AND PROTOCOLS IN DOMESTIC VIOLENCE CASES

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Adapted from Chapter Three of  
*Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond*  
by Shepard and Pence (1999); pp. 41-64.  
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The Duluth model's major contribution to the national legal reform effort has been its method of negotiating agreements with community agencies that intervene in domestic violence cases. Included in this interagency effort are victim advocates, law enforcement officers and administrators, prosecutors, probation officers, court administrators, mental health providers, policy makers, and in a limited role, judges. The model focuses on ensuring that practitioners respond to domestic violence cases in a consistent manner and that their response centralizes victim safety.

Although coordination is a method to reach the overall goal of victim safety, it is not in itself the primary goal of the Duluth model. When reform efforts focus on coordinating the system rather than on building safety considerations into the infrastructure, the system could actually become more harmful to victims than the previously unexamined system.

If we measure success by counting increases in arrests, conviction rates, or a reduction of repeat cases entering the system, coordination may seem to be the key to an interagency effort. However, if we use the criteria of insuring victim safety, holding offenders appropriately accountable for their violence, and changing the climate of tolerance for this type of violence, we see that coordination is merely a means to far more complex objectives.

Many cities adopt a strict mandatory arrest or a no-drop prosecution policy on domestic violence cases, as if apprehending and convicting batterers is the only goal of intervention. This course of action is shortsighted and ultimately fails because typically the victim is the biggest

obstacle in convicting the abuser. The victim then, who may or may not be helped by a conviction, is seen as the problem. From there the reform effort shifts from a critique of the institution's ability to hold an offender accountable to a critique of the victim. Ineffective intervention strategies and structural problems with the law fade from view as objects of inquiry.

Examining and amending our policies and procedures to build in victim safety has been an ongoing process at the Domestic Abuse Intervention Project (DAIP) in Duluth. In 1981, we negotiated agreements with nine key agencies to simultaneously enact policies directing practitioners to follow certain procedures when responding to domestic assault cases. In the nearly two decades since adopting those policies we have continued the process of examination and change.

Our primary task in intervening in domestic violence cases is to transform the way the system is structured to respond to domestic violence. Although existing procedures may serve the purpose of processing other misdemeanor crimes, they are often not effective in domestic violence cases. Several structural realities of the criminal justice system make processing domestic assault cases difficult. Problems with the structure include the slow processing of cases, victims being placed in an adversarial position to the offender, practitioners attending simply to single incidents instead of the overall use of violence, and texts (regulations, forms, procedures, and reports) that are not designed to direct practitioners to give attention to victim safety and to the collective goal of placing controls on offenders. Another significant problem in the criminal justice system is its fragmentation. Each practitioner in the system is highly specialized and tends to pay attention to their own function rather than to the collective work of the entire process. Dispatchers or responding law enforcement officers must see the relationship of their work during the first hour of a case to the work of other practitioners who will later intervene in the same case. Prosecutors, sentencing judges, probation officers, rehabilitation specialists, protection order judges, and custody evaluators read initial police reports looking for guidance on key decisions they must make in a case. Practitioners need to see how they are linked with others in the system.

Each practitioner is part of an organizational network. In order for the network to function properly each player must be consistent in his or her actions and be aware of what others in the system are likely to do in certain circumstances. Although very little of what practitioners do is at

their personal discretion, they do have discretion in whether to screen a case out of the system and to determine the appropriate level of intervention. Once those decisions are made the practitioner typically complies with standardized procedures in processing the case.

For example, once a law enforcement officer decides to arrest a suspect, the procedures for arresting, transporting, booking, and filing a report are routinized. Consistency in carrying out these tasks is ensured through the use of administrative procedures, standardized forms, instructions, training programs, departmental policy or procedural guidelines, and employee supervision. To achieve consistency and attention to safety, institutional procedures must be linked together and practitioners must be cognizant of the special problems these cases pose. When a practitioner's response is unpredictable, the best policies and procedures can still lead to failure. In designing an effective response, methods must be in place to ensure a high degree of practitioner compliance because, for a battered woman, an unpredictable system is like playing Russian roulette—a game with which she is already far too familiar.

Practitioners' actions are restricted by regulations including federal and state laws, case law, insurance regulations, agency and department policies, and local interagency agreements. These regulations must be scrutinized relative to victim safety and offender accountability objectives. To centralize safety, the response must take into consideration the risk the offender poses to this and other victims. Therefore, a law, a policy, or a procedure must be constructed in a way that allows the practitioner to account for the probability that offenders who are batterers are likely to retaliate against their victims because of actions taken by the state/community. Policies need to account for the likelihood that most offenders will pursue another relationship in the future. The intervention approach must shift the burden of confrontation from the victim to the institution to whatever extent possible and without coercing victims into a certain course of action. Although the approach assumes that most offenders who batter will use coercion and force in any intimate relationship, responses must not be designed under the assumption that all assaults in intimate relationships constitute battering. Not every person who assaults his or her partner is engaging in an ongoing pattern of coercion, intimidation and violence. To assess risk, the collective work of practitioners must be directed toward understanding the pattern and history of violence as well as the power differences between the victim and the offender. Because it is so important to

understand how the violence is being used in a relationship, the task of documenting and assessing for levels of danger must be built into the work routines of practitioners and seen as the collective work of all interveners.

### **SOME ASSUMPTIONS OF DULUTH'S REFORM EFFORTS**

In Duluth we work to hold batterers accountable. The term *accountability* means to be held responsible for one's actions. This is a long and complicated discussion when used in relation to battering. We can only highlight some of the assumptions we use in the Duluth response to domestic violence cases.

First, we do not assume that all violence is the same. The person who is physically and sexually abused over a period of time and uses illegal violence as a way of stopping the violence is not doing the same thing as the person who continually uses violence to dominate and control a partner. Similarly, a person who engages in abusive behaviors, including grabbing and shoving his or her partner, is not to be treated the same as the person who threatens to kill his partner and uses actions to terrorize her. All of these parties should be held accountable but the response must attempt to treat similar cases in a similar fashion. Therefore, policies and procedures should help standardize responses while allowing the system to respond to the specifics of a case.

In order to hold offenders accountable and to protect victims, we need to understand how the violence is used by a person and how victims are impacted by the violence. Harsh sanctions are not necessary with people who have used minimal force in a relationship, show potential for rehabilitation, and are entering the system for the first time. More jail time does not always mean more justice. On the other hand, we cannot be naive about how dangerous and deceptive many batterers can be. Offenders must be held accountable accordingly.

In Duluth we assume that most victims of ongoing abuse (intimidation, coercion, and violence) are safer if the state/court has some level of control over the offender. For example, convictions and probation are preferred over deferred prosecutions, and two years probation is recommended when abusers reach a level of abuse that indicates an escalating pattern of violence. Completely dropping a protection order is discouraged if a couple wants to live together again. Dropping the exclusion order but keeping the restraining order gives the system leverage if the abuse resurfaces. Cases are processed so that the system can respond quickly to renewed violence.

We assume that using violence against a child's parent adversely affects the child. Interventions must not pit the interest of the child against the interest of a parent who is an ongoing victim of the violence. We continue to debate the role of the abused parent in providing safety for the children.

### **SOME RULES OF POLICY MAKING**

In Duluth, policies evolved and developed over a long period of time. The changes and some of the corresponding conflict came in phases, with many inactive periods between the more active periods of reflection and change. Policy making is as much about the process as it is about content. We have learned over the years that the process needs to be inclusive and based on dialogue, not debate. It must also be attentive to practitioners' knowledge, research findings, and experiences of victims. Finally, the process must be open to scrutiny and evaluation. We list here some of the lessons we have learned during the almost two decades of policy development in Duluth.

#### ***Mind Your Politics***

In the early 1980s, we worked in an atmosphere of distrust, defensiveness, and finger pointing. Shelter advocates challenged agencies and institutions which often responded with hostility. Battered women's advocates were usually seen as “pushy, single issue, and inherently biased outsiders.”

Internal conflicts existed within and among agencies: police thought prosecutors were dropping the ball; prosecutors pointed to the weak response of judges, judges claimed a lack of appropriate resources for sentencing, and clerks were tired of all the prima donnas in the system. Dispatchers were concerned about a pending decision to move from the police department into a countywide 911 system. Police officers were split internally over the appointment of a new police chief. While most of these conflicts were not rooted in problems related to domestic violence cases, they were part of the political climate surrounding the domestic violence reform work in process.

Over the years, defensiveness to the criticism from outsiders - in this case, activists in the battered women's movement - has diminished significantly. Today, our system is not perfect; in

fact, it is still far from it. But now proposals for solutions are frequently raised by practitioners, rather than exclusively by advocates.

The number one rule of policy making should be that the change must simultaneously deal with domestic violence while considering the political realities of the multi-agency response. Community members wishing to initiate successful institutional reforms should anticipate resistance, be inclusive rather than exclusive, and avoid slogans and rhetoric. They should create an atmosphere conducive to dialogue in order to sustain relationships through the difficult discussions. Advocates must give up the notion that only they care about battered women and that practitioners in the system are personally responsible for failures in the legal system. Practitioners need to give up the myth that they as professionals have been trained to be objective and fair (as opposed to advocates) and recognize that bias is built into their training and discipline. Finally, administrators must prioritize the protection of victims over the protection of the agency.

### *Assess Current Practices Relative to the Primary Goals of Intervention*

The Duluth model owes much of its progress to the willingness of practitioners and policy makers to work with advocates and activists in the battered women's movement. These practitioners and policy makers relied on battered women's advocates to help identify problems in the system, participate in sessions to develop solutions, and to evaluate the impact of new procedures. Visitors to Duluth are amazed at the extent to which agencies have been open to having their handling of cases be scrutinized by others. The attitude among agency directors in Duluth is that such scrutiny improves their services rather than hinders their ability to operate. A good system is refined by scrutiny; an ineffective system is replaced by it.

Initially, shelter workers drew up lists of obstacles that women faced when using the criminal and civil court for protection. These lists shaped the agenda for reform. Most of the reforms that came from the process between 1981 and 1984 were what we might consider macro level changes. New policies were implemented in each agency that led to significant change in procedures. For example, dispatching policy required dispatchers to send a squad to all domestic-assault related calls and to give domestics involving assault the highest priority coding. Police policy required officers to make arrests when there was probable cause to believe that a

misdemeanor-level domestic assault had taken place that had resulted in an injury to the victim. Police policy also required officers to write a report on every domestic-related call. Probation policy required probation officers to request a revocation hearing if an offender committed another assault on a victim. The agreement with the judiciary made it routine for judges to order presentence investigations on all domestic violence-related offenses, no matter how seemingly minor. The agreement with counseling agencies required that counselors work with offenders in groups or classes and not offer marriage counseling as a method of reducing violence. All of the policies required new methods of documenting cases and sharing information with other practitioners, including victim advocates.

Later policies were altered on a more micro level as laws changed or experience highlighted problems. We conducted a series of low budget evaluations of specific aspects of the intervention process. We then used that data, as well as cases where practitioners or advocates felt the system failed to protect victims, as the source for ongoing refining of policies. From 1984 to 1994, we continued to make revisions but focused more on procedures than major policy changes. For example, criteria were established for police to distinguish between self-defense and assault. A protocol was developed for police clerical staff to provide victim advocacy agencies access to police reports on misdemeanor cases. We developed a curriculum for abuser classes and designed an interagency communication network that eventually became known as the Domestic Abuse Information Network (DAIN). We developed a program for victims of ongoing abuse who had been arrested for assaulting their abusers. We opened a visitation center offering supervised visitation and exchange of children for parents in cases where offenders were using visitation as an opportunity to continue the abuse. Native American activists reviewed each policy for its impact on Native American families and developed separate advocacy services and programming for the community.

In 1995, we began a new process for assessing our practices by employing the research methods of Canadian sociologist, Dorothy Smith (1990), to investigate how procedures and daily routines in the system affected certain institutional goals (safety, accountability, and changing the climate of tolerance for violence). Based on her work, we developed a method for auditing our system that examined each step of case processing. From that audit, we uncovered many practices

in our system that contributed to the inadequate outcome of cases and provided an agenda for change that will take another five years to fully implement.

The audit procedure is fully documented in a manual titled *Domestic Violence Safety and Accountability Audit* (Pence & Lizdas, 1998). The audit process involves an interagency team that includes staff from the police department, probation department, prosecutor's office, court administrator's office, and a victim advocate. The team observes each processing point and interviews the practitioners involved. Such an audit provides a community a full picture of where changes need to be made in the rules that guide practitioners' work and the daily routines used to carry out institutional objectives.

### ***Build Practice into Every Day Work Routines***

It is well known that large bureaucracies are coordinated by paperwork. Beginning with 911, most transactions and actions are textually mediated (paper driven). When a 911 call is made, the conversation between the caller and the dispatcher is guided by how the dispatcher is required to respond to and record the call. When a law enforcement officer arrives at the scene, he or she goes through certain steps to determine if an arrest is to be made and documents what happened in the incident. The strategy of reform has shifted over the years from *A change the attitude@* to *A change the text.@* Simply stated, if you expect a practitioner in a heavily burdened court system to consistently do something, look for something, or think about something, then request the information on the form the practitioner uses to process the case. Do not leave safety or accountability to the whim, memory, or personal commitment of hundreds of people. During our audit, we found dozens of places in our system where normal institutional practices failed to account for the safety needs of victims and left prosecutors in a weak position to obtain convictions even in serious cases. The following is an account from one of the workers involved in conducting the audit of our system. It graphically illustrates how a gap in the system is discovered in the audit process.

#### **The Little Green Frog Story**

While we were conducting an audit at the jail, a suspect was brought into the jail. I observed the jailer as he told the man to take off his bootlaces, belt, tie, and all the things he could possibly hang himself with. The jailer then told the man to take everything out of his pockets. Items in his pocket include \$5.85, a tiny green plastic frog, a small Swiss army

knife, a comb, and a few other items. The jailer put all these items in a plastic bag and wrote down everything that he took: the green frog, the Swiss Army knife, the \$5.85, the belt, and bolero tie. After writing down what had been put in the plastic bag, he told the inmate that he would put the bag in a box behind his desk and that he would get these items when he was released. The jailer then had the inmate sign a paper that stated what items had been taken from him.

You can see that the jailer was making it clear to the suspect that all his stuff was his, no one was going to take it, and that he would get it tomorrow. They documented everything to avoid a dispute later about what the man had with him when he was brought in.

This process is well thought through, particularly in terms of the potential for future lawsuits. That strange thing was that during the time they going through this process, the guy was very angry and yelling and was threatening his wife saying, "Someday I'm going to kill that fucking bitch. She knew this would happen. I can't believe this. Every time I walk into the house she tells the kids to dial 911. She'll pay for this!"

Then he was then carted off to his cell. I told the jailer that I noticed he had recorded every item that he had taken from the man but I wondered if there were any place he recorded the threats that the man had made against his wife. He said no. I asked if there was a form for recording these kind of threats. The jailer indicated that they did have an incident form on which they could report threats. I asked to see the form, and the jailer dug around and finally found the form. I asked him why, in this case, he hadn't recorded the man's threats. He said he was only obligated to report serious threats. I asked him how he knew the difference between a serious threat and a not very serious threat. He said that this guy had been in jail plenty of times and that he always blew off steam like that, so he knew it was not serious. I questioned the jailer more, and he asked me if I worked at a shelter or battered women's program and I told him that I did. He asked me if women ever came to the shelter and told us that their husband had threatened to kill them. I told him they did. He asked if we called the police and told them that. I said we did. He then asked if we called the police every time a woman told us that her husband had threatened her, and I responded that we did not. He asked when we did call, and I told him we called when it was serious threat. He asked how we knew it was a serious threat. I said, "I just know."

This example helped us see the need to carefully examine what seem to be perfectly adequate procedures. Two major tasks of an audit are to locate where safety and accountability can be built into the system and to translate safety and accountability into concrete practices such as a new jailer form or a new 911 response to a first call for help.

The following is a description of the first 24 hours of processing a misdemeanor domestic assault case in Duluth. Changes which have been built into the infrastructure of the system are in italics.

Victim calls 911 to report that her husband has assaulted her and violated the protection order. He had slapped her and grabbed the keys to her house. He left the house heading towards the east end of town in a blue 1985 Toyota pickup truck. The dispatcher gives the case a *priority call*, dispatching one squad to the house and alerting all other squads to the description of the vehicle and the alleged offender. The dispatcher *directly quotes the woman's*

description of the assault on the CAD (computer-aided dispatcher) complaint report form.

Officers respond to the house, conduct an interview *using a checklist format*, asking about *history of prior violence* by the suspect toward her or others, ask about and *document the involvement of children* in the incident, and *overall abuse*, give her a *referral card* to the shelter/legal advocacy program, and *file a complete report*.

Two hours later, a second squad pulls over a 1985 blue Toyota truck and identifies the woman's husband as the driver. After conducting an interview with him officers determine they have *probable cause to make an arrest and do so*.

When the suspect is booked, he makes several threatening remarks towards the victim which are recorded on the *jail incident form and turned over to the arraignment court* the next morning. After placing the suspect in his cell, the *jailer calls the shelter* and gives the name, phone number and address of the alleged victim. The jail *holds the suspect* until arraignment court the next day.

The *shelter sends a trained on-call volunteer advocate* to the house to talk with the woman. The advocate provides advocacy and information on the shelter services, protection orders, what might happen in court, and asks for her permission to *forward information regarding the history of abuse to arraignment court*. If the victim gives permission, the *advocate fills out a history form, a statement regarding the wishes of the victim regarding full, limited, or no contact with the offender, and obtains the name of a person who can reach the victim at any time*.

Domestic assault arrest police reports given *priority by the word-processing department*. A copy of each report is distributed to

- *the Domestic Abuse Information Network*
- *the shelter advocate assigned to follow up on the case*
- *the probation officer and judge at pre-trial court*
- *the court administrator*
- *the detective bureau for follow-up on enhancing the charges*
- *the suspect's probation officer (suspect has a previous conviction)*
- *the domestic violence file*

*The next morning an employee of the city attorney and probation department prepares a file on the case which includes the arrest report, any past police arrest or investigative reports on this offender, CAD printout (Computer Aided Dispatch - 911) reports, risk assessment form completed with women's advocate, photos of victim injuries, copies of past and current protection orders, any pending court cases, probation information, past DAIN involvement, any prior victims known, criminal history, to be available in all future considerations of the case by the prosecutor, judge, probation officer, rehabilitation program, and so on.*

The suspect is arraigned, and the probation officer appointed to this offender is sent the file to determine if he/she should ask for revocation of probation regarding the previous conviction.

All of these changes are the result of years of modification to the way our courts process these cases. Most changes represent many hours of discussion and debate. Others just seem to happen following one meeting on the subject. Effective policy development is a process that requires a commitment to the long haul.

### *Beware of Categories*

Several problems inherent to generalized policies and regulations often fail to account for the multiple social positions of those to whom the policy is being applied. For example, the arrest of an immigrant man recently arrived in this country could have devastating effects on him and his family. The use of a sentencing matrix which bases the decision to incarcerate an offender on past convictions rather than dangerousness to the victim will result in indigent men being sentenced differently for battering than wealthy men. Obviously, the threat of a conviction has a different meaning to men of different social classes and men from communities with different historical relationships to police and the courts.

Generalizing rules and regulations force interveners to apply broadly defined rules to individual cases in which more effective responses could be made by verifying the specifics. Let us use the example of the Minnesota law that divides assaults into two broad categories—felonies and misdemeanors. An assault becomes a felony if the assailant used a weapon or the assault resulted in permanent bodily harm or a broken bone to the victim. A misdemeanor is a less serious offense and is treated differently in several significant ways; most notably a misdemeanor carries a lighter sentence. Judges often sentence misdemeanor cases without requesting pre-sentence investigations.

Statutes are a set of generalizing rules which tend to group different situations together and treat them as if they are the same or similar. Let us look at how victim safety was compromised in a case involving a double arrest in one Minnesota community. State intervention is based on the notion that felony assaults (assaults involving the use of a weapon or permanent bodily harm) are more serious assaults than misdemeanor assaults (no weapon and no permanent bodily harm). The following is an excerpt from a police report documenting the arrest of a woman who had been physically and sexually abused by her husband for seven years.

I asked Diane Winterstein to tell me what occurred, she said her husband Phillip had come home after drinking at the Y&R bar and was becoming very belligerent. She said he told her that people were “reporting on her.” I asked what he might have meant by that and she said that he acts like everybody is his personal watch guard over her and that he makes up affairs she was supposed to have and then says his reporters saw her with someone. She went on to say that Phillip started pushing furniture around I noted that a chair was pushed over in the dining room. She then went into the kitchen and got out a steak knife and threatened to “poke his eyes out” if he didn’t leave the house immediately. I asked her if she was in fear of grave bodily harm at this point and she said no, she thought he was going to leave. Then according to Diane he started to call her names like “whore” and

“bitch” and “cunt” at which point she lunged at him and “poked him in the right hand with the knife.” She said when he saw the blood he started to cry and she called him a “big baby,” at which point she says, “he grabbed me by my hair began pulling me toward the bathroom and kicking me.” She stated that he kicked her three or four times in the legs and right hip area. I asked her if there were any bruises. She showed me the area of her right hip, which was red and swollen and beginning to bruise. I asked her if he did anything else to assault her and she stated that he threw her up against the wall and told her that this time she had gone too far. I asked her if she had been violent to him in the past and she said that she often threatens him to get him to leave her alone... She said that he slapped her across the face twice and then spit in her face...I conferred briefly with Officer Dickie and a decision was made to arrest both parties. I informed Diane that I was placing her under arrest for 2nd degree assault and took her into custody without incident. Officer Dickie placed Mr. Winterstein under arrest for 5th degree assault (see Officer Dickie's report for more details)... Officer O'Keefe took pictures of both parties' injuries. Both refused medical treatment. I placed a kitchen knife shown to me by Diane Winterstein as the one she used to stab her husband into evidence. (Pence, 1996)

In this case Diane Winterstein faced a prison sentence of ten years. She eventually pled guilty to second-degree assault for “stabbing her husband with a deadly weapon.” Since it was her first offense, she spent only 11 days in jail and was ordered to attend classes for offenders. The case against Phillip Winterstein was eventually dropped in exchange for his agreement to cooperate in the prosecution of the more serious case, the felony against Diane Winterstein.

It is the generalizing character of the law that impedes practitioners from intervening in this case in a way that will protect Diane from future assaults. In fact, it is quite possible that she has actually been made more vulnerable to her abuser by this state intervention than had the police never arrived at her door. Yet, each practitioner in this case did their job.

Reformists must consider these potential problems when attempting to use generalizing rules, policies, laws, and regulations in order to enhance victim safety. Of course, it would be impossible to manage a large bureaucracy without these generalizing texts. The implementation team must pay close attention to how redrafts of regulatory texts can backfire on certain groups of people. There is no universal battered woman: race, class, age, and gender positions result in differing impacts of the same treatment.

### *Use Policies to Control the Screening of Cases*

We have had to grapple with the difference between our rhetoric and the realities of people's lives; for example, consider the following:

- Not every case of domestic violence is best resolved in a courtroom.

- Every act of domestic violence does not necessarily lead to a serious attack on a victim.
- When victims call for help they are not calling to activate a long, hostile criminal proceeding. They are usually calling to make something happen immediately.
- Many individual victims will not be helped by a prosecution.
- Some cases in which an assault did occur are almost unprovable in a courtroom using the standard of proof required in a criminal trial.
- Most offenders who are arrested for assault will not be with the woman they abused after five years.
- With no intervention (sanction and or rehabilitation), most offenders will continue to be violent for many years.

Who determines the significance of such “facts”? Should the responding police officer decide which case should end up in a courtroom? If so, should the officer have full or only partial discretion to make that decision? The first question posed by a policy is to the extent to which a practitioner can exercise discretion when a specific course of action has been prescribed. The loss of discretion is the single biggest source of staff resistance to interagency policy development. Policies should not turn practitioners into robots, mechanically applying a few predetermined actions to a case.

Instituting policies such as Duluth's mandatory arrest policy does not mean that officers stop thinking, evaluating, or making judgements. In fact, the opposite is true. The Duluth police policy states the officer must decide when and if an arrest is appropriate, providing no injury has occurred. If the case has reached a level of violence in which someone has been injured and there is probable cause to believe that the suspect assaulted the alleged victim, the decision on whether to arrest is moot. This policy has increased officers' use of professional judgement and skills in these cases. In the past, if a case was difficult to sort out or the victim was reluctant to proceed with a criminal case the officer simply advised and left a brief report, or possibly no report. Currently, the officer is required to conduct a thorough investigation and question the parties at the scene in order to determine whether there is probable cause to arrest, to ascertain if any party was using self-defense, to document any action taken, and to gather evidence needed to prosecute these very difficult cases.

### *Change Takes Time*

The changes we discuss here have been in process for almost two decades. Sometimes rigid policies are needed to change long-held beliefs and traditions in an institution. Eventually, the new practice becomes the routine. The policies can begin to give back a degree of discretion that may have been important to limit for the first five to ten years of reform, given the prevailing thinking about the problem.

Staff turnover affects change. For example, in the early 1980s, when we worked with police officers designing new policy, there was considerable resistance to changing long-held practices. Officers were opposed to giving up discretion on when to arrest. Currently, nearly all of the Duluth police officers comply with and are supportive of the arrest policy and report writing guidelines because most of them became police officers after the policy was enacted. They were trained as rookies to use these methods of responding to domestic assault cases. Recently, when we introduced the notion of not making double arrests when there is a primary aggressor and two assailants, officers again resisted. Some of us thought the officers would appreciate the ability to use their discretion to determine which party to arrest, but instead officers argued strenuously for the application of existing arrest criteria in all cases.

### *Use Policies to Control for Appropriate Levels of Responses*

The criminal justice system cannot treat every assault as if it will become life threatening. Policies and protocols must guide practitioners in determining the level of response to cases based on their perception of the level of danger. With few exceptions, every practitioner has her or his own way of prioritizing these cases.

Policies should dictate the basis for which a practitioner should screen a case out of the system, respond as if it were an emergency situation, or take some action in between. Standard response has been established for domestic violence cases for all responders. Procedural checklists of actions to take on all domestic assault-related cases have been developed. For example, we recently developed a method for practitioners (i.e., prosecutors, probation officers, rehabilitation programs) to alert the sheriff's warrants division to cases that do or do not involve an immediate risk to the victims. The DAIN monitors the attendance of all offenders court ordered to

nonviolence classes. If an offender fails to attend court-ordered classes and is harassing or threatening the victim, the DAIN asks for a court hearing to find the offender in contempt of court. The sheriff's department is then notified that this is a high-risk situation. If, on the other hand, an offender fails to attend classes and the victim does not know where he is, has not heard from him, and is not aware of his whereabouts, the DAIN notifies the sheriff's department that this is not a high-risk situation. The sheriff's department then prioritizes the first case over the second in determining how aggressively to look to serve someone. This is necessary in situations in which the warrants division is too overburdened with warrants to look for a person beyond two or three attempts.

We have agreed as a matter of principle not to use scales in determining levels of danger and corresponding levels of institutional action. Instead, in cooperation with practitioners, we discuss and think through the types of cases that would constitute a standard, elevated, or emergency response. An example of this is the sentencing recommendation matrix developed by the probation department in consultation with the shelter advocates and the DAIN staff. This matrix shows how probation officers use information gathered in their pre-sentence investigation, which includes a domestic violence supplement form, to make a decision about an appropriate sentence to recommend. The sentencing recommendation matrix is most effective when it is part of a coordinated community response to domestic violence. **See Table 1**

**Table 1: Domestic Violence-Related Misdemeanor Sentencing Recommendation Matrix**

|  | Category 1   | Category 2  | Category 3  | Category 4   |
|--|--|---|---|--|
| <b>Offense</b>   | The offender commits an offense against the victim but no evidence suggests that the offender is battering the victim. The offender has no history of battering.   | The offender engages in battering behavior against the victim, but there is no indication that the battering is escalating in severity or frequency, or that this offender has battered another person. | The offender has established a clear pattern of battering with this or past victims. The PSI indicates the battering will likely continue and possibly escalate in severity and frequency.  | The offender's PSI demonstrates that the heightened, obsessive, and/or unrelenting nature of the battering poses a high risk of serious harm to this or other victims.   |
| <b>History of Violence</b>   | This category may include offenders who commit an act uncharacteristic of their typical behavior. It may also include victims of battering who use illegal violence or activities to control or stop violence used against them.   | This category may include batterers whose histories include using low levels of violence and activities that threaten or intimidate the victim.   | This category may include batterers whose histories include multiple domestic violence-related contacts with the police; demonstrated harassing behavior toward the victim; violation of an OFP; or repeated threats or assaults against this or other victims. The victim may be in fear of serious bodily harm. | This category includes offenders with histories similar to those of category 3 offenders but may also include stalking behavior, threats to seriously harm or kill; use of weapons or threats to do so; and injuries that require medical attention. |
| <b>Considerations</b>  | If the offender in this case is experiencing ongoing battering by the person assaulted, the probation officer considers safety measures for both parties. Specialized programming is recommended, and the probation officer does not consider executed jail time unless the assault is severe. | Recommendations focus on victim safety and rehabilitation programming rather than sanctions.  | Victim safety recommendations are combined with more sanction-oriented sentencing, such as the maximum probationary period, some executed jail time, and rehabilitation programming.  | Recommendations include the strongest victim safety measures possible, including working with child protection on children's safety. A substantial jail term and long-term probation may be combined with programming if offender is amenable.       |
| <b>Incarceration or other correctional programming</b>                   | 30 days stayed jail  | 60 days stayed jail   | 60 days stayed jail, 10 to 30 days executed jail/60 to 90 days stayed jail, 20 to 30 days executed jail   | 60 to 90 days stayed jail 20 to 30 executed jail/30 days stayed jail, 60 days executed jail, or 90 days straight time  |
| <b>Gross misdemeanor incarceration or other correctional programming</b> |  | 91 to 120 days stayed jail 0 to 45 days executed jail   | 91 to 120 days stayed jail 45 to 120 days executed jail   | 120 to 180 days stayed jail, 120 to 180 days executed jail/180 to 365 days stayed jail, 180 to 365 days executed jail  |
| <b>Probation duration*</b>   | 1 year   | 1 year  | 2 years   | 2 years  |

NOTE: PSI = Pre-sentence investigation; OFP = Order for protection

\*Gross misdemeanor convictions routinely receive 2 years probation

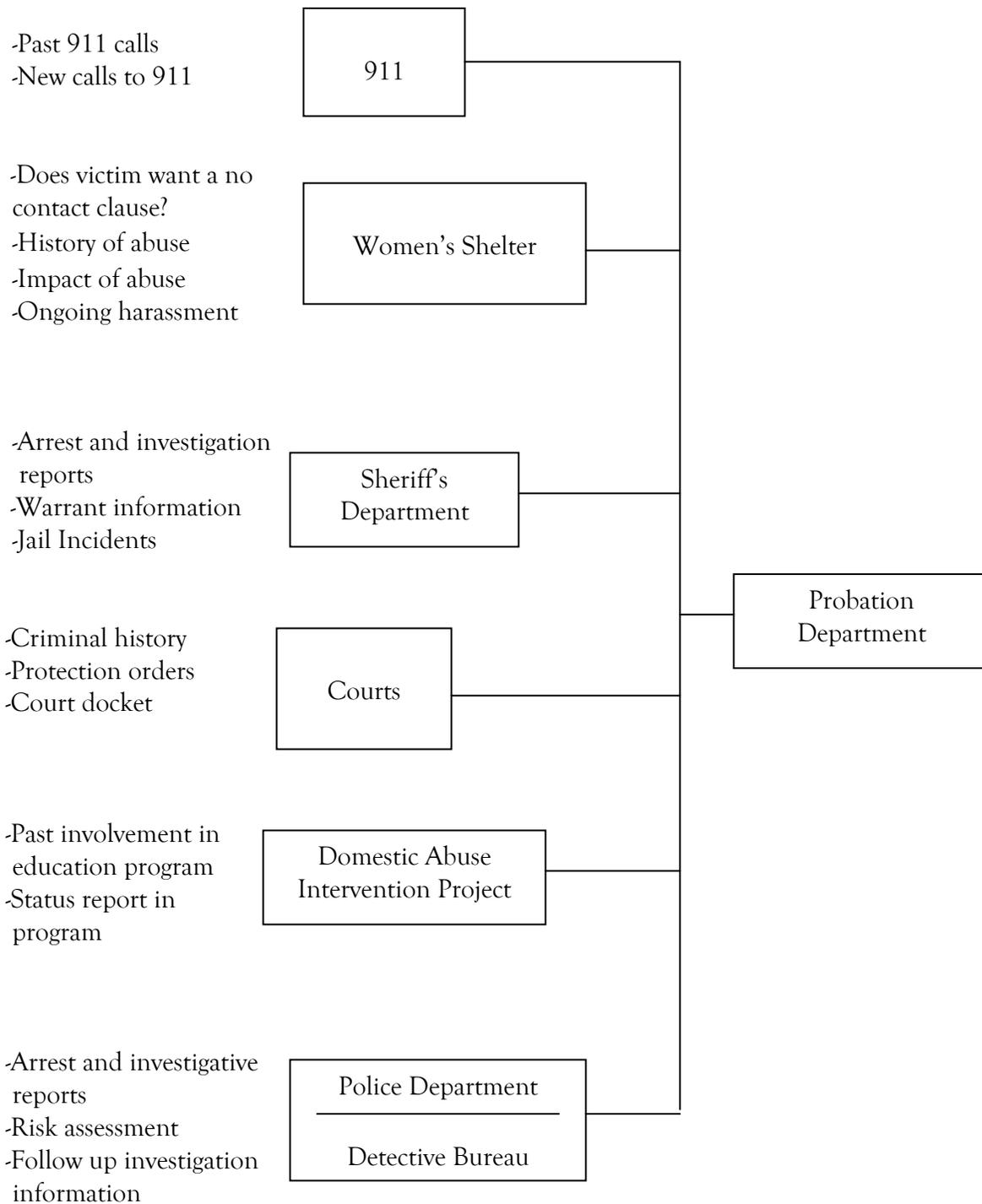
Another example is the development of the emergency response team. In 1996, we organized a process by which any practitioner in the system can call an emergency response team meeting. If a practitioner feels that an offender poses imminent danger to a victim, he or she can call a meeting of all of the agents or practitioners involved in the case (e.g. child protection worker, police officer, shelter advocate, probation officer). Either a telephone conference call or an emergency meeting takes place to discuss a response to this case. The recent development of guidelines for jailers to use in alerting the shelter and victims about threats made by suspects in custody is another policy-driven procedure.

### *Use Policies to Link People Together*

Duluth agencies have entered into a multi-agency agreement regarding sharing of information and documenting responsibilities on these cases. Every policy should guide practitioners on how and when to share information. **Figure 1** illustrates how we conceptualize each practitioner linking to others in the system.

This figure shows how the probation officer gets information from others in the system. A similar chart can be made with each of the other areas as focal points to see how each agency is linked to others in the system.

**Figure 1. Sources of Information for Presentence Investigations**



### *Provide Training and Follow-Up*

When developing procedures for handling cases, we recognize that most practitioners - whether advocates, probation officers, judges, or police officers - are average people. Forms, procedures, screening tools, assessment forms, and curriculums need to be user friendly. Practitioners should not be overwhelmed trying to decipher what the tools require, or these recording devices will probably be tossed in the wastebasket and people will go back to using easier methods of dealing with the case.

Training on policies should focus on case examples so that practitioners can apply the guidelines or rules. The DAIP has developed a training curriculum for police officers, probation officers, rehabilitation providers, advocates, and other practitioners in the system. All of the training curricula use case examples and apply policy and procedures to these case examples. For example, in the police training, there are a series of short videos of police officers responding to different cases. Each video is intended to elicit discussion with police officers about a particular aspect of investigating the case, such as identifying the primary aggressor, determining probable cause, distinguishing self-defense from an assault, recording the history of violence, and so on. Each of the training points are centered on actual case studies and practical dilemmas that practitioners face in their everyday work. Similarly, for probation officers, we provide a packet containing ten cases and ask probation officers to place each of these offenders on the sentencing recommendation matrix. Probation officers then discuss why they placed certain defendants at a level one, two, three, or four on the matrix. In conducting training in this way, we come to an understanding together of how to apply written regulations and rules that we have collectively designed. This style of training has been very effective because it engages practitioners in a process that allows them to understand the intent behind each rule, regulation, and policy, as well as understand the actual requirements on their part. It also leads to discussions that demonstrate how practitioners are linked to others in the system. It helps to identify the problems that practitioners will probably have in applying these procedures and provides them an opportunity to enhance the process by discussing other information or resources needed to carry out a particular policy, regulation, or procedure.<sup>i</sup>

### *Recognize that Victims and Victim Advocates Are Allies Not Enemies*

It is important to recognize that victim advocates, although they may sometimes seem unreasonable, biased, and maybe even hostile toward the court system, are in fact the most valuable allies that administrators can find if they are truly trying to improve their system's response. Victim advocates are obviously going to be your most vocal critics, but can tell you where the problems in the system exist. It is important to incorporate ways to listen to the experiences of battered women who have looked for safety and justice from the court system.

In the Duluth system, we have been fortunate to have had a group of battered women who from the beginning volunteered to serve on a policy committee for the shelter and the DAIP. The Battered Women's Advisory Committee consists of seven to twelve women who have used the system within the previous four years. The committee meets six or seven times each year to review and discuss any suggested changes that are being proposed in the system and ask how they believe those changes would have impacted them when they were in the process of trying to use the legal system. The committee is made up of women whose class, background, ethnicity, personal history, and experience in the court system differ. Most of the BWAC's meetings center around a two-hour informal discussion and pizza dinner. Besides this input from victims' perspectives, victim advocates meet on a monthly basis to discuss issues in the legal system and frequently invite supervisors of different agencies to talk about problems in the system. We believe that without such input from victims and victim advocates, policy reform efforts would not achieve their goal of victim safety as effectively.

### **CONCLUSION**

We end this discussion on policy making by providing a template we use as the outline for any new policy and a checklist we use when thinking through a policy. This template provides an overview of items that should be covered in a complete policy. It is provided with a warning: If you want practitioners to know what is in a policy, keep it brief and to the point. A policy should have two versions—the practitioner version and administration version. The practitioner version includes I and II. The administration version includes I, II, and III.

- I. The intent and rationale for the policy
- II. Guidelines for processing cases

- a) What should practitioner do and under what circumstances
- b) Using procedures, forms, etc.
- c) What, when, and how information should be shared with others
- d) Applicable laws, definitions, authority

### III. Supervision/monitoring

- a) How will policy be monitored by agency
- b) Steps to ensure compliance
- c) Record sharing for external monitoring (how, with whom)

The following checklist can help policy makers examine how a policy will organize workers to think about and act on the unique features of criminal cases.

- √ Focus on changing the institution, not the victim
- √ Balance between the need to standardize and the need to be attentive to the particulars of a case
- √ Focus on building cooperative relationships
- √ Focus on practices, not people
- √ Recognize that nobody owns the whole truth
- √ Build in methods of ensuring compliance with procedures in policy
- √ Link practitioners to those beyond the next worker in the system
- √ Account for the offender's level of danger
- √ Assume that a victim will be vulnerable to consequences if she or he participates in confronting the offender
- √ Assume that the offender is likely to batter in future relationships
- √ Document the pattern and history of abuse when and wherever possible
- √ Account for how:
  - categories help and hinder the understanding of a case
  - practitioners will get around the intent of the policy
  - offenders will get around the intent of the policy
  - the policy/response will be used against victims of battering
  - different levels of dangerousness and risk require different levels of response
  - punishment/sanction will have an impact on the offender
  - rehabilitation/programming could be used against victim
  - victims use violence against their abusers
  - slowness will affect victim safety
  - children are affected by violence
  - offenders could use children to control victims
  - institutions send double messages about children's exposure to violence
- √ Determine who needs information, when, and how they will get it

- √ Distinguish between differing impacts of intervention depending on the social status of victim/offender
- √ Put it in on the form—don't rely on memory
- √ Develop standardizing procedures that focus on safety (i.e. matrix, police report form, control log, dispatching screen)
- √ Do not expect practitioners to be robots
- √ Provide training that focuses on why and how to carry out new practices by using case studies
- √ Focus the assessment of institutions on what frames a practitioner's response:
  - rules and regulations
  - administrative forms and procedures
  - resources and technology
  - linkages to others in the system
  - training and ways of thinking
- √ Make sure the policy covers the following:
  - what to do under specified circumstances
  - guidelines to put cases into appropriate levels of response
  - methods to ensure practitioner compliance (tracking)
  - guidelines for making exceptions to the policy
  - how to document actions
  - how and with whom to share information on a case

If the policy is for the greater good, then it should be carried out in ways that protect the individual victim as much as possible.

*Distributed by Praxis in partnership with the Office on Violence Against Women, U.S. Department of Justice, for recipients of grants under the Rural Domestic Violence and Child Victimization Enforcement Grant Program. Points of view expressed in this article are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

## REFERENCES

- Pence, E. (1996). *Safety of battered women in a textually mediated legal system*. Unpublished doctoral dissertation. University of Toronto, Toronto, Canada.
- Pence, E. & Lizdas, K. (1998). *Domestic Violence Safety and Accountability Audit*. Duluth, MN: Minnesota Program Development.
- Smith, D.E. (1990). *Texts, facts and femininity: Exploring the relations of rulings*. New York: Routledge Kegan Paul.

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<sup>i</sup> For information about any of the Domestic Abuse Intervention Project training programs, call or write the National Training Project—202 E. Superior Street, Duluth, MN 55802 (218) 722-2781.