

PROBATION AND BAIL: EVALUATION AND PRE-TRIAL RELEASE

FRAMEWORK: BAIL EVALUATION AND PRE-TRIAL RELEASE IN DOMESTIC VIOLENCE-RELATED CRIMES

In all domestic violence cases, Minnesota law requires that a judge determine whether the defendant's release poses a threat to the victim, the victim's family, or the public. The judge must also consider the likelihood that the defendant will re-appear for a trial if released. An equally important part of determining the appropriate amount and conditions of bail is the history of violence, the severity of this offense and the risk posed to the victim and public of continued violence by the defendant. Once those factors are assessed, the judge is to impose conditions of release or bail, or both. The bail evaluator's vital role is to gather the information that provides the judge with a foundation for this important series of decisions. The Blueprint approach envisions a bail hearing where the pattern of abuse is made visible and considered when determining a suspect's likelihood to reoffend. If it is high, conditions and monitoring should reflect that.

Regardless of the type of crime, bail evaluators must obtain standard information indicative of the defendant's likelihood to appear at trial: the nature of the defendant's employment, living situation, education and other ties to the community. In domestic violence cases, the evaluator must also determine the level of risk a particular defendant poses to a victim. Establishing risk requires using all available sources of information to gather as much detail as possible about the history, context, and severity of violence in the relationship. The bail evaluator should contact the victim at the earliest opportunity to learn about the history of abuse and violence in the relationship, whether the victim is afraid and of what, and whether the victim is seeking a no-contact order and why or why not. Electronic databases that contain criminal history information, law enforcement reports that includes a history of violence section, and order for protection affidavits are helpful resources for this evaluative process¹.

Pre-trial release decisions balance the constitutional presumption of innocence of the defendant; victim safety, which may require restricting the defendant's behavior; and assuring the defendant's appearance at trial. The court has several options: (1) set bail, (2) release the defendant without bail but impose conditions of release, (3) require less than the maximum bail and impose conditions of release, or (4) release the defendant on his or her personal recognizance—a simple promise to remain law-abiding and appear for trial. In domestic violence cases involving *battering*, an ongoing pattern of abuse, a release on recognizance should be extremely rare.

Once released to the community, conscientious monitoring and supervision can help discourage and interrupt the offender's efforts to intimidate the victim. Re-offending is common in domestic violence cases.² The conditions of release should place controls on the defendant's behavior that will enhance the safety of the victim and make re-offense less likely. Defendants who are thought to pose a high level of risk to the victim or others should receive more intensive monitoring through frequent or in-person reporting. Pre-trial release supervisors should remain alert to indications that the defendant is violating no-contact orders or intimidating the victim and respond promptly to any violations of conditions of release. When the defendant engages in behavior that has safety implications for the victim, the pre-trial release supervisors should bring violations before the judge and request a warrant³. Minnesota law

requires that the judge who released the defendant issue a warrant directing that the defendant be arrested and taken immediately before the judge, if the judge (1) receives an application alleging that the defendant has violated the conditions of release; and (2) the judge finds that probable cause exists to believe that the conditions of release have been violated (see Minn. Stat. § 629.72). However, the Minnesota Rules of Criminal Procedure direct the issuance of a summons rather than a warrant unless it appears that the defendant is unlikely to appear for court and continued release poses a danger to an individual or the community. Conflicts between state law and rules of criminal procedure need to be resolved in the local policy. Keep in mind that given the unique characteristics of domestic violence cases and the prevalence of victim intimidation by the defendant, actions by the defendant that may not seem to directly affect safety may in fact implicate risk to the victim.

The bail evaluator has just hours to complete the tasks included in the following policies and protocols. Carrying them out as designed would be impossible without an interagency approach to cases that is built on the premise that each practitioner is accountable to the intervention needs of others working on a case. The agency administration has the responsibility to ensure that the evaluator has timely access to the proper databases, information, and people to follow these protocols.

Between arrest

and prosecution, 30% of offenders re-assault.

– S. Goldsmith (1991)

POLICY: CONDUCTING BAIL EVALUATIONS AND SUPERVISING PRE-TRIAL RELEASE

In addition to adhering to general agency policy, bail evaluators and pre-trial release supervisors will take the following actions in responding to domestic violence–related cases, according to their specific roles and job functions, using the protocols and appendices referenced and included as part of this policy.

1. Implement the provisions of this policy in accordance with **Protocol 1: Bail Evaluation in Domestic Violence Cases**, **Protocol 2: Conditional Release in Domestic Violence Cases**, and *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*.

Bail Evaluations

2. For all domestic violence–related crimes in which a bail evaluation is completed, present the victim’s or victim’s family account of the crime and address the safety needs of the victim and of the community and the likelihood that the defendant will appear in court.
3. Prepare a written bail evaluation that describes the severity and context of the domestic violence and the risk to the victim and the community, as well as the likelihood that the defendant will appear at trial.
4. Present the bail evaluation to the judge during judicial reviews of in-custody defendants, including information about the context and severity of the violence.

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5. Work in collaboration with victims, cognizant of the principles of continuing engagement.
6. Be attentive to cases in which victims of ongoing abuse are suspects also needing protection from further abuse.
7. Attend first appearances to provide bail evaluation to the court, prosecutor, and defense attorney. Answer questions pertinent to the preparation and content of the bail evaluation and to the execution of conditional release as ordered by the judge.

Conditional Release Supervision

8. Execute conditional releases as ordered by the judge.
9. Supervise all defendants granted conditional release by the court and monitor compliance with the court's conditions.
10. Respond promptly to all violations of conditional release in a manner appropriate to the alleged violation.
 - a. Assess each violation for its seriousness and its potential impact on the defendant's likelihood for failure to appear or for re-arrest, with particular attention to those violations that pose danger to the victim or the public.
 - b. Respond with the course of action appropriate to the nature of the violation.

Protocol 1: Bail Evaluation in Domestic Violence Cases

1. Make diligent efforts to obtain the arrested person's criminal history (arrests and convictions) by checking NCIC, state criminal history databases, driver and vehicle services, and any local databases.
2. Review CAD reports and any protection order affidavits unrelated to current event, if available.
3. Review past bail evaluations conducted on the defendant, if any.
4. Review presentence investigation summaries of violence and abuse, if available (see sample *HDVS*).
5. Make diligent efforts to obtain information from the victim directly or through the local advocacy program if the victim has given permission to share information. Contact the victim to assist in determining the circumstances, context and severity of the case, the victim's opinion about what pre-trial release conditions are most likely to address safety needs, and to refer to other community resources (see *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*).
 - a. Attempt to contact the victim at all numbers provided in the law enforcement report. In general, use the following script: "This is (bail evaluator's name) from (agency) calling for (victim's name) regarding (defendant's name). It is important that I talk with you as soon as possible. Please call me at (number) at your earliest convenience. If you receive a voice mail, please leave your name and phone number and a good time to reach you. Thank you." If the victim does not speak English, access interpreter services per agency protocol.
 - b. If unable to reach the victim directly, contact the advocacy program to determine whether the agency has spoken to the victim and whether the victim has given permission to share any information.
 - c. Offer to talk about concerns regarding safety, children, and financial concerns to the extent that they apply to conditions of release. Refer the victim to an advocate for further exploration of these issues or for other services.

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- d. Explore the victim's wishes regarding contact with the defendant and what is influencing those wishes. If the victim does not want a no-contact order, ask for specifics about how it might present problems so that the reasons for opposing a no-contact order can be communicated to and considered by the court. Try to determine if the victim has been pressured to not participate in the court processes.
 - e. Ask about history of violence, whether or not it has been reported to police. Use *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* to focus on what information to elicit regarding history of violence. Ask whether the violence or related abuse has been documented in any way other than police reports (e.g., use of a shelter, conversations with a counselor or social worker, visits with a religious advisor).
 - f. Inform the victim that he or she will receive a call or letter from the jail when the suspect is released.
 - g. Request permission to share information about safety concerns with the court and explore any concerns the victim has about holding certain information confidential. Explain that efforts will be made to protect information he or she wishes to hold confidential but that there is a chance the defendant could obtain information via court order. Refer the victim to a community advocate for confidential conversations.
 - h. Ask if and where suspect is employed.
- 6.** Interview the arrested person regarding:
- a. Where he or she lives, and for how long at that address
 - b. Whether any one has currently or previously sought a protection or harassment order restraining him or her from abuse (and if yes, obtain details)
 - c. Where he or she resided previous to the current address, if residency at current address is less than three months
 - d. Whether he or she is employed or a student, and the source of any income
 - e. Whether he or she is or has been a member of the armed forces
 - f. Whether he or she is currently on conditional release, probation, or parole
 - g. Whether he or she has obvious mental health or chemical dependency issues that conditions of release should address (via completing the screening form)
 - h. Names and contact information for two people who can verify defendant's information
- 7.** Contact verifiers to determine:
- a. Where defendant has been living (ask for people other than family members or friends for verification)
 - b. Defendant's employment or school
 - c. Length of time defendant has resided in the area
 - d. Defendant's history of drug or alcohol use, if any
- 8.** Complete and score the bail evaluation screening form. Point out any previous violations of criminal or civil protection orders and whether the current charge is an enhanced violation of past orders. If

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possible, summarize in a confidential document the victim's response to risk assessment questions, and any other information about past violence that is uncovered during the bail evaluation.

9. Using *Appendix 5E: Guide to Bail Setting, Conditional Release and Enforcement*, make recommendations to the court that address both victim/public safety and future appearances in court.
10. Note any previous violations of restraining orders and whether the current charge is enhanced due to those violations. Note whether the current offense occurred while the offender was on conditional release from a pending domestic-related offense.
11. Note and report the presence of any risk or danger factors as described in *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*.
12. If the assigned bail evaluator fails to complete all the evaluation steps, the next evaluator will complete them based on assigned evaluator's instructions for remaining steps.
13. Attend judicial reviews of in-custody defendants and present the bail evaluation to the judge.
 - a. Make diligent efforts to notify the victim of the bail review.
 - b. Complete and present the bail evaluation, including information from CAD reports, the victim responses to patrol risk assessment questions, affidavits for protection orders, and presentence investigation summaries of violence and abuse to the judge (see *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*).
 - c. Articulate to the judge the victim's or the victim's family's account of the alleged crime (pursuant to Minn. Stat. § 629.715 and Minn. Stat. § 629.72). Relay to the judge information about:
 - The nature and impact of the current offense
 - Any information about past violence uncovered in the evaluation
 - The victim's wishes and concerns regarding conditions of release, with particular attention to the issuance of a no-contact order
 - Whether the defendant is currently on conditional release from another domestic violence-related offense
 - Whether the defendant has previously violated civil protection orders or orders prohibiting contact issued as part of a criminal proceeding.
 - d. Implement the judge's decision.
 - Hold the defendant for court
 - Make the bail evaluation available for court personnel.
 - OR set bail, with or without conditional release and/or a domestic abuse no-contact order or stay-away order.
 - Inform the jailers of the judge's decision.
 - If the judge issues a no-contact order, serve the defendant a copy and explain what it is.
 - If the judge orders other conditions of release, serve the defendant a copy and explain the conditions.

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- Inform the defendant about how and when to contact pre-trial services.
 - If the judge orders conditional release, call the victim and inform her or him of the judge's decision. Inform the victim of conditions of release, the existence of a no-contact or stay-away order if applicable, the defendant's next court appearance, and how to contact pre-trial services and how to reach an advocate. Follow with an explanatory letter and copies of any conditional release or no-contact orders issued by the court.
- 14. Work in collaboration with victims, cognizant of the principles of continuing engagement.**
- a. The principles of continuing engagement with victims of domestic violence include:
 - Whenever possible, minimize the victim's need to confront the offender.
 - When using information provided by the victim, protect her or him from retaliation.
 - Treat each interaction with the victim as an attempt to build collaboration over multiple interventions.
 - Be mindful of the complex and often dangerous implications of a victim's collaboration with interveners.
 - Be aware that the fundamental purpose of battering, which characterizes the majority of domestic violence criminal cases, is to control what the victim says, thinks, feels, and does. Victims are rarely in a position to "tell all," although they may do so in unguarded moments. Take great care to not endanger victims with what they have shared about their lives.
 - Engage in dialogue with the victim, thereby avoiding inadvertently treating her or him as a data point.
 - In order to avoid unintentionally replicating or reinforcing the actions of the abuser, interveners must offer a clear alternative to messages that the victim is crazy, at fault, unbelievable, and unable to make decisions, and that the abuser is unstoppable.
 - b. Incorporate the victim's concerns regarding her or his safety and that of children into the bail evaluation.
 - c. Convey to the court the victim's wishes regarding contact with the defendant with specific information about reasons why the imposition of a no-contact order might pose a hardship.
 - d. Promptly provide a written copy by mail of the pre-trial release conditions, if conditions are ordered by the court.
 - e. If a conditional release is ordered by the court, provide the victim with contact information for the conditional release supervisor, as well as a clear written explanation of how to report violations of conditions of release.
 - f. If it appears that the suspect is a victim of ongoing abuse (battering), refer her or him to an advocate.

Protocol 2: Conditional Release in Domestic Violence Cases

1. If the bail evaluator has been unable to reach the victim, make diligent efforts to do so prior to the court hearing. Check the police report and any other available source to find contact information.

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Determine if a victim/witness or community advocate in court will be able to help facilitate a connection between the victim and pre-trial services.

2. Distribute copies of the bail evaluation to the prosecutor, judge and defense attorney.
3. Discuss the bail evaluation with the prosecutor and defense attorney, including the defendant's criminal history, the victim's account of the offense, the history of violence and risk assessment, and the victim's wishes regarding contact and perspective on the impact of a no-contact order.
4. If conditional release and/or no contact is ordered, meet with the defendant following the court hearing and reinforce the conditions of release, the importance of following the court's orders and possible consequences for violations, and when and how to contact pre-trial services.
5. If the judge ordered a conditional release, contact the victim before the defendant is released from jail to inform her or him of the conditions of release. Send a letter that includes:
 - a. A copy of the conditional release order
 - b. Information regarding the issuance of a no-contact order
 - c. The date and time of the next court hearing
 - d. Information regarding how to report violations of conditional release and the phone number for pretrial services
6. Verify the address where the defendant will be staying after release. Notify the jail when verification is received. If possible, the defendant should be held until his or her address is verified.
7. If the court has issued a no-contact order and a conditional release order, provide a copy of the no-contact and conditional release orders to the police department where the victim resides.
8. Open a file and meet with the defendant.
9. Determine the frequency and manner of contact with pretrial services. In cases of high risk to the victim, consider requiring in-person reporting.
10. Hold regularly scheduled in-person group intake sessions for defendants who are on conditional release in domestic violence-related offenses. During the meeting, pre-trial services staff will do the following:
 - a. Explain conditions of release and emphasize the importance of compliance with conditions—including no-contact orders—and the consequences of violations.
 - b. Have the defendant sign any required releases of information required.
 - c. If the court has ordered a chemical health assessment, provide the defendant with information about where to go and when it must be completed.
 - d. If the court has ordered random drug or alcohol testing, provide information about how and where the testing will take place.
 - e. If a mental health evaluation is required, provide information about where that will be conducted and the time frame for completion.
 - f. If the court has ordered that the defendant take psychotropic medications as prescribed, ensure that the defendant has executed a release of information for the conditional release supervisor to talk with the doctor about medication compliance, unless the judge has ordered another method of monitoring.

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11. Provide other community referrals to the defendant as deemed appropriate by the conditional release supervisor or requested by the defendant, e.g., assistance with finding employment, housing, counseling, medical care, education.
12. Contact the victim to discuss any safety concerns and make sure she or he knows about the conditions of release, no-contact order, process for reporting violations, and how to reach the conditional release supervisor.
13. Refer victim to the local advocacy program and other community resources.
14. Respond promptly to calls from victims and be diligent in attempting to reach victims who leave messages.
15. Thoroughly document in the case notes all contacts with the defendant, the defendant's compliance with conditions, contacts with the victim, and actions taken by the conditional release supervisor.
16. Respond promptly to **violations** of conditional release not related to victim or community safety in accordance with *Appendix 5E: Guide to Bail Setting, Conditional Release and Enforcement*.
 - a. These violations include:
 - Failure to report or call in
 - Failure to notify pre-trial services about a change in employment or residence
 - Failure to obtain prior permission to travel
 - Failure to execute required releases
 - Failure to complete a chemical health assessment
 - Failure to complete a mental health assessment
 - Failure to take prescribed medications
 - Any other violation not directly related to victim safety or the safety of the community
 - b. **First:** Evaluate the seriousness of the noncompliance, taking into account: the nature of the condition; the reason for the noncompliance; the seriousness of the violation; the defendant's compliance history; and information about dangerousness gleaned from the bail evaluation and risk assessment. Contact the victim to incorporate her perspective, of how the noncompliance has impacted the level of risk and danger, into your evaluation. Review all of the above described information in the context of *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*.
 - c. **Second:** Determine the appropriate course of action. If fewer than three minor violations, the pre-trial release supervisor may elect to handle the violations with internal sanctions.
 - d. **Possible sanctions:**
 - Verbal warning
 - Written warning letter
 - Increase frequency of phone contact
 - Require in-person reporting
 - Increased frequency of in-person reporting

- In the case of non-compliance with medications, require the defendant to report to pre-trial services and take medications in the presence of a conditional release officer or other staff member.
- If information gleaned from the risk assessment and bail evaluation indicate a high level of risk, request a warrant even if the alleged violation appears to be minor.

e. If the defendant's whereabouts are unknown or if the violation raises concerns about the victim's safety, request a warrant.

17. Respond promptly to drug or alcohol-related violations of conditional release:

a. Drug testing violations include any of the following:

- Reports and tests positive (after baseline)
- Fails to report
- Reports and is unable or refuses to submit a sample
- Reports and submits a sample for which there is a suspicion of tampering (includes "dilutes")

NOTE: Failure to report and failure to cooperate with testing are viewed as significant because they are often indicative of active drug use by the defendant. When a defendant appears for testing but says he or she is unable to submit a sample, every effort shall be made to facilitate the defendant's successful submission of a sample.

b. First: A court counselor, informed of the history of domestic violence, will assess the violation taking into account: the reason for the violation; the seriousness of the violation; the level of risk the defendant poses; the defendant's compliance history; and information about dangerousness gleaned from the bail evaluation and risk assessment. The court counselor will contact the victim to incorporate her perspective of how the violation has impacted the level of risk and danger. The counselor will then review all of the above described information in the context of *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*.

c. Second: The court counselor will determine the appropriate course of action. If the violation/s is/are minor and the defendant does not have a substantiated history of abuse, the pre-trial release supervisor may elect to handle the violation/s with internal sanctions.

d. Possible sanctions:

- Issue verbal warning
- Send written warning letter
- Increase frequency of drug testing
- Completion of a chemical health assessment and compliance with all recommendations
- Increased frequency of phone contact
- Require in-person contacts (group or individual)
- Increased frequency of in-person contacts
- Require attendance at drug educational program

NOTE: If the defendant fails two or more drug or alcohol screens, request a warrant.

- e. **If the defendant's whereabouts are unknown or if the violation raises concerns about the victim's safety, request a warrant.**

18. Respond promptly to **violations of conditional release related to violence or safety** in accordance with *Appendix 5E: Guide to Bail Setting, Conditional Release and Enforcement*. See also *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*.

- a. Violations related to violence or safety include any of the following:
 - Failure to surrender firearms (for those defendants not otherwise prohibited by law from possessing firearms)
 - Repeated failures of drug or alcohol tests
 - A new offense (whether or not the new offense has been charged), including:
 - Violation of a no-contact order
 - Violation of a stay-away order
 - New assault or violent crime
 - Prohibited person in possession of firearm or ammunition
 - Other criminal offense
- b. Review the court calendar daily to determine if a defendant already on conditional release has been re-arrested and is appearing on a new charge. Obtain the police report and review the facts alleged in the report. Take action according to whether the case is in-custody or out-of-custody.
 - **In-custody cases:**
 - Add the conditional release violation hearing to the calendar.
 - Contact the victim to obtain information about the violation and surrounding circumstances related to risk and danger in the context of *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*. Prepare a report for the defense attorney, prosecutor and court summarizing the conditions of release, the violation, and the updated risk information, and making recommendations to address the violation.
 - Be present to address the court about the violation.
 - **Out-of-custody cases:**
 - If a victim has reported a violation to pre-trial services, conduct an updated risk assessment by obtaining specific information about the nature of the violation and surrounding circumstances related to risk and danger in the context of *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*. Advise the victim to call the police and file a police report. Obtain the police report.
 - If the conditional release supervisor learns through other means, e.g., probation or police response to a gone-on-arrival case, obtain the police report. Contact the victim to conduct an updated risk assessment as described above.
 - Prepare a violation report requesting an arrest warrant outlining the conditions of release, the violation(s), and the updated risk assessment. Complete the necessary paperwork for activating an arrest warrant.

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- Present the violation report and warrant paperwork to the judge and request a warrant.
- If the judge **signs the warrant**: (1) contact the victim to let her or him know an arrest warrant was issued; (2) notify the prosecutor and defense attorney that a warrant was issued; and (3) close the file.
- If the judge **declines to sign the warrant**: (1) Increase the level of monitoring of the defendant; (2) document the violations for the file and provide the information to the presentence investigation writer when appropriate; and (3) continue to monitor the defendant's compliance and report any new violations to the appropriate judge.

19. Court hearings for violations of conditional release

- a. Prepare and distribute to the court, prosecutor, and defense attorney a written report detailing all violations of the conditions of release with recommendations for court action in accordance with *Appendix 5E: Guide to Bail Setting, Conditional Release and Enforcement*.
- b. Notify the defendant (about out-of-custody hearings) and the defense attorney about the date, time, and location of the hearing.
- c. Attend the hearing and be prepared to respond to questions about the report and recommendations.
- d. Discuss violations with the prosecutor and defense attorney, with particular emphasis on those violations that pose a risk to victim or community safety.
- e. Even if not ordered by the court, increase monitoring as permitted by state law.

Appendices to the Policy on Bail Evaluations and Pre-trial Release

The following appendices are attached to and included as part of the bail evaluation and pre-trial release policy:

- *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*
- *Appendix 1B: Training Memo—Risk and Dangerousness*
- *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*
- *Appendix 5E: Guide to Bail Setting, Conditional Release and Enforcement*

See the Blueprint Supplement for appendices referenced in the policy and protocols. All training memos are based on Minnesota law. Other jurisdictions should make modifications as necessary.

The 'Blueprint'

is not a collection of policies by separate agencies; rather, it is a collective policy. Under the Blueprint we are linked to each other through our common goals; to do what it takes to keep the victim safe, to support each practitioner in doing their job and to hold each offender accountable for their violence.

– John Harrington, St. Paul Police Chief, Aug. 24th, 2009

PROBATION AND BAIL: THE PRESENTENCE INVESTIGATION

FRAMEWORK: WRITING THE PRESENTENCE INVESTIGATION REPORT IN DOMESTIC VIOLENCE-RELATED OFFENSES

Probation's primary role in any case is to work with offenders who pose a risk to the public and lower that risk to whatever extent possible. In domestic violence cases, very specific, identifiable members of the public bear this risk. Recognizing the nature of the risk; constraining the offender's ongoing coercion, intimidation, and violence; and offering opportunities to change abusive behavior begin with the presentence investigation.

The presentence investigation (PSI) is written for the bench and the supervising probation officer. It puts the event leading to the conviction and the offender's history into a context that allows the court to impose a sentence which addresses victim safety, offender accountability, and offender rehabilitation. The PSI also provides the bench with the background information needed to consider any plea agreement in relation to safety, accountability, and rehabilitation; and to make an informed decision regarding whether to accept or reject the agreement. The supervising probation agent will use the PSI to get a full picture of (a) the incident, (b) the impact of the incident on the victim, (c) associated domestic violence, (d) the results of past interventions with the offender, (e) the offender's needs related to making behavioral changes and the victim's needs for safety, (f) other high risk needs that need to be addressed to avoid ongoing criminality, and (g) supervision and treatment needs. Excerpts from the non-confidential section of the PSI will also be used by practitioners in any future cases involving the same offender, including charging attorneys, bail evaluators, police investigators, and service providers.

The PSI becomes the most detailed description of the offense, the offender, and the situations surrounding the defendant's use of violence and related abusive behaviors. The process of constructing the PSI report reinforces and sets the stage for probation's continuing engagement with the victim during the course of probation. Certain sections of the PSI are important tools for subsequent interveners, especially those providing services mandated by the court. For example, the history section in the PSI assists prosecutors in charging new offenses or arguing appropriate bail conditions on a new arrest. Similarly, a treatment provider who may have limited or no contact with the victim gains enormous insight by reading the History of Domestic Violence Summary (HDVS) as opposed to simply reading the police report of a single incident. The PSI's HDVS, more than any other single document, can provide interveners with the best institutional understanding possible of (a) who is doing what to whom and with what impact, (b) who is likely to do harm in the future, (c) the likely level of continued harm, and (d) what measures by the state and community are most likely to reduce or eliminate that future harm. The Blueprint builds the sharing of this important institutional knowledge into case management processes, within the boundaries of state law and confidentiality regulations and due process considerations. (See *Appendix 1D: History of Domestic Violence Summary Instructions and Sample.*)

The Blueprint is designed to maximize the opportunity to build a collective institutional knowledge of the case, from 911 through discharge, by making the nature of the abuse visible at every opportunity. The probation officer is dependent on practitioners at earlier points of intervention asking, observing, and recording information about the pattern and severity of abuse. The system builds data over time and each new contact with victims and offenders offers a more complete picture of the frequency and

severity of the abuse and violence⁴. The PSI process is the most intentional, thorough, and comprehensive opportunity to pull that institutional knowledge of the case together in a coherent description and summary that positions the PSI writer to make a well-founded set of recommendations to the court for incarceration, restitution, and conditions of probation. The protocols, appendices, and training memos accompanying the Blueprint help prepare the PSI writer to address issues of potential recidivism and the specific need for victim safety measures. The investigation is the primary means by which high-risk behaviors for homicides and future severe and escalating violence are made visible to the court and subsequent interveners.

The Blueprint is intended to create a standard that ensures fairly similar recommendations, regardless of the individual probation officer handling the case. Given the complexities and variables present in domestic violence cases, a fixed matrix or inflexible recommendations for time to serve are unworkable. Instead, the combination of common training for probation agents, key documentation from previous interveners, the eye of the supervisor on each PSI, and the collective goals of the department all serve to ensure that probationers will be treated to a fair, victim-protective and uniform response to domestic violence cases⁵. In other words, safety will be the focal point and similarly situated cases will be treated similarly.

The presentence investigation process offers a crucial opportunity for the probation department to engage with victims and offenders in ways that support change while being mindful of the complex and often dangerous implications for the victim of such collaboration.⁶ Such a relationship includes minimizing a victim's need to confront the offender and protecting victims from retaliation for sharing information. The PSI process also reinforces interagency messages of protection, help, and accountability. Sentencing recommendations that are anchored in a full picture of the abuse and the offender's personal history carry the message that an offender will be held accountable for the harm while also offered support to change violent and abusive behavior.⁷

The PSI crafted according to this policy and its accompanying protocols carries the message that the state is willing and ready to extend protection and help to the victim of that harm.

POLICY: WRITING THE PRESENTENCE INVESTIGATION REPORT

In addition to adhering to general agency policy, probation officers conducting presentence investigations (PSIs) in domestic abuse-related cases will take the following actions, using the protocols, appendices, and training memos referenced and included as part of this policy.

1. Complete all relevant training.
 - a. Probation officers conducting felony PSIs must complete the department's domestic abuse training program.
 - b. PSI writers should familiarize themselves with the relevant sections of the American Probation and Parole Association's *Community Corrections Response to Domestic Violence: Guidelines for Practice*.
 - c. PSI writers should familiarize themselves with *Appendix 7A: Rehabilitation Program Considerations in Domestic Violence Cases*, *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*, *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*, and *Appendix 1B: Training Memo—Risk and Dangerousness*.
2. Conduct a full presentence investigation on felony and misdemeanor cases.

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- a. Using the sources and elements described in **Protocol 1: Domestic Violence Presentence Investigation**, document the domestic abuse–related factors in the case.
 - b. Highlight the dangerous behaviors used by the defendant in accordance with *Appendix 1A: Practitioners’ Guide to Risk and Danger in Domestic Violence Cases*.
- 3.** In cases where there is information to suggest the defendant is being abused by the person who is the victim of the instant offense, attempt to determine the scope of violence and abuse both experienced by and used by the defendant. NOTE: such cases most often involve female defendants who are ongoing victims of domestic violence.
- a. If the probation officer determines the defendant is also a victim of ongoing abuse, use the guidelines from *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*.
 - b. Make sentencing recommendations that do not make the defendant more vulnerable to her or his abuser, while taking steps to deter the defendant’s continued use of violence.
 - c. Attempt to link the victim/defendant to a local advocacy program.
- 4.** Form and develop a working relationship with the victim, using **Protocol 2: Victim Engagement Guidelines** and information from the county’s victim/witness advocates and community advocates familiar with the case.
- 5.** Make diligent efforts to obtain a victim impact statement, including:
- a. Information about the full scope of domestic violence used by the offender
 - b. Impact of the violence in this incident
 - c. Impact of any related patterns of abuse by the offender
- 6.** Identify and include the following items in the written report:
- a. The sentence allowed by law
 - b. A statement regarding any statutorily mandated minimum period of incarceration, fines or fees, and programming
 - c. Information regarding statutorily mandated notices and firearms forfeiture
 - d. Recommendations for jail time to be served and/or stayed, conditions of probation, no-contact orders, and restitution
 - e. A statement for the bench to use in relaying the consequences for failure to abide by the conditions of probation.

Protocol 1: Domestic Violence Presentence Investigation

- 1.** Make diligent efforts to obtain records of the instant offense and history of domestic abuse from the sources listed below:
 - Reports related to the **instant offense**:
 - 911 CAD report or call transcript
 - Initial patrol officer reports

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- Follow-up investigative reports (including statements by victims, witnesses and defendant; plus risk assessment information)
 - Related child protection reports (when available)
 - Medical reports
 - Order for protection proceedings and affidavits describing the need for protection related to this incident
 - A description of the instant offense from an interview with the offender
 - A description of the instant offense from an interview with the victim
 - Reports related to the history of **domestic violence–related behaviors** used by the defendant against this or other victims (regardless of conviction):
 - 911 calls/CAD reports involving the defendant in other reported domestic abuse–related events
 - Domestic abuse–related law enforcement reports from local and surrounding jurisdictions. Pay attention to reports frequently related to domestic violence such as criminal damage to property, trespass, and kidnapping. Outcome of other domestic abuse-related criminal and civil cases
 - Domestic violence incidents reflected in records related to orders for protection, harassment orders, or criminal no-contact orders or actions involving the offender
 - Findings of child protection or other government agency investigations of violent or abusive behavior if there are incidents of children being drawn into the violence
 - Prior PSIs, including PSIs from other jurisdictions (when available)
 - Reports from rehabilitation or treatment programs previously used by the offender, if available
 - Juvenile probation and court records (when available)
 - PSI writer interview with the defendant
 - PSI writer interview with the victim
 - a. Immediately after being assigned the case, request that the prosecutor provide to the PSI writer any documents from the above list included in the police investigation file and any additional information the prosecutor deems useful in preparing a PSI.
 - b. As soon as possible after ascertaining the availability of these records from the prosecutor, contact the investigation unit to obtain any domestic violence–related police reports, CAD reports coded as domestics where officers enter a brief report when there is no probable cause to arrest, and protection and harassment order affidavits.
 - c. Contact the prosecution victim/witness advocate and obtain current contact information for the victim and information the advocate might have pertinent to sentencing and restitution.
2. In the section of the PSI that addresses aggravating circumstances, describe the non-confidential information related to any action or circumstance described in *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*. The documentation should allow the PSI reader to put

the instant offense into a larger context of abuse, if it exists. Put any confidential information from the victim or other sources in the confidential section of the PSI.

- a. Address the violence and abuse in the instant offense first and then make visible what is known about a pattern of abuse and aggression by the offender.
- b. Provide a brief summary or use excerpts from previous documentation (see *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*), noting the date and source of the information. Be as explicit as possible about the presence of risk factors, acts of coercion, intimidation, violence, or aggression.
- c. Focus the aggravating circumstances on those factors identified as dangerous in *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*. Pay specific attention to:
 - The full scope of domestic violence–related behaviors used by the offender
 - Frequency and any changes in the pattern of violence and related abusive behaviors
 - Severity of the violence and related abusive behaviors
 - Any apparent patterns in the circumstances under which the violence or abuse occurs
 - Extent to which others are drawn into the abuse, including immediate and extended family members, clans, friends and associates, gang affiliates
 - Use of children against the victim or direct aggression toward children in this or past relationships
 - Other institutions involved with the offender or victim in relation to the domestic violence
 - Use of coercion, intimidation, emotional abuse, abusive control toward other intimate partners, and/or a partner's children
 - Use of sexual coercion, intimidation, or abuse in this or past relationships
 - Any indicators the severity of violence or abuse is escalating or already at risk of causing serious injury or harm
 - Relationship of mental illness to defendant's actions and past efforts to seek help
 - Relationship of alcohol and drug use to defendant's actions and efforts to seek help
3. Using the sources of information noted previously, document the mitigating circumstances as applicable to the case. Mitigating circumstances include the lack of a pattern of ongoing coercion, intimidation or violence; or information to suggest the defendant is an ongoing victim of domestic violence by the person she or he has assaulted, or information to suggest the violence is related to mental illness or trauma and not directed toward a specific person. In cases of ongoing domestic violence, attempt to determine the scope of violence and abuse both experienced by and used by the defendant.
4. Transfer the public records information contained in the aggravating and mitigating circumstances section to the HDVS for use by the supervising probation officer and any rehabilitation programs, as well as practitioners acting on any subsequent cases involving the offender, such as police investigators, bail screeners, service providers, prosecuting attorneys, and judges. (See *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*.)

This summary helps differentiate the scope of violence and danger in domestic violence cases and assists intervening practitioners in adjusting their interventions to the level of risk and danger posed by the offender.

5. Write a recommendation for sentencing and conditions of probation.
6. Make both the confidential and non-confidential portions of the PSI readily available for review by the prosecution and defense attorneys in advance of the sentencing date.

Protocol 2: Victim Engagement Guidelines

1. Work in collaboration with victims, cognizant of the principles of “continuing engagement.”
 - a. Whenever possible, minimize the victim’s need to confront the offender.
 - b. When using information provided by the victim, protect her or him from retaliation by not identifying the victim as the source of the information.
 - c. Treat each interaction with the victim as an attempt to build collaboration over multiple interventions.
 - d. Be mindful of the complex and often-dangerous implications of a victim’s collaboration with interveners.
 - e. Be aware that the fundamental purpose of battering, which characterizes the majority of domestic violence criminal cases, is to control what the victim says, thinks, feels, and does. Victims are rarely in a position to “tell all,” although they may do so in unguarded moments. Take great care to not endanger victims with what they have shared about their lives.
 - f. Engage in dialogue with the victim, thereby avoiding inadvertently treating her or him as simply an information source.
 - g. In order to avoid unintentionally replicating or reinforcing the actions of the abuser, offer a clear alternative to messages that the victim is crazy, at fault, unbelievable, and unable to make decisions and that the abuser is unstoppable.
2. As part of the presentence investigation process, obtain contact information from the victim/witness advocate on record and make diligent efforts to interview the victim in order to:
 - a. Obtain information about the frequency, severity, and circumstances surrounding the use of violence, coercion, abuse, and intimidation.
 - b. Obtain information about the impact of the instant offense and the surrounding abuse and violence, if applicable, on the victim. Include attention to:
 - Physical harm
 - Emotional harm
 - Sexual coercion or harm
 - Harm to victim’s relationship with her/his children
 - Harm to her/his children
 - Harm to family and associates (e.g., friends, coworkers, neighbors)
 - Economic harm (loss of housing, job, etc.)

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- c. Explore whether the victim wishes to provide a Victim Impact Statement to the court. If available, link the victim to the victim witness program or local advocacy program if the victim wishes to consider making a statement.
- d. Obtain the victim's input on the (a) sentence, (b) restitution, and (c) conditions of probation. Include attention to:
 - Time to serve
 - Limited or no contact with the victim or victims
 - Treatment services for battering, chemical dependency, and mental illness
 - Conditions which could provide protection for the victim
 - Specialized counseling within chemical dependency or batterers' treatment programs regarding the use and abuse of children
 - Specialized counseling related to chemical dependency, depression, the use of sexual coercion, and childhood trauma
- e. Make efforts to put into place an ongoing check-in relationship with the victim, and to link the victim to confidential advocacy services
 - Make sure victim knows how to report any continuation of coercion, intimidation or violence and what options probation and the court has, should the abuse continue
 - Provide victim with information on how to talk confidentially with an advocate should the need arise, and encourage an initial connection if the victim has no advocate
3. Use all contacts with the victim to relay the messages of the interagency approach: (a) the focus is on the defendant's actions and behaviors and the resulting harm; (b) interveners are there to help, protect, and build safety; and (c) offenders will be held accountable and offered opportunities to change violent and abusive behavior.
4. Conduct the PSI cognizant of the role of probation to work with offenders who pose a risk to the public—in domestic violence cases a specific member of the public and potential future victims—and reduce that risk to whatever extent possible while offering the probationer an opportunity to change abusive behaviors.
 - a. Encourage victims who want a sentence of probation to consider reporting all acts of intimidation, coercion, and threats or acts of violence to probation. Provide a number where she or he can leave a confidential, detailed message.
 - b. When victims want to talk confidentially about the circumstances of their case and need to problem solve refer them to the services offered by local community advocacy program/s.
 - c. Explain that victims can be present and speak at sentencing and provide them with a connection to victim/witness support services.
5. Make diligent efforts to contact the victim prior to the supervising agent's first meeting with the offender in order to begin building a collaborative relationship between the victim and the probation office to hold the probationer accountable and keep the victim safe.
 - a. Be prepared for a strong sense of mistrust or even hostility toward the system by the victim and work in ways to build trust over time.

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- b. Inform the victim of the probation office goals regarding public safety, victim safety, and offender accountability and rehabilitation.
 - c. Use the interview to increase your understanding of the offender's pattern of violence, particularly any "markers" of escalation, as addressed in *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*, and the victim's capacity for self-protection.
 - d. Use the interview to increase the victim's understanding of (a) coercion, intimidation and battering in relationships, (b) factors that contribute to risk and danger, (c) available resources to victims, and (d) the role the probation officer can play in victim safety.
 - e. Ensure that victims have information about how probation will be involved with the victim and the offender to: a) check on the victim's welfare; b) review with the victim the probation conditions; and c) check on the offender's compliance with probation conditions.
 - f. Encourage victims to keep the supervising agent informed of changes in their lives related to their safety and the offender's compliance.
6. Communicate with key persons connected to the offender in a manner that protects the victim and others subject to possible retaliation, while safeguarding the offender's right to fairness.
 7. Ensure that the offender has signed any releases of information during the presentence investigation allowing the supervising agent to exchange information with the victim and service providers.
 8. Unless the victim has asked not to be contacted, contact the victim periodically throughout the probationary period. Check on the victim's welfare.
 9. When acting on a violation of probation, particularly those related to the victim:
 - a. Give the victim prior notice of the action whenever possible and whenever doing so would not compromise the agent's ability to proceed with the violation.
 - b. Obtain victim input on the probation response to the violation.
 - c. Obtain victim input on whether the violation has an impact on her or his safety.
 - d. Inform the victim of the date, time, and place of any revocation hearing.
 - e. Obtain the victim's input on whether imposing sanctions for the violation will enhance or decrease her or his safety.

Appendices to Policy on Writing the Presentence Investigation Report

The following appendices are attached to and included as part of the probation presentence investigation policy:

- *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*
- *Appendix 1B: Training Memo—Risk and Dangerousness*
- *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*
- *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*
- *Appendix 1E: History of Domestic Violence Summary*
- *Appendix 5E: Guide to Bail Setting, Conditional Release and Enforcement*

- *Appendix 6A: Training Memo—Victim Impact Statements*
- *Appendix 7A: Rehabilitation Program Considerations in Domestic Violence Cases*
- *Appendix 7B: Training Memo—Conditions of Probation*

See the Blueprint Supplement for appendices referenced in the policy and protocols. All training memos are based on Minnesota law. Other jurisdictions should make modifications as necessary.

When intervention

was swift and certain, the rate of offenders entering the batterer intervention groups increased from 70% to 95% and the completion rate rose to 70%.

– E. Gondolf (2004)

PROBATION AND BAIL: PROBATION SUPERVISION

FRAMEWORK: PROBATION SUPERVISION IN DOMESTIC VIOLENCE-RELATED OFFENSES

The research on the effectiveness of rehabilitation groups in reducing domestic violence⁸—particularly the ongoing coercion, intimidation, and violence that characterizes battering—is mixed. However, the research is clear on the deterrent effects of close probation supervision of domestic violence probationers coupled with swift and sure responses to all violations: such a response can reduce future abuse⁹. Domestic violence is a complex crime. It encompasses very different acts of violence occurring in very different circumstances for very different reasons, so a single approach to deterrence will not work.¹⁰ The PSI writer should provide as full a picture as possible of the kind of violence, the frequency and severity of violence, and the circumstances under which the probationer uses that violence. The supervising probation officer manages risk. That task is fourfold: (1) to work with the probationer to help change the behaviors that have resulted in a conviction; (2) to stay aware of signs that the abuse and violence might be reoccurring; (3) to find the right (and available) kinds of rehabilitation programs; and (4) to act swiftly each time the probationer pushes against the controls over his or her abusive behaviors.

The criminal justice system processes events, i.e., particular crimes that occur at a particular time. Not until sentencing and probation does the system begin to look at the context of that crime and attempt to remedy both the event and the circumstances that surround it. At this time, community agencies are also drawn into the process of change. The interagency approach to the case suddenly expands as programs specializing in chemical dependency, battering, victim support, community education, and economic assistance come together to prevent further abuse. The probation officer is the linchpin that connects these possibilities for change together in an accessible and meaningful way for the probationer.

Our collective interagency approach is designed to stop violence against the victim, both the current victim and future ones who can so quickly fill those shoes if the abusive behavior continues. Engaging with the victim helps probation officers understand what makes the ongoing situation dangerous and what particular signs might signal reoccurring violence.¹¹ If the victim is linked to an advocacy program that is also working cooperatively with the probation department, it is far more likely that steps can be taken to disrupt escalating violence.¹²

The supervising probation officer is the only practitioner in the system that develops an ongoing relationship with the probationer. As such, the probation officer is best-positioned to relay and reinforce the messages intended by the overall response: change is possible, being accountable is the first step toward change, continued abuse will not be tolerated, and there is a network of help available to support a probationer's efforts to change abusive behavior.¹³

POLICY: SUPERVISING PROBATIONERS IN DOMESTIC VIOLENCE–RELATED OFFENSES

The provisions of this policy and related protocols generally apply to supervision of domestic violence offenders on release from prison and to domestic violence offenders whose supervision has been transferred to or from another probation office.

Special considerations apply, however, to offenders on supervised release following imprisonment after a domestic violence related offense. This includes offenders who are sentenced for other offenses where the incident giving rise to conviction included domestic violence. Particularly where the violence was part of a pattern of coercion and control, the risk to victims of domestic violence does not end with the offender’s imprisonment. The patterned, continuing nature of the offense results in a substantial risk that domestic violence related offenses will continue following the offender’s release. Many of the Blueprint policies and protocols applicable to probation supervision apply to supervised release following imprisonment as well. However, both the passage of time during the offender’s imprisonment and, in many jurisdictions, the applicability of state corrections department policies and procedures are additional considerations requiring supplementation and/or modification of the probation supervision policies and protocols. *Appendix 7C: Training Memo—Supervised Release in Domestic Violence Cases* addresses these considerations and includes additional protocols applicable to these cases.

Additionally, transfer of supervision in domestic violence cases is fraught with risk to victims and difficulty with holding offenders accountable. Transfers can: present myriad opportunities for an offender to “slip through the cracks”, defeat a victim’s efforts to find safety in a new location; delay a sure, swift response to supervision violations; diminish victim engagement; make it less likely that context and severity will be used to differentiate cases; and increase the complexity of interagency cooperation. Because transfers present a substantial potential for diminishing the effectiveness of the criminal justice response, specialized protocols are necessary to address transfers in domestic violence cases.

Appendix 7I: Training Memo—Probation Transfer in Domestic Violence Cases addresses the difficulties which arise from the transfer of supervision in domestic violence cases. It includes protocols that apply when considering interstate or intrastate transfer of supervision. The protocols address both transfers in and transfers out of the local jurisdiction. The protocols were written based on Minnesota law and apply to all cases arising from a domestic violence related incident, regardless of whether the resulting conviction is for a domestic violence related offense. They serve as a guide to the issues which must be addressed and possible solutions. However, due to variation in local jurisdictions’ policies regarding transfers, they may need to be adapted to fit local rules and practice.

In addition to adhering to general agency policy covering supervision of probationers, probation agents will take the following actions in supervising probationers in domestic abuse–related cases, using the protocols and appendices referenced and included as part of this policy.

1. Promptly notify the victim of the probationer’s status and probation conditions; and of the name and contact information for the supervising agent, as specified in **Protocol 3: Supervision of Domestic Violence Probationers**.
2. Make diligent efforts to contact the victim prior to the supervising agent’s first meeting with the probationer and meet with the victim by phone or in person to implement the provisions of **Protocol 2: Victim Engagement Guidelines in Domestic Abuse–Related Cases**.

3. To ensure that the probationer understands what is required, promptly meet with the probationer to review and, if necessary, clarify each condition of probation, each notification (including firearms restrictions and other prohibitions), and the supervision process. Conduct the review using **Protocol 3: Supervision of Domestic Violence Probationers** and **Protocol 4: Violations and Probation Revocation** with the accompanying notices.
4. Ensure that the probationer signs permissions allowing the release of records, information sharing regarding programs and services related to probation conditions, and information sharing regarding continued or escalating risk.
5. Assist the probationer in entering and successfully completing rehabilitative services.
6. Conduct routine monitoring for probation compliance and indications of any increasing risk to the victim or other parties, per **Protocol 3: Supervision of Domestic Violence Probationers**.
7. Respond to violations of probation in accordance with **Protocol 4: Violations and Probation Revocation** to ensure sure and swift consequences for failure to adhere to probation conditions.
8. Use diligent efforts to shield the victim or victims from retaliation when taking enforcement action for probation violations.
9. Maintain case notes in sufficient detail to: (a) consistently monitor and enforce probation conditions; (b) keep other interveners informed of the probationer's actions; and (c) guide others who might need to act for the supervising agent in his or her absence. As new information becomes available regarding acts of intimidation, coercion or violence, update the HDVS on each probationer.

Protocol 3: Supervision of Domestic Violence Probationers

1. Promptly notify the following parties of the probationer's status and probation conditions and the supervising agent's name and contact numbers, using the appropriate notification letter and process.
 - a. Victim (prior to first meeting with probationer)

NOTE: Under Minnesota law, adult victims' names are not confidential but her or his address and phone number is. Do not include the victim's address in information forwarded to other parties without the victim's permission.
 - b. Probationer
 - c. Police Investigation Unit, with a request to notify probation of any new police contacts with the probationer
 - d. If requested by the victim, local advocacy program/s asking them to contact the victim and set up support services during probation period (this requires a negotiation with local advocacy program)
2. Promptly meet with the probationer to review the following:
 - a. Each condition of probation, both standard and special conditions
 - b. Notifications related to firearms and other weapons restrictions and other prohibitions
 - c. Process of supervision, including contacting and reporting to the supervising agent
3. Ensure that the probationer understands the meaning of all probation conditions and the process of supervision by taking the following measures:

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- a. Explain and conduct supervision in the probationer's first language or provide interpretation or communication assistance to probationers with limited English proficiency or with hearing or speech disabilities.
 - b. Explain and conduct supervision using language and communication strategies that address the probationer's literacy and cognition level.
 - c. Avoid professional jargon.
 - d. Allow the probationer to have a support person present during the initial interview.
4. Ensure that the probationer signs releases which allow:
- a. Release of records:
 - From probation to court-ordered programs and service providers
 - From court-ordered programs and service providers to probation officers
 - b. Information sharing and discussion regarding attendance, indications of continued or escalating risk, and the offender's cooperation with the program:
 - From probation to all programs and service providers to which the probationer has been court-ordered and vice versa
 - From all court-ordered programs and service providers working with the probationer to probation
 - Between all programs and service providers to which the probationer has been court-ordered
5. Provide appropriate program referrals utilizing *Appendix 7F: Domestic Violence Resources* (developed locally) and *Appendix 7A: Rehabilitation Program Considerations in Domestic Violence Cases*.
- a. Refer the probationer to specialty programs appropriate to the following:
 - Severity of offense and risk posed by the offender
 - Whether the probationer was the object of an ongoing pattern of violence from the victim in this case
 - The probationer's cultural identity and social needs (to the fullest extent possible)
 - b. Use lengthier programs for higher risk probationers (though not necessarily more rigorous programs).
 - c. Use programs that allow quick entry into programming, unless there is reason for delay which outweighs the beneficial effect of immediate programming.
 - d. Be aware of other risk needs that should be addressed to avoid ongoing criminality.
 - e. Require that probationers attend assigned programs as soon as possible. If there is a significant delay and an opening in an alternative group is available, require probationers to attend the alternative group while waiting to get into assigned programming.
 - f. Provide rehabilitation programs with the PSI, the History of Domestic Violence Summary (see *Appendix 1E: History of Domestic Violence Summary*), and a summary of the sentence and probation conditions.

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- g. Provide rehabilitation programs with information regarding any concerns that the victim has asked probation to share.
 - h. Provide probationers with information regarding community and social service resources that would be helpful, though not required, to successfully complete probation.
6. Coordinate between the probationer and treatment programs or social service agencies to ensure programming that fits the severity of the offense, risk to the victim (including secondary victims), and promotes compliance. Assist the probationer in entering and successfully completing rehabilitative services.
7. When sharing confidential information with treatment or other program providers, make clear that confidential information cannot be shared with the offender.
8. Be aware of and responsive to situations and behaviors associated with an increased risk for re-offense with probationers who engaged in a patterned use of intimidation, coercion, and violence toward the victim or victims. See *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*. Be aware of the following factors that often precede new assaults:
 - a. Inability of probationer to stop excessive drug or alcohol use
 - b. The victim making a permanent break with the probationer
 - c. The victim entering a new relationship
 - d. The victim cooperating with any adversarial legal action against the probationer
 - e. Obsessive behaviors toward the victim or children
 - f. Stalking or surveillance of the victim or her/his family and/or friends
 - g. Pressuring his/her way back into the victim's home
 - h. The victim seems unable to speak to the probation officer without fear or exhibits anger toward intervening practitioners
9. Be cognizant of and responsive to situations and behaviors associated with an increased risk for re-offense with probationers who have documented histories of being abused by the victim in the case and who are now on probation for using reactive violence.
 - a. Indications of victims of abuse who kill their abusers may include:
 - Access or prior use of weapons
 - More than 10 violent incidents in the last year at the hands of her or his abuser
 - Prior police intervention in one or more domestic violence calls
 - Isolation from family and friends
 - Prior strangulation by her or his abuser
 - Traditional relationship (married, children, lengthy relationship)
 - Being continually subjected to sexual and or physical abuse by her or his abuser
 - Increased sense of entrapment
 - b. Indicators of probability of reoffending include:
 - Inability to stop drug and alcohol use

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- Probationer’s abuser extending the abuse to the children
 - Probationer experiencing continued sexual and physical abuse by her or his abuser
 - Increased economic dependence on abuser or financial instability
- 10.** Be cognizant of and responsive to situations and behaviors associated with an increased risk of violence by probationers with mental health problems.
- a. Not having access to or not using prescribed medication
 - b. Becoming homeless
 - c. Being noncompliant with case management or other mental health programming
- 11.** Be cognizant of and responsive to situations and behaviors associated with an increased risk of violence by probationers with drug and alcohol addictions or abuse. These include:
- a. Failure to maintain abstinence when use is associated with violence
 - b. Failure to complete treatment when use is associated with violence
 - c. Becoming homeless
- 12.** Conduct routine monitoring for:
- a. Compliance with all probation conditions
 - b. New no-contact orders, orders for protection, and police contact
 - c. Changes in life circumstances that might indicate risk
 - d. Alcohol and drug use if related to probation conditions or the victim’s concerns
 - e. Participation in and compliance with rehabilitation programming
- 13.** Whenever any of the following events occur, contact the victim to check on her or his safety:
- a. Suspected violation of probation
 - b. Offender misses two program groups in a row
 - c. A new no-contact order
 - d. A new order for protection
 - e. A dirty UA
 - f. Offender misses two meetings with probation officer
- 14.** To the extent possible, collaborate and conduct field work with local police.
- a. Monitor the probationer’s activity in the community.
 - b. Check on the welfare of victims.
 - c. Assist police investigations of new incidents of alleged domestic violence, particularly when the probationer is gone when the police arrive on the initial call and remains at large in the community.
 - d. Assist the police in locating probationers in order to execute warrants.
 - e. Identify probationers needing increased monitoring in the community.

- f. Build relationships in the community with those who might offer resources to defendant and victims.
15. Respond to violations of probation in accordance with **Protocol 4: Probation Violations and Revocation** to ensure sure and swift consequences for continued acts of intimidation, coercion, or violence.
16. Make every attempt to shield the victim or victims from retaliation when taking enforcement action for probation violations.
17. Maintain case notes in sufficient detail, to:
 - a. Provide the documentation necessary to consistently monitor and enforce probation conditions.
 - b. Keep other interveners informed of the probationer's actions.
 - c. Ensure consistency across a temporary or permanent change in the assigned agent.
 - d. Prepare required reports to the court and other parties.
18. As new information regarding violence, coercion, or intimidation is gathered, update the HDVS.
19. As necessary for any scheduled judicial review hearings, provide the court with periodic updates regarding the offender's compliance with probation.
20. Whenever possible, notify the victim in advance of the offender's discharge from probation, sentence expiration, or discharge from the workhouse.

Cognitive-behavioral

programs for batterers were the most commonly used, effective for most offenders, and less costly to administer.

– E. Gondolf (2004)

Protocol 4: Violation and Revocation of Probation

1. On suspicion of a probationer's violation of any condition of probation, investigate to determine if the suspicion is **correct, provable, and linked to victim safety** (including secondary victims); proceed with the violation any time there is probable cause for the violation and it appears likely that the clear and convincing standard can be met.
2. Consult with a supervisor and, except in extraordinary circumstances, take one of the following actions when it appears the probationer has violated probation:
 - a. Respond with a negotiated, non-incarceration option, such as increased reporting, increased monitoring, or residence restrictions, and document the violation and response in CSTS notes.
 - b. Issue a probation officer's order to detain (Blue Warrant, Minn. Stat. § 401.025 or 244.195).
 - c. Return to court for a probation violation proceeding.
3. Consider the following factors when determining the appropriate response to a violation:

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- a. Whether the violation is based upon a new allegation of assaultive, threatening, or stalking behavior, or a crime against the property of the current or a former victim
 - b. Ongoing risk assessment to determine factors and behaviors linked to victim safety (as included in *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*), the strength of those links, and adapting the probation response accordingly
 - c. Concrete changes the probationer has made to date
 - d. General community safety
 - e. Current and past adjustment to probation
- 4.** If the violation is based upon an allegation of assaultive, threatening, or stalking behavior or a crime against any victim, the property of a current or a former victim, or violation of a no contact order provision, do not wait for a new charge to be resolved before filing a violation.
 - 5.** After filing a violation, contact the appropriate prosecuting attorney with notice that the violation has been filed and to request the participation of a prosecuting attorney at all court proceedings, including the admit/deny hearing. Discuss any prosecution concerns about proceeding with the violation before the new charge and inform prosecutors whether probation is making either of the following requests:
 - a. That the probation violation hearing be held immediately, without waiting for the new charge to be resolved, as addressed in *Appendix 7H: Training Memo—Legal Considerations in Probation Violations Based on a New Offense*
 - b. That the probationer be held without bail pending resolution of the probation violation in those cases where the court chooses not to hear the violation before the new charge is resolved (if the defendant does not pose a high risk of a new offense, holding without bail may be unnecessary)
 - 6.** In responding to violations without a strong link to victim safety and which do not involve allegations of assaultive, threatening or stalking behavior or a crime against the property of the current or a former victim, consider whether a negotiated option or order to detain is an adequate response.
 - 7.** Except in extraordinary circumstances, recommend a warrant (as opposed to summons) when bringing a violation to court.
 - 8.** Discuss the case with the supervisor before filing for a violation hearing if there are doubts about provability.
 - 9.** Prepare the following documents when submitting the violation to the court:
 - a. Recommendation of the Probation Officer and Order Vacating Stay of Execution of Sentence
 - b. Order of the Court Vacating Stay of Execution of Sentence
 - c. Probation Violation Report, including an updated HDVS.
 - 10.** Clearly identify the condition(s) the probationer is alleged to have violated and detail the ways in which it has been violated. Never place responsibility for an arrest, probation violation, or other consequence on the victim or other third party.
 - 11.** Use available opportunities to make it clear that an arrest, probation violation, or other consequence is the result of the probationer's behavior and the probation officer's exercise of his or her authority and duties.

- 12.** In recommending a consequence to the court for a probation violation, consider the issues related to different kinds of domestic violence cases, as addressed in the following guidelines:
- a. The primary consideration should be the effect of continued probation on the safety of the victim (including secondary victims).
 - b. Strongly consider recommending that the probationer serve part or all of the remaining time whenever the violation involves the factors or behaviors included in *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*.
 - c. Where revocation is not being recommended, consider what sanctions and additional conditions, if any, are likely to increase victim safety and probationer accountability.
 - d. When the conviction includes a violation of an order for protection and the probationer refuses or fails domestic violence treatment, recommend that the sentence be executed pursuant to Minn. Stat. § 518B.01, subd. 14 (b).

Appendices to Policy on Supervising Probationers

The following appendices are attached to and included as part of the policy on probation supervision in domestic abuse cases:

- *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*
- *Appendix 1B: Training Memo—Risk and Dangerousness*
- *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*
- *Appendix 7A: Rehabilitation Program Considerations in Domestic Violence Cases*
- *Appendix 7B: Conditions of Probation*
- *Appendix 7C: Training Memo—Supervised Release in Domestic Violence Cases*
- *Appendix 7D: Firearms Prohibitions*
- *Appendix 7E: Monitoring Conditions of Probation in Domestic Violence Cases*
- *Appendix 7F: Domestic Violence Resources* (local probation administration should make a list of approved services and programming available for probationers)
- *Appendix 7G: Training Memo—Probation Violation Law*
- *Appendix 7H: Training Memo—Legal Considerations in Probation Violations Based on a New Offense*
- *Appendix 7I: Training Memo—Probation Transfer in Domestic Violence Cases*

See the Blueprint Supplement for appendices referenced in the policy and protocols. All training memos are based on Minnesota law. Other jurisdictions should make modifications as necessary.

PROBATION AND BAIL: ADMINISTRATION AND SUPERVISION

FRAMEWORK: ADMINISTRATION AND SUPERVISION OF THE COUNTY PROBATION RESPONSE TO DOMESTIC VIOLENCE CASES

Domestic violence is a complex crime because it encompasses very different acts of violence occurring in very different circumstances for very different reasons and a single approach to deterrence will not work. The presentence investigation writer is charged with providing as full a picture as possible of the kind of violence, the frequency and severity of violence, and, when possible, the circumstances under which the offender is using the violence. This picture enables the differentiated response to the various types of domestic violence cases before the court.

Close supervision of domestic violence offenders coupled with sure and swift response to violations helps reduce repeat violence. When a defendant is placed on probation community agencies are also drawn into the process of change. The interagency approach expands as programs specializing in chemical dependency, battering, victim support, community education, and economic assistance come together to prevent further abuse. The probation officer is the linchpin in connecting these possibilities for help in an accessible and meaningful way for the probationer.

The supervising probation officer is also the only practitioner in the system that develops an ongoing relationship with the offender. As such, probation officers are the best-positioned to relay and reinforce the messages intended by the overall response; namely, that change is possible, being accountable is the first step toward change, continued abuse will not be tolerated, and there is a network of help available.

County probation administrators and supervisors have a key role in providing the environment, support, and oversight that makes this response possible.

POLICY: ADMINISTERING AND SUPERVISING THE PROBATION RESPONSE

In addition to adhering to general agency policies, agency administrators and supervisors will take the following actions in organizing the County probation response to domestic violence offenders, using the protocols and training memos referenced and included as part of this policy and according to their respective roles and job functions.

1. Implement the provisions of **Probation Protocol 5: Organizing the Probation Response to Domestic Violence Cases**.
2. Ensure that the following elements are established and provided in the probation response to domestic violence cases:
 - a. Availability of accessible programs for offenders on probation in domestic abuse–related cases
 - b. Efficient and timely access to records by supervising probation agents
 - c. Language interpretation services

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- d. Program evaluation and quality control specific to all domestic abuse–related policies and protocols
 - e. Training focusing on the *Blueprint for Safety*
 - f. A combination of hiring practices and/or training that results in probation agents that develop a complex understanding of domestic violence
3. Select 3 to 5 cases to review quarterly with each agent for compliance with all aspects of the policies and protocols

Protocol 5: Organizing the Probation Response to Domestic Violence Cases

Prepare for implementing this protocol by reading the following probation protocols:

- **Protocol 1: Domestic Violence Presentence Investigation**
- **Protocol 2: Victim Engagement Guidelines**
- **Protocol 3: Supervision of Domestic Violence Probationers**
- **Protocol 4: Violation and Revocation of Probation**

Agency supervisors and administrators are responsible for organizing the probation response to domestic violence offenders, as noted below, according to their respective roles and job functions.

1. Conduct regular reviews of presentence investigation reports and provide feedback and guidance to PSI writers.
 - a. Each quarter, review three presentence investigations completed in domestic abuse–related cases by each probation officer assigned to complete PSIs with an eye toward its compliance with the Blueprint policies and protocols.
 - b. Pay particular attention to whether and how the PSI pays attention to victim safety needs (including secondary victims) and reflects the needs of specific populations.
 - c. Meet with the PSI writer as needed to review the results and provide feedback and guidance.
2. Conduct regular reviews of the probation response to domestic abuse–related cases, with specific attention to enforcement of conditions of probation and the response to violations.
 - a. Each quarter, review three domestic abuse–related cases by each probation officer assigned to supervise such cases.
 - Review each case for compliance with policies and protocols.
 - Pay particular attention to whether and how the supervising agent responds to reported or possible violations.
 - Meet with the supervising agent as needed to review the results and provide feedback and guidance.
3. Assign all cases where strangulation or stalking is part of the current offense, or where there is a history of such actions, to high-risk supervision.
4. After reviewing the ODARA and LSI-R assessments and reviewing the aggravating circumstances of a case, as they relate to the factors discussed in *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*, determine the level of supervision appropriate for each probationer. (It

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is recommended that probation use an actuarial tool such as ODARA or LSI-R; however, there are other options for local assessment tools.)

- 5.** Ensure that interpreters are available to probation officers as needed in communicating with offenders and victims.
 - a. Where possible, assign the offender to a probation agent who can communicate in the offender's language.
 - b. Utilize the Language Line or other designated sources for interpreters.
- 6.** Work toward ensuring a manageable case load for each probation officer as follows:
 - a. 30 to 40 cases per agent for high-risk offenders
 - b. 45 to 50 cases per agent for moderate risk offenders
- 7.** When resources do not permit lower case loads, identify and implement alternative procedures, including the use of group supervision. If the caseloads preclude probation officers from carrying out the policies and protocols of the department, the supervisor shall prioritize the tasks to be performed by the agents.
- 8.** Ensure that agent referrals to domestic abuse treatment utilize programs that reflect guidelines for maximizing the effectiveness of such programs, including:
 - a. Enrollment in the most appropriate program as soon as possible after the start of probation
 - b. Swift and certain response for noncompliance with program requirements
 - c. Strong communication between program facilitators and probation
 - d. Intensive programming if the offender has engaged in severe or ongoing violence, intimidation, and coercion of an intimate partner in conjunction with a history of non-domestic violence crime
- 9.** Work with domestic abuse and other treatment programs to provide sliding fee scales.
- 10.** As resources permit, develop and implement an in-house open-start oversight group for offenders to provide agents and probationers options when entry into a domestic abuse treatment is delayed or when appropriate domestic abuse programming is not available. Rather than allow offenders to not enter a program or be on a long waiting list for a program, enter them into a probation-led group that meets weekly or bimonthly. Contact BWJP for information on content of probation-led groups (technicalassistance@bwjp.org).
- 11.** Establish procedures for a response to victims who contact the office prior to assignment of a supervising agent.
- 12.** Maintain current lists of community resources to which offenders and victims can be referred for assistance.
- 13.** Work with other agencies to establish procedures whereby other intervening agencies provide automatic notification of their contacts with offenders.
- 14.** Work toward developing outcome and compliance measures for domestic violence–related cases.
- 15.** Provide or arrange for training on conducting the presentence investigation and supervising offenders in domestic abuse-related cases.
- 16.** Update policies, protocols, and training memos annually to reflect changes in law.

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17. Assess the availability of accessible programs for offenders on probation in domestic abuse–related cases, including:
 - a. Reasonable waiting lists
 - b. Accommodation of language
 - c. Accommodation of cognitive and physical disabilities
 - d. Cultural accessibility
 - e. Geographic accessibility
 - f. Financial access
 - g. Programming that addresses multiple needs
18. Work with other agencies to ensure efficient and timely access to records by probation agents, including access to records related to:
 - a. Court proceedings
 - b. Past probation PSIs and case notes
 - c. Criminal history
 - d. All new local police contact
 - e. Past and current protection or harassment order affidavits and outcomes.
 - f. Past police reports related to domestic violence on the probationer
 - g. Child protection reports relevant to the probationer’s domestic violence offenses
 - h. Juvenile court records
19. Conduct program evaluation and quality control specific to Blueprint policies and protocols and communicate with probation officers to clarify and reinforce policies and protocols.
20. Institute a combination of hiring practices and training that result in an understanding of domestic violence by all probation agents on staff.

Appendix to Policy on Administering and Supervising the Probation Response

The following appendices are attached to and included as part of the policy on probation supervision in domestic abuse cases:

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- *Appendix 7A: Rehabilitation Program Considerations in Domestic Violence Cases*
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- *Appendix 7C: Training Memo—Supervised Release in Domestic Violence Cases*

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- *Appendix 7D: Firearms Prohibitions*
- *Appendix 7E: Monitoring Conditions of Probation in Domestic Violence Cases*
- *Appendix 7F: Domestic Violence Resources* (local probation administration should make a list of approved services and programming available for probationers)
- *Appendix 7G: Training Memo—Probation Violation Law*
- *Appendix 7H: Training Memo—Legal Considerations in Probation Violations Based on a New Offense*
- *Appendix 7I: Training Memo—Probation Transfer in Domestic Violence Cases*

See the Blueprint Supplement for appendices referenced in the policy and protocols. All training memos are based on Minnesota law. Other jurisdictions should make modifications as necessary.

To us,

implementing the Blueprint is homicide prevention.

– John Choi, St. Paul City Attorney (Aug. 24th, 2009)

CHAPTER 7 ENDNOTES

1. Gondolf (2012, p. 193) recommends understanding risk assessment as a process where it is essential to have multiple sources of information, and the perception of the victim is incorporated.
2. Cattaneo and Goodman (2005).
3. "Swift, certain, and progressive responses to non-compliant behavior sends offenders a clear message that such behavior is not tolerated and that offenders are accountable for their own behavior." (F. S. Taxman, D. Soule, and A. Gelb, 1999).
4. Gondolf (2012, p. 193) argues that risk is dynamic, it changes at each point of intervention and with each shift in a relationship. Therefore, a one-time, stand-alone risk assessment is not enough.
5. Paternoster et al. (1997) discuss the role of fair procedures in domestic violence cases.
6. A victim's perception of danger is a powerful predictor of re-assault (Roehl, et al., 2005, p. 14; Gondolf, 2004; Weisz, et al., 2000).
Ongoing risk assessment in domestic violence cases is discussed in Gondolf (2012); Kropp (2008) and in Douglas and Kropp (2002).
While a victim's prediction of re-abuse should be taken seriously, victims can fail to recognize the potential for femicide or attempted femicide (Roehl et al., 2005, p.14; Weisz et al., 2000, p. 7)
7. Belknap and Sullivan (2003); Ford and Breall (2000); Ptacek (1999).
8. The research on the effectiveness of batterer intervention groups in reducing violence is mixed, but overall shows some positive impact.
For a summary of batterer intervention see Gondolf (2012). Also see Gondolf (2004) and Saunders (2008).
For a critique of experimental studies, see Gondolf (2001).
9. See Chapter 1, for discussion of Sure and Swift Consequences.
10. Dutton et al. (2005) present an overview of domestic violence when criminal conduct is linked to coercion. They point out that "coercion in which an assault is imbedded helps to define its level of severity" (p. 2).
In discussing domestic violence, Erskine (1999, p. 1209) addresses multiple criminal acts, from misdemeanors to felonies.
11. Adding a victim's prediction of reassault significantly increases the accuracy of risk assessment, as addressed by; Gondolf and Heckert (2003); Heckert and Gondolf (2004); and Weisz, et al. (2000, p. 86).
12. Sullivan and Bybee (1999, p. 43) found that, compared to victims who did not work with advocates, victims who worked with advocates were more than twice as likely to live without violence for the next two years.

Research from Quincy, MA by Buzawa et al. (2000) also found victim advocacy had a positive impact on prosecution.

The effect of working cooperatively with victims is discussed in Belknap and Sullivan (2003); Ford and Regoli (1993); and Goodman and Epstein (2008).

13. Probation officer Jim Hendersen advises that "offenders should receive swift, clear, meaningful, predictable, and certain consequences for violating probation." See BWJP webinar *The Impact of Differential Sentencing of Batterers*, May 2014, is available at <http://www.bwjp.org/resource-center/resource-results/the-impact-of-differential-sentencing-of-batterers.html>

Recent work on motivational interviewing shows promise for increasing compliance and decreasing abuse for domestic violence offenders. Motivational interviewing trainings for probation officers are available from the National Institute of Corrections (NIC). Also see Walters et al. (2007).