

The

blueprint *for*safety

An Interagency Response to
Domestic Violence Crimes

INTERAGENCY APPROACH
COLLECTIVE GOALS
CONTEXT & SEVERITY
A PATTERNED CRIME
CONTINUING ENGAGEMENT
SWIFT & SURE CONSEQUENCES
MESSAGES OF HELP & ACCOUNTABILITY
REDUCE DISPARITY OF IMPACT

Adapted from the Saint Paul Blueprint for Safety

Introduction

For more information and to download materials:

Praxis International:

Email: blueprint@praxisinternational.org

Saint Paul Police Department:

www.stpaul.gov/police

Saint Paul Domestic Abuse Intervention Project:

www.stpaulblueprintsdpip.org

Blueprint for Safety

An Interagency Response to Domestic Violence Crimes

Adapted from the Saint Paul Blueprint for Safety

Archbishop Desmond Tutu tells us that justice demands three things:
that the truth be told, that to whatever extent possible the harm be repaired,
and that the conditions that gave rise to the injustice be forever altered.

*The Blueprint is dedicated to all people whose bodies bear the marks
of this injustice and to those who are committed to altering the
conditions that give rise to this devastating form of violence.*

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- Battered Women's Legal Advocacy Project
- Breaking Free
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- Domestic Abuse Project
- Hope Center
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- Minnesota Coalition for Battered Women
- Project Peace

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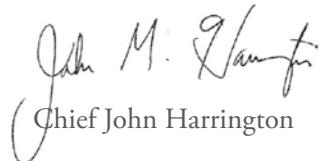
We are proud to convey to you the collective work of ten agencies that took up the challenge to write a blueprint for every Minnesota community struggling with the destruction caused by violence in our homes. Our work was made possible by the generous support of the Minnesota Legislature. The "Saint Paul Blueprint for Safety" is limited in that it addresses the roles and functions of criminal justice practitioners only. It is expansive in that it goes beyond what any community has yet been able to fully achieve.

When writing policies and protocols for so many agencies we often heard people say, "Well, this isn't a policy it's just what we do" or, "No need to write that down; everybody knows to do that." Indeed, over ninety percent of what is in the Blueprint is done by at least some practitioners some of the time. The Blueprint is the only document like it in the country, however, for two reasons. First, it is written as one document, with a chapter for each agency and each chapter inextricably linked to the whole. It is not a collection of good policies, but a collective policy. Second, the Blueprint operates on three levels simultaneously: on the level of (1) what victims need to be safe, (2) what practitioners need from each other to do their jobs, and (3) what is required by each worker and agency to hold the offender accountable.

Crafting the Blueprint was no small feat; implementing it will require even more commitment on the part of agencies, their leaders, and the countless practitioners that make up this massive entity called the criminal justice system. That commitment begins with a reading of the Blueprint that is motivated by a good faith attempt to make it come alive and realize its very ambitious goal: namely, to fulfill Saint Paul's commitment to reducing homicide and making our homes places of refuge rather than incubators for more suffering, crime, and violence. The Blueprint envisions a response that holds that every victim is worth fighting for and every abuser must be held to account. We hope that the Blueprint inspires other Minnesota communities to make a similar commitment to its goals and process of review and change.

We are grateful for the opportunity to have created the Blueprint and humbled by the prospects of what now lies ahead to fully implement its promise.

Sincerely,



John M. Harrington
Chief John Harrington



Saint Paul City Attorney John Choi



The Most Livable
City in America

BECOMING A BLUEPRINT COMMUNITY

Becoming a Blueprint Community

The Minnesota legislature has made The Blueprint for Safety (Blueprint) available to all Minnesota communities. The Blueprint is just that--a set of plans. Most of them are based on practices already tried and tested in many Minnesota cities and towns. The Blueprint's contribution is its meticulous attention to the details of interagency case processing that often proves to be the place where fatal errors occur. Across the country, we have learned the hard way that when agencies do not coordinate their interventions on multiple levels of information gathering and sharing, nor use sound intervention approaches, tragedy occurs. Most deaths that appear to have been preventable are usually not the result of an individual mistake; rather, it is because we, as an entire system, were unable to connect the dots and act in a unified and strategically sound way.

To be a Blueprint Community requires two commitments:

1. To recreate the Saint Paul experience of agency leaders, practitioners, and victim advocates collaborating to write each participating agency's policies and protocols. This multi-agency writing process attends to all the details of moving a case from one processing step to the next, so that each person who touches the case is positioned to act in ways that protect victims from ongoing abuse and holds offenders accountable. This means that no community can simply cut and paste these policies into a local document. At the same time, no community is burdened with starting from a blank slate. Just as the contractor, who uses a generic blueprint, makes specific site adaptations to the configuration of the lot, soil conditions, homeowner's budget, and local building codes, so will local jurisdictions have slightly different versions of these basic policies and protocols. The time, research,

and debate that went into this document (like the architect's blueprint) will greatly reduce the time and effort local communities will need to write their own policies and protocols addressing the very unique crime of domestic violence.

2. To adhere to the foundational principles described in the Blueprint. The six principles discussed in Chapter 1 are the glue that philosophically holds together this approach to domestic violence cases. They are fundamental to the Blueprint concept. We do not mean to imply other approaches will not work; rather, that the term Blueprint Community means something specific. To be a Blueprint Community means that the major criminal justice agencies have agreed that the six foundational principles should guide the intervention work at each step of case processing. Differences that arise about how to undertake cases or policy and procedural language, should be resolved in a way that is consistent with these six principles.

How should a community start the process?

1. The first step is to determine if there is sufficient political will among the criminal justice system agencies to take on such a project. Unless the leadership in law enforcement, prosecution, probation, and the bench are all committed to a cohesive approach to these cases, the Blueprint will never become a reality in that community. It is best to wait until all the core agency leaders are on board, than to foist a project onto one or more reluctant agencies. The latter approach may result in producing a form of resistance that a Blueprint Community agrees to put aside.

2. The advocacy program and agency leaders need to agree on a central role for advocates to comment on and help shape policies and protocols, even though the Blueprint does not have a set of

policies and procedures for advocates. Advocates should not be seen as a part of the system nor be expected to engage in a case management role. Please review the companion piece, *The Distinct and Vital Role of a Legal System Advocate*. For those communities who do not have an advocacy program, The Minnesota Coalition for Battered Women (Jowen@MCBW.org) can help them find this key resource.

3. Next, determine who will coordinate the effort. There needs to be at least one agreed upon person or agency in the community who will act as the point person for organizing the project. In Minnesota, there are a number of organizations that can assist jurisdictions wanting to become a Blueprint Community.^[1] Assistance can range from helping an inter-agency group get started, to helping a community through the entire process.

4. Next, hold an exploratory readiness meeting between senior representatives of the major agencies and a spokesperson from another Blueprint Community to obtain a briefing on the scope, demands, and benefits of such a project.

5. If the decision is to go forward, then form a working committee to adapt and implement the Blueprint in your community. That committee, which needs representatives from each agency, will need to read the Blueprint, adapt the policies, protocols and supplemental material to their local community, and then ensure the Blueprint is implemented.^[2] (See Using the Blueprint, page 16).

6. Be inclusive. Not only does the Blueprint approach call on agencies to work together to map out procedures and protocols, it also calls for the inclusion of people in the community that are most impacted by such public policies. If certain populations are overrepresented in the local criminal justice system, representatives

of those communities should be meaningfully consulted during the planning process.

7. Build into the implementation plan a way to sustain the vision of the Blueprint reforms. Any successful effort to implement a Blueprint approach will require a long term commitment. A person or organization should be authorized and adequately resourced to monitor and actively sustain an ongoing effort. Avoid policy drift; think sustainability.

¹ Consulting organizations include Praxis International (email: Blueprint@praxisinternational.org), The Minnesota Coalition for Battered Women (email: Jowen@MCBW.org) and The Battered Women's Justice Project (BWJP) (email: technicalassistance@BWJP.org).

² All of the Blueprint training materials will be available on the Praxis International website (www.praxisinternational.org) May 2010.

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FOUNDATIONS OF EFFECTIVE INTERVENTION

Minnesota has long been regarded as a leader in the national efforts to end intimate partner violence. In 1974, Women's Advocates was one of the first shelters to open in the country and became a model for the thousands of shelters to open in the next three decades. The Domestic Abuse Project in Minneapolis was among a handful of batterers' programs to open in the early 1980s and remains a leader in the field of abuser treatment. Duluth was the site of the first interagency intervention project and in 1982 was the first city to mandate its law enforcement officers to arrest in domestic abuse cases. It has won international acclaim for its pioneering work in interagency collaboration. Beginning in the 1970s, the Minnesota Legislature has consistently produced what is considered one of the country's most comprehensive bodies of domestic violence legislation. All eleven tribes and every region of the state have advocacy programs for victims of domestic violence. The Minnesota Coalition for Battered Women is a strong voice for victims in every major public policy making area affecting victims of battering. Programs in Olmsted County are collaborating with child protection agencies to find ways to help victims of battering and their children recover from the destructive impact of battering on the parent-child relationship. New initiatives are exploring how to work most effectively on behalf of children when domestic abuse leads to divorce.

It is therefore not surprising that the next generation of innovation comes from the collaborative work of community groups, advocates, leaders in the criminal justice system, and the state legislature. In 2007, the Minnesota Legislature awarded a grant to the City of Saint Paul to write a comprehensive plan integrating the knowledge gleaned from thirty years of research, demonstration

projects, and practice into a "blueprint" for city and county agencies responding to misdemeanor and felony assaults. There are two versions of the Blueprint, one specifically for the City of Saint Paul and this one for any community to use as a template or guide to create their own customized version. Both documents are based on Minnesota law and legal terminology.

The *Blueprint for Safety* (Blueprint) is the result of conversations and consultation with community members, practitioners, advocates, victims, defense attorneys, researchers, agency leaders, and experts in confronting this crime both locally and nationally. In the end, the leadership of the core intervening agencies and the district court bench create a successful *Blueprint Community*. Such leadership is the basis for any community's effort to confront this devastating form of violence.

The Blueprint is anchored in six foundational principles we have identified as essential characteristics of intervention that maximize safety for victims of domestic violence and holds offenders accountable while offering them opportunities to change.

1. Adhere to an **interagency approach and collective intervention goals**
2. Build attention to the **context and severity** of abuse into each intervention
3. Recognize that most domestic violence is a **patterned crime** requiring continuing engagement with victims and offenders
4. Ensure **sure and swift** consequences for continued abuse

5. Use the power of the criminal justice system to **send messages of help and accountability**
6. Act in ways that **reduce unintended consequences and the disparity of impact** on victims and offenders

Endnotes highlighting research findings, academic literature, and intervention models supportive of these foundational elements can be found at the end of each chapter, with a complete bibliography found in chapter 9.

1. Interagency approach¹ and collective goals

Processing a single domestic violence related case involves five levels of government and over a dozen intervening agencies. Hundreds of practitioners might touch these cases every day. An effective response, meaning one that leads to an end to the violence, requires *solid coordination* across and among the many practitioners involved, as well as a strong *system of accountability*. Practitioners are committed to the mission, function, and goals of their respective agencies, but in an interagency approach they are simultaneously accountable to the victim on whose behalf we intervene, to the offender with whom we intervene, and to others intervening in the case. This interagency approach requires a *system of communication* in which each practitioner receives and relays information in ways that make it possible for everyone to act with the best knowledge of the case. The legal system is structured to assign distinct roles with specific powers to create a system of checks and balances that prevents the misuse of State power. That system is the backbone of our justice system. That doesn't mean however, that practitioners in these various roles should not attempt to agree on some shared assumptions about risk management, deterrence and safety. In fact, the absence of a cohesive approach often thwarts the possibility of justice in these cases. Finally, an effective interagency response requires a *commitment to excellence* by each intervening agency and

practitioner, as well as a *commitment to challenge one another and actively engage in resolving disagreements*. When so many agencies are involved in case processing there will be differences, arguments, and unmet expectations; this is not the problem. The problem arises when there is no ongoing structured way to resolve those conflicts. Interagency approaches succeed when everyone focuses on a shared goal that is centered on the needs of the victims and families harmed by the violence and brutality.

The criminal court process demands a high level of coordination to carry out the dozens of case processing steps involved in the response. The criminal codes, rules of evidence and procedure, case law, administrative forms and processes, calendars and schedules, databases, and information sharing protocols dictate how interagency collaboration is organized. This Blueprint provides additional structure by introducing coordinating elements designed specifically to enhance approaches to domestic violence related cases:

- In a criminal domestic violence case that involves over one hundred institutional steps, the Blueprint creates **written policies** for each core processing point. Beginning with the 911 operator and ending with the probation officer who discharges a case months or even years later, each policy is written with every intervener's needs in mind. The Blueprint's interlocking policies serve two goals: to standardize research-based practices and processes so that the public as well as system practitioners can count on a consistent, effective, and fair response; and to bring agencies with distinctive missions and goals together under a common set of collective goals centralizing victim safety and offender accountability. By agreeing on some fundamental intervention principles, we offer both victims and offenders a system that is clear in its messages, expectations, and actions.

- Each policy is accompanied by **administrative protocols or procedures** that coordinate workers' actions while simultaneously avoiding turning each practitioner into a robot, devoid of professional skills and judgment. Every form, matrix, set of guidelines, report writing format, and assessment tool has been designed to address the unique characteristics of this crime and the interagency nature of case management.
- Via a **system of documentation and information sharing**, each intervention step is woven together with subsequent steps in case processing. The legal system is a text-based system. What a law enforcement officer is trained and required to record about an incident has an impact on charging, trial decisions, sentencing, probation conditions, and rehabilitation programming. Risk scales, charging guidelines, and sentencing matrices are significant factors in how a complex institution processes thousands of cases. The Blueprint uses new and enhanced approaches to gathering, recording, and disseminating information on cases. This information sharing system is linked to agreed-upon intervention goals in domestic violence cases and to efforts to coordinate interventions across agencies.
- Each policy also sets a foundation from which agencies and practitioners can clearly delineate their respective **roles and functions**. A multiagency coordinated response requires connections between and across practitioners so that it is impossible to lose sight of the nature of the harm, the likely danger, and the opportunities for action and change in each case. The Blueprint calls on each practitioner in each intervening agency to be oriented toward collective goals, as well as toward those of their own agencies. Those collective goals are to (a) protect adult and child victims from ongoing abuse, (b) impose meaningful consequences for the harm, (c) help offenders who are willing to change, and (d) reduce the

unintended negative consequences of state intervention for individuals and communities.

2. Attention to context and severity

Domestic violence is a broad category that has come to include many kinds of behaviors within relationships between family and other household members. It jumbles together vastly different actions: from throwing a shoe at a partner who gambled away \$1000, to strangling a woman until she loses consciousness because she wants out of the relationship. It groups together slapping someone on the arm with head-butting. The term domestic violence focuses attention on specific acts of violence toward a family member and obscures the context of that violence, which often includes ongoing coercion, intimidation, and emotional harm.

What has been largely submerged under the category of domestic violence is **battering**: a term recognized, defined, and brought to public attention in the 1970s by advocates responding to the realities of sustained abuse in women's lives, primarily by their intimate partners. Battering came to describe an ongoing pattern of coercion, intimidation, and emotional abuse, reinforced by the use and threat of physical or sexual violence.² As laws were enacted to protect victims of battering and hold batterers accountable, the term "domestic violence" was adopted both to be inclusive of cases where a male is the victim and to emphasize the place where the abuse is occurring, the home. Every act of violence by one person against another that occurred in the setting of the home came to have the same meaning; that is, all violence involving family members became acts of domestic violence. Laws passed with battering in mind were applied to teenagers hitting their parents, to one brother hitting another, to a husband strangling his wife, and to that wife scratching her husband in response. Slogans like "zero tolerance for violence in the home" hindered critical reflection about the differences between these acts of violence.

Chapter 1: Foundations

We have learned that applying a single treatment to such a broad range of human interactions and behaviors inhibits meaningful intervention for victims and perpetrators.³ For example, grouping all acts of violence together, regardless of intent and context, leads us to treat a battered woman or a teenage child who reacts to abuse with violence (albeit illegally) the same as the person who dominates his partner through a pattern of fear, coercion and violence. Placing all acts of relationship violence into a single category of “misdemeanor domestic violence” or “felony domestic violence” can distort our understanding of who is doing what to whom, and who needs what level of protection from whom. For victims of battering, such misunderstandings are not benign and they can have fatal effects, as analysis of intimate partner homicide confirms.⁴

Our challenge is to make visible all that we can possibly know about the full scope of abuse occurring in a relationship.⁵ Intervenors must be able to see the scope and severity of the offender’s violence, how often and under what circumstances it is occurring, and the pattern of the abuse: is it escalating, deescalating, potentially lethal, or unpredictable? We were tempted to build the Blueprint around typologies of domestic violence offenders, but in the end decided that such an approach presented too many due process and safety traps. Instead, we have built differentiation into each step of the process, supported by intense attention to gathering, documenting, disseminating, and building on new information over a period of time and frequent, ongoing contact with offenders and victims. This differentiation will allow us to accomplish the Minnesota Legislature’s charge to design a system that tailors interventions to the specifics of a case and accounts for the unique aspects and different levels of violence and abuse that offenders use and to which victims are subjected.

This process of differentiation is not new to the Blueprint. The Minnesota Legislature recognized the need for differentiation over

a decade ago when it discouraged dual arrests even when evidence existed to arrest both parties in a domestic abuse-related case. Instead, the law encouraged officers to arrest the predominant aggressor. It also gave prosecutors the ability to respond to the ongoing nature of this crime by allowing but not requiring enhancements for repeat offenders. This powerful discretionary tool permits prosecutors to respond to the specifics of a case in new ways.

To respond to domestic violence without inadvertently causing further harm requires differentiating who is doing what to whom, and with what impact. The Blueprint directs practitioners to gather information that illuminates both the pattern of abuse and the specific acts being committed. Policies and protocols then propose different interventions based on the circumstances, frequency, and severity of abuse.

3. A patterned crime requiring continuing engagement

A domestic violence crime is rarely fully resolved with the first intervention.⁶ For those offenders who have much to lose by criminal justice intervention, a single legal action may be enough to jolt them out of thinking that violence is an effective way of dealing with their relationship. For another group of offenders who batter, the violence will not stop or decrease significantly in severity until there are repeated interventions. There is a small but volatile group with long and violent criminal histories for whom sanctions have little or no impact. If the violence is caused by mental illness, brain trauma, or similar factors, multiple and very specific interventions may be necessary.

With the clear exception of stalking, most domestic violence-related criminal interventions focus on a single event of violence. But most practitioners charged with intervening in domestic violence cases understand that these single acts of violence are usually part of a patterned use of coercion, intimidation, and the

Chapter 1: Foundations

use or threat of violence—namely, battering. As such, the relationship is characterized by a “continuing” set of violent actions committed over time and in countless situations. Interventions to process one assault look different than interventions intended to stop the continued use of abuse and violence.⁷ The Blueprint is designed to do both: to process the “event of a crime” in a manner that confronts and stops the pattern of abuse and violence.

This dual approach to intervention has important implications for an interagency approach. First, we must be prepared to link seemingly isolated incidents into a more coherent picture of behavior and complexity of risk and safety for any one victim. Second, we must all see our shared task and function as reaching beyond the processing of that single event to stopping future abuse. Without significant change on the part of the offender, the coercion and violence is likely to continue and may escalate in severity and frequency.

The patterned nature of battering means that our contact with a victim or offender will likely continue for an extended period of time. This extended contact provides the opportunity to build relationships that reinforce safety and accountability in more lasting ways. If a victim is reluctant or refuses to participate in a prosecution and court intervention at a given point, how we treat her or him will shape the possibilities for a future partnership.⁸ As an investigator explained:

If I treat her with respect and let her know I'm concerned the first time I meet her, when it happens again she is more likely to take my call, or even call me. If I get frustrated and angry because I need her in order to get to him and I throw up my hands, saying 'fine, you want to live that way go ahead,' then I'm just one more person slapping her in the face.

As two patrol officers noted:

What I do and say the first time we go out on a case sets the tone for what the next officer faces. If she's hostile and in my

face and I treat her with respect and let her know we are here for her and her kids when they need us, the next officer (or maybe even the one after that) will be dealing with a different person...

Let's just put it this way, I'm not the one getting bashed up and pushed around and treated like an animal, so I'm in a better position to extend that hand. It might take two or three of us and different calls, but eventually most women get to a point where the police aren't the enemy and then they want to work together...

To produce a more meaningful and individualized response we must collaborate with victims in ways that acknowledge the nature of domestic violence as a patterned offense. This means:

- Wherever possible, minimize the victim's need to confront the offender.
- Protect the victim from retaliation when using information that she or he has provided.
- Treat each interaction with the victim as an opportunity to build collaboration over multiple interventions (even when a victim starts out hostile to those interventions).
- Stay mindful of the complex and often dangerous implications of a victim's collaboration with interveners.⁹
- 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.¹⁰
- Engage in a dialogue with the victim rather than treating her or him as a data point.
- Avoid unintentionally reinforcing the abuser's actions: 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.¹¹

4. Sure and swift consequences

In the criminal justice field, it is widely believed that sure and swift punishment is more important than severe punishment. Research into domestic violence shows this to be particularly true in confronting this crime. Evidence suggests that building sure and swift consequences into the infrastructure of case processing can reduce recidivism in some cases and the severity of ongoing abuse in others.¹²

The national data is encouraging, although day-to-day work in the criminal justice system can leave many practitioners frustrated and skeptical that the changes made over the past several decades have not reduced violence.

Batterers tend to push against any boundary set for them.¹³ The clearer we are about what behavior is and is not acceptable, the more likely the abuser is to live within those boundaries. Each policy and administrative protocol in the Blueprint, from the initial law enforcement contact through case closure, is designed with the goal of sure and swift consequences in mind, but also with the recognition that sometimes intervention goals can conflict. For example, if a probationer is arrested for assaulting his former partner, that new case may take months to resolve. The decision to pursue an immediate probation violation for committing a new offense is weighed against the possibility that the violation hearing might pose problems for the new case, which carries a more substantial and enhanced penalty. A prosecutor might prefer to wait for the new conviction to avoid such complications. However, waiting might result in the defendant having free license to harass the victim, particularly if the defendant is aware that all new cases will be rolled together and treated as one in the end. One course of action—pursuing the probation violation—reinforces swift

consequences. The other course of action—pursuing an enhanced gross misdemeanor—may reinforce more substantial consequences. The Blueprint policies and protocols address these dilemmas, sometimes with a mandate requiring practitioners to take certain actions, sometimes with a set of guiding principles or procedures, and sometimes with a training memo suggesting how to weigh the different outcomes.

The Blueprint

uses interagency policies, protocols, case processing procedures, and information sharing to (a) maximize the state's ability to gain a measure of control over a domestic violence offender; (b) use that control to intervene quickly when there are new acts of violence, intimidation or coercion; and (c) shift the burden of holding the offender accountable for violence or abuse from the *victim* to the *system*.

5. Messages of help and accountability

The single greatest obstacle to the criminal justice system's effective intervention in battering cases is the degree of psychological and physical control the abuser has over the victim.¹⁴ Batterers rely on the power they have over the victim to shield them from legal interventions. Therefore, the ability to work with a victim of battering hinges on her/his belief that (a) our intervention will counteract that power, (b) we understand the reality of living with battering, (c) we have a collaborative approach to working with her or him, and (d) we are here to help, however long it takes.

The State, and by extension the practitioners who represent it, has a powerful influence over people. The messages given to victims, offenders, and children at each point of intervention can have a deterrent effect or, alternatively, can fail to deter and therefore act as an opening for more violence.¹⁵

Consider two linchpin characteristics of battering cases involving heterosexual men.¹⁶ First is the batterer's sense of entitlement to his actions. His partner is the target of his violence not so much because of *what she did as who she is*. Research has shown that a cognitive behavioral approach that challenges the abuser's belief systems about his rights and entitlements in intimate relationships is more effective than any other rehabilitation approach.¹⁷ That approach can begin with the dispatcher and responding officer. If every intervening practitioner is coherently and consistently "on-message" the path to a rehabilitation program will be well-worn before a batterer enters his first group. This cannot happen when each practitioner offers his or her distinct and often competing message about what lies at the root of the problem and what will fix it.

Effective interventions with an offender who is a batterer are respectful, but also clear and consistent that there will be a consequence every time the offender violates a sanction or

requirement. This consequence will be sure and swift and it will be linked to what the person chose to do. For a man who batters a female partner, a previously absent message will now suddenly be very clear: he will be held accountable for the harm he has caused. Offenders need to know that the system is coordinated, the players speak to each other, and they cannot successfully play one off against the other. Most importantly, batterers have to see that the violence, coercion, and intimidation are the focus of the state's intervention, and not the victim's behavior. In this specific respect, there is no neutrality available to law enforcement officers, prosecutors, or judges; every message either challenges an abuser's sense of entitlement or reinforces it.

The second linchpin characteristic of battering is the batterer's domination of the victim—not only physically, but often economically, socially, emotionally, psychologically, and legally.¹⁸ The practitioner who talks to the victim in terms of, "Look what happened: he hit you once, he'll hit you again," misses the complex nature of batterers' domination of their victims and the far-reaching implications of that domination on the lives of women and their children. The abuser's messages to his partner are often linked to her cultural, economic, religious, or spiritual identity¹⁹ "No one will believe you... no one will help you... they all know you're crazy... you're disgracing the clan (or family)... they'll take your kids... a good (Native, African American, Christian, Hmong, Jewish) woman doesn't shame her husband this way... what about the things you've done: your drinking, your visits to the shrink?... everyone knows you're bipolar... I'm a (cop, minister, lawyer, doctor, hero in this town, stable business- man), who would believe you over me?... think of the family... the children need a father, you're taking that away."

Our messages to a victim need to be cognizant of the relentlessly destructive messages she has been told and on some level has come to believe. As interveners, every action we take and every

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statement we make can and should be aimed at an efficient, consistent, coherent, clear message that strips the abuser of his most powerful weapon: his message that “they can’t and won’t help you.”²⁰

Two caveats require attention here. First, not all cases of domestic violence involve heterosexual men *battering* women. Some involve gay men battering their partners. People with significant mental health problems may assault partners outside of the context of battering. Similarly, a small percentage of drug addicted domestic violence offenders do stop abusing their partners when they stop using drugs. Victims of battering who fight back illegally do not fit the profile we have described above. There are also women who batter their partners—primarily in lesbian relationships, but sometimes, though rarely, in heterosexual relationships. While cases involving battering by men are the vast majority processed in the criminal justice system, when practitioners encounter cases that do not involve men battering women, they need to adjust their interventions accordingly.

The second caveat is a reminder that in the courtroom the offender is presumed innocent until proven guilty. Practitioners relay messages at every point of contact with the offender and victim. Most of those points of contact are pre-conviction. Practitioners must walk a fine line between presuming guilt and being helpful and clear with suspects and victims.

Practitioners have the opportunity to counteract the messages associated with a batterer’s defense for the violence.²¹ A batterer (i.e., someone who engages in a continuous pattern of violence and abuse) has basically seven defenses, each with a supporting message. Those messages are: a) I didn’t do it; someone else did, b) the victim is lying, c) it was an accident, d) it was self-defense, e) it can’t be proved, f) yes, I did it, but you’d do it too in my situation; have you met her? Or g) I did it, but the officer messed up; they can’t convict. Batterers do not even need to present these defenses

when they can rely on their victims to be unavailable to counter or challenge the defenses. Most abusers discourage victims’ participation and reinforce the message that interveners cannot or will not help. Sometimes they do this in blatantly illegal ways; other times they rely on their power over the victim. Our pressure on a victim to cooperate and the protection we can offer is matched and often overpowered by the pressures a batterer can apply and the consequences he or she can impose for that cooperation.

The Blueprint is embedded with a set of messages that, if coordinated across practitioners and intervening agencies, can contribute to lower recidivism, increased engagement with victims, and less resistance from abusers to the state’s role in confronting the abuse. The Blueprint extends messages of help: to protect victims and to provide offenders with opportunities for change. It also extends messages of accountability: individual accountability for the harm caused by battering; interagency accountability in building and sustaining an effective response; and intervention’s accountability to ensuring protection for victims and fair, respectful treatment of offenders.

6. Reducing unintended consequences of interventions and the disparity of impact

We do not all experience the world in the same way. People’s social realities are constructed by differences in class, age, race and ethnicity, immigration status, sexual orientation, history, privilege, and many other aspects of culture and identity. As a result, we do not all experience battering in the same way, or the actions of interveners, or the impact of policies.²² An effective domestic violence intervention accounts for the realities of peoples’ unique circumstances and social standing. For example, our intervention strategies must address the relationship between violence, poverty, homelessness, gender, and race. Our interagency approach must reduce rather than emphasize the disparity between groups of

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people with different social realities. Reducing disparity requires us to find ways to sustain compassion for the people we encounter. Working in and around the criminal legal system in general—and responding to domestic violence in particular—is stressful, demanding work. We are constantly dealing with aspects of peoples' lives that are harmful, chaotic, and cruel. It is far too easy for a corrosive cynicism to set in that dismisses those before us as unworthy of help and attention, and diminishes the kind of problem solving that fosters safety and accountability on both individual and systemic levels.

Almost every practitioner in the system can cite a case where everyone did his or her job and every policy was followed, but the outcome of the case was neither just nor protective of the victim. In these familiar cases, the poor outcome is as much due to failures in our intervention strategies as it is about specific abusers. Effective intervention cannot be a blanket, one-dimensional response. Truly implementing the concept of equal treatment under the law requires thoughtful legal interventions that produce just outcomes. Under what circumstances should we adjust for the impact of policy and practice on peoples' different social realities? Whenever possible, the Blueprint introduces ways in which practitioners can reduce the level of disparity produced by their interventions.

Conclusion

The Blueprint incorporated input from hundreds of experts, beginning with dozens of victims of abuse who attended focus groups and pinpointed specific ways that interventions could better promote their safety. These experts also included 911 call takers and dispatchers, Sheriff's Department warrant officers and jail staff, law enforcement officers, prosecutors, probation agents, and judges. Community-based advocates and advocates located in the County Attorney's office weighed in on the design. We consulted with a national team of researchers and deliberated nearly every

line of the Blueprint with supervisors from each participating agency. The level of collaboration in the process demonstrates why Minnesota has long been considered a leader in the national movement to end the most common form of violence in our society.

The Minnesota Coalition for Battered Women began tracking domestic violence-related homicides in 1989. They report this grim tally: at least 454 women have been murdered by a suspected, alleged, or convicted perpetrator who was a current or former husband, boyfriend, intimate partner, or household or family member.²³ They have been shot, stabbed, strangled, and beaten to death, often with great brutality and often in the presence of or during an attack against their children as well. Unreported are the countless "near homicides"—non-fatal thanks to prompt medical attention—and the even greater number of people who endure ongoing and daily coercion, intimidation, and violence with devastating impact.

In the past thirty years, we have come a long way to building working relationships, alliances, and collaboration among advocates, law enforcement, prosecutors, probation agents, and other interveners, both with one another and with victims. These relationships have produced a far more intentional and effective approach to community intervention in what was once considered a private crime. This effort has significantly reduced intimate partner homicides overall and introduced options for victims of domestic violence that were unheard of in our parents' and grandparents' time. It has meant that women, who are most often the victims of domestic violence, live for far shorter periods of time in an abusive relationship, as do their children.

We have learned that each encounter between someone living with this violence and a practitioner in the "system" is an opportunity to interrupt the actions and patterns that sustain battering. The Blueprint organizes us to present a cohesive set of messages to victims and perpetrators. To adult victims: a) we're here to help

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when you're ready for that help; b) the violence is not your fault and you are not responsible for the perpetrator's actions; and c) I'm concerned for your safety—by working together we have the best chance of stopping the violence. To children: a) you haven't done anything wrong—it's not your fault; b) we want everyone to be safe and we're here to help you and your family; and c) we won't hurt your father or mother. To perpetrators: a) the violence must stop—there is help for you to do that and there will be consequences if

you don't; b) this arrest (or prosecution or probation) is a result of your actions and not the actions of others; and c) this is an opportunity for you to change, to reject the violence and repair the harm you have caused, and we can help you do that. In its structure and content, the Blueprint prepares agencies and practitioners across the criminal legal system to carry these messages with one voice.

UNDERLYING ASSUMPTIONS IN THE BLUEPRINT FOR SAFETY

In our grandparents' generation, women had few options for finding safety from battering. There were no organized shelters or religious or community support systems challenging the abuser (although informal confrontations occurred in many communities). Law Enforcement was expected to calm the situation down and leave. All but the most serious assaults were screened out of the system and the few arrests that occurred were rarely prosecuted. That all changed with the opening of the first shelter for battered women in 1974 and the first interagency intervention project in 1980. The last thirty-five years have seen enormous changes in the state's response to intimate partner violence. For the first time in history, the state's obligation to protect its citizens was applied to "wives."^{*}

In any society, widespread use of violence, aggression, and coercion in families is a cultural phenomenon. Such violence is rooted in unjust social structures which the criminal justice system alone cannot unravel. The criminal justice system plays two important roles in reducing violence in families, however, by (1) enforcing laws which criminalize a once accepted cultural practice (similar to the legal system's impact on drinking and driving, child labor, sexual harassment in the workplace, and exposure to secondhand smoke); and by (2) stopping individual abusers from doing more harm. It is one of many institutions that convey social norms and reign in unacceptable behavior. It strives to accomplish this in domestic violence by responding with sure and swift consequences to those whose battering makes the home a place of fear rather than a place of refuge.

For almost three decades, advocates have raised the voice of concern that too little is being done to stop the violence.

Researchers have sent mixed messages about what works and what does not work. Organized opposition to reform has grown. As one criminal court judge shared with a colleague:

I've always thought that in domestic violence cases I could be the only person in the courtroom—no defendant, no victim, no attorneys; not a clerk or deputy in sight, not a motion to rule on or decision to make—and still I'd be absolutely sure I was doing something wrong.

The judge's frustrations are shared by many in the criminal justice system. Intimate partner violence is a complex type of crime. The offender's control over the victim can make effective intervention incredibly difficult and time-consuming in a resource-starved institution. The good news is that our overall strategy of using the legal system to stop the violence has made a difference, particularly in homicide rates. Spousal homicides overall dropped by 46% between 1976 and 2004. The number of black males killed by their partners dropped an astounding 82%, black females by 56%, and white males by 55%. Between 1976 and 1992, there was also a 48% drop in severe violence.²⁴ Battered women and their children face a very different reality today than did our grandmothers.

Yet few in the "system" are comforted by these statistics when law enforcement calls and courtroom calendars are still overflowing with domestic violence-related cases. The Blueprint proposes the next level of change. It rests on years of experience in interagency coordination; research on arrests, sentencing, and treatment of batterers; statistical trends; and a year-long process of interagency negotiation in Saint Paul. The policies and protocols are designed to guide every practitioner to do everything possible each time a

*We use the word "wives" here as did Del Martin in her 1979 classic, *Battered Wives*, to speak of women in a marriage-type relationship with men.

person reaches out to this mammoth institution for help. Each assumption underlying the Blueprint is supported by research. The Blueprint is an attempt to integrate what we have collectively come to understand as best practices in the criminal justice system response to domestic violence. Those assumptions include:

- When work is coordinated across agencies and within agencies, the overall capacity to protect is increased.
- The action of one practitioner is strengthened by the cumulative effect of coordinated actions across the criminal justice system.
- When the system is organized to treat a case as part of an ongoing pattern of criminal activity rather than a singular event, outcomes improve.
- Interagency coordination is strengthened when information is organized around common risk markers that are uniformly collected and shared.
- Not all domestic violence is the same; interventions are different for violent acts that lack a context of coercion,

intimidation and control (e.g. cases of mental illness, isolated events, victims of abuse reacting).

- Sending clear and consistent messages of offender accountability and victim safety can reduce the violence.
- Whenever possible we must shift the burden of confrontation from the victim to the intervening practitioner.
- Danger and repeat violence from the perpetrator can be anticipated when certain actions and behaviors are visible.
- It is important for every act of aggression by the offender to be met with sure and swift consequences.
- Intervention policies and protocols should be adapted to diminish unintended consequences that adversely affect marginalized populations.

Archbishop Desmond Tutu tells us that justice demands three things: (1) that the truth be told, (2) that the harm be repaired to whatever extent humanly possible, and (3) that the conditions that gave rise to the injustice be changed. The Blueprint envisions and builds a path to all three for those subjected to violence, aggression, and coercion in their intimate relationships and families.

PRACTITIONERS' GUIDE TO RISK AND DANGER

The following is an abbreviated list of factors related to risk and danger in domestic violence. Most of the research is based on violence toward women, which reflects the majority of cases coming into the criminal justice system. The presence of these indicators suggests that one of the following outcomes is likely without effective intervention: the violence will (1) continue, (2) escalate, and/or (3) become lethal.

This Guide can also be found as *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* for downloading and printing as a separate document.

Practitioners should not assume that the Guide to Risk and Danger lists every possible risk marker for continued violence or lethality. Instead, the Guide uses key categories of risk to identify the indicators of severe violence or lethality. Every practitioner should be familiar with, look for, and document the key categories of risk and danger included in the guide. They can then weigh this information from the research with their own experience in domestic violence cases and the conditions highlighted in the guide as particularly associated with increased risk and lethality. When there is violence without these risk factors, practitioners should consider the probability that this is a case of either resistive violence or non-battering related domestic violence.

While a victim's perception of danger can be a very powerful predictor of re-assault, 47% of victims of femicide failed to recognize the potential for lethal violence or attempted murder. **At a minimum, an intervening practitioner should always ask a victim:**

- How recent was the last violence?
- Is the violence increasing in frequency?
- What types of violence and threats are you experiencing?
- Do you think [the offender] will seriously injure or kill you or your children?

Using this risk guide	Acts or threats of violence associated with risk & lethality
<ul style="list-style-type: none"> ❑ Each Blueprint protocol includes specific instructions for documenting and responding to risk. Practitioners should also read <i>Appendix 1B: Training Memo—Risk and Dangerousness</i>. ❑ Elicit and document the risk factors contained in this guide. Whenever possible, talk with the victim; engage in a discussion about danger rather than just asking if these things have happened. Victim perceptions and interpretations are important. ❑ Communicate risk factors to other intervening practitioners in a timely manner. ❑ Be attentive to the factors in a given case; use experience, common sense, and training to make judgments about the level of danger that both the offender and the set of circumstances pose. ❑ Adjust the response to each case based on the level of risk and dangerousness. ❑ Protect the victim from retaliation when soliciting or using safety and risk information. ❑ Link victims with risk factors to an advocate. ❑ Stay alert; the level and type of risk will likely change over time and as circumstances change. Determining and managing risk is an ongoing process. ❑ A victim's attempt to terminate the relationship is a major change that poses increased risk. ❑ Victims' perceptions of high danger are typically accurate; their perceptions of low danger are often not. 	<p>Factors listed in italics are particularly associated with lethal violence</p> <ul style="list-style-type: none"> • <i>Stalking</i> • <i>Strangulation; attempts to “choke”</i> • <i>Threats to kill the victim</i> • <i>Threats to kill that the victim believes or fears</i> • <i>Threats to kill that are conveyed to others</i> • <i>Threats of suicide</i> • <i>Forced sex or pressuring for sex even when separated</i> • <i>Serious injury to the victim</i> • <i>Carries, has access to, uses, or threatens with a weapon</i> • <i>Violence outside of the home</i> • Aggression toward interveners • Threats to family, coworkers, victim's new partner • Animal abuse or killing pets • Damages victim's property • Violent during pregnancy or shortly after birth • Hostage-taking; restraint • Acts exhibiting extreme hostility toward the victim <p>Coercion</p> <p>Violence with a pattern of coercion is a serious marker of high risk violence. Coercion may be displayed as control of children, finances, or activities; sexual aggression; intimidation; hurting pets; or isolating the victim from support systems.</p>

Risk is higher when the violence is accompanied by:

- An increase in frequency, severity, or type of violence over recent months
- Almost daily impairment by alcohol or drugs
- The victim attempting a permanent break
- Estrangements, separations, and reunions
- Failure of prior interventions to affect the offender
- A victim who expresses fear of threats to kill
- A victim making no attempt to leave despite severe abuse
- Prior arrests, law enforcement calls, and/or protection order(s)
- Isolation of victim (physical or social)
- A victim seeking outside help in the past year
- A victim has a child who is not the offender's
- An abuser leaves before law enforcement arrive; eludes warrants
- An abuser's:
 - Lack of remorse
 - Mental health issues
 - Financial difficulty; unstable housing
 - Generalized aggression or violent acts
 - Ongoing efforts to take children from their mother
 - History of violence in multiple relationships
 - First act of violence is life-threatening or brutal
 - Obsessive control of victim's daily activities
 - Obsessive jealousy
 - Significant and harmful use of a child
 - Drawing others into the abuse (e.g., children, family, friends)
 - Non-compliance with probation or pre-trial release conditions

Homicide-Suicide (for male offenders) accounts for 27-32% of the lethal domestic violence incidents

Predominant risk markers include: *guns, patterns of estrangement and reunion and offender's poor mental health.* Additional risk markers are:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Obsession or jealousy • Alcohol impairment (23 to 38% of perpetrators) • History of domestic violence | <ul style="list-style-type: none"> • Suicide attempts or threats • Personality disorder • Depression of offender (46%) |
|---|---|

Women who kill male partners

Predominant risk markers include: *severe, increasingly frequent, and recent violence by male partner against the defendant; a defendant who is isolated and has few social resources.* Additional risk markers are:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Access or prior use of weapons • More than 10 violent incidents in the last year at the hands of the person killed • Law enforcement intervention in one or more domestic violence calls in past year | <ul style="list-style-type: none"> • Prior strangulation by person killed • Traditional relationship (married, children, lengthy relationship) • Trapped and isolated in violent relationship • Defendant sought help |
|---|---|

(Note: The absence of any of these factors such as "defendant sought help" should not lead to a conclusion that there is no risk. These are not absolute correlations.)

J.C. Campbell, D. Webster, et al., "Assessing Risk Factors for Intimate Partner Homicide," NIJ Journal No. 250 (2003): 15-19. <http://www.ncjrs.gov/pdffiles1/jr000250e.pdf>

P.R. Kropp, Intimate Partner Violence Risk Assessment and Management, Violence and Victims 23(2), (2008): 202-220.

J. Roehl, C. O'Sullivan, et al., "Intimate Partner Violence Risk Assessment Validation Study, Final Report," (2005). NIJ at <http://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf>

N. Websdale, "Lethality Assessment Tools: A Critical Analysis," (2000). VAWnet at http://www.vawnet.org/summary.php?doc_id=387&find_type=web_desc_AR

USING THE BLUEPRINT AND SUPPLEMENTAL MATERIALS

The Blueprint envisions a system in which each practitioner is tuned in to what others can and will likely do when intervening in domestic violence cases. It encourages practitioners to act as a collection of agencies organized around common goals and philosophies. We therefore recommend one reading of the Blueprint from start to finish, rather than going only to the section that is specific to your agency or role.

The Blueprint is organized around a common framework, “Foundations of Effective Intervention,” articulated earlier in this chapter and policies and protocols for each key point of intervention, from 911 to probation and the bench (Chapters 2 through 7 and guidelines for the bench in Chapter 8). Chapter endnotes referenced throughout the Blueprint expand upon and buttress the Blueprint as a whole. We know that if people are to use the Blueprint and adapt it to their own communities, they need to be well-versed in the findings of researchers and practitioners who have paid attention to domestic violence over the past several decades. We wanted readers to have a solid selection of research and commentary to work with as they made decisions about their policies and protocols. The material was challenging to compile because the research in this field is scattered, filled with contradictions, and often politically charged. Endnotes integrate data from empirical studies, academic research, domestic violence and criminal justice literature, and national resources developed by and for practitioners. Chapter 9 includes the bibliography for all references to research, academic literature, and intervention models cited throughout the Blueprint.

The chapters addressing the areas of criminal justice system intervention all have the same structure: a framework statement

that provides an overview of key aspects of the specific agency and practitioner roles in responding to domestic violence cases, followed by one or more policies and related protocols. Readers will find some repetition in content as the protocols further articulate and define the broad policy language.

The appendices referenced throughout the Blueprint can be found in the Blueprint Supplement (www.praxisinternational.org). Communities may adapt the training memos found in the appendices for local use or write their own training memos on the same topics. If you wish to adapt our material, you must receive written permission from Praxis by contacting us at blueprint@praxisinternational.org and include the following citation in the footer: *This document was originally prepared by Praxis International as part of The Saint Paul Blueprint for Safety.*

The Saint Paul Domestic Abuse Intervention Project (SPIP) has produced a companion piece, *The Distinct and Vital Role of a Legal and System Advocate*, available on its website (www.stpaulblueprintspip.org) that we recommend reading in order to understand how to work with independent advocacy programs in an interagency approach to intervention.

When a batterer

combines threats or force (coercion) with control, such as “micro-regulating” and “micro-surveillance,” the result is entrapment.

- E. Stark (2007)

COPYING THE BLUEPRINT

Two questions commonly asked regarding the use of this document:

1. Can the Blueprint be copied?

2. Can the Blueprint be altered?

The answer to question (1) is yes, absolutely. The answer to (2), however, is both yes and no. Any jurisdiction wishing to implement these policies and protocols are encouraged to use and adapt any or all of the language in Chapters 2-8, which contain actual sample policies and protocols. However, some parts of the Blueprint are not intended to be altered. This includes the six principles articulated in the foundational narrative (Chapter One), since they are essential to the Blueprint's meaning, as well as a few of the training memos which need to be precise, and are clearly marked as such.

Communities will have to make changes based on state law and terminology, such as, Order for Protection (OFP), which will need to be altered. When making the cover to your local Blueprint, it would be greatly appreciated if the phrase, "Adapted from the Saint Paul Blueprint for Safety" is included.

For questions regarding the use of these materials, feel free to contact the authors at:

blueprint@praxisinternational.org

A victim's decision

to use the criminal justice system in the future was connected to financial dependence on the perpetrator, safety from abuse during prior interventions, and previous support from practitioners.

– R.E. Fleury-Steiner, et al. (2006)

CHAPTER 1 ENDNOTES

1. “The core tenet of most coordinated criminal justice responses [is] the belief that a criminal justice system that predictably and routinely entangles offenders in multiple ways improves the odds that any given offender will encounter a response that may alter his behavior.” (Worden, 2003, p. 14)

Shepard (1999) offers a brief overview of the components of a coordinated community response (CCR) and how they work. Shepard and Pence (1999) provide more in-depth information on building a CCR.

A number of studies found that a coordinated intervention in domestic violence cases could have a positive, even cumulative, effect on the behavior of the offender (Murphy, et al., 1998, pp. 278-279; Saunders, 2008, p. 165; Syers and Edleson, 1992, p. 484; Tolman and Weisz, 1995, p. 482; Worden, 2003, p. 13; 2001).

Sullivan (2006, p. 205) reports an increased responsiveness to victims and improved interagency interactions through a CCR.

Some studies found CCRs did not fully accomplish their goals or encountered unintended consequences for some victims. These studies are useful to those crafting interagency responses as they help to understand and avoid the pitfalls of this work.

Bouffard and Muftie (2007) report that the effectiveness of a CCR was related to the quality of the batterer’s treatment.

- Salazar et al. (2007) found unintended consequences of CCR efforts when an increase in domestic violence arrests led to a rise in victim arrests.
- An audit of five jurisdictions in CA concluded that batterer intervention programs were not working as intended (California State Auditor, 2006).
- A study of ten CCRs funded by the Centers for Disease Control found great variation in CCR quality, but no significant impact on domestic violence rates overall (Klevens et al., 2008).

The *Greenbook* reports on interagency coordination efforts around the intersection of domestic violence and child maltreatment in six demonstration communities across the U.S. (Edleson et al., 2004, pp. 62-63) While the CCRs were one of the successes of the project, they faced problems with differences in agency structures, philosophies, power, and trust. Participants reported obstacles to collaboration, including: length of the process, lack of time, and differences in organizational cultures.

In a study of interagency coordination, Gondolf (2009) found a number of problems related to personnel issues: new staff and leadership who were unfamiliar with the goals and history of the CCR, varying levels of involvement or resistance, and loss of trained personnel leaving gaps in institutional knowledge. While caseloads increased, there were also interagency barriers: differing intervention priorities, communication breakdowns, and financial stressors.

Worden (2003) mentions unintended consequences and resistance from key leadership as detriments to coordinated intervention. This author recommends caution in selecting outcome measures and definitions of success.

The literature also demonstrates facets of CCRs that work well.

“One large scale study of women in the justice system found that the more battered women perceived different agencies as working together, the more highly they rated them in terms of helpfulness and effectiveness and the more satisfied they were both with the legal system in general and with their own individual case outcomes in particular” (Goodman and Epstein, 2008, p. 85).

Russell and Light (2006) found that victims responded well to police when officers were proactive and part of an integrated team.

Sullivan (2006, p. 205) says “strong leadership, a shared mission, shared power, and a membership extending across more fields” are needed to accomplish goals.

Worden (2003) recommends building on current relationships and resources with a committed core group.

In a review of 41 coordinating councils, Allen (2006, p. 48) concludes that to create an effective CCR requires an inclusive environment, broad participation, and shared decision-making.

2. While the law brackets physical violence as specific criminal acts, other professional fields use a definition of battering that includes a variety of physical, sexual, and emotional behaviors. For examples, see Asmus et al., 1991; Dutton and Goodman; Follingstad et al., 1990; Johnson and Ferraro; Ptacek, 1999; Russell, 1990; Sullivan, 2006; Stark, 2007; Shepard and Campbell, 1992; Stark and Flitcraft, 1996; Tjaden, 2005.
3. “A more discriminating understanding of the nature of specific IPV [intimate partner violence] crimes, including the element of coercion, would help secure more appropriate sentencing, as well as treatment for the perpetrators, and more effective safety planning for victims (Erskine, 1999),” (as cited in Dutton, et al., 2005, p. 2).

A major debate in the literature is the efficacy of mandated policies—for both practitioners and victims.

Victims face economic and extralegal household realities that may depend on an intact family unit (Hotaling and Buzawa, 2003, p. 33). For some victims, the ability to drop charges may give them the power they need to negotiate for change in the relationship (Ford, 1991). Other victims face retaliation and rage from offenders for the system's intervention and expectations of accountability (Ptacek, 1999).

Goodman and Epstein (2008, p. 93) note that, "survivors who are forced into ... inflexible models may well reject them altogether." In Indianapolis, Ford and Breall (2000, p.8) found that when victims were given a choice of whether or not to drop the charges against the offender, and they chose not to drop the charges, they were less likely to experience re-abuse over the next 6 months.

While some victims are more satisfied with an intervention if they have some control over the system's response to their case, O'Sullivan, et al. (2007) lay out the complex legal and ethical dilemmas for practitioners facing such requests for flexibility. Their work evaluates victim safety, empowerment, and recidivism for two prosecutorial approaches to filing domestic violence cases.

4. For example, see the following fatality reports:

- Minnesota Coalition for Battered Women (http://www.mcbw.org/files/u1/2008_femicide_report_-final_0.pdf#!femicide-report/ctod);
- Washington State Coalition Against Domestic Violence (<http://www.wscadv.org/docs/FR-2010-Report.pdf>)
- Wisconsin Coalition Against Domestic Violence (<http://wcadv.org/ourwork/homicide-reports>)
- Additional information and links to domestic violence homicide studies in other states are available from the National Domestic Violence Fatality Review Commission at www.ndvfri.org

5. Stark (2007) estimates that coercive control is involved in at least 60% of domestic violence cases and is probably higher in criminal justice system cases where women seek help.

Dutton, et al. (2005, p. 2) argue "that measurement of violent acts alone cannot adequately characterize violence in intimate partner relationships (DeKeseredy and Schwartz, 1998; Dutton, 1996; Edleson and Tolman, 1992; Smith, Smith, and Earp, 1999; Yoshihama, 2000). Rather it is necessary to understand the use of, and response to, IPV in the context of the relationship and the cultural, social, and institutional systems within which the perpetrator and victim live (Dutton, 1996; Edleson and Tolman, 1992)."

Johnson and Ferraro (2000) point out the importance of making distinctions in the motives of the batterer, types of violence that are used, and cultural or social positions of the victim and the perpetrator.

Belknap and Sullivan (2003) reported on non-physical behaviors perpetrated against women in the six months before their partner was arrested. Table 1.6 shows how victims ranked frequency of occurrence for such items as “Tried to control her activities,” “Discouraged her contact with family/ friends,” and “Forbid her from leaving her home.”

Dutton, et al. (2005) reports on the development of a measurement of coercion, demands, and surveillance. Examples of items on their Demand Subscale include “Wearing certain clothes,” “Using street drugs,” “Bathing or using the bathroom.” Coercion Subscale items include threatening harm to partner, self, or others. Surveillance Subscale items include “Kept track of telephone/cell phone use,” “Checked or opened your mail,” or checked the odometer on the car.

6. Websdale (1999) reminds us that homicides are often preceded by multiple criminal justice interventions.

In the Quincy study, Buzawa et al. (1998, p. 189) found about half of the offenders had prior arrests for violent offenses and within two years of the last criminal justice intervention, 44% of the offenders were rearrested for domestic violence.

Hart notes that between the arrest and prosecution, 30% of offenders may re-assault (Goldsmith, 1991, p. 7) and as many as half of domestic violence victims may be threatened with retaliation for cooperation with prosecutors (Davis, et al., 1990, p. 19).

Batterers can reoffend quickly. Goodman and Epstein (2008, p. 75) say that “20% to 30% of arrested offenders re-assault their partners before the court process has concluded or shortly afterward, often as retaliation for involving them in the court system (M.A. Finn, 2003; Ford & Regoli, 1992; Goodman, Bennett, & Dutton, 1999; Hart, 1996).”

According to Gondolf and White, 20% of offenders will re-assault regardless of the intervention (2001, p. 361).

In another study, 14% of the victims reported threats from the perpetrator since disposition of their case, 8% had property damaged, 9% experienced new violence, and 37% of perpetrators had been verbally abusive. (Smith, et al., 2001, p. 72)

Batterers can be very resistant to change despite arrest, intervention, or group treatment. (Goodkind, et al., 2004, p. 515)

Offenders with a ‘stake in conformity’ (employed, married, stable housing) are least likely to reoffend after interaction with the justice system. (Roehl, et al., 2005, p. 14)

However, the high-risk offender with a criminal history tends not to change their behavior with criminal justice intervention. “For high risk offenders, even a ‘model’ court has not broken their pattern of intimidation and control and the interventions they have used to date are insufficient. Stopping chronic and/or serial batterers is apt to be a long, difficult process, not easily impacted by any one criminal justice

intervention, especially one that is fundamentally compromised by long prosecutorial and judicial delays and restricted to misdemeanor type sentences." (Hotaling and Buzawa, 2003, p. 26)

From their study of batterers in four cities, Heckert and Gondolf concluded that "men in the repeat re-assault category were slightly more likely to use a chain of tactics, or multiple tactics, in their violent incidents. That is, their violence was more likely to be excessive and unrelenting." (2004, p. III-15-8)

Buzawa et al. (1998, pp. 205 and 198) found that courts are most likely to see entrenched batterers who have had prior involvement with the system) and less likely to see those batterers who use occasional violence and have no criminal record. They suggest that the level and conditions of an intervention could be linked to risk markers made visible for each offender.

7. Stark (2007, p. 94) points out that the harm in domestic violence is not only due to the number of violent events, but to an accumulation of multiple harms. It is the cumulative effect, rather than a set of isolated acts that impact the victim of battering.

Erskine (1999, pp. 1207-1232) discusses the importance of exploring ongoing patterns of intimidation and coercion to determine appropriate charges for a range of criminal or violent behaviors.

A critical part of accurate risk assessment is discussing with the victim her experiences over time and marking changes in frequency and severity. (Block, 2000, p. 290)

8. When victims are satisfied and work well with the prosecutor's office, prosecution rates increase, there are a greater number of guilty verdicts, and victims are more likely to report continued abuse. (Buzawa and Buzawa, 2003; Belknap and Graham, 2003; ; O'Sullivan et al., 2007)

However, when a prosecutor and victim want or need different outcomes from intervention, a victim's "nonparticipation may be chosen in response to the prosecutor's noncooperation with her plan for securing herself from continuing violence." (Ford and Breall, 2000, p. 7)

80% of the women who called police wanted protection (Ford and Breall, 2000). But "a battered woman who has made prior attempts to seek prosecution of civil protection orders, only to have the perpetrator escalate his violence, may be unwilling to face the risk that prosecution will further endanger rather than protect her." (Roehl et al., 2005, p. 15).

Goodman and Epstein (2008, p. 92) explain that when a victim perceives that her needs do not fit what the system offers, "she is likely to feel disserved or even betrayed by the police. [Police] actions may expose her to a wide range of future harms, including retaliatory violence,

poverty, homelessness, and loss of community. As a result, [she] may well decline to call the police if she ever again finds herself subjected to intimate partner violence. Her friends, hearing her story, may well do the same.”

Goodman and Epstein (2008, p. 94) go on to explain that “one study … found that participants who reported feeling in control of the process of working with service providers were far more likely to rate the services they received as helpful and to use them again (Zweig, Burt, & Van Ness, 2003). Similarly, a study within the criminal justice system found that victims who chose not to report recidivist abuse to officials were those who felt they had ‘no voice’ in a previous prosecution.” Also see Belknap and Sullivan (2003, p. 6).

9. In Indianapolis, Ford and Breall (2008, p. 92) found that any action by the prosecutor lowered the risk of re-abuse by 50% for 6 months.

A victim’s cooperation is affected by delayed hearings, threats, and violence that continue during the process, and perceived lack of attention or support from prosecutors. (Tolman and Weisz, 1995, p. 482)

Ultimately, a victim needs to determine whether the system can provide adequate protection against the offenders’ violence.

Fleury-Steiner et al. (2006, pp. 339 and 338) interviewed 178 women whose partners had been through the court system. 19% of these women had been assaulted between the time of the arrest and the closure of the case. The re-abuse continued for 38% of these victims during the first six months after the case closed and 35% experienced continued abuse in the second six-month period. These researchers concluded that if the system is not able to protect the victim while a case is pending, batterer and victim both receive clear messages about the lack of offender accountability and victim safety.

In making decisions about collaborating in a criminal justice case against the perpetrator, victims face “practical and relational obstacles” such as exposure to retaliation, escalating violence, forced separation, or the financial hardship of an arrest. (Goodman and Epstein, 2008, p. 97; Johnson, 2007, pp. 498-510; Dugan et al., 2003, pp. 20-25; Hart, 1996)

When the case proceeds, a victim may face an increase in controlling behaviors including stalking the loss of victim status, and fears of being arrested or losing custody of the children. (McFarlane, et al., 1999, p. 311; Belknap and Sullivan, 2003, p.10.)

10. See Johnson and Ferraro (2000, p. 949); Stark (2007).

11. Worden suggests that “the efficacy of many innovations [in intervention] may be contingent on the consistency of the messages that are exchanged among the victims, offenders, and practitioners” (2003, p. 10).

Interactions with the police create an important baseline for the victim's level of trust in the rest of system. Belknap and Sullivan (2003) found that whether victims believed the state was a resource for their help seeking was based on positive interaction with an officer who listened without judgment and communicated empathy. Victims saw police as helpful when they provided legal information, advocacy support, attended to medical care, and paid attention to the needs of the children.

Goodman and Epstein (2008, p. 78) note, "Other research has shown that women who experience government officials as listening to their stories and responding to their individual needs are more likely to feel treated fairly and therefore to cooperate with the prosecutor's requests than are women who feel forced into a mandatory model dismissive of their input (Erez & Belknap, 1998; Ford & Regoli, 1993)."

A perpetrator may not stop battering the victim, but victims do not stop working toward non-violence. (Campbell et al., 1998, pp. 743-762).

Goodkind et al. (2004) studied the safety planning strategies victims with children used; in particular, see Table 1: Safety Planning Strategies Endorsed and Consequence of Using Strategy (p. 520).

Researchers at Texas Women's University (2003) designed a one-hour phone contact for use with the victim during the processing of a protection order. Their study demonstrated that "abused women offered a safety intervention at the time of applying for a protection order quickly adopt safety behaviors and continued to practice those safety behaviors for eighteen months" (p.8).

Practitioner's can support a victim's safety planning by providing tactical information about the legal process, legal options, appropriate referrals, and specific communication about the risk of severe violence and lethality. (Johnson, 2007; Kropp, 2008, p. 213)

12. Gondolf (2004) noted a reduction in no-shows and improved completion rates of batterer intervention programs when offenders moved through the system quickly. When intervention was swift and certain, the rate of offenders entering the groups increased from 70% to 95% and the completion rate rose to 70% (p. 619). Gondolf linked the effectiveness of batterer programs to a streamlined system where violations were treated with a 'swift and certain' response, offenders identified as high risk received increased sanctions, and risk markers were monitored throughout the intervention (see discussion on page 624).

Two additional studies by Gondolf (2000; 1999) verify the impact of swift and sure response for domestic violence offenders.

In domestic violence cases, the specific language of swift and sure is not commonly used, but several authors do recommend aggressive or prompt response to violations of court orders. (Buzawa et al., 2000; Hofford, 1991, pp. 12-17) One of the four lessons reported from the Judicial Oversight Demonstration project was the importance of "procedures to monitor or educate defendants and provide a quick court response to violations of no-contact orders and other bond conditions." (Visher et al., 2007, p. 9)

To review a theoretical frame for choice theory and negative sanctions see Pratt (2008) and Kurbrin, et al. (2009).

A research study conducted by Weisburd, et al. (2008) demonstrated the impact of swift and certain responses to probation violators.

13. In their seminal study of the criminal justice system in Quincy, MA, Buzawa et al. (2000, pp. 9, 10, 18, and 12) found that 84% of offenders had prior arrests, 54% had six or more prior charges, and 14% had at least 30 criminal charges. In the Quincy study, nearly three-quarters of the victims had made prior calls to the police about that perpetrator. “Less than half the victims were living with the offender at the time of incident, but three-fourths of victimizations occurred in their homes.” Even as a model proactive court, in Quincy “the system does not appear to prevent recidivism among ‘hard-core’ re-offenders.” The population of batterers in that study recidivated within one month after arrest.

Bouffard and Muftie (2007, p. 364) reported that batterers who had been in the system with a prior domestic violence case were significantly more likely to be no-shows for batterer group intake than those without a domestic violence record.

14. Dutton and Goodman (2005) describe a process of coercion and control created by both demands and threats: threats that the victim knows from past experience to be credible. In summary, a history of exposure to negative consequences from previous threats assures compliance with future demands. This dynamic of threats and consequences form a “cumulative pattern” of control that is not dependent on physical contact. To break that pattern, the victim assesses resources and options for safety that are as credible as the perpetrator’s threats. For additional information about the process of coercion and control, see Dutton et al. (2005) and Stark (2007).
15. In his observation of courtroom interactions in domestic violence cases, Ptacek (1999, pp. 172-178) studied how the interaction between judges, victims, and offenders can support or deter the battering dynamic. He points out that the behaviors demonstrated in the courtroom can (intentionally or not) become another resource the perpetrator can use for intimidation or coercion in the future. To that extent, a victim’s experience of the criminal justice intervention can reaffirm the perpetrator’s messages. Ptacek created a graphic titled “Judicial Responses that Reinforce Women’s Entrapment” to describe some of the behaviors he observed. To demonstrate the potential parallels that victims may find in criminal justice interventions, he lays the judge’s behaviors alongside behaviors used by perpetrators. Ptacek’s graphic is available in a report by Levey, et al. (2000, p. Appendix I-2).
16. Descriptors of entitlement are found in the writings of practitioners with extensive experience facilitating batterer intervention programs. These practitioners are in agreement about entitlement as a foundational element of battering.

Bancroft (2002, p. 54) describes entitlement as a belief (and attitude) that the batterer alone has the right to privilege and status in this relationship.

F. Mederos (2004, p. 15) adds that entitlement is the expectation that a partner will fulfill a specific (gendered) role in the relationship and that the perpetrator has the right to use violence, anger, or other forms of abuse for failure to meet those expectations.

Also see Pence and Paymar (1993).

17. 49% of batterer groups use a cognitive-behavioral approach. (Saunders, 2008. p.157).

From a longitudinal study of batterer programs, Gondolf (2004, p. 623) concluded that cognitive- behavioral programs for batterers were the most commonly used, effective for most offenders, and less costly to administer. Also see Hamberger (1997); Pence and Paymar (1993); Sullivan (2006, p. 204); White and Gondolf (2000).

18. "Violence is simply a tool ... that the perpetrator uses to gain greater power in the relationships to deter or trigger specific behaviors, win arguments, or demonstrate dominance." (Dutton, et al., 2005) In the development of a coercion scale, these same authors identified nine areas where offenders focused demands on victims: personal activities and appearance, support systems, household responsibilities, economic resources and work, health, physical intimacy, legal help seeking, immigration, and children or parenting (pp.1-3).

Stark (2007, pp. 228-278) argues that in large part the historic concept of domination has been replaced by coercive control: coercion as force or threats used to yield a desired response and control as both structural and tactical. Control could involve deprivation, manipulation, demanding compliance while controlling resources, behaviors, and support systems. Stark uses the terms microregulating and microsurveillance to emphasize the intrusion of coercive acts in the lives of victims. When combined, the product of coercion and control is entrapment.

19. Dutton and Goodman (2005, p. 747) point out that a victim's cultural, religious, and economic realities give coercive tactics and threats their meaning.

For a listing of control tactics embedded in messages that are used by perpetrators before and after criminal justice intervention See Table 1.6 in Belknap and Sullivan. (2003, n.p.)

20. Fleury-Steiner et al. (2006, p. 329) found that a victim's decision to use the criminal justice system in the future was connected to their financial dependence on the perpetrator, safety from abuse during prior interventions, and support from practitioners.

One of the conclusions from the Judicial Oversight Demonstration Initiative was that judges can make a difference in victim safety and offender accountability. (Visher et al., 2007, p. 2)

From observations of restraining order hearings in Dorchester and Quincy, MA, Ptacek (1999) identified five types of authority judges present to victims and offenders. The messages carried by the court's demeanor can be of believability, support, seriousness of the charge, or a dismissive 'wink and a nod.' The court's response to a victim can counteract messages of the batterer, but are particularly important information for the victim's strategic planning.

Victims fear that criminal justice practitioners will believe the offender, not make an arrest, or take no action. (Russell and Light, 2006, p. 389)

Prosecutors send clear messages by communicating to the victim how the criminal justice system works and just what it can and cannot do. (Hotaling and Buzawa, 2003, p. 38)

Messages of support are also sent through the types of institutional resources that are offered: advocacy, culturally sensitive programs and referrals, translation and TDDY services, etc.

21. Colia Ceisel (Public Defender Ramsey County, Retired), Presentation at Saint Paul Police Department Training, June 28, 2009. For more discussion on batterers' defenses of violence, see Bancroft (2002, pp. 296-301); Buzawa and Buzawa (2003, pp. 147-148); and Loue (2001, p. 119).
22. Colia Ceisel (Public Defender Ramsey County, Retired), Presentation at Saint Paul Police Department Training, June 28, 2009. For more on batterers' defenses of violence, see Bancroft (2002, pp. 296-301); Buzawa and Buzawa (2003, pp. 147-148); and Loue (2001, p. 119).
23. Minnesota Coalition for Battered Women (2008).
24. For a summary of homicide trends in intimate relationships, visit the Bureau of Justice Statistics report at <http://www.bjs.gov/content/pub/pdf/ipva99.pdf> and <http://www.bjs.gov/content/pub/pdf/htus8008.pdf>
For a discussion of national data sources and statistics, see Stark (2007 pp. 53-56).

911 EMERGENCY COMMUNICATIONS CENTER

FRAMEWORK: BUILDING A SAFETY-ORIENTED RESPONSE

When telecommunicators are organized, trained, and prepared to determine who is in danger and how, there are multiple opportunities to deliver a safety-oriented response to domestic abuse calls. Accurately recognizing and communicating the risk that one party poses to another can enhance the immediate safety of responding officers and everyone at the scene, as well as the extent to which subsequent interveners can address ongoing safety. An effective response requires solid coordination and communication between call takers, dispatchers, and patrol officers.

Domestic violence occurs along a continuum of severity and urgency.¹ A call may signal a high level of immediate danger to the victim, responding officers, and others at the scene. It may involve physical or sexual violence, as well as abduction of an adult or child. The offender may be violating a protection order, destroying property, or stalking, intimidating, threatening to kill, hitting, beating, strangling, stabbing, or shooting a victim. The victim may be resisting or forestalling an assault. There may be quickly escalating physical violence or threats with a gun or other weapon. Or the caller may be reporting an event with little urgency, where no one has been hurt or is in immediate danger. When a suspect has left the scene (often referred to as “gone on arrival” or GOA) calls can shift quickly

from a lower to a highly urgent priority if the suspect suddenly reappears. Based on national studies, between 42 and 66% of suspects are gone on arrival. These suspects are more likely to have criminal histories and twice as likely to re-abuse.²

Callers are often injured, frightened, or in danger of imminent attack.³ They seek reassurance that a squad has been informed and need to know how long it will take help to arrive. They may not be free to speak openly about what is happening and who is involved. Difficulties in communication produced by fear, injury, strangulation, and stress may be further complicated by language differences, hearing or speaking disabilities, cognitive disabilities, or intoxication. Sometimes the caller offers a detailed description of the immediate threat which can be confirmed with a few clarifying questions. At other times the call taker must determine the nature of the emergency within the constraints of the caller’s freedom to safely and openly relay information. The circumstances under which a victim of domestic violence calls 911 for help requires call takers to communicate effectively and respectfully in order to obtain accurate and thorough information.

As call takers obtain details about the nature of the emergency, they must stay alert to and ask

whether it is safe for the caller to remain on the line and whether a caller can safely answer open-ended questions. If the caller does not want the suspect to know that 911 has been called, the call taker may have to ask brief yes-or-no questions. Hang-up calls and calls where no one appears to be on the line require that the call taker pay close attention to background sounds and conversations in order to inform dispatch about what is occurring and who is involved. It is not unusual in a domestic abuse call for the apparent suspect to get on the line—indeed, sometimes getting the suspect on the line can make a victim safer.⁴ Call takers must be prepared to respond to such complex situations in ways that diminish danger and advance safety for all involved.

A 911 call taker should be alert to behaviors that possibly indicate stalking and should respond in a manner that takes into account the potential risk and danger inherent in stalking cases. Violations of protective or harassment orders or other unwanted contact may be part of a pattern of behavior imposed on the victim and signal increased risk of harm. The call taker should take seriously reports of incidents that do not involve violence but can indicate stalking or harassment. Inquire about any past incidents that were similar or where the caller felt harassed or intimidated. Ask the caller if he or she is afraid of

being harmed, or if he or she has been threatened with physical violence. Capture this information on the CAD report and dispatch with the appropriate priority. For further explanation of stalking, the challenges it presents to law enforcement and a list of behaviors that may signal stalking, see *Appendix 3G: Training Memo—Law Enforcement Response to Stalking*.

Under the Blueprint policies and protocols, responding officers need far more detail about the call than previously expected. As always, they need the correct location, how to safely enter the premises, and the presence and use of weapons. But now officers need specifics provided by the caller on the violence and threats being used, injuries, and the suspect's history of aggression toward law enforcement. They need up-to-date information about changing conditions at the scene. In GOA calls, details about the suspect's identity, physical description, and direction and mode of travel increase officers' ability to locate the suspect. Information about existing orders for protection, harassment orders, domestic abuse no-contact orders, warrants, criminal history, and prior calls to the address and parties involved can assist call takers, dispatchers, and officers to establish the nature of the emergency and the type and level of danger presented.

Domestic abuse calls often involve highly volatile situations. A caller who has been attacked or threatened may be frightened or injured and grow increasingly agitated as time passes. The five, ten, or fifteen minutes it takes for an officer to reach the scene can seem like ten times that long to someone who is urgently in need of help. In these situations, a call taker can offer reassuring messages and explain that help is coming as quickly as possible. Calming techniques can reduce the caller's distress, thereby increasing the clarity and accuracy of the information that she or he offers.

The Blueprint is designed to ensure that information related to the nature of emergency that call takers and dispatchers gather and document reaches subsequent interveners who are seeking to hold domestic violence offenders accountable. Prosecutors and those writing presentence investigation reports, for example, count on high quality, readily accessible recordings and computer assisted dispatch (CAD) transmissions that document specific details of the nature of the threats, harm, and violence involved in the call. Attempting to determine whether there is an actual domestic relationship involved helps to reduce the hundreds of cases officers respond to that are coded as a "domestic," but are not. Reducing over-coding helps focus officers' sense of urgency on

domestic calls and provides a more accurate picture of the volume and scope of reported incidents.

Because domestic violence is a patterned crime, usually occurring over a long period of time, a single call is rarely the extent of the 911 center's involvement with a victim and offender. Many victims make repeated calls to 911 in the face of ongoing intimidation, threats, and violence. Neighbors or family members may call seeking help for a victim, although many victims may be wary of and even hostile to this kind of "third party" call.⁵ Victims' attempts to leave the abusive relationship are often met with aggressive resistance and almost half (45%) of lethal domestic violence attacks are precipitated by the victim leaving.⁶ Victims often cannot speak freely or openly about what is happening to them without facing retaliation and heightened abuse. It can take years to truly disrupt an offender's abusive behavior. The response to each call must therefore establish a foundation for continuing engagement if it is to reflect the ongoing nature of the crime and contribute to the long-term safety of victims, their children, and responding officers. Victims must know that they can use 911 to request help whenever they need it, whether it is the first or fifth or fifteenth call.

POLICY: RECEIVING 911 DOMESTIC ABUSE CALLS

In addition to adhering to general agency policy, Emergency Communications Center (ECC) call takers will take the following actions in receiving and responding to domestic abuse-related calls, 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: Receiving 911 Domestic Abuse Calls**.
2. Treat each domestic abuse call as Priority 2 if any of the following circumstances exist, including calls if the suspect has left the scene:
 - a. A weapon is involved.
 - b. A physical assault is occurring or has just occurred.
 - c. It appears that violence is imminent; or the caller is afraid or the argument is escalating.
 - d. The suspect has made severe threats, such as threatened to kill the victim, take or harm children, harm or kill

Protocol 1: Receiving 911 Domestic Abuse Calls

This protocol is not meant to instruct call takers in a set of strict sequential steps. It acknowledges that receiving 911 domestic

pets, burn down the house, or commit suicide.

- e. The suspect has left the scene and the caller or victim fears his or her imminent return.
3. Code calls as Priority 3 if any of the following circumstances exist:
 - a. The suspect is gone and unlikely to return soon and the caller or victim does not fear his or her return.
 - b. There is a reported violation of a no-contact order, order for protection, or harassment restraining order with no threat of harm and the suspect is not at the scene or likely to return soon.
 - c. There is a verbal argument between parties with no known history of violence or no threat of harm.
 - d. A third party reports shouting or a loud argument with no further information. NOTE: Go to Priority 2 if it is determined that there is a history of violence at that address or between the parties.

abuse calls involves simultaneously obtaining and relaying information while maximizing safety for victims and responding officers.

- e. When in doubt, code the call as Priority 2.
4. Communicate effectively, respectfully, and safely with callers.
5. Determine the nature of the emergency and the response priority.
6. Direct responding officers to the location and parties at the scene including information to assist in locating a suspect who has left the scene.
7. Establish the type and level of danger.
8. Advance safety for those at the scene while help is en route.
9. Communicate and document information related to the nature of the emergency; violence, threats, and injuries; and the safety of responding officers and those at the scene.
10. Establish a foundation for continuing engagement with members of the public seeking help in domestic abuse cases.

These functions often occur within a short period of intense activity. A safe response to domestic abuse calls requires considerable

judgment on the part of call takers and an understanding of complex factors affecting communication and safety.

Communicate effectively: communicate in ways that (1) get help quickly and safely to the scene; (2) help the caller convey what is happening; and (3) establish an initial relationship with a member of the public who is turning to the law enforcement and other governmental agencies for help.

1. Use Protocol 1—Cards 1 through 3 (*Appendices 2A, 2B & 2C*) to guide the call.
 - a. When callers are unable to communicate clearly:
 - Provide language interpretation and TTY/TDD calls.
 - Slow down, simplify language, and adjust the response when the caller appears to have difficulty because of fear, injury, disability, intoxication, or other barriers to communication.
 - Be alert to the impact of strangulation or other injuries on a caller's ability to communicate.
 - b. Elicit information safely.
 - Verify that it is safe for the caller to speak freely.
 - Utilize strategies that promote safety when it has not been confirmed that the caller can speak freely.

- c. Inform caller when patrol has been notified and tell the caller that a squad has been dispatched. In emergency situations where the victim is afraid or anxious, check with the squad to see if the officer is en route and relay that information to the caller.
 - d. Respond safely to calls that are disconnected or otherwise interrupted.
 - e. Reflect awareness of cultural and social factors in communication.
 - f. Establish rapport with and communicate core messages to callers.
 - Reinforce that 911 is available when a caller needs it, regardless of how many times they have called.
 - Avoid blaming or criticizing the caller.
 - Respond to callers with courtesy, respect, and reassurance, even when they are difficult to work with.
2. Determine the nature of the emergency and the response priority, per policy.
 - a. When in doubt, code the call Priority 2.
 - b. Establish the immediate threat of harm to persons at the scene, responding officers, and others.
- c. Determine the nature of any injuries and the need for immediate medical attention.
 - d. Establish whether children are safe, harmed, abducted, or being drawn into the events in any way.
 - e. Assign an accurate type code.
 - Code any dispute between adult partners or former partners as a domestic when the relationship between the parties meets the statutory definition of a domestic relationship. Use this code whether or not there is an allegation of physical violence.
 - Code calls that involve allegations that a protection order has been violated accordingly.
 - An officer dispatched to a call coded domestic who finds that there is no domestic relationship between the parties should notify the dispatcher to recode the call.
 - Do not recode a call simply because it does not involve an allegation of physical assault. Re-code the call as non-domestic only if it has been established that there is no domestic relationship between the parties.
 - An officer dispatched to a call coded as non-domestic should notify the

- dispatcher to recode the call as a domestic when that relationship has been established and there is any allegation of abuse, whether or not an arrest is made.
- f. When it is safe for the caller to stay on the line, keep the caller on the line until an officer is on the scene and has made contact with the caller, victim, or witness.
- Apply in calls reporting or suggesting high danger, volatility, or escalation, including but not limited to calls involving weapons, where the caller is afraid, where an assault or another crime is in progress, or where someone has been seriously injured.
 - Apply in calls where the suspect is at the scene and the threat is ongoing.
 - Apply in non-urgent calls reporting a low level of immediate threat and danger, as call volume permits.
 - Apply when the caller is a child and there is an ongoing situation.
- g. Do not force the caller to stay on the line if she or he says it is not safe. They may, however, be able to put the phone down and keep an open line.
- h. Use Appendix 2B: *Protocol 1—Card 2 UNSAFE FOR CALLER TO SPEAK FREELY*

- OR STAY ON THE LINE* to guide the response to the following calls:
- Suspect on the line
 - Hang-up or other interrupted call
 - Open-line call
3. Direct responding officers to the correct address and location and to the appropriate people at the scene.
- a. Use Protocol 1—Cards 1 through 3 (*Appendices 2A, 2B & 2C*) to guide the call.
 - b. Establish the correct address and physical location of the event.
 - c. Utilize information available via the ANI/ALI screen and GPS sources as necessary and appropriate.
 - d. Establish the means of entry to the premises.
 - e. In third-party calls, determine whether the caller can let officers into the building.
 - f. Establish the identities, descriptions, and locations of those involved at the scene.
 - g. Establish and communicate the caller's location to dispatch.
4. Establish the type and level of danger to the caller, responding officers, and others at the scene.

- a. Use Protocol 1—Cards 1 through 3 (*Appendices 2A, 2B & 2C*) to guide the call.
- b. Establish as clear a picture as possible of the type of violence and actions of aggression or harm involved and the immediate danger.
 - **Enter specific details** in the CAD about the type of violence, actions of aggression, injuries, and harm being reported.
 - Include an **exact report of what the caller saw or heard** in order to assist officers in determining the means of entry, asking questions at the scene, and establishing probable cause. (See *Appendix 1C: Training Memo—Interventions with Victims of Battering as Suspects or Defendants*.)
 - Elicit pertinent information about the suspect's history of aggression.
 - Determine the risk to persons at the scene.
 - Determine the risk to responding officers, including dogs or other pets that may pose a problem for them.
 - Determine the presence and use of weapons and the suspect's history of aggression toward law enforcement.
 - Continue to stay alert to and confirm whether it is safe for the caller to

- stay on the line and respond to the call taker's questions.
- 5. Advance safety for those at the scene while help is en route.
 - a. Use Protocol 1—Cards 1 through 3 (*Appendices 2A, 2B & 2C*) to guide the call.
 - b. Communicate safely and effectively with the caller.
 - c. Provide safety suggestions or instructions to the caller.
 - d. Provide medical instructions to the caller as necessary.
 - e. Stay alert to and respond safely to a suspect on the line. When helpful to reinforcing safety, engage with a suspect on the line to control escalation while officers are en route.
 - f. Notify the 911 supervisor when one of the parties involved is a law enforcement officer, public safety officer, 911 employee, public official, or a prominent member of the public.
- 6. Communicate and document information related to the nature of the emergency; violence, threats, and injuries; and the safety of responding officers and those at the scene.
 - a. Use Protocol 1—Cards 1 through 3 (*Appendices 2A, 2B & 2C*) to guide the call.
 - b. Relay accurate information to dispatch and responding officers.
 - c. Enter specific details about the violence, threats, and injuries involved into the CAD report.
 - d. Access and relay records, including orders for protection, domestic abuse no-contact orders, and, upon the officer's request, suspect's probation or parole status, if available.
 - e. Provide updated information about the call and conditions at the scene to dispatch.
 - f. Respond to requests for information from dispatch and officers en route or at the scene.
- 7. Establish a foundation for continuing engagement with members of the public seeking help in domestic abuse cases.
 - a. Use Protocol 1—Cards 1 through 3 (*Appendices 2A, 2B & 2C*) to guide the call.
 - b. Be familiar with *Appendix 1C: Training Memo—Interventions with Victims of Battering as Suspects or Defendants*.
 - c. Avoid placing the victim in a position of confrontation with the suspect.
 - d. Protect the victim from retaliation when communicating with the suspect or the victim.
 - e. Treat each interaction with the victim as an opportunity to build collaboration over multiple contacts.
 - f. Know the signs that violence may be resuming or escalating.
 - g. Respond to callers' requests for information about community resources related to domestic violence.

Appendices to Protocol 1: Receiving 911 Domestic Abuse Calls

The following appendices are included as part of the policy on receiving 911 domestic abuse calls.

- *Appendix 1C: Training Memo—Interventions with Victims of Battering as Suspects or Defendants*
- *Appendix 2A: Protocol 1—Card 1 CALLER SAFETY UNKNOWN*
- *Appendix 2B: Protocol 1—Card 2 UNSAFE FOR CALLER TO SPEAK FREELY OR STAY ON THE LINE*
- *Appendix 2C: Protocol 1—Card 3 CALLER SAFE TO SPEAK FREELY*

- *Appendix 2F: Training Memo—Accurate Coding of 911 Domestic Abuse Calls*
- *Appendix 2G: Training Memo—911 Attention to Violence*
- *Appendix 2H: Training Memo—Recognizing Signs of Strangulation*
- *Appendix 2I: Training Memo—Suspect on the Line*
- *Appendix 2J: Training Memo—Open-Line and Interrupted Calls*

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.

Victims made more 911 calls

if the perpetrator used a weapon, the victim experienced sexual abuse, or the physical violence was severe.

- Bonomi *et al.* (2006)

POLICY: DISPATCHING 911 DOMESTIC ABUSE CALLS

In addition to adhering to general agency policy, ECC dispatchers will take the following actions in dispatching and responding to domestic abuse-related calls, using the protocols and appendices referenced and included as part of this policy.

1. Implement the provisions of this policy in accordance with **Protocol 2: Dispatching 911 Domestic Abuse Calls**.
2. Treat each domestic abuse call as Priority 2 if any of the following circumstances exist, including calls where the suspect has left the scene:
 - a. A weapon is involved.
 - b. A physical assault is occurring or has just occurred.
 - c. It appears that violence is imminent; or the caller is afraid or the argument is escalating.
 - d. The suspect has made severe threats, such as threatened to kill the victim,

Protocol 2: Dispatching 911 Domestic Abuse Calls

This protocol is not meant to instruct call takers in a set of strict sequential steps. It acknowledges that receiving 911 domestic abuse calls involves simultaneously obtaining and relaying information while maximizing safety for victims and responding officers.

take or harm children, harm or kill pets, burn down the house, or commit suicide.

- e. The suspect has left the scene and is likely to return soon.
3. Code calls as Priority 3 if any of the following circumstances exist:
 - a. The suspect is gone and unlikely to return soon.
 - b. There is a reported violation of a no-contact order, order for protection or harassment restraining order with no threat of harm where the suspect is not at the scene and unlikely to return soon.
 - c. There is a verbal argument between parties with no known history of violence and no threat of harm.
 - d. A third party reports shouting or a loud argument with no further information. NOTE: Go to Priority 2 if it

is determined that there is a history of violence at that address or between the parties.

- e. When in doubt, code the call as Priority 2.
4. Relay the nature of the emergency and the response priority to responding officers.
5. Direct responding officers to the correct address, location, and appropriate people at the scene, including detailed information that will assist officers in locating a suspect who has left the scene.
6. Relay to responding officers all available information about the type and level of danger involved, including description of violence, threats, and injuries.
7. Communicate and document information related to the nature of the emergency and the safety of all involved to responding officers.

These functions often occur within a short period of intense activity. A safe response to domestic abuse calls requires considerable judgment on the part of call takers and an understanding of complex factors affecting communication and safety.

1. Relay the nature of the emergency and the response priority to responding officers per policy, using *Appendix 2D: Protocol 2—Card 1 Safety Oriented Dispatching* to guide the call.

- a. When in doubt, code the call as Priority 2.
 - b. Establish the immediate threat of harm to responding officers, the victim, and others.
 - c. Establish the nature of any injuries and the need for immediate medical attention.
 - d. Establish whether children are present, safe and unharmed.
 - e. Query call taker as needed to verify details related to responding officer and victim safety.
2. Direct responding officers to the correct address, location, and appropriate people at the scene, including detailed information that will assist officers in locating a suspect who has left the scene.
- a. Verify the correct address and physical location of the call while maximizing safety for the caller.
 - b. Verify the caller's location.
 - c. Relay to responding officers all available details about the identities and physical descriptions of those involved and at the scene.
 - d. Relay to responding officers all available details about suspect identity, physical description, and vehicle when the suspect has left the scene or is reported as gone-on-arrival (GOA).
3. Relay to responding officers all available information about the type and level of danger involved, including violence, threats, and injuries and actions of aggression or harm to persons at the scene.
- a. Verify and relay the presence and use of any weapons.
 - b. Verify and relay information about the suspect's history of aggression toward those at the scene and toward law enforcement. In cases that seem volatile, notify the records section operator and request record checks.
 - c. Promptly relay details about changing conditions at the scene to responding officers.
 - d. Promptly relay details about any change in suspect location and information that will aid officers in locating a suspect who has left the scene.
 - e. Determine and relay the status of any current warrants, court orders, and probation status (if probation information is available to dispatch).
 - f. Determine and relay the history of past calls to the location or those involved.
4. Check officer status and safety at the scene as warranted.
- Communicate and document information related to the nature of the emergency and the safety of all involved to responding officers and subsequent interveners.
- a. Enter into the CAD report specific details about the violence, threats, and injuries involved.
 - b. Provide updated information about the call and conditions at the scene to responding officers.
 - Inform the officer via radio of the general nature and severity of any threats.
 - Enter the more specific description of the call and quotes into the CAD and cue officer to check the CAD as soon as possible.
 - c. Respond to requests for information from officers en route or at the scene.
 - d. Ensure that officers have the following information available:
 - Warrants
 - Criminal history
 - Current order for protection, harassment order, domestic abuse no-contact order, and other court orders

- Probation and parole status
- e. Do not recode a call as non-domestic simply because it does not involve an allegation of physical assault. Recode the call only if it has been established that there is no domestic relationship between the parties.
- f. On information from a responding officer, recode the call to a domestic type in cases where the initial coding was a non-domestic call type.
- g. Notify the designated 911 supervisor when one of the parties involved is a law enforcement officer or other public safety officer, 911 employee, public official, or prominent member of the public.

Notify the records section when the officer indicates he or she is going to booking and request that a CAD report be e-mailed to the designated bail evaluator staff.

Appendix to Protocol 2: Dispatching 911 Domestic Abuse Calls

The following appendix is attached to and included as part of the policy on dispatching 911 domestic abuse calls:

- *Appendix 2D: Protocol 2—Card 1 Safety-Oriented Dispatching*

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 third parties

called the police, “the odds are 2-1/2 times higher that such cases will involve a major injury to the victim, compared to cases in which the victim calls [the] police herself.

– E. Buzawa et al. (2000)

POLICY: RECORDS SECTION RESPONSE IN 911 DOMESTIC ABUSE CALLS

In addition to adhering to general agency policy, ECC records section personnel will take the following actions in responding to domestic abuse-related calls, using the protocols and appendices referenced and included as part of this policy.

Protocol 3: Records Section Response

1. Utilize all available databases, documents, and other records to assist call takers, dispatchers, and patrol officers in establishing the nature of the emergency and the type and level of danger presented. Upon request, check the following:
 - a. Search civil court order registries statewide and nationally for orders for protection, harassment orders, and domestic abuse restraining orders.
 - b. Search for current domestic abuse no-contact orders (DANCO) issued as part of a pending criminal case.
 - c. Search and verify status of any current warrants.
1. Respond promptly to requests for information related to 911 domestic abuse calls, according to **Protocol 3: Records Section Response**.
2. Utilize all available databases, documents, and other records to assist call takers, dispatchers, and patrol officers in
 - d. Search and verify vehicle registration and driver's license.
 - e. Search for data on previous calls involving the same parties or address.
 - f. Search for criminal history, including arrest, charging, and conviction data. Use the History of Domestic Violence Summary (See *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*) when available.
 - g. Search and verify probation and parole status, if possible.
2. Promptly relay the search results to personnel receiving, dispatching, and responding to the call.
- establishing the nature of the emergency and the type and level of danger presented.
3. Following an arrest on a domestic call, e-mail the CAD report and the order for protection affidavit and petition, if any, to designated bail evaluator staff.
3. Following an arrest in a domestic abuse call, email the following documents to the designated bail evaluator staff, preferably immediately and no later than two hours after the arrest:
 - a. A copy of the CAD report
 - b. A copy of the affidavit for any order for protection or harassment order related to the call and the parties involved.
4. Following any call involving a person on probation or parole, e-mail the CAD report to the probation or parole officer of record.

Appendix to Protocol 3: Records Section Response

The following appendix is attached to and included as part of the policy on records section response:

- *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*

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.

POLICY: SUPERVISING THE 911 RESPONSE TO DOMESTIC ABUSE CALLS

In addition to adhering to general agency policy, ECC supervisors will provide the support and oversight necessary to ensure a safety-oriented response to domestic abuse-related calls, using the protocols and training memos referenced and included as part of this policy.

1. Implement the provisions of this policy in accordance with **Protocol 4: Supervising 911 Domestic Abuse Calls**.

2. Conduct regular reviews of 911 recordings of domestic abuse calls and provide feedback and guidance to call takers.
3. Conduct regular reviews of 911 CAD transcripts in relation to calls and provide feedback and guidance to dispatchers.
4. Maintain 911 recordings for at least ninety days (and longer if possible) and CAD transcripts indefinitely in a manner which allows later access by investigators, prosecutors, and defense attorneys.
5. Relay recordings of 911 calls and related documents to investigators, prosecutors, and defense attorneys as requested.
6. Notify the designated patrol supervisor when a domestic abuse call involves a law enforcement or other public safety officers, 911 personnel, public official, or other prominent member of the public.
7. Conduct regular reviews of the response to inquiries and requests made to records section personnel in domestic abuse cases.

Protocol 4: Supervising the 911 Response to Domestic Abuse Calls

1. Prepare for implementing this protocol by taking the following actions:
 - a. Read all ECC policies and accompanying appendices and training memos related to the 911 response to domestic abuse calls.
 - **Protocol 1: Receiving 911 Domestic Abuse Calls**
 - **Protocol 2: Dispatching 911 Domestic Abuse Calls**
 - **Protocol 3: Records section Response in 911 Domestic Abuse Calls**
 - b. Be familiar with *Appendix 2E: Protocol 4—Card 1 Call Review Checklist*.

- c. Review and integrate the materials in *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*, *Appendix 1B: Training Memo—Risk and Dangerousness Appendix*, and *1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants* into the call taking and dispatching work routines.
2. Conduct regular reviews of 911 recordings and CAD transcripts (as assigned to the designated supervisor).
 - a. Use *Appendix 2E: Protocol 4—Card 1 Call Review Checklist* to guide the reviews.
- b. Listen to three 911 domestic abuse calls from each call taker on a quarterly basis.
- c. If problems are identified, meet with the call taker to listen to the calls, review the checklist results, and provide feedback and guidance as needed.
- d. Provide a written annual report based on reviewing a sample of ten or more of each of the following types of domestic abuse calls:
 - Caller is a “third party,” someone other than the victim or suspect, e.g., neighbor, bystander, family member
 - Caller is a child

- Hang-up calls coded as domestic abuse calls
 - Disconnected or otherwise interrupted calls
 - e. On a quarterly basis, listen to the radio transmissions from each dispatcher of three 911 domestic abuse calls and read the related CAD transcripts and call taker generated information.
 - f. If problems are identified, meet with the dispatcher to listen to the calls and read the accompanying CAD transcript, review the checklist results, and provide feedback and guidance.
 - g. Include attention to information requested and supplied by records section personnel as part of the regular quarterly reviews conducted with call takers and dispatchers.
 - h. Prepare a quarterly report for the Operations Manager regarding compliance with these policies and protocols.
3. Maintain 911 recordings and CAD transcripts in a manner that allows later access by investigators, prosecutors, and defense attorneys; relay recordings and documents as requested.
- a. Ensure that recording equipment and systems are properly maintained, including any necessary software upgrade and instructions to 911 personnel.
 - b. Ensure that the 911 recording will be preserved as potential evidence for at least 90 days, and longer if possible. Ensure that CAD screens will be preserved on the secure server for at least 90 days and indefinitely, if possible.
4. Inform call takers of the importance of and process for notifying 911 supervisors when a domestic abuse call involves a law enforcement officer or other public safety officer, 911 employee, public official, or prominent member of the public.

Appendices to Protocol 4: Supervising the 911 Response to Domestic Abuse Calls

The following appendices are attached to and included as part of the policy on supervising the 911 response to domestic abuse calls:

- *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 2E: Protocol 4—Card 1 Call Review Checklist*

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.

CHAPTER 2 ENDNOTES

1. Campbell, et al., (2003 pp. 15-19).
2. An estimated 42-66% of suspects are ‘gone on arrival’ (Klein, 2008, Part 1, p. 17).

In the Quincy study of a proactive court model, “those offenders who left the scene had twice the number of past criminal charges and twice the recidivism rate of those present when police arrive.” (Buzawa, et al., 2000, p.22)

3. Bonomi, et al. (2006, p. 1360) studied how often domestic violence victims called police. They found victims made more 911 calls if the perpetrator used a weapon (96% more), the victim experienced sexual abuse (58% more), or the physical violence was severe (40% more).
4. New laws criminalizing interference with 911 calls have been enacted in Alaska, Washington, Connecticut, Indiana, Maine, Minnesota, North Carolina, Texas, and Wyoming.
5. In the Quincy, MA study, 68% of 911 calls to the police were made by the victim. Buzawa et al. (2003, p. 21) found that when third parties called, “the odds are 2-1/2 higher that such cases will involve a major injury to the victim compared to cases in which the victim calls [the] police herself.”
Hutchison (2003; cited in Smith, p. 45) found that almost two-thirds of calls to police were made by victims. In this study, 14% of third party calls were made by a neighbor/friend, 9% by a child, 4% by a family member, and 4% by a stranger.
6. Block (2003, p. 6).

LAW ENFORCEMENT—PATROL RESPONSE

FRAMEWORK: PATROL RESPONSE TO DOMESTIC VIOLENCE-RELATED CASES

The patrol officer is the one of few practitioners in the criminal justice system to come close to seeing and hearing what really goes on in the privacy of violent homes. For a responding officer, the patrol report is one of a dozen he or she might write in a shift. In a domestic violence legal case, however, it is the most important document. In an interagency response the patrol report lays the foundation for how each subsequent intervener thinks about and acts on the case. Its attention to specific details either helps or hinders each practitioner's efforts to maximize victim safety and offender accountability. The Blueprint's interagency approach emphasizes the importance of accumulating information over time and incidents in order to understand and appropriately respond to the level of danger and risk posed by offenders¹ in a crime that is often complex and difficult to prosecute.

Each intervening practitioner has a specific role to play in a case and each looks to the officer's report when making decisions about when and how to act.² The investigator reads a report asking, *Can I work this up into a case that can be proven beyond a reasonable doubt? Are there witnesses? Can I find them? Did they see or hear something?* The bail evaluator asks, *Will this person be a threat to the public or to this or other victims?* The prosecutor asks, *What crimes were committed, if any? Was anyone acting in self-defense?* When a case results in a plea or conviction, the presentence investigation writers ask, *Is this event an unusual happening or part of a pattern of violence, coercion and intimidation?* To answer this question the PSI writer reads every report written on the defendant. When officers treat each call as part of an ongoing case the pattern will emerge and the safety needs of all victims become more evident. Every goal of the Blueprint—

ensure swift and sure responses, adjust responses to the level of the violence, link practitioners together with a common understanding of the violence, engage with victims, and ensure a level of interagency accountability—is largely dependent on the patrol officer's initial response to the case. This policy and the accompanying protocols should be adapted for Sheriff's Office patrol divisions.

The Blueprint's policies and protocols for law enforcement response are accompanied by three key tools for the responding officer. The first two are a practitioners' guide to risk and danger in domestic violence cases (*Appendix 1A*) and its accompanying training guide (*Appendix 1B*). They draw on the research and experience we have at our disposal to help identify and document the major factors that indicate whether the violence in a case is likely to continue, escalate, or become lethal. The third tool is a report-writing format that produces a patrol report that answers each of the core questions subsequent interveners will have about the incident (*Appendix 3L*).

The policies and protocols emphasize the importance of basic, solid law enforcement work in domestic violence cases, which can seem futile on a case-by-case basis but will, in many cases, result in a successful intervention over time.³ Such success is more likely when officers and other interveners stay engaged with victims⁴ who may be quick to call for help during an assault,⁵ but who are understandably cautious in joining in an adversarial court process against the person who holds all of the power cards and readily uses coercion and violence to maintain that power.⁶ Victim engagement is a cornerstone of the Blueprint and it begins in the first hour of the case.

POLICY: PATROL RESPONSE

In addition to adhering to general agency policy, patrol officers and supervisors will take the following actions in responding to domestic violence-related calls, using the protocols, appendices, and training memos referenced and included as part of this policy.

In accordance with Minnesota State Law and for the purposes of this policy, a domestic relationship means spouses and former spouses; parents and children; persons related by blood; persons who are or have lived together; persons who have a child in common or share a pregnancy regardless of whether they have been married or have lived together at anytime; and persons involved in a significant romantic or sexual relationship. (NOTE: This definition is based on Minnesota law. Communities in other states may make modifications to this policy as needed.)

1. Implement the provisions of this policy in accordance with **Protocol 1: Patrol Response to Domestic Violence-Related Calls.**
2. Respond to domestic violence-related calls directly and without delay.
3. Secure the scene and as safety permits separate all parties.
4. Conduct a thorough initial investigation to determine if probable cause exists to believe

a crime has been committed and identify the suspect.

5. Make the arrest decision according to the following requirements and guidelines:
 - a. The officer **shall arrest** when probable cause exists and any of the following conditions are present:
 - The alleged assault or incident involves a felony-level crime.
 - The victim has signs of injury or impairment.
 - A dangerous weapon is involved.
 - An order for protection, harassment restraining order or domestic abuse no-contact order has been violated.
 - A victim is in fear of imminent bodily harm.
 - b. In misdemeanor cases without serious injury, an officer may (with supervisor's approval) elect to not arrest when the arrest would require placing children in foster care and there is an alternative for keeping the victim/s safe. The officer shall document the decision not to arrest.
 - c. When both parties have used violence, the officer shall first make a determination if either party acted in self-defense and arrest the party that was not acting in self-defense.
- d. When both parties have used illegal violence and neither was acting in self-defense, the officer shall arrest the predominant aggressor; the prosecutor will determine whether the second party will be charged.
- e. When an officer believes that there is a compelling public safety issue which requires the arrest of both parties and that both parties pose a significant threat of danger to each other, the officer should arrest both parties.
- f. Utilizing *Appendix 1C: Training Memo—Interventions with Victims of Battering as Suspects or Defendants*, be aware of the need to adjust responses when the suspect is a victim of ongoing physical and/or sexual abuse by the victim of this incident.
6. Collect and secure evidence related to the probable cause determination, regardless of whether the suspect has been arrested at the scene.
7. In cases where the suspect is gone on arrival (GOA), probable cause to arrest exists, and the officer would have made an arrest, take measures to locate the suspect and submit a complete investigation report.

- a. Remain on the scene until the officer believes that the likelihood of imminent violence or abuse has been eliminated and the situation has stabilized.
 - b. Ensure that the victim has been given information about safety and resources before clearing the scene.
 - 8. Whether or not there has been an arrest, provide assistance to victims, including assistance with accessing medical care, securing shelter, and providing notice of victim's rights information in accordance with **Protocol 2: Victim Engagement** and *Appendix 3A: Training Memo—Law Enforcement Response to Persons with Disabilities*.
 - a. Notify the local advocacy program of all domestic-related arrests and gone-on-arrival cases where officers issued a pick-up-and-hold as soon as possible, in accordance with **Protocol 2: Victim Engagement**. (NOTE: This requires an agreement between the department and the advocacy program.)
 - 9. Identify and check on the welfare of each child at the scene and follow up as required.
-
- 10. Submit the appropriate report on all calls that include an allegation of a domestic assault or related crime as required by Minn. Stat. § 629.341.
 - 11. Do not recode any call coded as a domestic by dispatch where the relationship between the parties fits the domestic relationship definition. A call may be recoded if it can be verified that there is no domestic relationship between the parties.
 - 12. When responding to a domestic call involving a department employee, secure the scene and address the safety needs of those present. Request that a supervisor of higher rank than the officer involved be dispatched to the scene to oversee the criminal investigation and make an arrest decision in accordance with this policy.
 - a. If the arrestee is an officer from the same agency as the responding officer, the supervisor at the scene shall recover the officer's badge, law enforcement identification card, and service weapon. If circumstances indicate a high risk of danger or potential lethality, the on-scene supervisor shall confiscate all weapons at the scene on the same basis as they would for any citizen.

- b. If the suspect is the chief of police or the Sheriff, the second in command shall be called to the scene.
- 13. When responding to a domestic call involving a public figure, request that the street supervisor or station commander be dispatched to the scene, conduct a criminal investigation, and make an arrest decision in accordance with this policy. For purposes of this policy, a public figure is defined as an elected official, sports figure, television or radio personality, celebrity, or other well-known person.

Those offenders

who left the scene had twice the number of past criminal charges and twice the recidivism rate of those present when police arrived.

– E Buzawa, et al. (2000)

Protocol 1: Patrol Response to Domestic Violence-Related Calls

A. Initial Approach

1. Respond to domestic calls directly and without delay, utilizing a tactical approach as appropriate to the circumstances of the call. (Note: Saint Paul law enforcement internally distributes a tactical approach training memo.)
2. Approach the scene with a high degree of caution.
3. Maximize safety for all involved as officers approach the scene, make initial contact with the occupants, and gain entry to the premises.

B. Securing the Scene

1. Separate the parties.
2. Restrain the suspect if necessary, and/or remove the suspect.
3. Assess for injuries, administer first aid, and request medical services as necessary.
4. Inquire about strangulation and internal injuries.
5. Address victim concerns about the cost of paramedic services by informing them that those services are not billed to the victim unless they require insertion of an IV or medical transport is requested. (NOTE: check local practices.)

6. If injuries appear life-threatening or if the victim is impaired, e.g., through injury or intoxication and unable to make the decision, request medical services regardless of the victim's preference.
7. Determine the whereabouts and identities of all people on the premises, including children.
8. Identify and secure weapons that might pose a threat during the investigation or that might be potential evidence.
9. Separate occupants and witnesses from the victim and accused, keeping them out of sight and hearing range of one another, as safety permits.

C. Initial Investigation

1. Make initial observations and note spontaneous statements by those at the scene, including:
 - a. Immediate statements made by victim, suspect or witnesses
 - b. Observations of the crime scene (furniture tipped over; broken phones, doors, other damaged property; torn clothing; blood; no sign of physical altercation, etc.)
 - c. Emotional demeanor of parties at the scene (angry, scared, crying, etc.)

- d. Physical appearance of parties (disheveled clothing or hair, torn clothing, obvious injury, flushed face, etc.)
 - e. Indications of drug or alcohol use by those at the scene and apparent level of intoxication or impairment (coherent in responding to questions)
2. Obtain a comprehensive account of events by interviewing or talking with each party involved in or witness to the incident.
 - a. To the extent possible and as safety permits, talk to all parties and witnesses away from sight and hearing range of other parties.
 - b. Arrange for an interpreter if necessary.
 - c. Seek the following information from each party involved in the incident:
 - Account of events:
 - Specific nature of any threats
 - Indications of witness tampering or whether the suspect has threatened the victim if she or he seeks help from law enforcement
 - Manner in which weapons were used
 - Indications of stalking
 - Details about claims of strangulation

Chapter 3: Law Enforcement

- Indications of self-defense
- Injuries or impairment:
 - Pain
 - Effects of strangulation
 - Breathing
 - Impaired movement
- Emotional state
- Recent use of alcohol or drugs
- Relationship to other parties involved, including witnesses
- Identification, address, and means of locating the person for follow-up
- Presence and type of firearms and other weapons in the home, regardless of whether a weapon was used in the current incident
- d. Talk to each witness; document what the witness saw and heard, relationship to the parties involved, date of birth, and a number and address to reach the witness.
- e. Be alert to and probe for indications of sexual aggression or coercion, stalking and/or strangulation.
- f. Ask the victim if the suspect knows his or her address and phone number(s). If the victim is concerned that the suspect will obtain this information, note that in the report and inform victim that the information has been marked as

confidential, but it is nevertheless possible that the suspect could gain access to it. Follow department protocol to protect victim contact information.

3. Obtain information about the history of violence and stalking from the apparent victim by asking the following three risk questions:
 - a. Do you think he/she will seriously injure or kill you, your children, or someone else close to you?
 - What makes you think so?
 - What makes you think not?
 - b. How frequently does he/she intimidate, threaten, or assault you?
 - Is it changing?
 - Getting worse?
 - Getting better?
 - c. Describe the time you were the most frightened or injured by him/her.
4. Establish whether the victim has been intimidated about cooperating with law enforcement personnel or courts by asking if the suspect has ever threatened the victim for seeking help from the law enforcement/courts or others? If so, obtain details.
5. Obtain a description of what each witness saw and heard and the witness's name, date of birth, and contact information.

6. Utilizing *Appendix 1C: Interventions with Victims of Battering as Suspects or Defendants*, be attentive to the need for adjusting interventions to protect both the suspect and victim of the incident.

7. Obtain information from Dispatch using available databases.

D. Establishing Probable Cause

1. Consider the totality of circumstances when making a probable cause determination. In domestic violence cases, totality of circumstances includes:
 - a. Information received from 911
 - b. Each party's account of events
 - c. All parties' and witnesses accounts
 - d. Officer observations which corroborate or negate accounts of events by other parties
 - e. Physical evidence
 - f. Either party's history
 - g. Officer training, experience, and education
2. Attempt to talk with both parties and as many witnesses as practical prior to making a probable cause determination.

E. Arrest Decision

1. Make an arrest decision according to the conditions specified in the policy, including

arrests for violations of protection orders or no-contact orders

- 2. The Department discourages dual arrests.** Utilize this protocol and the guidance in the training memos to investigate and make an arrest decision when both parties have used or are alleged to have used violence against the other. “Self-defense” means that the person reasonably believed that he or she was in imminent danger, force was necessary, and the person used only the level of force reasonably necessary to prevent the harm feared. In Minnesota, there is no duty to retreat from one’s own home when acting in self-defense, but that does not cancel the obligation to act reasonably when acting in self-defense. “Predominant aggressor” is defined as the party to the incident who, by his or her actions in this incident and through known history and actions, has caused the most physical harm, fear and intimidation against the other.

- a. Assess whether one party acted in self-defense
- b. Do not arrest a party who acted in self-defense
- c. If neither party acted in self-defense and there is probable cause to arrest both parties, investigate and make an arrest decision regarding the predominant or most dangerous aggressor. Consider who would most likely cause the greater

degree of fear and harm to the other if left unrestrained. (See *Appendix 1C: Interventions with Victims of Battering as Suspects or Defendants.*)

- d. Take the predominant or most dangerous aggressor into custody and document the probable cause determination on the secondary offender in the report.
 - e. The policy allows a dual arrest when an officer believes that there is a compelling public safety issue which requires the arrest of both parties and that both parties pose a significant threat of danger to each other.
- 3. Obtain supervisor’s approval if making a decision not to arrest in a misdemeanor case without serious injury where the arrest would require placing children in foster care and there is an alternative for keeping the victim/s safe.**
- a. Such a decision is most likely if the victim is too intoxicated to care for the children or the victim is not the parent or legal guardian.
 - b. Document the decision not to arrest.
 - c. Do not exercise this option if it would mean leaving the children with a person with a known history of serious domestic violence, or a person who does not appear capable of caring for the children.

4. Conduct the arrest swiftly and safely, once that decision has been made.
 - a. Search and handcuff the suspect prior to placing him or her in the squad with an in-squad camera.
 - b. Activate the in-squad camera and recorder when the suspect is in a vehicle.
5. Make a record of all spontaneous statements by the suspect.
6. After arriving at the jail, fill out the required documents to hold the defendant. Ensure that the jail has complete and accurate information about how to contact the victim when the suspect is released.
7. After arriving at the jail, attempt to interview all arrested misdemeanor-level domestic abuse suspects in accordance with *Appendix 3D: Training Memo—Miranda Rights and Domestic Violence Cases.*
 - a. An investigator will interview gross misdemeanor and felony suspects.
 - b. Record all in-custody interviews.
 - c. Do not attempt to make a custodial interview of a non-English speaking suspect without the assistance of a court-certified interpreter.

F. Evidence Collection – General

1. Collect and process all relevant evidence from the scene.

2. Photograph injuries and note bruises or other injuries that may require follow-up by investigators.
3. Obtain a medical release from the victim and information about where medical treatment will be sought. Include the following information on the release:
 - a. Date treatment was initially sought or will be sought to the present date
 - b. Victim's authorization for release of records regarding follow up treatment
4. Photograph disarray at the scene.
5. Photograph damaged property, including all evidence seized as well as broken windows and doors, damage to vehicles, damaged telephones, and similar evidence.
6. Photograph, and if possible, collect damaged property such as broken phones, bloody or torn clothing.
7. NOTE: Do not seize a telephone if it is the only working phone available to the victim. (Local advocacy programs may be able to supply cell phones equipped to call 911.)
8. Collect electronic evidence such as text messages, email, voicemail, etc.

G. Strangulation – Investigation and Evidence Collection

1. Be alert to the signs and symptoms of strangulation.

2. If the victim has any of the symptoms of strangulation, dispatch emergency medical services. See *Appendix 3F: Training Memo—Law Enforcement Response to Strangulation* regarding medical care.
3. Conduct an initial interview of the victim regarding the method of strangulation and its impact, e.g., difficulty breathing, loss of consciousness.
4. If possible, talk with the suspect before making a probable cause determination. Take caution to not inadvertently arrest a person acting in self defense.
5. Document all evidence of strangulation in the written report, using the term "strangulation" rather than "choking," unless quoting the party interviewed.

H. Stalking – Investigation and Evidence Collection

1. Be alert to the possibility that any single report of domestic abuse could be part of a pattern of stalking behavior. Pay particular attention to repeated violations of protection orders and no contact orders.
2. Ask questions of the victim to determine if the current incident is an isolated event or part of a pattern of behavior.
3. Be aware of the possibility that actions that would not otherwise be illegal or might not cause alarm in another context could be examples of stalking behavior and respond

according to *Appendix 3G: Training Memo—Law Enforcement Response to Stalking*.

4. If an arrest is made pursuant to probable cause, search the suspect's vehicle, if present, for tools and implements used to commit stalking, kidnapping, or related crimes. If necessary, obtain a search warrant.
5. Be alert to the existence of and collect evidence specifically associated with stalking behavior, such as floral deliveries, emails, notes, cards and letters, gifts, and similar evidence.
6. Note in the report information the victim has offered regarding previous acts of stalking or harassment for follow-up by the investigator.

I. Suspect Gone-on-arrival (GOA)

1. In addition to the initial investigation procedures included in this protocol, obtain the following information when the suspect has left the scene (GOA) prior to patrol officers' arrival:
 - a. Suspect's name, date of birth, and physical description, including clothing
 - b. Suspect's direction and mode of travel upon leaving the premises
 - c. Description of the suspect's vehicle, if applicable
 - d. Where the suspect might have gone

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- e. Where the suspect stays when not with the victim
 - f. Whether the suspect has ever interfered with the victim's attempts to seek help, especially from law enforcement
2. Take the following actions when the suspect has left the scene (GOA) prior to patrol officers' arrival:
- a. Search for the suspect on the premises.
 - b. Search for the suspect in the immediate area and the direction and area where the suspect might have fled.
 - c. Check with 911 for other addresses where the suspect might be located. Issue a squad pick-up.
 - Request that 911 air squad pick-up on all active dispatch channels.
 - Issue a be-on-the-lookout alert (specify local procedures.)
 - Note squad pick-up and alert actions in the report.
 - d. Encourage the victim to call 911 if the suspect returns.
 - e. Provide information to the victim about restraining orders, how to request that the prosecutor file a criminal complaint, advocacy services, and shelter.
 - f. Offer to transport the victim or arrange for transport to shelter or another safe place if needed.
- g. Provide whatever assistance is reasonable to help the victim to secure broken doors or windows.
 - h. Collect and process evidence in the same manner as when an arrest has taken place.
 - i. Remain at the scene until the officer believes the likelihood of further violence has been eliminated.
 - j. After leaving the scene, when possible, drive by the residence over the next few hours and return to look for the suspect.
 - k. Prior to clearing the scene, ensure that the victim receives information about victim advocacy services, protection orders and how to request criminal charges.
- J. Victim Engagement**
- 1. Work in collaboration with victims and provide specific support and attention to safety.
 - 2. Notify the local advocacy program by telephone at (number) on all domestic-related arrests and gone-on-arrivals as soon as possible.
- NOTE: This requires a negotiated arrangement with an advocacy group to provide such follow-up. See the Saint Paul Intervention Project website for a complete
- description of advocacy in these cases (www.stpaulblueprintspip.org)
- a. Preferred: make the referral before clearing the scene, but at the latest immediately after booking.
 - b. Provide the advocacy program with the following information:
 - Case number
 - Victim's name, address and phone numbers
 - Suspect's name and date of birth
 - The charge(s) and whether the suspect was arrested
 - A brief description of the incident
 - Any information regarding the victim's needs (e.g., interpreter, medical treatment and facility, need for shelter)
- K. Children at the Scene**
- 1. Check on the welfare of all minors at the scene and determine:
 - a. Names and **dates of birth** of any children present
 - b. Presence and location of any children at the incident
 - c. Physical and emotional condition of any children present

- d. Child or children's involvement in the incident, if any
2. Attempt to talk with each child at the scene and explain that the officers are there to help and to make sure everyone is safe. Do so immediately, and privately, if possible.
3. Be aware of how the child is responding to the situation and try to reduce the child's anxiety and fear.
4. Be alert to and document any spontaneous and relevant statements made by a child witness.
5. In general, talk to the child about what she or he saw or heard and determine if the child has been injured or directly harmed.
6. Do not interview a child when information available to the officer suggests that it might be harmful. Document the reasons for not interviewing the child or children in the report.
7. Consider the following in determining whether to interview children:
 - a. Child's physical, emotional, or psychological ability to give a statement
 - b. Child's age and ability to understand questions and formulate responses
 - c. Non-offending parent/guardian's preferences as to whether and how to talk with the child or children
8. Avoid subduing or arresting a party in front of children whenever possible.
 - a. If a child witnesses the arrest, talk with the child to provide reassurance that the arrested person will be alright, the child did nothing wrong, the arrest is not their fault, law enforcement is there to help keep everyone safe for the night, and the officer is making the arrest decision.
9. When the actions of the officer result in a situation where no responsible adult will be in the home to care for the children (e.g., dual arrest or a single arrest and the other parent must seek medical treatment), inquire of the custodial parent if there is someone who can be contacted to care for the children.
10. Notify Child Protective Services in accordance with the requirements of Minn. Stat. § 626.556, Reporting Maltreatment of a Minor, when any of the following occur:
 - a. A child has been injured as a result of an assault.
 - b. A child has been sexually abused.
 - c. A child has been neglected.
 - d. Actions taken by the officer will result in a situation where no responsible adult can be located to care for the child or children.
11. Call for medical assistance or transport the child to the nearest hospital for treatment if a child has been injured and is in need of medical care.

L. Recoding Calls

1. Do not recode any call coded as a domestic by dispatch where the relationship between the parties fits the domestic relationship definition. If the relationship is unknown, do not recode.
2. If a call was coded as a domestic by dispatch and it is determined that there was no domestic relationship as defined in this policy, explain the situation in a brief entry (three to four sentences) in the CAD and recode the call appropriately.

M. Reports – Determination of Probable Cause

1. In all cases resulting in a determination of probable cause that a crime was committed, regardless of the initial coding by dispatch and including cases where the suspect has left the scene, prepare a written report that documents the items included in *Appendix 3L: Domestic Violence Patrol Report Checklist*, attached to this protocol.
2. SAFETY NOTE: If the victim is afraid that disclosure of her or his address and phone number will compromise personal safety or property, explain that a victim has a right to request that this information be non-public according to state law [Minn. Stat. § 13.82 subd.17 (d)]. If the victim requests that such

information be shielded, clearly indicate on the report that the victim's address and phone number must be kept confidential from the suspect. If the victim seeks shelter, do not include the location in the report; obtain a telephone number where she can be reached in the next few days.

N. Reports – Determination of No Probable Cause

1. File a brief report as required by Minnesota § 629.341 in cases where there was a domestic relationship but no probable cause that a crime was committed or in cases where the officers could not locate the parties. File this report by entering the information listed below into the CAD system or 911 documentation:

- a. A brief summary (three to four sentences) of the incident
- b. Description of the basis for the determination of no probable cause
- c. Description of the attempts to locate the parties involved, if applicable
- d. Names and dates of birth of the parties involved

O. Incidents Involving Department Employees

1. Secure the scene and address the safety needs of those present.

2. Request that a supervisor of higher rank than the officer involved be dispatched to the scene.
3. Under the direction of the on-scene supervisor, conduct a criminal investigation, make an arrest decision, and process evidence in accordance with the policy and this protocol.
4. If the arrestee is an officer from the same agency as the responding officer, the on-scene supervisor shall recover that person's badge, law enforcement identification card, and his or her service weapon.
 - a. If circumstances indicate a high risk of danger or potential lethality, the supervisor shall confiscate all weapons at the scene, using the same due process as with any member of the public.
 - b. If the suspect is unwilling to allow officers to take possession of the weapon or weapons, badge, and identification card, the on-scene supervisor will notify the watch commander.
 - c. If the suspect is the chief of police, the senior assistant chief shall be called to the scene.
5. If the arrestee is an officer employed by an agency other than the responding officer's agency, the on-scene supervisor shall notify the suspect's agency of the arrest.

6. The on-scene supervisor shall ensure that the victim is given the required information about the victim's rights and that the referral to the local advocacy program is made in accordance with local agreement.

P. Incidents Involving Public Figures

1. A public figure is defined as an elected official, sports figure, television or radio personality, celebrity, or other well-known person.
2. Request that a supervisor be dispatched to the scene.
3. Under the direction of the on-scene supervisor, conduct a criminal investigation, make an arrest decision, and process evidence in accordance with the policy and this protocol.
4. Notify the department's public information officer to prepare for possible inquiries from the media.
5. Take extra precautions to protect the victim's safety and confidentiality, including:
 - a. Shield the victim from the media.
 - b. Ensure that victim contact information is not included in the report, if so requested by the victim.
6. The on-scene supervisor shall ensure that the victim is given the required information about victims' rights and that the referral to the local advocacy program is made.

DOMESTIC VIOLENCE PATROL REPORT CHECKLIST		
<p>Background and officers' actions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Time of officers' arrival and time of incident <input type="checkbox"/> Relevant 911 information, including specific details about any violence or threats in the 911 call <input type="checkbox"/> Immediate statements of either party and any witnesses at the scene <input type="checkbox"/> A complete description of the scene <input type="checkbox"/> Note any existing protection or no-contact orders, probation, warrants, prior convictions <input type="checkbox"/> Summarize actions taken by responding officers (e.g., entry, arrest, non-arrest, use of force, attempts to locate, transport, advocacy contact and referrals, victim notification, seizing firearms, rationale for self-defense or primary aggressor determination) <input type="checkbox"/> Account of evidence collected (e.g., pictures, statements, weapons, other) <input type="checkbox"/> Presence of risk factors described in <i>Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases</i> <input type="checkbox"/> If an arrest was not made, the reason why <input type="checkbox"/> When possible, issue a squad pick-up and hold on GOA suspects that are on probation. 	<p>For each witness and party involved:</p> <ul style="list-style-type: none"> <input type="checkbox"/> His/her account of events and responses to follow-up questions <input type="checkbox"/> Officer observation related to the person's account of events <input type="checkbox"/> Identification, address, and means of locating the person for follow-up, including: <ul style="list-style-type: none"> <input type="checkbox"/> Home address and phone number <input type="checkbox"/> Place of employment, work address and phone number <input type="checkbox"/> Cell phone number(s) <input type="checkbox"/> Relationship to other parties <p>For each party involved:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Injuries or impairment, (including pain, strangulation effects, breathing, movement impairment) <input type="checkbox"/> Emotional state/demeanor <input type="checkbox"/> Acts of intimidation or aggression <input type="checkbox"/> Presence or use of weapons <input type="checkbox"/> Alcohol or drug consumption and impairment of those involved 	<p>Information from the victim, including history of violence and stalking and contact information:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Responses to the risk questions: <ol style="list-style-type: none"> 1. Do you think he/she will seriously injure or kill you or your children? What makes you think so? What makes you think not? 2. How frequently and seriously does he/she intimidate, threaten, or assault you? Is it changing? Getting worse? Getting better? 3. Describe the time you were the most frightened or injured by him/her. <input type="checkbox"/> Threats to the victim for seeking help, particularly from law enforcement or courts, and stalking behaviors Name and phone numbers of someone who can always reach the victim (NOTE: Record victim contact information in the confidential section of the report and on the <i>Victim Information Form</i>.) <input type="checkbox"/> Inform the victim that every effort will be made to protect this information, but that it is possible that the suspect could gain access via court order
<p>Additional information related to the suspect:</p> <ul style="list-style-type: none"> <input type="checkbox"/> GOA: details about where the suspect might be and where he/she stays when not at the address of the incident; physical and vehicle descriptions; aliases <input type="checkbox"/> Suspect's county and state of residence during the past ten years <input type="checkbox"/> Whether Miranda is given and/or request for attorney and when this occurred <input type="checkbox"/> Whether a custodial taped interview of the suspect was conducted <input type="checkbox"/> Any spontaneous statements given by the suspect after the arrest 	<p>Additional information related to the case:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Details regarding presence, involvement, and welfare of children at the scene <input type="checkbox"/> Existence of language, communication, or cognition barriers <input type="checkbox"/> Medical help offered or used, facility, and medical release obtained with victim's SSN and appropriate boxes checked <input type="checkbox"/> Presence or involvement of elderly people or people with disabilities 	

Protocol 2: Victim Engagement Guidelines

1. Work in collaboration with victims, cognizant of the principles of “continuing engagement,” as addressed in the training memo accompanying this protocol.
 - 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.
 - 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 cooperation with the legal system.
 - 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 the offender, the abuse and their situation.
 - f. Engage in dialogue with the victim, thereby avoiding inadvertently treating her or him simply as 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. Victim engagement guidelines for patrol officers:

In responding to domestic violence-related calls, conducting the on-scene investigation, and interacting with victims and suspects, take the following specific actions, as appropriate to the circumstances of the case and victim safety:

 - a. Do not tell the perpetrator what the victim has told officers.
 - b. Do not ask the victim if she or he:
 - Wants the suspect arrested
 - Will testify in court
 - Will sign a citizen’s arrest form
 - c. Remain at the scene until the likelihood of further imminent violence has passed.
 - d. Recognize that remaining calm and professional even if the victim is upset or hostile will enable officers to obtain better information.
- e. Recognize that the need for assistance may continue beyond the current incident and that the officer’s response will influence whether the victim will view law enforcement as a resource for ending the violence in the future.
- f. Reassure the victim that he or she can continue to call law enforcement if necessary. This is especially true for victims who seem hostile to intervention.
- g. Be cognizant of the victim’s need for privacy and dignity by allowing her or him to change clothes if needed, shielded from on-lookers.
- h. Obtain a phone number of someone who will always know how to reach the victim and record that number on the Victim Information Form in accordance with department procedure.
- i. Provide victim with information about shelter, orders for protection and other community resources; preferable a card that provides notice of the domestic abuse victim’s rights (Minn. Stat. § 629.341 subd.3).

- j. Recognize that for a variety of reasons a victim may appear hostile to officers even if she or he asked for help. If officers are patient and calm in the face of that hostility it will often dissipate over time; that is, initial hostility is likely to dissipate three or four calls later, but probably not five or ten minutes later.
 - k. Recognize that victims are most likely to disclose abuse to the responding officer immediately following an assault. Most of the information on lethality and risk will be disclosed at this point in time. Become familiar with *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* and the accompanying *Appendix 1B: Training Memo—Risk and Dangerousness*, and use them to focus questions about risk.
 - l. Recognize that the officer's need for specific information may compete with the victim's need to talk on his or her own terms.
 - m. Recognize that better information is usually obtained by asking open-ended questions and following up on responses to those questions.
 - n. Reassure the victim that the violence is not her or his fault, that she or he did the right thing by calling law enforcement, and that officers will take appropriate action to protect the victim.
 - o. Provide messages of help, reassurance, and protection.
3. Victim engagement guidelines for investigators:
- In conducting the investigation and interacting with victims and suspects, take the following specific actions, as appropriate to the circumstances of the case and victim safety.
- a. Do not tell the suspect what the victim has told you.
 - b. If circumstances allow, do not tell the suspect you have spoken to the victim.
 - c. Treat each contact with the victim as an opportunity to build a continuing relationship.
 - d. Be patient with victims who may be hostile and less than appreciative of your efforts. Over time, if treated well, most victims will participate in a collaboration to stop the violence.
 - e. Ensure that the victim knows who you are and how to contact you.
 - f. Encourage the victim to report contact, abusive behavior and/or violations by the suspect.
 - g. Request that the victim report any threats made by the offender for cooperating with the investigation.
 - h. Inform the victim of the importance of keeping a record of mail, voice mail, e-mail, text messages, and other communication and contact from the suspect or others acting on the suspect's behalf.
 - i. Inform victim of the availability of periodic "welfare" checks at her or his residence by officers.
 - j. Problem solve with the victim around enhancing safety as the case proceeds through the legal system.
 - k. If the victim is willing to talk about the full scope of abuse and violence, ask for details and record all credible reports of violence, stalking, coercion, intimidation, and related acts of abuse
 - l. Inform the victim of the availability of community services that will support and enhance safety.
 - m. Ask open-ended questions—more likely to produce information than narrow questions.
 - n. Provide the victim with the phone number of the local advocacy program for safety planning and services. (See *Appendix 1C: Training Memo—Interventions with Victims of Battering as Suspects or Defendants* for referrals involving victims who are suspects.)

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- o. If the victim and/or witnesses do not speak English, contact appropriate interpreter services.
- p. For follow-up interviews, do not use neighbors or family members (specify

- local procedures for interpreter services).
- a. Provide messages of help, reassurance, and protection, using the guidance provided by *Appendix 3K: Training*

Memo—Victim Engagement and the Law Enforcement Response to Domestic Violence

Appendices to Policy on Patrol Response

The following appendices are included as part of the patrol response policy:

- *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*
- *Appendix 1B: Training Memo—Risk and Dangerousness*
- *Appendix 1C: Interventions with Victims of Battering as Suspects or Defendants*
- *Appendix 1E: History of Domestic Violence Summary*
- *Appendix 2G: Training Memo—911 Attention to Violence*
- *Appendix 3A: Training Memo—Law Enforcement Response to Persons with Disabilities*
- *Appendix 3B: Training Memo—Gone-on-Arrival (GOA) Cases*
- *Appendix 3C: Training Memo—Making the Arrest Decision*
- *Appendix 3D: Training Memo—Miranda Rights and Domestic Violence Cases*

- *Appendix 3E: Training Memo—Implications of Crawford and Forfeiture by Wrongdoing*
- *Appendix 3F: Training Memo—Law Enforcement Response to Strangulation*
- *Appendix 3G: Training Memo—Law Enforcement Response to Stalking*
- *Appendix 3H: Training Memo—Response to Children in Domestic Violence–Related Calls*
- *Appendix 3I: Training Memo—How a Defense Attorney Reads a Domestic Violence–Related Report*
- *Appendix 3J: Training Memo—How a Prosecutor Reads a Domestic Violence–Related Report*
- *Appendix 3K: Training Memo—Victim Engagement and the Law Enforcement Response to Domestic Violence*
- *Appendix 3L: Domestic Violence Patrol Report Checklist*

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.

Victims who worked with advocates

were more than twice as likely to live without violence as those who did not.

— C. Sullivan & D. Bybee
(1999)

LAW ENFORCEMENT—CONDUCTING INVESTIGATIONS

FRAMEWORK: CONDUCTING INVESTIGATIONS IN DOMESTIC VIOLENCE-RELATED CASES

Investigators build upon and expand the initial evidence collection and attention to danger and risk provided by patrol officers. The subsequent investigation can be a critical factor in determining whether a prosecutor can take action in ways that minimize the victim's direct participation in the prosecution and need to confront the offender. Evidence developed by the

investigator can make it possible to pursue charges related to witness tampering and to actions of violence that are associated with increased risk and lethality, such as stalking, strangulation, and sexual coercion and aggression.⁷

POLICY: CONDUCTING INVESTIGATIONS

In addition to adhering to general department policy, the investigative unit will take the following actions in conducting investigations in domestic violence-related cases, using the protocols and appendices referenced and included as part of this policy.

1. Implement the provisions of this policy in accordance with **Protocol 3: Domestic Violence Investigations**.
2. The supervisor shall promptly review every domestic violence-related report where an officer has determined that probable cause exists that a crime was committed and assign the case for follow-up investigation; or send the report to the charging attorney with no further investigation.
3. In cases where a primary investigation centers on a non-domestic crime but a domestic violence-related crime was also

involved in the case, fully investigate the domestic-related crime.

4. Conduct investigations supplementing the initial law enforcement investigation at the scene.
5. Prioritize investigation of cases where the suspect is gone-on-arrival in the same manner as in-custody cases and take victim safety into account.
6. Engage with the victim or victims in a way that prioritizes safety, offers resources, builds collaboration over time, and increases access to services and protection in accordance with **Protocol 2: Victim Engagement Guidelines**.
7. If a case that the investigator believes has strong merit is declined by the prosecuting authority, request the specific reason for the decision to decline and explore the

possibility of further investigation to support prosecution. If the prosecutor remains reluctant to proceed with the case, discuss it with the investigative unit supervisor for further follow-up.

The unit supervisor shall review cases regularly as appropriate with the prosecutor's office and shall meet quarterly with prosecutors to review and discuss recurring issues.

8. In cases where the prosecutor has insufficient evidence to charge the case but believes that further investigation would likely produce enough evidence to charge, the prosecutor will designate the case for release pending further investigation and return the case to the investigator specifying what additional investigation actions should be taken and designating a time period in which to gather the information.

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- If there is still insufficient evidence to charge at the end of the additional investigation period, the prosecutor will decline the case and promptly inform the investigator.
9. Be alert for crimes that often occur in domestic violence situations and investigate according to the related training memos; such crimes include:
- Stalking/harassment

Protocol 3: Domestic Violence Investigation

A. Case Assignment

- Regardless of whether the offender is in custody or out of custody (GOA), cases with one or more of the following factors will receive the highest priority in case assignment:
 - An imminent time deadline before which the suspect must be charged or released
 - Significant injury or impairment
 - Strangulation or stalking behavior has been alleged
 - A victim's response to risk questions indicates significant risk of harm
 - A victim expresses fear of imminent bodily harm

- Strangulation
 - Sexual coercion and sexual aggression
 - Witness tampering
 - Conduct all investigations involving department employees and law enforcement personnel as suspects, in accordance with this policy and protocol.
 - Conduct all investigations involving a public figure in accordance with this policy and
 - Cases with one or more of the following factors will receive secondary priority in case assignment:
 - Minor injury or no injury, except where the prosecutor has requested an investigation
 - No indication of ongoing abuse or victim intimidation by the suspect
 - No follow-up investigation will be assigned on cases involving:
 - Misdemeanors where the initial investigation is complete
 - Cases without probable cause
 - Follow-up investigation for in-custody misdemeanor cases will occur after charging at the request of the city attorney.
 - Cases shall be evaluated for multiple charges and joint investigation.
- protocol, regardless of the socioeconomic status or prominence of the suspect.
12. Determine if the suspect is on probation; if so, notify probation of the circumstances of the case, including any offenses where the suspect left the scene and has not been located.
- The investigative unit supervisor shall evaluate cases for multiple charges, both domestic-related and non-domestic-related.
 - If there is the possibility of multiple charges, the investigator will thoroughly investigate all crimes.
6. If it appears that the suspect is a victim of ongoing abuse by the victim of this incident, assign the case to an investigator with instructions to follow the procedures in *Appendix 1C: Training Memo—Interventions with Victims of Battering as Suspects or Defendants*.
- #### B. Investigation
- Identify and obtain contact information for witnesses if not included in the incident report.

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2. Conduct follow-up interviews with and obtain statements from witnesses, including the person who called 911 and children, if the initial interview was incomplete or missing important information.
3. Apply the following considerations in determining whether to conduct follow-up interviews with children:
 - a. The child's physical, emotional, or psychological ability to give a statement
 - b. The child's age and ability to understand questions and formulate responses
 - c. The non-offending parent or guardian's preferences as to whether and how to talk with the children.
4. Arrange for a follow-up interview with the victim.
 - a. Inquire about her welfare and safety.
5. Provide referral information regarding advocacy support, restraining orders, and other community supports.
6. Conduct a thorough interview with the victim that includes attention to:
 - a. Her or his account of events surrounding the incident
 - b. The extent to which the victim feels uneasy about providing information to law enforcement and if so, why
7. Conduct the domestic violence risk assessment with the victim, in accordance with *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*, *Appendix 1B: Training Memo—Risk and Dangerousness* and *Appendix 1C: Training Memo—Interventions with Victims of Battering as Suspects or Defendants*.
 - a. Review the victim's response to the risk questions included in the patrol report.
 - b. If it appears there is a history of violence, ask follow-up risk questions. Cover the following risk factors and as time allows probe for what the victim thinks are the risks associated with each factor.
 - Does he/she own a gun?
 - Have you left after living together?
 - Does he/she ever try to strangle you?
 - Has he/she ever used a weapon against you or threatened you with a weapon?
 - Has he/she threatened to kill you or himself/herself?
8. In the victim interview and risk assessment, probe for details related to:
 - a. Severity and frequency of abuse
 - b. Victim's level of fear
 - c. Isolation
 - Has he/she avoided arrest for domestic violence?
 - Does he/she use drugs? If so, what kind and with what effect?
 - Has he/she ever forced you to have sex when you didn't want to?
 - Does he/she control many of your daily activities (e.g., friendships, whether or when your family can visit, travel)?
 - Is he/she jealous of you?
 - Does he/she follow or spy on you or leave threatening notes or messages?
 - Do you have a child that is not his/hers?
 - Has he/she beaten you when you were pregnant?
 - Has he/she ever threatened or tried to commit suicide?
 - Is he/she working?
 - Is he/she an alcoholic or problem-drinker?

- d. History of violence (whether or not it resulted in law enforcement contact)
- 9. Follow up on any indications or suspicions of strangulation, stalking, witness tampering, or sexual coercion or aggression.
- 10. Record all statements as required by law and in other situations whenever possible.
- 11. Obtain all medical reports after verifying signed release.
- 12. Run a comprehensive criminal history check, including MNCIS, to obtain juvenile history in order to determine correct offense level and indications of stalking.
- 13. Document all history of abuse by obtaining:
 - a. Past law enforcement reports on the offender
 - b. Past and current protection orders including the Petition and Affidavit portion, and any existing no contact orders issued by a criminal court
 - c. In cases of stalking or increased risk of harm (per risk assessment), law enforcement reports from other jurisdictions within and outside the state
 - d. NOTE: Gathering law enforcement reports from other jurisdictions may occur after charging, but before pre-trial in order to amend charges if appropriate prior to pre-trial negotiations.
- 14. Collect all evidence related to the case, including:
 - a. Follow-up photographs of injuries at 24, 48, and 72 hours in cases where bruises may develop after the initial response
 - b. Physical evidence not collected by the responding patrol officers
 - c. Any weapons used in the incident

NOTE: If the incident included threats to kill, highlight threats for prosecution so a request can be made for seizure and/or no possession of weapons as a condition of release.
- 15. Make note of information missing from the patrol reports and convey incomplete reports to the investigative unit supervisor. The investigative unit supervisor will return incomplete reports to appropriate patrol commander for review and a supplement, if necessary.
- 16. Make immediately available to the probation officer conducting a presentence investigation the following information:
 - a. Instant offense
 - b. All information related to the criminal history check and history of abuse
- c. Responses to the victim interview and risk questions, with attention to the type, severity, and frequency of violence; the victim's level of fear and degree of isolation
- d. All supplemental reports of interviews with witnesses

C. Gone-on-arrival (GOA) cases

- 1. In cases where the offender was not arrested at the scene, cases with one or more of the following factors will receive the highest priority:
 - a. Significant injury or impairment
 - b. Witness tampering, strangulation or stalking behavior has been alleged
 - c. A victim's response to risk questions indicates increased risk of harm
 - d. A victim expresses fear of imminent bodily harm
- 2. Follow Section B-Investigation of the protocol in conducting the investigation of GOA cases.
- 3. Before interviewing the victim, determine if the victim is safe and able to speak freely.
- 4. Inform the victim that the investigator will attempt to interview the suspect.
- 5. Take the following actions when interviewing a suspect who is out of custody/GOA:

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- a. Conduct the interview in person so that suspect reactions can be assessed.
- b. Notify the victim if the investigator assesses increased risk of harm and assist the victim in problem-solving regarding enhancing her/his safety.
6. Determine whether the suspect is on probation for a misdemeanor offense; if so, consider forwarding the incident report and contacting the probation officer to discuss whether a pick-up-and-hold should be issued.
7. If the charge is a felony, issue a pick-up-and-hold.
8. When the suspect is in custody, conduct the suspect interview at the jail.
9. Notify the victim of the prosecutor's charging decision.
 - a. Ensure that the victim has information regarding advocacy and civil protection orders.
 - b. Encourage the victim to call law enforcement again if new incidents occur.

D. Victim engagement

1. In conducting the investigation, work in collaboration with victims according to **Protocol 2: Victim Engagement Guidelines**.
2. When using information provided by the victim, protect her/him from retaliation.

- a. Do not tell the suspect what the victim has told you.
- b. If circumstances allow, do not tell the suspect you have spoken to victim.
3. Ensure that the victim knows who you are and how to contact you.
4. Encourage the victim to report contact, abusive behavior and/or violations by the suspect.
5. Request that the victim report any threats against her/him for cooperating with the investigation.
6. Inform the victim of the importance of keeping a record of mail, voice mail, e-mail, text messages, and other forms of communication and contact from the suspect or others acting on the suspect's behalf.
7. Inform the victim of the availability of periodic "welfare" checks at her/his residence by officers.
8. Problem solve with the victim around enhancing safety as the case proceeds through the legal system.

E. Declined cases

1. Notify the victim of the prosecutor's decision.
2. When the prosecutor declines a case the investigator believes has merit, he or she

should discuss the case with the supervisor and then contact the charging attorney to discuss the reason for declining the case and explore the possibility of further investigation.

If the charging attorney indicates additional investigation might result in charges, continue the investigation as requested by the prosecutor.

3. After a prosecutor's initial decision to decline the case, if the investigator concludes the case has strong merit, he or she may request supervisory approval to retain the case and gather additional evidence to improve the possibility of charging.
4. If the case is finally declined by the prosecutor as a felony and transferred to another prosecuting authority as a misdemeanor, the investigator shall be informed of the transfer and contact the new charging attorney to discuss the case.

F. Stalking

1. Investigate allegations or indications of stalking according to guidance provided in *Appendix 3G: Training Memo—Law Enforcement Response to Stalking*.
2. Keep in mind that often cases are not charged as stalking until after arraignment.

G. Strangulation

1. Investigate allegations or indications of strangulation according to guidance provided in *Appendix 3F: Training Memo—Law Enforcement Response to Strangulation*.

H. Sexual coercion and aggression

1. Review the officer's report for indications of or references to sexually coercive or aggressive behavior.
2. Interview the victim with sensitivity to the complexity of revealing sexual aggression or coercion.
3. Consult with an advocate if sexual coercion or aggression is indicated in the initial report.

Appendices to Policy on Conducting Investigations

The following appendices are included as part of the 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—Interventions with Victims of Battering as Suspects or Defendants*
- *Appendix 1E: History of Domestic Violence Summary*

I. Cases involving employees

1. Conduct the investigation following general policies and procedures and this protocol.
2. If patrol has not already done so, the investigative unit supervisor shall notify the supervisor of the suspect's unit as soon as possible after the incident.
3. Contact local advocacy program for assistance in referring the victim for safety planning and services.
4. Deliver all reports and information obtained to the suspect's commander at the completion of the investigation.
5. Refer all incidents involving law enforcement personnel for review by the prosecuting authority.

6. In appropriate cases, discuss referring case to the state crime bureau or another jurisdiction with an investigative unit supervisor.

J. Cases involving public figures

1. Conduct the investigation following general policies and procedures and this protocol.
2. Coordinate with and refer media inquiries to the department's public information officer.
3. Shield the victim from media inquiries.
4. Omit victim contact information from the report if requested by the victim.
5. Contact local advocacy program for assistance in referring the victim for safety planning and services.

- *Appendix 3J: Training Memo—How a Prosecutor Reads a Domestic Violence–Related Report*
- *Appendix 3K: Training Memo—Victim Engagement and the Law Enforcement Response to Domestic Violence*
- *Appendix 3O: Follow-up Investigations and Expanded Attention to Risk*

See the Blueprint Supplement for appendices referenced in the policy and protocols. All training memos are based on Minnesota law.

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Other jurisdictions should make modifications as necessary.

LAW ENFORCEMENT—SUPERVISING INVESTIGATIONS

FRAMEWORK: SUPERVISING INVESTIGATIONS IN DOMESTIC VIOLENCE-RELATED CASES

Supervisory oversight of domestic violence investigations ensures that this link in the interagency response works to its fullest potential.⁸ Oversight should reinforce thorough evidence collection, attention to risk and danger, and strategies that minimize the need for a victim to confront the offender. Oversight should emphasize proper investigation and documentation to

accurately charge a case. In addition to the responsibility of the supervising investigators who follow up on patrol reports, the commander of the investigative unit in charge of domestic violence cases also assists patrol supervisors in maintaining the quality of patrol reports and helps maintain connections between the department and other intervening agencies.

POLICY: SUPERVISING INVESTIGATIONS

In addition to following general agency procedures covering supervisory oversight of investigations, the investigative unit supervisor will take the following actions in providing supervisory oversight of investigations in domestic violence-related cases, using the protocols and appendices referenced as part of this policy.

1. Implement the provisions of this policy in accordance with **Protocol 4: Supervising Investigations**.
2. Monitor investigative files to determine if all necessary actions were taken in the investigation, and direct any necessary follow-up.

3. Prepare a report outlining whether patrol reports sent to the investigative unit comply with the patrol report protocol.
4. Meet every other month with division commanders to discuss quality and compliance of patrol reports with the protocol and refer reports to commander for review and redrafting if necessary.
5. Meet quarterly with the city and county attorney's offices to discuss and review problematic cases.
6. Meet quarterly with probation and prosecution to ensure the History of Domestic Violence Summary (see *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*) is being created and updated in accordance with protocols.

7. Prepare a quarterly case tracking report to be sent to the assistant chief of the investigative division.
8. Consult with investigators on individual cases.
9. Review Blueprint policies, protocols, and training memos with new investigators assigned to the unit within 30 days of their assignment.
10. Update policies and protocols each year pursuant to legislative, statutory changes.

Protocol 4: Supervising Investigations in Domestic Violence-Related Cases

1. Ensure that every investigator is familiar with policies and procedures.
2. Review investigation files for thoroughness and if not satisfactory return to the

investigator with specific instructions on actions to take.

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3. Provide consultation to investigators on cases as needed.
4. Monitor investigations to determine:
 - a. If additional training is necessary in investigative techniques (e.g., interviewing, self-defense and predominant aggressor evaluation)
 - b. If additional training is necessary in the specifics arising in domestic violence-related cases
5. If additional training is warranted, direct the investigator to appropriate training and continue monitoring to determine effectiveness of training.
6. Compile and submit a case tracking report that includes:
 - a. Number of cases investigated
 - b. Number of cases charged (misdemeanors, gross misdemeanors, and felonies)
 - c. Number of cases declined (misdemeanor, gross misdemeanor, and felonies)
 - d. Number of incomplete patrol reports returned
 - e. Concerns that need to be resolved and anticipated challenges
7. Review Blueprint policies, protocols and training memos with new investigators
8. Update Blueprint policies and protocols yearly to comply with legislative statutory changes.
9. Assistant Chief will review five to ten randomly selected files every six months for completeness, using the case review checklist appended to this protocol.
 - a. Number of cases investigated
 - b. Number of cases charged (misdemeanors, gross misdemeanors, and felonies)
 - c. Number of cases declined (misdemeanors, gross misdemeanors, and felonies)

Appendices to Policy on Supervising Investigations

The following appendices are included as part of the investigation supervisory policy:

- *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*
- *Appendix 1B: Training Memo—Risk and Dangerousness*
- *Appendix 1C: Training Memo—Interventions with Victims of Battering as Suspects or Defendants*
- *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*
- *Appendix 3E: Training Memo—Implications of Crawford and Forfeiture by Wrongdoing*

- *Appendix 3F: Training Memo—Law Enforcement Response to Strangulation*
- *Appendix 3G: Training Memo—Law Enforcement Response to Stalking*
- *Appendix 3H: Training Memo—Response to Children in Domestic Violence—Related Calls*
- *Appendix 3I: Training Memo—How a Defense Attorney Reads a Domestic Violence—Related Report*
- *Appendix 3J: Training Memo—How a Prosecutor Reads a Domestic Violence—Related Report*

- *Appendix 3K: Training Memo—Victim Engagement and the Law Enforcement Response to Domestic Violence*
- *Appendix 3M: Supervising Domestic Violence Investigations—Case Review Checklist*
- *Appendix 3O: Follow-up Investigations and Expanded Attention to Risk*

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.

LAW ENFORCEMENT—SUPERVISING THE PATROL RESPONSE

FRAMEWORK: SUPERVISING THE PATROL RESPONSE TO DOMESTIC VIOLENCE-RELATED CASES

The success of the interagency approach hinges largely on what happens in the first hour of each case. The patrol officer's role in laying a foundation for all subsequent interventions cannot be over-emphasized. Patrol supervisors, in turn, relay the department's priorities and

expectations, thereby reinforcing the interagency response and the patrol officer's key role. This is accomplished by supervisors periodically attending domestic violence calls at the scene, reviewing reports on a daily basis, and providing more in-depth review of reports as needed to

maintain the department's report-writing standards and reinforce the importance of thorough patrol reports to the overall safety and accountability goals of the interagency approach.

POLICY: PATROL SUPERVISION

In addition to following general agency policy, patrol sergeants and department command will take the following actions in providing supervisory oversight in domestic violence-related cases, using the protocols and appendices included in this policy.

1. Implement the provisions of this policy in accordance with **Protocol 5: Supervising the Patrol Response to Domestic Violence**.
2. Monitor responding officers' on-scene activities and compliance with policy by

periodically appearing on the scene of domestic calls and assessing the patrol response.

3. Review patrol reports for accuracy and completeness using *Appendix 3N: Supervising Patrol Response to Domestic Violence—Patrol Report Checklist*.
4. Respond to patrol officers' requests to approve decisions to not arrest in misdemeanor cases where probable cause has been established.

5. Respond to department employee-involved domestic violence calls by ensuring that a supervisor of higher rank than the involved officer is dispatched to the scene.
6. Ensure that patrol officers receive and are introduced to domestic violence response policies and protocols and related appendices and training memos.

Protocol 5: Supervising the Patrol Response to Domestic Violence

1. Assess the on-scene patrol response to domestic violence-related calls, including:
 - a. Skill in securing the scene and managing the immediate crisis
 - b. Skill in obtaining initial information from those at the scene
 - c. Thorough assessment and documentation of probable cause determinations
 - d. Awareness of potential stalking, strangulation, and witness tampering
 - e. Skill and thoroughness in identifying, photographing (or arranging for

- photographs) of injuries and relevant evidence, and collecting physical evidence
- f. Professional and competent treatment of those at the scene, including victims, children, people with disabilities, older victims
 - g. Prompt referral to advocacy
- h. Conscientious attention to the security of the victim by making reasonable efforts to secure broken doors or windows, obtain a cell phone to call 911, etc.
2. Conduct daily and ongoing reviews of patrol officers' reports.
- a. Use the Law Enforcement Report Checklist attached to **Law Enforcement Protocol 1: Patrol Response to Domestic Violence—Related Calls**, to review daily reports submitted by officers and approve or send back for corrections.
 - b. If the suspect is in custody and the author of the report is off-duty, approve the report and notify the investigative unit supervisor of the errors in the report.
- c. On a quarterly basis, randomly select two reports of each officer and conduct a thorough review of the reports using *Appendix 3N: Supervising Patrol Response to Domestic Violence—Patrol Report Checklist*. Where reports do not meet the standards, meet with the officers to provide feedback and guidance.
- d. Periodically review a sample of reports submitted by officers in cases involving a determination of no probable cause to review compliance with policy and protocol.
3. Approve officers' decisions to not arrest in misdemeanor cases where probable cause has been established in accordance with departmental arrest policy and emphasis on avoiding unnecessarily placing children in foster care as the primary reason for no arrest in such cases.
4. In responding to department employee—involved domestic violence, take the following action:
- a. Recover the officer's badge, ID, and service weapon.
 - b. If the situation is deemed to be highly dangerous, remove all weapons from the scene on the same basis as any member of the public.
 - c. Supervise the on-scene investigation.
5. Introduce and provide officers with appendices and training memos related to policies and protocols governing the patrol response to domestic violence cases.
- a. Patrol sergeants: introduce each of the appendices and training memos and review them with patrol during roll call.
 - b. Post appendices and training memos via e-mail.
 - c. Direct officers to read and confirm that they have read the documents pursuant to established procedures.

Appendices to Policy on Supervising the Patrol Response

The following appendices are included as part of the patrol supervision policy:

- *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*

- *Appendix 1B: Training Memo—Risk and Dangerousness*
- *Appendix 1C: Interventions with Victims of Battering as Suspects or Defendants*
- *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*
- *Appendix 3A: Training Memo—Law Enforcement Response to Persons with Disabilities*

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- *Appendix 3B: Training Memo—Gone-on-Arrival (GOA) Cases*
- *Appendix 3C: Training Memo—Making the Arrest Decision*
- *Appendix 3D: Training Memo—Miranda Rights and Domestic Violence Cases*
- *Appendix 3E: Training Memo—Implications of Crawford and Forfeiture by Wrongdoing*
- *Appendix 3F: Training Memo—Law Enforcement Response to Strangulation*
- *Appendix 3G: Training Memo—Law Enforcement Response to Stalking*
- *Appendix 3H: Training Memo—Response to Children in Domestic Violence–Related Calls*
- *Appendix 3I: Training Memo—How a Defense Attorney Reads a Domestic Violence–Related Report*
- *Appendix 3J: Training Memo—How a Prosecutor Reads a Domestic Violence–Related Report*
- *Appendix 3K: Training Memo—Victim Engagement and the Law Enforcement Response to Domestic Violence*
- *Appendix 3L: Domestic Violence Patrol Report Checklist*
- *Appendix 3N: Supervising Patrol Response to Domestic Violence—Patrol Report Checklist*

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.

CHAPTER 3 ENDNOTES

1. Risk markers that are clearly documented and clearly communicated are important for practitioners' and victims' accurate assessment of danger. (Kropp, 2008) Russell and Light suggest a focus on evidence that will prove a pattern and escalation over time (2006, p. 387). Buzawa, et al. suggest the level and conditions of an intervention could be linked to risk markers made visible for each offender (1998, p. 198).
2. Worden (2000) notes that "the quality of police report writing and investigation may spell success or failure for evidence-based prosecution initiatives" (p. 7). In Hartley and Ryan's study of prosecution strategies, they warn that "victim character assassination seemed especially intense in cases in which the investigation was incomplete or there was a lack of physical evidence" (2003, p. 16). Worden notes the importance of thorough investigation, documentation, and reporting to convictions and findings of probable cause (2000, p. 7).
3. Batterers can be very resistant to change (Goodkind, et al. 2004, p. 515); 20% of offenders will re-assault regardless of the intervention (Gondolf and White 2001, p. 361). However, a number of research studies suggest that a coordinated intervention can have a positive, even cumulative, effect on the behavior of the offender (Murphy et al., 1998, p. 278; Saunders, 2008, p. 165; Syers and Edleson, 1992, p. 484; Tolman and Weisz, 1995, p. 482; Worden, 2003, p. 13).
4. Interaction with an officer sets the tone for a victim's satisfaction with the criminal justice system, cooperation with prosecution, and inclusion of criminal justice as a future resource in safety planning (Belknap, 2003, p. 6; Hotaling and Buzawa, 2003b; Johnson, 2007, p. 507; Russell and Light, 2006). Victims who felt the police response did not provide for their safety were less likely to report re-abuse (Hotaling and Buzawa, 2003b, p. 20).

Russell and Light (2006) found that victims responded well to police when officers were proactive and part of an integrated team. Victims who were offered emergency transportation or notification of the offender's release (Russell & Light, 2006, p. 390), certified translators and culturally appropriate resources (Lemon, 2006), or were met with a demeanor that was empathetic and nonjudgmental (Belknap, 2003) were more likely to be empowered by their interaction with the police.

Also see Chapter 1, Section 3 (A patterned crime requiring continuing engagement). Endnote #11 for discussion of continuing practitioner-victim engagement.

5. Bonomi et al. report that victims called the police when the incident involved a weapon, sexual abuse, or severe physical violence (2006, p. 1360). Buzawa et al. found that 68% of calls were made by the victim, but when third parties called, the odds of the victim having a major injury were two and one-half times higher than when a victim called directly (2000, p. 21). Senturia, et al. found that a cross-cultural population of victims contacted police when the violence escalated or they perceived an increased risk (2003, p. 35).

6. See the endnotes for Chapter 1, Section 5, (Messages of help and accountability). These endnotes reference coercion and control (#14 and #18); courtroom interactions that support or deter battering (#15); batterer entitlement (#16); and victim interactions with the criminal justice system (#20).
7. The International Association of Chiefs of Police National Law Enforcement Policy Center recommends that investigators in domestic violence cases cross-screen for sexual abuse and abuse of other household members and animals. (Thomas, 2006, p. 2) When high-risk markers are visible, Erskine (1999) argues that charges of coercion, intimidation, harassment, or stalking can be added to present a more complete picture of the nature and harm done to a victim. Fleury-Steiner, et al. (2006) found that 19% of victims in their study had been re-abused while their case was open. They note that filing charges such as witness tampering sends a powerful message to both parties about the level of protection the system will provide (p. 338).
8. Effective coordinated interagency responses to domestic violence require strong leadership (Sullivan, 2006, p. 205), active participation (Allen, 2006, p. 62) and system accountability and monitoring (Shepard and Pence, 1999).

SHERIFF'S OFFICE

JAIL, WARRANT PROCESSING, AND COURTHOUSE SECURITY IN DOMESTIC VIOLENCE-RELATED CASES

In addition to its patrol response and investigation of domestic violence crimes, a sheriff's office generally has responsibilities for operating the jail, receiving and processing warrants, and providing courtroom security. In the interagency response to domestic violence, each of these functions has a role in reinforcing the common goal of protection of and safety for individual victims and the community.

Personnel assigned to the jail are in a position to interrupt an inmate's attempts to intimidate or harass the victim via phone or written communication. Jail staff should document and report an inmate's threats or attempts to influence a victim's participation in a case. This information

can assist prosecutors in pursuing charges of witness tampering that are less reliant on direct victim testimony.

The jail's careful attention to victim notification regarding the timing of an inmate's release, conditions of release, and future court appearance provides the victim information that may be used in securing her or his safety. Prompt warrant service improves controls on domestic violence offenders who may present heightened risk to individual victims, the community, and law enforcement officers. Attention to courthouse security helps minimize: victim intimidation, risk to victims, their advocates and family members; and risks that domestic violence offenders present to courthouse personnel and other interveners.

POLICY ON JAIL, WARRANT PROCESSING, AND COURTHOUSE SECURITY

In addition to adhering to general policies of the sheriff's office, personnel assigned to the jail, warrant processing, and courtroom security will take the following actions in domestic violence-related cases, using the protocols, appendices, and training memos referenced and included as part of this policy.

1. Implement the provisions of this policy in accordance with the following protocols, which are attached to and included as part of the policies addressing the jail, warrant processing, and courthouse security.

- **Protocol 1: Jail Booking, Supervision, and Release**
- **Protocol 2: Receiving and Processing Warrants**
- **Protocol 3: Courtroom Security**

Jail

2. Book and release domestic violence offenders according to established procedures.

3. Protect domestic assault victims from intimidation and harassment by the suspect/defendant while in custody.

Warrant processing

4. Complete warrants promptly and accurately according to the procedures established by state statute or the state crime bureau and the FBI.

5. Use warrants to take defendants into custody in order to maintain the safety of individual victims and the community, hold offenders accountable, and ensure officer safety.

Protocol 1: Jail Booking, Supervision, and Release

1. Booking new inmates
 - a. Verify the date and time of arrest.
 - b. Book the inmate on all charges listed in the paperwork presented by the arresting officer.
 - c. Check to make sure the arresting officer has provided victim contact information, including whether it is safe to leave messages at any or all numbers provided. Record appropriately in the jail's information system.
 - d. Block the inmate's access to all phone numbers listed on the victim information form. (An argument can be made that the number should not be blocked unless the victim requests it.)
 - e. Conduct the mental health screening per policy.
 - f. Document in the inmate diary any threats he or she makes to harm the victim or others. Write an offense report and forward to the arresting agency.
 2. Transferring inmates' property
 - a. Upon booking, a victim or third party may retrieve keys and other items in the inmate's possession if the inmate signs a release consenting to this.
 - b. Unless considered evidence, the inmate can sign a release that permits the victim or a third party to request that the impound lot release the inmate's car.
 - c. If the car is owned by the victim or a party, is not evidence, and the inmate refuses to release the keys, they will be released to that person upon presentation of a court order.
 - d. If an inmate refuses to sign a release, property, keys and other items will be released to the victim or third party upon presentation of a court order.
 3. Monitoring inmates' contact with the public
 - a. Visits
 - Visits between inmates subject to no-contact orders and their victims are prohibited.
- Courthouse security**
6. Maintain security in the courthouse by responding to the safety needs of victims of domestic violence crimes and the general public.
- b. Written communication
- Staff will confiscate correspondence from any inmate charged with a domestic violence-related offense to his or her victim. If the correspondence contains threats or attempts to influence the victim with respect to his or her participation in the current prosecution, transfer such correspondence to the arresting agency.
 - Staff will review all correspondence from inmates charged with domestic violence-related offenses to look for evidence that they are seeking to contact their victim(s) or otherwise violate the law.
 - Any inmate found to be attempting to use or using correspondence in violation of a no-contact order will be disciplined.
 - Offenses will be documented in the inmate diary. If the inmate is subject to a no-contact order, the violation of the

- order will be reported to the arresting agency.
- c. Phone calls
- Any inmate who attempts to use or uses the phone to contact his or her victim while subject to a no-contact order, or who circumvents or attempts to circumvent the phone system to make unauthorized calls, will lose phone privileges except for calls to his or her attorney.
 - An inmate restricted to attorney-only calls will be required to give jail staff the name of the attorney. Verify the name and phone number of the attorney and dial the number for the inmate.
 - Document offenses in the inmate diary. If the inmate is subject to a no-contact order, report the violation of the order to the arresting agency.
 - If an inmate is not subject to a no-contact order, his or her victim can request that the inmate be allowed to make contact by phone either by submitting a written request or by appearing in person and presenting photo identification.
 - If a victim reports phone harassment by an inmate to jail staff, block the victim's numbers and inform the victim of the option of blocking calls from the jail. Inform the investigator assigned to the case or the law enforcement agency involved of the reported phone harassment.
4. Releasing inmates
- a. Verify the inmate's identity by checking his or her wristband, comparing stored photo images, asking questions based on personal information, or using other means of identification as described in jail policy.
 - b. Check for outstanding warrants or holds.
 - c. If jail staff have a specific safety concern about an individual inmate who is about to be released because a hold has expired, the jail staff will contact the arresting agency to verify the date and time of expiration; however, the inmate cannot be held past the expiration time if staff are unable to reach the arresting agency.
 - d. If an inmate is being released to the street, permit the inmate to make arrangements for transportation. Inmates subject to no-contact orders will not be permitted to contact their victims for transportation.
5. Victim notification
- a. Call the victim at the number(s) obtained at the time of booking
- b. Whenever possible, continue calling until the victim is reached directly. If he or she cannot be reached, and if the victim information indicates that a message may be left, do so at the number(s) indicated. Leave a message stating that you are a correctional officer (or deputy) calling from the (name of custodial facility) to inform the victim of the defendant's impending release.
- c. In accordance with Minn. Stat. § 629.72, inform the victim of the following:
- Time of the inmate's release
 - Conditions of release, if information provided by the court
 - Phone number of Day One's hotline (866-223-1111) and/or other domestic violence program that will connect the victim to the nearest battered women's shelter
- d. Notify the victim by mail of the above information.
6. Additional notifications
- a. In accordance with Minn. Stat. § 629.72, notify any local law enforcement agencies known to be involved in the case.
 - b. At the victim's request, notify the local battered women's and domestic abuse program of the inmate release information listed above.

Protocol 2: Receiving and Processing Warrants

- 1. Receiving warrants**
 - a. Court administration enters all criminal court warrants into state criminal investigative agency database and forwards paper copies to the warrant office.
 - b. In adherence to state policy, enter all felony warrants into the state criminal investigative database and NCIC by the deadline established.
 - c. Expedite processing of warrants upon request of other law enforcement agencies, the city or county attorney, the court, a victim advocate, or others. These requests may be prompted by knowledge that the defendant is particularly dangerous and/or knowledge of his or her whereabouts, among other factors.
 - d. Prior to processing, paper warrants are available to the apprehension unit for review. If a judge has signed the warrant, the apprehension unit or other law enforcement can choose to work the warrant.
- 2. Processing warrants**
 - a. As mandated by FBI policy, priority for warrant processing goes first to felonies, then to gross misdemeanors, and finally, misdemeanors. Prioritize violent over non-violent misdemeanors.
 - b. Check in warrants and enter the date and time on the warrant screen. This starts the clock running for entry into the NCIC.
 - c. Create a warrant jacket to hold printouts of information about the defendant.
 - d. Verify defendant's identity and criminal history.
 - e. Run a new BCA criminal history each time a new warrant is issued.
 - f. Check the electronic information against the paper warrant.
 - g. Enter felony warrants into state criminal investigative agency database and NCIC; gross misdemeanor and misdemeanor warrants are entered into the database(s) dictated by state policy.
 - h. Upon completion of processing, initial and forward to a second person for proofreading, if staff resources allow.
- 3. Final warrant review**
 - a. The deputy or deputies responsible for apprehension will review the warrant and determine whether to work it based on level and type of offense. Felonies should receive first priority, followed by violence
- 4. Apprehension team**
 - a. Review the warrant and determine priority based on the level and type of offense. Felonies and violent misdemeanors and gross misdemeanors receive priority.
 - b. When a warrant is served on a defendant and the victim is present, give the victim the information card.
 - c. Warrants for offenders who cannot be located after a reasonable amount of time and effort should be periodically reviewed as time and personnel permit. Priority for follow-up is given to warrants for violent offenders. See Appendix 1A:

Practitioners' Guide to Risk and Danger in Domestic Violence Cases.

- d. When new information becomes available (for example, from advocacy programs, victims, the law enforcement, the courts, prosecution, probation, or the

Protocol 3: Courthouse Security

1. General procedures
 - a. For purposes of this protocol, "no-contact order" refers to any court order prohibiting contact between the victim and suspect, whether an order issued by a civil court, or a no-contact or stay-away order issued in a criminal proceeding. Contact incidental to being in the same courthouse may not be considered a violation of a no-contact order.
 - b. Post signs throughout the courthouse that read as follows: "No-contact orders/orders for protection remain in effect in the courthouse. Violations should be reported to the Sheriff's Office."
 - c. If possible, obtain the daily calendar from the clerk's office and make note of which cases are domestic violence cases and whether a no-contact order is in place.
 - d. Be prepared to respond to requests for assistance from victims, victim advocates, or others concerned about the possibility of victim intimidation or violations of public), make new attempts to locate defendants as time and resources permit; give priority to domestic violence felonies and misdemeanor domestic violence cases with high risk indicators.
2. Out-of-custody calendars
 - a. When a safety concern is communicated by a victim, victim advocate, or victim's representative, strongly encourage the victim to use the designated safe waiting area. If requested by the victim and as time and resources permit, escort the victim to the designated secure area. Inform the clerk in the appropriate courtroom of the victim's whereabouts.
 - b. Throughout the courthouse and in the courtrooms, remain alert for any attempt by defendants to intimidate or harass victims. Be prepared to respond to requests for assistance from court personnel, victims, or victim's advocates. If one person is attempting to harass or intimidate another, intervene by separating and identifying the parties. Inquire of the parties whether a no-contact order is in place.
3. In-custody calendars
 - a. No in-custody defendant will be allowed to pass or receive anything from anyone or have contact with anyone in the gallery, except as ordered by the judge.
 - e. When high priority offenders cannot be located despite the apprehension unit's best efforts, turn over the warrant to the Fugitive Task Force of the U.S. Marshal Service or the FBI.
 - c. If informed of a possible violation of a no-contact order, take whatever action reasonable and necessary to address the defendant's behavior.
 - d. Upon establishing probable cause, arrest that person in violation of the no-contact order, pursuant to Minn. Stat. § 518B, subd. 22.
 - e. Report to the prosecutor any incident of victim intimidation or harassment by a defendant and document the intimidation or harassment as requested by the prosecutor.
 - f. If a victim expresses concern for his or her safety following the court proceeding and requests the assistance of deputies, escort that person from the building as time and resources permit.

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b. If a defendant attempts to intimidate the victim or others through visual contact or gestures, or if he or she is the subject of a no-contact order and attempts any

communication with the victim, intervene immediately to stop the behavior and notify the judge and the prosecutor. If the behavior persists, remove the defendant

to a holding cell until his or her proceeding is about to begin.

Appendices to Policy on Jail, Warrant Processing and Courthouse Security

The following appendices are attached to and included as part of this 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 4A: Training Memo—Safety Considerations in the Management of Domestic Violence Cases*
- *Appendix 4B: Training Memo—Receiving and Processing Warrants in Domestic Violence Crimes*

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.

CHAPTER 4 ENDNOTES

[no endnotes]

PROSECUTING ATTORNEY—CHARGING DECISIONS

FRAMEWORK: CHARGING DECISIONS IN DOMESTIC VIOLENCE-RELATED CRIMES

Prosecutors play a key role in the Blueprint approach to intervention. They are in a central position to integrate the foundational principles into the resolution of every case. Because they have broad discretion in deciding whether and what to charge in any particular case, they hold the key to applying the principle of adjusting the response to severity and context.¹ In that same capacity they are best positioned to act affirmatively to avoid unintended consequences of state intervention. Every court appearance affords the prosecutor the opportunity to make the violence visible and to send powerful messages to victims and offenders.

In every case, a prosecutor must evaluate the likelihood of conviction. At the same time, a prosecutor is charged to act in service to justice rather than to achieving convictions.² Seeking justice in domestic abuse-related cases includes weighing the goals of victim safety and offender accountability and rehabilitation. Domestic violence cases introduce several additional factors to consider in exercising the discretion to charge, including: (1) the history and context of violence between the defendant and the victim; (2) the seriousness of injuries and/or the level of fear expressed by the victim; (3) ways in which children have been used as part of a pattern of abuse and violence; and (4) the possible negative or beneficial impact of aggressive pursuit of convictions and enhancement or the impact of less aggressive approaches to a case.³ The standard for charging varies across jurisdictions along a continuum from probable cause to substantial likelihood of success at trial. When evaluating domestic violence-related cases that present a high risk of harm or lethality to the victim, a prosecutor may charge a case in the absence of optimal facts or evidence and request additional investigation.

In any criminal case, the decision whether to charge and what to charge depends heavily on the information gathered by law enforcement's initial response and evidence-gathering and subsequent follow-up investigation. The closer prosecutors and law enforcement are linked, the more likely there will be sufficient information available to prosecutors to make timely decisions under deadlines for charging or releasing a suspect.⁴ In many domestic violence cases, sure and swift consequences are the most effective way to reduce further abuse. Prosecutors can contribute to that deterrence by issuing the highest level charge possible within the framework of ethical practice and the goals of victim safety and offender accountability and rehabilitation.

Most domestic violence cases coming to the attention of the criminal justice system are part of an ongoing pattern of intimidation, coercion, and violence (i.e., battering) that began prior to the specific incident and arrest that brought the case to the prosecutor's office.⁵ While most criminal domestic violence cases do involve this pattern of abuse, some cases are clear exceptions requiring different intervention approaches. Offenders who are mentally ill and use a more generalized, less targeted form of violence, are not deterred by the same interventions as a batterer. While many batterers are also addicted to alcohol or drugs and will use violence regardless of their dependency status, some offenders only use violence when under the influence and do not engage in a pattern of coercion. They can be stopped by discontinuing the substance abuse. A final exception involves cases in which the victim of ongoing abuse uses violence against the abuser. These cases involving victims/defendants are addressed throughout the Blueprint, and are also discussed at length in Appendix 1C:

Training Memo—Intervention with Victims of Battering as Suspects or Defendants.

In cases of battering (ongoing pattern of coercion, intimidation and violence), the violence is likely to continue beyond closure of that specific case, particularly if there is no coordinated, interagency response. It may take repeated interventions to control the behavior of a defendant who is engaging in ongoing intimidation, coercion, and violence. Each intervention should be seen as part of a continuing effort to contain the abuser's violence. Most victims of domestic violence try multiple times to leave the relationship before successfully freeing themselves. Some victims live with abusers because the alternatives for them and their children upon leaving are bleaker and more precarious to their overall well-being than conditions in the relationship.⁶ As a result, prosecutors will often be working with a victim who is entrapped in the relationship.

Many victims of battering face intense pressure to oppose prosecution,⁷ even as they want the criminal legal system to impose significant consequences for the harm they have experienced. 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.⁸ Victims are rarely in a position to ‘tell all’ and cooperation with interveners often creates concerns for them⁹ and has complex and dangerous implications. Prosecutors can work in collaboration with victims in ways that acknowledge that reality, minimize the victim’s need to confront the offender,¹⁰ and protect victims from retaliation (see sample policy in supplemental materials on when to compel a victim to testify).

Prosecution should be centered on victim safety, but not be victim-dependent. The Crawford case and its progeny make it critical that prosecutors approach domestic violence cases and direct evidence-gathering in ways that minimize dependence on the victim, maximize other sources of evidence, and stay mindful of intimidation and coercion directed at victims to prevent their participation in the prosecution process. See Appendix 5A: *Training Memo—Implications of Crawford and Davis for Prosecution of Domestic Abuse Cases.*

In the past decade, many prosecutors have adopted evidence-based prosecution—building a case with multiple sources of evidence. An evidence-based approach that builds on as many non-victim sources as possible, however, does not mean that a prosecutor assumes at the charging stage that the victim will be unavailable to testify and thus declines the case as unwinnable. Prosecutors should not assume, for the purpose of charging, that the victim will be unavailable. Nor should the victim’s testimony, when obtainable, be discounted. The uncorroborated testimony of an available victim may be sufficient to proceed with the case.

Pursuing the widest range of charges supported by probable cause, as described in these policies and protocols, can provide avenues for sanctioning and supervising domestic violence offenders that are less reliant on direct victim testimony: for example, charges stemming from a defendant’s actions after officers arrive at the scene,¹¹ either directed at officers or exhibited in front of officers, or engaging in witness tampering through calls from the jail. Such behavior demonstrates the defendant’s willingness to continue abusive behavior even when independent authority figures are present or the defendant is confined. Charging such crimes offers the potential to utilize law enforcement witnesses, which may lessen the need for the victim to testify. Thorough attention to the range of possible charges can also help illuminate crimes of strangulation and stalking. Because stalking is a patterned crime and strangulation does not always manifest visible injuries, they can be easy to overlook.¹² Both are markers of serious danger to the victim¹³ (see Appendix 1A: *Practitioners’ Guide to Risk and Danger in Domestic Violence Cases* and Appendix 1B: *Training Memo—Risk and Dangerousness*).

This approach—charging all crimes supported by the evidence—requires strong linkages between prosecutors and law enforcement in order to produce thorough investigations, reports and evidence-collection that clearly substantiate each charge. Multiple charges must not be pursued as a form of harassment against a particular defendant, however, but as a legitimate means of strengthening public safety and accountability for the harm done. There are times when charging misdemeanor crimes along with

one or more felony crimes can weaken a prosecutor's case by giving the defense attorney and jury the opportunity for a compromise verdict.

Prosecutors must consider the possibility of lesser charges having this effect in some cases.

While the approach of charging all crimes supported by the evidence generally enhances victim safety and offender accountability, there may be situations where safety considerations and justice require a more limited range of charges, particularly in responding to defendants who are victims of ongoing abuse. In prosecuting cases involving victims of ongoing abuse who have used illegal violence against their abusers, the prosecutor must consider the safety needs of both the victim of the immediate offense and the defendant in the case.

Maximizing safety for a defendant who is a victim of ongoing domestic violence (or “**victim defendant**”) requires careful appraisal of the ways in which multiple charges may adversely affect her or his safety. Pursuing multiple charges may unintentionally reinforce the batterer’s control via such actions as threats to make reports to law enforcement or probation or to use the charges against the defendant to influence child custody decisions.¹⁴

Law enforcement discourages dual arrests and directs officers to arrest the predominant aggressor when both parties use illegal violence. When officers are skilled in making self-defense determinations and apply the predominant aggressor arrest policy properly, most victim defendants are screened out of the system.¹⁵ Prosecutors may decide that a case was more likely than not self-defense and further screen victims of abuse from the criminal justice system.

Nevertheless, cases will be presented to the prosecutor when the victim defendant was clearly the predominant or only aggressor in the instant offense. Such cases present prosecutors with a number of complex questions in determining who should be protected from whom and in what

ways. Criminal justice policy reforms, such as mandatory arrest and no-drop prosecution, do not preclude prosecutors from exercising judgment and discretion. Rather, fairness requires that prosecutors continue to make distinctions when particular factors are present in order to ensure a just approach that meets the goals of victim safety and offender accountability and rehabilitation.

The prosecutor’s decision to charge can send powerful messages of help and accountability to victims and defendants on behalf of a community that recognizes domestic violence as serious and unacceptable. To victims: *You have the right to live without violence and no one has the right to abuse or hurt you. The criminal justice system will intervene to stop the violence and place controls on abusive behavior. If you are a victim of ongoing abuse and have used illegal violence in response, that violence is not acceptable; there are alternatives and we will act in ways that maximize your safety and connect you with those alternatives.* To defendants who have engaged in intimidation, coercion, and violence toward an intimate partner: *You are not entitled to abuse another person; the criminal justice system will hold you accountable and there will be consequences for the harm you have caused, along with opportunities for you to change your behavior.*

The primary responsibility

of prosecution is to see that justice is accomplished.

— National District Attorneys’ Association, National Prosecution Standards 1.1 (2nd ed. 1991)

POLICY: CHARGING DECISIONS

These policies and protocols are generally applicable to domestic violence cases. However, there may be instances in which, due to the circumstances and facts of the case, another course of action may be required to better serve the goals of victim safety, community safety, and offender accountability. All of these policies and protocols should be reviewed by supervisory personnel on a yearly basis.

In addition to adhering to general agency policy, prosecutors will take the following actions in making decisions about whether to charge and what to charge in domestic abuse-related cases, using the protocols and training memos referenced and included as part of this policy.

1. Utilize the widest possible range of information sources, including the History of Domestic Violence Summary (see *Appendix 1E: History of Domestic Violence Summary*), when available and request additional evidence as needed to evaluate the case and make the charging decision, in accordance with **Protocol 1: Charging Decisions**.
2. Review the following considerations as they apply to the circumstances of the case:
 - a. History and context of violence between the parties involved (see *Appendix 1E: History of Domestic Violence Summary*)
 - b. Seriousness of injuries and/or level of fear expressed by the parties

- c. Use of children as part of the pattern of abuse
 - d. Consequences of no intervention or less aggressive intervention on the potential lethality in the case
3. File charges that reflect all crimes committed in the case as supported by the evidence, except where considerations of victim safety, including the safety of a victim defendant would warrant otherwise.
 - a. If the defendant is engaging in a patterned use of intimidation, coercion, and violence toward the victim, file all charges that will likely result in a disposition that places controls on the defendant's behavior, holds the defendant accountable for the behavior, enhances safety of the victim, and allows for the possibility of rehabilitation, as appropriate.
 - b. If the defendant is a victim of ongoing domestic violence ("victim defendant"), consider whether charging the widest range of crimes or the most severe crime furthers the goal of enhancing the victim/defendant's safety or whether, given the circumstances of the case, less severe charges or no charges should be brought.
 4. Approach each case with an understanding that the victim may be unavailable to testify while recognizing that at the charging stage the availability of victim testimony may not be known.
 - a. Request that evidence-gathering be done in a way that minimizes dependence on the victim and maximizes the sources of evidence.
 - b. Stay alert to intimidation and coercion directed at victims to prevent participation in the prosecution process.
 5. In setting priorities, give precedence to those cases appearing to present the greatest risk, based on the evidence and the victim's responses to risk questions.
 - a. Prioritize cases where the offender is out of custody or gone-on-arrival (GOA) according to the same risk evaluation as in-custody cases.
 - b. Charge GOA cases within 30 days even if an interview with the suspect has not been obtained.
 - c. In those cases where the defendant is not in custody and there is high risk, if the prosecutor determines that charges should be filed, prosecutors will request a warrant.

6. In evaluating cases for charging, pay particular attention to charges that may have been historically underutilized but are characteristic of domestic violence cases, such as:
 - a. Illegal behavior that occurs after officers arrive on the scene
 - b. Strangulation
 - c. Harassment/Stalking
 - d. Terroristic threats
 - e. Sexually aggressive behavior
 - f. Pattern of harassing conduct
 - g. Witness tampering
7. Evaluate prior recent incidents to determine whether the offender engaged in prior criminal conduct against the same victim. If so, consider charging those incidents where there is sufficient evidence.
8. Evaluate prior convictions to determine if they allow enhancement of the current offense with additional penalties.
 - a. Where possible and appropriate, use the enhancement to support more flexibility in negotiating a resolution that serves both victim safety and offender accountability.
9. Enhancements, even when available, should not be utilized automatically. They are intended to further the goals of offender accountability, victim safety, and justice. Avoid using enhancement when those goals are not met.
10. In the following circumstances, transfer the case immediately to the appropriate prosecuting authority and promptly inform law enforcement of the case transfer and reason for the transfer:
 - a. If prosecutors at the felony level determine not to charge a case and misdemeanor/gross misdemeanor charges may be possible
 - b. If prosecutors at the misdemeanor/gross misdemeanor level determine that the case may be appropriate for felony-level charges
11. Work in collaboration with victims in accordance with **Protocol 2: Victim Engagement Guidelines**.
12. Be responsive and provide information to community domestic violence advocates inquiries and consult with community domestic violence advocates as consented to by the victim.
13. Inform the investigator, the victim, and others designated in **Protocol 1: Charging Decisions** once a final determination has been made whether or not to charge the case.
14. Supervising prosecutor will take the following actions to implement and maintain this policy and related procedures:
 - a. Review three files per prosecutor semiannually for policy and protocol compliance.
 - b. Meet quarterly with law enforcement, the supervisor of the victim witness program, and the supervising attorney of the other prosecuting jurisdictions to discuss cases that have been declined and the thoroughness of investigations.
 - c. Be available to meet with law enforcement as requested to review individual cases that have been declined for prosecution.

Protocol 1: Charging Decisions

1. Charging decisions should further the multiple goals of controlling an offender's behavior, holding the offender accountable for his or her behavior, providing rehabilitation services to appropriate offenders, deterring future violence, and enhancing the safety of victims of the offense and possible future victims of the defendant.

2. Approach domestic violence-related cases in ways that minimize dependence on the victim and maximize other sources of information. Stay mindful of intimidation and coercion directed at victims to prevent participation in prosecution.
 - a. Know the implications of the Crawford and Davis decisions and strategies to maximize non-victim sources of information in light of those decisions.
 - b. Know the doctrine of forfeiture by wrongdoing and strategies for applying it in domestic violence cases, including training law enforcement on needed evidence gathering.
 - c. Expand the focus of attention to illegal behavior after officers' arrival.
 - d. Develop access to multiple sources of information in addition to the victim.
 - e. Hold quarterly meetings with law enforcement, the supervisor of the victim witness program, and the supervising prosecutors from relevant prosecutorial jurisdictions to review the thoroughness of investigations, discuss declined cases, and address any concerns that either investigators or prosecutors identify as needing resolution.
 - f. Periodically, select five cases at random and complete a case review with law enforcement, supervising prosecutor, and the law enforcement officer and prosecutor responsible for each reviewed case.
 - g. Work with local law enforcement to train law enforcement on relevant legal issues and investigation techniques that support minimizing dependence on victims of domestic violence.
3. Use the following sources of information as available and provided by law enforcement to evaluate the case and decide whether and what to charge:
 - Law enforcement reports of the current offense
 - Past law enforcement reports involving this suspect
 - Summary of the presentence investigation on offenders previously convicted (see *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*)
 - Evidence collected at scene, e.g., photographs, broken phones, ripped clothing, other damaged property
 - 911 tapes and CAD reports
 - Jail phone call recordings or other related documents
 - Past and current protective orders or orders for protection (hereinafter OFP) and harassment restraining orders (hereinafter HRO) pleadings, including affidavits
4. Re-evaluate the case for additional charges or amend charges as additional evidence is gathered and developed.
 - a. In order to meet legally imposed deadlines, all information may not be available at the time of initial charging.
 - b. Additional charges could include harassment/stalking, strangulation, or enhancement of charges.
5. Request further investigation rather than decline cases that might be charged with additional information.
 - a. Focus especially on additional investigation related to charging

- strangulation, harassment, stalking, and terroristic threats.
- b. In requests to law enforcement, specify what additional information is needed, including obtaining information from other jurisdictions.
- 6. Evaluate the nature and history of violence between the parties involved in the case to understand the context of the violence, fully inform prosecutorial decision-making, and advance the goals of victim safety and offender accountability and rehabilitation. Ask:
 - a. To what extent is there a pattern of ongoing intimidation, coercion, and violence?
 - b. Who is perpetrating any such pattern, and against whom?
 - c. What is the severity of the violence?
 - d. What is the frequency of the violence?
- 7. Evaluate the seriousness of injuries and/or level of fear expressed by the parties. Ask:
 - a. Who has been injured and how?
 - b. Who is afraid of whom and in what ways?
Note: include fear of losing children, homelessness, loss of family, job, etc.
 - c. What kind of threats have been made or coercion used to dissuade the victim from participating in the prosecution?

- d. Who is most vulnerable to ongoing intimidation, coercion, and violence?
- 8. If children are involved, evaluate whether they have been present, were themselves assaulted, or were used as an instrument of abuse by the party engaging in ongoing intimidation, coercion, and violence against the other. Ask:
 - a. Has the abusive party physically harmed the children? If so, in what ways?
 - b. Has the victim been threatened that the children will be harmed? If so, in what ways?
 - c. What is the status of any family court action?
 - d. Does the victim fear that the abuser will take the children in retaliation for cooperation?
 - e. Was the victim assaulted during pregnancy or shortly after giving birth?
- 9. If the defendant is engaging in a patterned use of intimidation, coercion, and violence toward the victim in this case, file charges that will likely result in a disposition that will place controls on the defendant's behavior, enhance victim safety, and allow for the possibility of rehabilitation, as appropriate.
 - a. In cases where potential charges include a non-domestic-related felony and a domestic-related misdemeanor that is not pursued, discuss the domestic-related

elements of the case with the probation presentence investigation (PSI) writer, either directly or through the victim witness advocate to ensure that recommendations for conditions of probation consider adequate domestic violence-related programming.

- 10. If the defendant is a victim of ongoing domestic violence (victim defendant), use a course of action that will help place controls on the person's continued use of violence without making her or him more vulnerable to ongoing battering or abuse. Use the options presented in *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*.

Specifically, consider whether charging the widest range or most severe crime furthers the goal of enhancing victim safety or whether, given the circumstances of the case, charges that do not trigger the full range of domestic violence consequences or filing no charges may be appropriate.

- 11. File charges that reflect the broad range of crimes committed in the case, except where considerations of victim safety, including the safety of victim defendants, warrant otherwise. As it applies to the circumstances of the case, consider the impact of no intervention or less aggressive intervention on potential risk and lethality as well as charging all crimes committed.

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- a. Evaluate the risk and lethality factors evident or suggested in the case (see *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* and *Appendix 1B: Training Memo—Risk and Dangerousness*).
 - b. Assess the possible consequences or benefits of charging all crimes, filing fewer charges or deciding not to charge the case.
- 12.** Consider but do not limit charges to the following:
- Interference with emergency call
 - Harassment/stalking
 - Violation of an OFP/HRO or a domestic abuse no contact order (hereinafter DANCO) if available in your jurisdiction
 - Strangulation
 - Assaults on witnesses
 - Terroristic threats
 - Disorderly conduct
- Criminal damage to property
 - Assaults on responding officers
 - Witness tampering
 - Sexual assault
 - Burglary
 - Trespassing
 - Depriving another of custodial or parental rights
 - Coercion
 - Identity theft
 - Interference with privacy
 - Animal abuse
- 13.** When a decision is made to decline charges, promptly communicate that decision to law enforcement. If the law enforcement officer believes there is merit to the case, discuss the case with the officer to determine if additional evidence can be gathered to support a charge.
- 14.** Make information regarding the charging decision available to the following individuals and agencies, as applicable:
- Arraignment attorney
 - Victim/witness personnel
 - Victim and victim advocate
 - Pre-trial release personnel
 - Investigator
 - Arresting officer (in cases where there is no further investigation)
 - Probation officer (if defendant is currently on probation)
- 15.** In cases where both parties have used illegal violence, neither party has engaged in self-defense, and the predominant aggressor has been arrested, review the case and consider whether to charge the second party in addition to the predominant aggressor.

Protocol 2: Victim Engagement Guidelines

1. Work in collaboration with victims, cognizant of the principles of “continuing engagement”:
 - a. Minimize the victim’s need to confront the offender.
 - b. When using information provided by the victim, attempt to protect her or him from retaliation.
 - c. Treat each interaction with the victim as an attempt to build collaboration over multiple criminal justice system 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 subject to constitutional constraints and rules of discovery.
 - 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. Act in ways that prioritize safety and respect a victim’s precarious circumstances and fear of the offender’s aggression. The prosecutor or the victim/witness advocate acting on the prosecutor’s behalf should:
- a. Provide information about likely pre-trial release conditions and answer the victim’s questions.
 - b. Request a no-contact order (see Appendix 8A: *Training Memo—Use of No-Contact*

Orders in Domestic Violence Criminal Cases). If the victim requests contact, however, consider each request individually and keep in mind that in some cases a prolonged no-contact order may result in hardship for the victim.

- c. If the victim requests that a no-contact order not be issued and the request is not the result of coercion, consider honoring the request or tailoring the no-contact order to maximize its benefits and minimize its burdens for the victim.
- d. When a defendant is not held in custody, request pre-trial supervision when there is indication of escalating violence or a serious concern by a victim or interagency partners about the probability of continued harassment and harm.
- e. Answer questions about the risks and benefits of testifying and the risks and benefits of not testifying.
- f. When talking directly with victims do so accompanied by an investigator, paralegal, or other third party. Having a third party present resolves the concern of the prosecutor becoming a witness in the case.

NOTE: Because of the nature of the relationship with the victim, a community-based advocate would not be an appropriate third party although it is appropriate to have a community

advocate present as a support person upon the request of the victim.

- g. Do not threaten to or place a victim in custody to ensure witness availability. However, in some extremely limited circumstances, it may be advisable to send a patrol officer or investigator to the victim’s residence to facilitate the victim’s appearance at trial. In very rare cases, if the community or children are at high risk of serious or lethal harm, consider requesting a warrant, keeping in mind that there is a reasonable likelihood that the perpetrator may use severe violence on the victim in retaliation for testifying. A warrant may not be requested unless the prosecutor has obtained the approval of the supervising prosecutor.

NOTE: In almost every case, requesting a warrant to force a victim’s testimony will be counterproductive and inconsistent with Blueprint victim engagement guidelines. For a more detailed explanation of the policies and procedures to follow concerning the issuance of a witness warrant for domestic violence victims see *Appendix 5D: Sample Policy Language—When to Compel a Victim to Testify*.

3. Respond to domestic violence crimes in ways that are victim safety-centered but not victim-dependent.

- a. Approach each case with an understanding that the victim may be unavailable to testify or may recant.
- b. Utilize all available sources of evidence that support charges independent of a victim's direct testimony.
- c. Seek charges stemming from a defendant's actions after officers' arrival on the scene, witness tampering from jail, and violations of pre-trial release conditions.
- d. If requested by the victim or victim's advocate, ask the court to order that the victim's address and phone number remain confidential or be restricted to defendant's attorney only.
- e. Protect victims from retaliation because of their participation in prosecution.
- f. Pursue possible charges that can be prosecuted independent of a victim's direct testimony.
- g. Emphasize at every opportunity that it is the prosecutor's decision on behalf of the community and the state to pursue charges, and not the victim's decision.
- h. Stay alert to intimidation and coercion directed at victims to prevent their participation.

- i. Be prepared to take prompt action for witness tampering by the defendant and utilize the doctrine of forfeiture by wrongdoing (see *Appendix 5B: Training Memo—The Implications of Forfeiture by Wrongdoing for Prosecution of Domestic Abuse Cases*).

As many as half

of domestic violence victims may be threatened with retaliation for cooperation with prosecutors.

– R. Davis, et al. (1990)

Appendices to Policy on Charging Decisions

The following appendices are included as a part of the charging decisions 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 3I: Training Memo—How a Defense Attorney Reads a Police Report*
- *Appendix 3J: Training Memo—How a Prosecutor Reads a Police Report*
- *Appendix 5A: Training Memo—Implications of Crawford and Davis for Prosecution of Domestic Abuse Cases*
- *Appendix 5B: Training Memo—The Implications of Forfeiture by Wrongdoing for Prosecution of Domestic Abuse Cases*
- *Appendix 5C: Training Memo—Use of Expert Witnesses in Domestic Violence Cases*

- *Appendix 5D: Sample Policy Language—When to Compel a Victim to Testify*
- *Appendix 5F: Training Memo—Addressing Uncharged Sexual Abuse in Domestic Abuse Cases*
- *Appendix 8A: Training Memo—Use of No-Contact Orders in Domestic Violence Criminal 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.

PROSECUTING ATTORNEY—BAIL AND PRE-TRIAL RELEASE

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

Courts have two primary goals in setting the conditions under which a defendant will be released prior to trial: (1) ensure that the defendant will make future court appearances and (2) protect the community, the alleged victim, and any other person. Because of the unique circumstances of domestic violence-related cases, in which victims may be especially vulnerable to coercion and intimidation, the goal of protecting victims requires specific attention to victim safety and the defendant's risk of causing further harm to the victim.¹⁶ Many jurisdictions require that both goals be taken into account when setting bail and pre-trial release conditions. For example, Minnesota law specifically requires that the judge determines whether the release of someone arrested for domestic abuse-related offenses poses a threat to the alleged victim, another family or household member, or public safety.¹⁷ Minn. Stat. § 629.72 requires this determination when setting conditions of release for an arrest for domestic abuse, harassment, or violations of an order for protection or a domestic abuse no-contact order.

Building sound pre-trial release practices involves paying increased attention to safety at the front end of the criminal justice process,¹⁸ both in the specific conditions of release and through the wider interagency response. Elements in the interagency response include expanding victim/witness support, expediting access to orders for protection (which can provide broader, longer-lasting restrictions than pre-trial release conditions alone), prompt revocation of pre-trial release for new acts or threats of violence, and aggressively pursuing witness tampering and intimidation.

In an interagency effort to establish and enforce specific conditions of release for domestic violence crimes, the following elements, as part of an

interagency response, involving the pre-trial release agency and the court, as well as the prosecutor's office, reinforce victim and community safety and address the high rate of re-abuse in domestic violence cases.

- Contact a victim as soon as possible, in ways that respect her or his fear and circumstances.
 - Determine whether the victim is afraid and if so, in what ways.
 - Follow up on responses to the risk questions documented in the patrol report and in the investigators report.
 - Tell the victim that in domestic abuse related cases the prosecutor generally requests a no-contact order to shield the victim from retaliation or intimidation from the suspect.
 - Ask if a no-contact order might have some negative consequences and probe to fully understand those consequences.
 - Ask about changes in injuries or new symptoms from the incident.
- Provide information about likely pre-trial conditions and answer the victim's questions.
- Use all available sources of background information (e.g., patrol report, criminal history records, History of Domestic Violence Summary, and databases, order for protection records) to ascertain the danger that a defendant poses to a victim.
- Review responses to risk assessment questions and results of risk assessment tools when considering appropriate conditions of release.

Chapter 5: Prosecuting Attorney's Office

- Put conditions of release in writing and provide a copy to the victim as soon as possible.
- Enter pre-trial release conditions into law enforcement information systems and notify local agencies.
- If the victim requests contact, consider each request on an individual basis, evaluating the risk to the victim if a no contact order is not issued and the difficulty faced by the victim if it is ordered. In most cases, request a no-contact order.
- Take prompt action on violations of release conditions.
- Require pre-trial supervision of defendants where there is indication of escalating violence or serious concern by a victim or interagency partners about the probability of continued harassment and harm to the victim or children.

- Request that bail be set at an appropriate amount to not only ensure the defendant's appearance but to enhance the safety of the victim and the public.

Prosecutors are in a distinct position to articulate the nature of any threat and the related safety needs of the victim and others to the court and to make recommendations for conditions of pre-trial release that fit the circumstances of the case. They also have a distinct role in establishing and reinforcing an interagency response to develop guidelines for bail and conditions of release in domestic abuse cases. Additionally, the prosecutor plays a key role in ensuring that violations of conditions of release are handled promptly and that the consequences for violations are sure and swift.

POLICY: BAIL AND PRE-TRIAL RELEASE RECOMMENDATIONS

These policies and protocols are generally applicable to domestic violence cases. However, there may be instances in which, due to the circumstances and facts of the case, another course of action may be required to better serve the goals of victim safety, community safety, and offender accountability. All of these policies and protocols should be reviewed by supervisory personnel on a yearly basis.

In addition to adhering to general agency policy, prosecutors will take the following actions in recommending conditions of bail and pre-trial release in domestic abuse-related cases, using the protocols and appendices referenced and included as part of this policy.

1. Utilize the widest possible range of sources of information to determine bail and pre-trial release conditions that will best meet the safety needs of the victim and others, in accordance with **Protocol 3: Bail and Pretrial Release Recommendations**.
 2. Seek and consider input from the victim and/or the victim's advocate to assist in determining the circumstances of the case, the context and severity of the offense, and the bail and pre-trial release conditions that are most likely to ensure the victim's safety and the safety of others involved and the public.
- a. Consider each no-contact order individually and avoid requesting a no-contact order automatically in every case (see *Appendix 8A: Training Memo—Use of No-Contact Orders in Domestic Violence Criminal Cases*). In general, the prosecutor will request a no contact order be issued in domestic violence cases. However, if the victim requests contact, the prosecutor shall consider the request keeping in mind that in some cases a prolonged no-contact order may result in hardship for the victim.
 - b. Consider the risk to the victim, if any, if a no contact order is not issued and the

- difficulty, if any, faced by the victim if it is ordered.
- c. Work in collaboration with victims in accordance with **Protocol 2: Victim Engagement Guidelines**.
 - 3. Use the factors included in **Protocol 3: Bail and Pretrial Release Recommendations** and *Appendix 5E: Guide to Bail Setting, Conditional Release and Enforcement* to determine the nature of the threat that the defendant presents to the victim and other persons and the related safety needs.
 - 4. Make recommendations to the court for bail and conditions of pre-trial release that reflect the context and severity of the offense, the danger that the defendant poses, and the safety needs of the victim and the public, in accordance with **Protocol 3: Bail and Pretrial Release Recommendations**.
 - a. If there is information to strongly suggest that the defendant is engaging in an ongoing patterned use of intimidation, coercion, and violence toward the victim, consider the full range of conditions of release that will likely result in placing controls on the defendant's behavior and enhance victim safety during the pre-trial period.
 - b. If the defendant reasonably appears to be the victim of ongoing domestic violence consider whether requesting the full range of conditions of release in domestic violence cases is appropriate. Utilizing *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*, consider whether more limited conditions will meet the goal of victim and public safety and prevent the defendant from becoming more vulnerable to abuse.
 - 5. In recommending bail and pre-trial release conditions, describe in detail to the court the violence that has occurred in this incident, the history of violence between the parties, the danger posed by the suspect to the victim and others based on this incident, the responses to the risk questions in the law enforcement reports, and the history between the suspect and the victim.
 - 6. Take prompt action upon notice of a defendant's violation of conditions of pre-trial release to ensure sure and swift consequences. If defendant's violation is an act of violence, threat of violence, coercion, intimidation, or presents an increased risk to the victim, consequences shall include but not be limited to, forfeiture of bail and revocation of conditions.
 - 7. Unless undertaken by an interagency partner, keep the victim informed of bail and pre-trial release conditions and procedures for reporting violations.
 - 8. Supervising prosecutors will conduct a quarterly review of a random sample of cases to ensure that bail amounts and conditions of pre-trial release account for the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public.
 - 9. The review will also involve violations of conditions of bail to ensure that sure, swift and appropriate consequences for violations have been requested.

Protocol 3: Bail and Pre-trial Release Recommendations

- 1. Use the following sources of information as available to determine bail and pre-trial release conditions that best meet the safety needs of the victim and others.
 - a. Law enforcement reports of the current offense
 - b. 911 tapes and CAD reports
 - c. Past law enforcement reports involving this defendant

- d. Portions of previous PSIs written on this offender [See *Appendix 1E: History of Domestic Violence Summary*]
 - e. Arrests and convictions, including all available databases
 - f. Input from victim or victim's advocate
 - g. Probation status and compliance
2. Consider the risk factors related to the current offense and past actions in determining the nature of the threat the defendant presents to the victim and other persons and the related safety needs (see *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* and *Appendix 5E: Guide to Bail Setting, Conditional Release and Enforcement*).
- NOTE: Evaluating dangerousness to the alleged victim as a basis for setting bail and imposing certain conditions of release may generate controversy. The defense bar and some judicial officers might consider it inappropriate to inquire into these factors at the pre-trial stage since the defendant is presumed innocent and such inquiries might bias the court. However, it is now well recognized in policy and statute that in order to fashion conditions of release the judicial officer should take into account the safety of the community, the alleged victim, and any other person. See e.g., ABA Standard 10-1.2; Bail Reform Act of 1984, 18 USC §§ 3141-3150; Minn. Stat. § 629.72 (2006).
- a. Information obtained from domestic violence-specific risk assessment questions
 - b. Severity of the assault, how frequent and how recent
 - c. Serious injury in this or prior assaults
 - d. History and nature of past violence toward this victim and others
 - e. Whether the parties are recently separated
 - f. Specific attention to strangulation and stalking
 - g. Threats to harm the victim or the children
 - h. Threats of homicide or suicide
 - i. Intimidation of the victim if she/he seeks help
 - j. Indicators of extreme jealousy, controlling behavior
 - k. Sexual aggression and coercion
 - l. Violence towards pets
 - m. Criminal history and current probation status or other pending charges
 - n. Access to firearms and their use or threatened use
 - o. Current and past protection or harassment order, obtained by this or other victims
 - p. Excessive alcohol or drug use and its impact on defendant's actions
 - q. Mental health concerns and impact on defendant's actions
3. In recommending bail and pre-trial release conditions, describe to the court in detail the:
- a. Violence and coercion that has occurred in this incident
 - b. History of violence and coercion used by the defendant in this and other relationships.
 - c. Danger posed by the suspect to the victim and others based on this incident
 - d. Responses to the risk questions in the law enforcement reports
 - e. History of abuse between the suspect and the victim.
4. Determine which standard and domestic violence-specific conditions of bail and pre-trial release best fit the circumstances of the case, the context and severity of the offense, the danger the defendant poses to the victim, and the safety needs of the victim and the public. Some risk factors and conditions to consider:

Misdemeanors and Gross Misdemeanors

Low Risk: Conditional release or lower bail; little or no supervision

- No injury or harm
- No history of abuse
- Victim credibly expresses no fear
- Little or no risk of future harm
- No criminal history

Misdemeanors, Gross Misdemeanors, and Felonies

High Risk: High bail & extensive conditions; close supervision

- Severe injury, harm, or extreme violence
- History of ongoing abuse and violence
- Likely risk of future harm
- Criminal history
- History of non-appearance in court

Conditions of pre-trial release in domestic abuse cases

Standard conditions:

- No act prohibited by state, federal, or local law, even if it is not charged as a crime or does not result in a criminal conviction
- No violations of the law
- Make all court appearances

Domestic abuse-specific conditions:

- No contact with victim or victim's family, direct or indirect, or through a third party (subject to considerations noted in the protocol)
 - No contact with or appearance at the victim's residence, home, place of employment, school, or other designated locations
 - If the parties live together, a provision permitting the defendant to return to the residence to obtain personal belongings only if accompanied by an officer
 - Weekly in-person reporting to pre-trial supervision staff or supervising probation agent
 - No firearms possession
 - No use of alcohol or mood-altering chemicals not prescribed by a doctor
 - Periodic alcohol and drug testing
 - If applicable, contact with children to be supervised and defendant must obtain a family court order
 - In stalking and other appropriate cases, restrictions on offender's movement and communication with or about the victim
5. Obtain and consider input provided by the victim or victim's advocate to establish the following in relation to bail and pre-trial release recommendations:
- a. Nature and impact of the current offense
 - b. Context and history of past violence
 - c. Consequences of imposing specific conditions of bail and pre-trial release, with particular attention to no-contact orders (as noted in number 6)
 - d. Conditions of bail and pre-trial release that are most likely to meet the victim's safety needs
6. Request a no-contact order in all cases unless the victim requests contact. If the victim requests contact, consider the following factors in making recommendations regarding no-contact orders:
- a. A no-contact order can impose significant hardships for a victim, particularly economic hardships which may increase risk given the victim's particular life circumstances.
 - b. Obtain information from the victim about the implications of a no-contact order for the victim and her or his family.
 - c. Evaluate each case in the context and totality of the circumstances involved, taking into account: victim opposition; offender intimidation; victim fear; economic impact; and dangerousness of the offender.

- d. Consider options that allow contact under limited conditions in cases where the risk factors indicate minimal risk, the victim has requested contact, and there is no evidence of coercion. Such conditions might include:
- Allow contact but prohibit assaultive, harassing, threatening or stalking behavior.
 - Impose active pre-trial supervision.
 - Request pre-trial conditions such as counseling, weapons restrictions, and random drug and alcohol testing.
 - Allow contact by e-mail, phone or only in public places.
 - Request a time limitation on the no-contact order, e.g., until enrolled in and attending domestic abuse counseling.
 - Allow contact but exclude the offender from the victim's residence.
7. Unless undertaken by interagency partners, keep the victim informed of the status and enforcement of bail and pretrial release conditions.
8. If defendant's violation is an act of violence, threat of violence, coercion, intimidation, or presents an increased risk to the victim, request forfeiture of bail and revocation of conditions.

In every case,

a prosecutor must evaluate the likelihood of conviction. At the same time, a prosecutor is charged to act in service to justice rather than to achieving convictions

- Praxis International

Appendices to Policy on Bail Setting and Pre-trial Release

The following appendices are included as part of the bail 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 1E: History of Domestic Violence Summary*
- *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.

PROSECUTING ATTORNEY—PLEA AGREEMENTS & SENTENCING

FRAMEWORK: NEGOTIATED PLEA AGREEMENTS AND SENTENCING RECOMMENDATIONS

Negotiated plea agreements and sentencing recommendations are critical to furthering the goals of enhancing victim safety, holding offenders accountable for their behavior with a sure and swift response, and providing opportunities for rehabilitation. Prosecutors are in a position to reach agreements and emphasize consequences that reflect the context and severity of the offense, the danger that the defendant poses to the victim(s), and the safety needs of the victim and the public. In so doing, prosecutors help set the basis for the behavioral controls that the criminal justice system can place on defendants' future conduct. The plea agreement and sentencing recommendations are the foundation for future action by a number of others, including:

Probation

The plea agreement and sentencing recommendations set the outside parameters and framework within which probation creates its plan for services and supervision of the defendant.

Victim

The plea and sentence set the framework within which the victim and offender have or do not have contact and provide controls on offender behavior that enhance victim safety.

Law Enforcement

The plea and sentence determines, in some cases, whether officers can arrest and hold for future enhanced charges and signals the relative dangerousness of the offender in future calls.

Prosecutor

The plea and sentence affect the ability to charge an enhanced crime and/or to pursue a probation violation if a violation or a new case occurs.

Family Court

The sentence affects decisions related to custody, visitation, and access to children.

The resulting sanctions and consequences can influence whether there is a subsequent arrest or incidence of violence. One researcher indicates that “*more rigorous sentences, including jail, work release, electronic monitoring, and/or probation, significantly reduce re-arrest for the domestic violence over the less intrusive sentences of fines or suspended sentences without active probation.*”¹⁹ Dispositions that address risk factors and impose appropriate sentences, including incarceration and supervised probation, can reduce the severity of ongoing abuse.

The type of violence and its context and severity are central factors in determining the terms of a plea agreement or sentencing recommendation that will best reflect the circumstances of the offense, the danger the defendant poses to the victim, others, and the victim’s safety needs.²⁰ When the defendant’s actions are part of an ongoing pattern of intimidation, coercion and violence, requiring a plea to the most serious charge and a more severe sentence is appropriate.²¹ When the defendant is a victim of ongoing violence who has used illegal violence in return (a “victim defendant”), an appropriate disposition may be a plea to a lesser offense and/or an agreement to a stay of imposition with probationary

conditions that include support services that will aid in reducing the likelihood of the victim defendant using violence in the future.

A prosecutor is presented with a unique set of circumstances when negotiating a plea agreement with a victim defendant or making sentencing recommendations in such cases. Safety concerns and risk factors apply to both the victim in the current case and the victim defendant. While the statutory crime charged might be the same, there are significant differences *between the violence a victim defendant is using in response to abuse, and the violence they are experiencing by this ongoing abuse.*²² In these cases, it is not a question of treating like cases alike, but rather of treating dissimilar cases differently.

Prosecutors and probation should operate from a shared framework when determining appropriate sentencing recommendations. Blueprint Communities should use or adapt *Appendix 5G: Framework for Recommending Time to Serve and Length of Probation* and *Appendix 5H: Sentencing Guidelines Departure in Domestic Violence Cases*. Prosecutors may not have all the information in the plea negotiations that probation gathers when developing the presentence investigation (PSI). The probation officer should not feel constrained by the plea agreement and in appropriate cases shall argue that a plea agreement suggests too little time served for the severity and context of the crime.

POLICY: NEGOTIATED PLEA AGREEMENTS AND SENTENCING RECOMMENDATIONS

These policies and protocols are generally applicable to domestic violence cases. However, there may be instances in which due to the circumstances and facts of the case, another course of action may be required to better serve the goals of victim safety, community safety, and offender accountability.

All of these policies and protocols should be reviewed by supervisory personnel on a yearly basis.

In addition to adhering to general agency policy, prosecutors will take the following actions in negotiating plea agreements and making sentencing recommendations in domestic abuse-related cases, using the protocols and appendices referenced and included as part of this policy.

1. Utilize the widest possible range of sources of information to reach a negotiated plea or make sentencing recommendations that best meet the victim's safety needs, in accordance with **Protocol 4: Negotiated Plea Agreements and Sentencing Recommendations**.
2. Obtain input from the victim, the victim's advocate, or victim/witness specialist to assist in determining the negotiated plea agreement or sentencing conditions that best reflect the circumstances of the case, the context and severity of the offense, and the victim's safety needs. Work in collaboration with victims in accordance with **Protocol 2: Victim Engagement Guidelines**.
3. Ensure that the victim has the necessary information and that processes are in place to secure victim's rights as required by law.
4. Negotiate plea agreements and make sentencing recommendations to the court that reflect the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public, in accordance with **Protocol 4: Negotiated Plea Agreements and Sentencing Recommendations**.
 - a. If there is information to strongly suggest that the defendant is engaging in an ongoing patterned use of intimidation, coercion, and violence toward the victim, generally require a plea to the most serious charge(s) and recommend a more severe sentence as a means of placing

- controls on the defendant's behavior and enhancing victim safety [see Appendix 5G: *Framework for Recommending Time to Serve and Length of Probation*, Appendix 5H: *Sentencing Guidelines Departure in Domestic Violence Cases* and Appendix 1E: *History of Domestic Violence Summary*].
- b. If the defendant reasonably appears to be the victim of ongoing domestic violence, consider a plea to a lesser offense or an agreement to a stay of imposition with probationary conditions that include support services that will aid in reducing the likelihood of the victim defendant using violence in the future and preventing her/ him from becoming vulnerable to more abuse. (See Appendix 1C: *Training Memo—Intervention with Victims of Battering as Suspects or Defendants*.)
5. Review the presentence investigation and at sentencing support the imposition of conditions recommended by probation.
- Alternatively, support and argue for different or additional conditions if in the prosecutor's judgment the PSI does not contain complete and appropriate conditions in light of the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public.
6. Appear at any proceedings that address violations of sentencing conditions, including admit or deny hearings, and argue for imposition of more severe consequences in all cases involving new threats or acts of abuse. If the violation involves an act of violence, threat of violence, coercion, or intimidation, take immediate steps to revoke probation.
7. Supervising prosecutors will provide or arrange for training as applicable to prosecutors, law enforcement, probation, and the judiciary on topics related to successful intervention in domestic violence-related cases, in accordance with **Protocol 4**:
- Negotiated Plea Agreements and Sentencing Recommendations.**
8. Supervising prosecutors will conduct a quarterly review of negotiated pleas in domestic abuse-related cases to ensure that they account for the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public.
9. Supervising prosecutors will conduct a quarterly review of sentencing recommendations in domestic abuse-related cases to ensure that they account for the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public.
10. Supervising prosecutors will conduct a quarterly review of cases in which a violation of probation involved violence, threat of violence, intimidation or coercion to ensure that immediate steps were taken to revoke the defendant's probation.

Protocol 4: Negotiated Plea Agreements and Sentencing Recommendations

1. Negotiated pleas and sentencing recommendations should further the multiple goals of controlling offenders' behavior, providing rehabilitation services to appropriate offenders, deterring future violence, and enhancing the safety of victims.
2. Use the following sources of information available to the prosecutor to evaluate the case and determine the conditions of the negotiated plea and sentencing recommendations:
- Pre-trial evaluation and summary of compliance with conditions of release
 - Law enforcement reports of the current offense
 - Past law enforcement reports involving this suspect

- Past history of violence portion of the presentence investigation on offenders previously convicted
 - Summary sheets from probation on offenders previously convicted
 - Evidence collected at scene, e.g., photographs, broken phones, ripped clothing, other damaged property
 - 911 tapes and CAD reports
 - Jail phone call recordings or other related documents
 - Past and current DANCO; OFP and HRO pleadings, including affidavits
 - E-mail, voice mail, text messages, letters, and other communication
 - Arrests and convictions, including all available data bases
 - Victim's responses to dangerousness or risk assessment questions
 - Communication with victim, either direct or (with victim consent) via advocate or victim/witness personnel
 - Defendant's behavioral history in relation to possible stalking charges
 - Medical records
 - Family court files
 - Child protection records
3. Obtain input from the victim, the victim's advocate, or victim/witness specialist to establish the following in relation to the terms of the negotiated plea and/or sentencing recommendations:
- Nature and impact of the current offense
 - Context and history of past violence
 - Sanctions that are most likely to meet the victim's safety needs
 - Victim's relationship with the criminal justice system and its impact on her or his reaction to and support for prosecution
4. Ensure that the victim has the necessary information and that processes are in place to secure the following victim's rights as applicable in your jurisdiction:
- Right to submit a victim impact statement (Minn. Stat § 611A.038). The impact statement may be presented to the court orally or in writing, at the victim's option. If the victim requests, the prosecutor must orally present the statement to the court. Request that proper court decorum be maintained while the impact statement is being communicated to the court.
 - Right to restitution. (Minn. Stat §§ 611A.04; 045).
 - Right to notice of plea agreement, final disposition, any appeal, and expungement. (Minn. Stat §§ 611A.03, 0385; 039; 06)
5. Consider the following risk factors related to the current offense and past actions in determining the terms of the plea agreement and sentence, as obtained from a domestic violence-specific risk assessment, patrol and investigation reports, and other sources of information, e.g., an advocate (see *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*):
- Type and severity of assault; how frequent, how recent
 - Serious injury in this or prior assaults
 - History and nature of past violence toward this victim and others
 - Current or recent separation between victim and defendant
 - Specific attention to strangulation and stalking
 - Threats to harm the victim or the children
 - Threats of homicide or suicide
 - Intimidation of the victim if she/he seeks help
 - Indicators of extreme or obsessive jealousy or controlling behavior
 - Sexual aggression and coercion
 - Violence towards pets
 - Criminal history and current probation status or other pending charges

- Access to firearms and their use or threatened use
 - Current and past protection or harassment orders, obtained by this or other victims
 - Alcohol or drug use and its impact on defendant's actions
 - Mental health concerns and impact on defendant's actions
- 6.** Establish the nature and history of violence and coercion between the parties involved in the case in order to understand the context of the violence, fully inform the plea negotiation and sentencing recommendations, and advance the goals of victim safety and offender accountability and rehabilitation. Ask:
- To what extent is there a pattern of ongoing intimidation, coercion, and violence?
 - Who is perpetrating any such pattern, and against whom?
 - What is the severity of the violence?
 - What is the frequency of the violence?
- 7.** Establish the seriousness of injuries and level of fear expressed by the parties. Ask:
- Who has been injured and how?
 - Who is afraid of whom and in what ways?
 - (Note: include fear of losing children, homelessness, loss of family, job, etc.)
- 8.** If children are involved, establish whether they have been present and/or used as an instrument of abuse by the party engaging in ongoing intimidation, coercion, and violence against the other. Ask:
- Has the abusive party physically harmed the children? If so, in what ways?
 - Has the victim been threatened that the children will be harmed? If so, in what ways?
 - What is the status of any family court action?
 - Does the victim fear that the children will be taken by the abuser (abducted or via custody) in retaliation for participating in the prosecution?
 - Was the victim assaulted during pregnancy or shortly after giving birth?
- 9.** Take the following factors into consideration in negotiating a plea agreement:
- Victim input
 - Severity and extent of harm to the victim
 - Difficulties with evidence that constrain the likelihood of success at trial
- 10.** If there is information to strongly suggest that the defendant is engaging in an ongoing patterned use of intimidation, coercion, and violence toward the victim, generally require a plea to the most serious charge(s) and recommend a more severe sentence as a
- The need for active supervision of the defendant; in most cases request the maximum period of probation supervision
 - Opportunity for rehabilitation and offender's likely compliance
 - Sufficient stayed time to be a deterrent to continued wrongful conduct
 - A combination of time to serve and stayed time, appropriate to the severity of the crime and the harm caused (see *Appendix 5G: Framework for Recommending Time to Serve and Length of Probation* and *Appendix 5H: Sentencing Guidelines Departure in Domestic Violence Cases*).
 - Whether a defendant in custody at the time of a plea should remain in jail pending sentencing
 - Whether a defendant who will be released pending sentencing should be placed under supervised release
 - For felonies, sentencing guidelines applicable to your jurisdiction, including, where appropriate, factors supporting departure

means of placing controls on the defendant's behavior and enhancing victim safety.

- 11.** If the defendant reasonably appears to be a victim of ongoing domestic violence, consider a plea to a lesser offense and/or an agreement that will help place controls on the person's continued use of violence without making her or him more vulnerable to ongoing battering or abuse. Using *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*, consider whether a plea to the widest range and/or most severe crime furthers the goal of enhancing the safety of the victim of the ongoing domestic violence and the victim in this offense or whether a plea that does not trigger the full range of domestic violence consequences is instead appropriate.

- 12.** Take into account the particular circumstances of the victim and defendant and attempt to minimize the potential disparate impact of the plea agreement, with specific attention to the following:
- No-contact orders and consideration of when a no contact order should be cancelled or modified based on risk factors and possible adverse impact related to economic support, isolating victim from her or his cultural community, and impact on children. Given the potential adverse impact on the victim and the effect on the victim's willingness to be supportive of

probation supervision and enforcement of probation conditions; except in rare circumstances, probationary no-contact orders should not be imposed over the objection of the victim.

- Fines and costs of mandated programs, probation supervision, and incarceration on economic well-being of victim and children
 - A defendant who is the victim of ongoing violence
 - A victim with a disability who is reliant on the perpetrator for ongoing care
- 13.** Disseminate information regarding the negotiated plea and sentencing to the following individuals and agencies, as applicable:
- Victim
 - Community advocate
 - Victim/witness personnel
 - Probation
 - Investigator
 - Arresting officer (in cases where there is no further investigation)
- 14.** Provide the Probation PSI writer with information already obtained by the prosecutor, e.g., past and current DANCOS, OFP and HRO pleadings, including: affidavits, arrests and convictions; pre-trial evaluation;

medical records (when appropriate); and all current and past domestic violence-related law enforcement reports.

- 15.** Take an active role in recommending conditions of probation and responding to violations.
- Work with probation to craft conditions of probation that are clear, concrete, and enforceable.
 - Be prepared to request specific and additional consequences in the event of a defendant's violation of a condition of probation. If the violation involves an act of violence, threat of violence, coercion, or intimidation, take immediate steps to revoke defendant's probation.
 - Review the presentence investigation prior to sentencing and prepare to argue that conditions recommended by probation be imposed, if in agreement with the conditions.
 - Argue for different and/or additional conditions if in the prosecutor's judgment the PSI does not contain complete and appropriate conditions in light of the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public.
 - Appear at any proceedings that address violations of sentencing conditions,

including admit or deny hearings and argue for consequences that account for the egregiousness of the violation, impact on the victim's safety and other circumstances, and impact on public safety.

- 16.** Provide training as applicable to prosecutors, law enforcement, probation, and the judiciary on the following topics related to

Appendices to Policy on Plea Agreements and Sentencing

The following appendices are attached to and included as part of the plea agreements and sentencing 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 1E: History of Domestic Violence Summary*
- *Appendix 5G: Framework for Recommending Time to Serve and Length of Probation*
- *Appendix 5H: Sentencing Guidelines Departure in Domestic Violence Cases*

See the Blueprint Supplement for appendices referenced in the policy and protocols. All training memos are based on Minnesota law.

successful intervention in domestic violence-related cases:

- Risk factors
- Role of thorough and complete investigation in establishing a sufficient evidentiary base to negotiate an appropriate plea agreement

- Case preparation and evidence-gathering that reduces dependence on the victim
- Presentence investigations that include thorough consideration of risk

When prosecutors

work with victims to meet victims' goals, prosecution rates increase, there are a greater number of guilty verdicts, and victims are more likely to report continued abuse.

- E. Buzawa & C. Buzawa (2003); J. Belknap & D.L. R. Graham (2003); O'Sullivan et al. (2007)

CHAPTER 5 ENDNOTES

1. Vorenberg, (1981, pp. 1521, 1555).
2. National Prosecution Standards (§ 1.1 NDAA, 2nd Ed. 1991), asserting that the primary responsibility of prosecution is to see that justice is accomplished.
3. Long and Kristiansson (2007, p. 1-6).
4. Police report writing and investigation are important to successful evidence-based prosecution and convictions (Buzawa- et al., 2003, p. 22; Worden, 2003, p.).
5. Asmus et al.(2005, p. 115); Dutton and Goodman (2005).
6. From a study of women's responses to battering, Campbell et al. report that severity of abuse was only one factor in women's decisions to remain in a violent relationship (1998, p. 757).
Victims weigh safety and extralegal realities such as finances or housing against the potential for effective treatment and cessation of violence from the criminal justice system's intervention. (Worden, 2003, p. 4).
7. For victim ambivalence regarding prosecution, see: Buzawa, Hotaling, and Byrne (2003); Buzawa et al. (2000); Ford and Breall (2000).
8. Dutton and Goodman (2005) and Johnson and Ferraro (2000).
9. See discussion of threatened retaliation and re-assault under Hart in Chapter 1, endnote #6.
10. Belknap and Sullivan (2003); Buzawa, et al. (2003); Ford and Breall (2000); Goodman and Epstein, (2008).
11. McFarlane, et al. (2002): 51-68; Strack and McClane (1999).
12. McFarlane, et al. (1999); Campbell, et al. (2003).
13. Ford and Breall (2000).

14. In addressing issues related to defendants who are victims of ongoing abuse, prosecutors are encouraged to read Mary Asmus, *At a Crossroads: Developing Duluth's Prosecution Response to Battered Women Who Fight Back* (2004, Rev. 2007).
15. Johnson and Ferraro (2000) use the term violent resistance to differentiate acts that do not necessarily meet the legal standards for self-defense.
16. Prosecutor's Toolkit published by the National Center for the Prosecution of Violence Against Women of the American Prosecutors Research Institute. Available at: http://www.ndaa.org/apri/programs/vawa/vaw_home.htm.
Long and Kristiansson (2007).
17. Required under Minn. Stat. § 629.72 when setting conditions of release for an arrest for domestic abuse, harassment, or violations of an order for protection or a domestic abuse no-contact order.
18. This discussion and list of pre-trial release practices that maximize safety for victims of domestic violence has been adapted from Sadusky (2006).
19. Klein (2008, Part II, p. 40).
20. Dutton and Goodman (2005); Johnson and Ferraro (2000).
21. Erskine (1999) argues that when high-risk markers are visible, additional charges of coercion, intimidation, harassment, or stalking present a more complete picture of the nature and harm done to the victim.

Hofford (1991; pp. 12-17) promotes maximum supervision of domestic violence offenders. She argues that "the risk of recidivism is extremely high; felonious assaults are frequently reduced to misdemeanors in these cases; the community is at risk of future violence; a great majority of offenders have substance abuse problems. In addition, it is likely that perpetrators of family violence have committed the crime a number of times in the past; these offenders typically rationalize their criminal behavior; they know and have easy access to their victims."
22. Johnson (2008, p. 10) discusses defendants who are also victims of domestic violence. He points to a pattern that is visible in these relationships where one partner uses violence but not coercive control and the other partner uses both physical violence and coercive control.

VICTIM/WITNESS SERVICES

FRAMEWORK: VICTIM/WITNESS SERVICES RESPONSE TO DOMESTIC VIOLENCE-RELATED CRIMES

Victim/witness advocates, by virtue of being located within the prosecutor's office, are uniquely situated to facilitate the victim's access to the prosecutor and to the legal system. Their extensive knowledge of the legal process and their relationships with prosecutors position them to help move cases forward, ensure that victim's safety needs are accounted for in the resolution of cases, and promote victim engagement with the legal system.

This proximity to prosecutors, however, presents particular issues for victims. Because the advocate is connected to the prosecutor's office, the

prosecutor's legal requirement to disclose information to the defense can be extended to conversations between the victim and the advocate. Thus, there can be no promise of confidentiality with the victim/witness advocate. Advocates must be clear with victims about this and should develop relationships with community advocates who can provide assurance of confidentiality. The safety and well-being of victims is best served when victim/witness advocates and community advocates have solid working relationships that clarify the distinct and unique role each advocate plays.

POLICY

Victim/witness advocates shall take the following actions in providing assistance to victims of domestic violence in criminal cases, using the protocols and training memos that are referenced in this policy.

The advocate will:

1. Inform the victim that any communications with the victim/witness advocate are not confidential and may be communicated to the prosecuting attorney and thus, under certain circumstances, the defense attorney.
2. Take steps to ensure that the victim has had a voice in the decision to charge or decline a case.
3. Participate in efforts to resolve differences between charging attorneys' and investigating law enforcement officers' actions on cases from a victim safety-centered position.
4. Establish a relationship with the victim by making contact as soon as possible after charging, and maintaining contact throughout the pre-trial phase to ensure that the victim's wishes and safety needs are made central to case management.
5. Provide required victim notification pursuant to state law and assist victims in exercising their rights under the law.
6. Assist the victim with restitution and reparations requests.
7. Assist the victim in preparing a victim impact statement and ensure that the statement is presented to the court in accordance with the victim's wishes. See *Appendix 6A: Training Memo—Victim Impact Statements*.
8. Facilitate the preparation of the victim and other witnesses to testify at trial.
9. Enhance safety by providing post-conviction information and support.

Protocol 1

A. Charging

1. Upon contacting the victim, inform her or him that any communications with the victim/witness advocate are not confidential and may be communicated to the prosecuting attorney and thus, under certain circumstances, the defense attorney.
2. Ensure that the victim has had a voice in the decision to charge or decline a case.
 - a. If the victim desires, meet with her/him and the prosecutor to ensure that the victim's concerns are thoroughly considered and that she/he understands the basis for the prosecutor's decision.
3. Participate in efforts to resolve differences between charging attorneys' and investigating law enforcement officers' actions on cases from a victim safety-centered position.
 - a. Attend regular interagency meetings with prosecutors and the head of the agency investigating domestic violence crimes to review problematic cases and discuss how to resolve differences.

B. Pre-trial support and information

1. Establish a relationship with the victim by making contact as soon as possible after charging, and maintaining contact

throughout the pre-trial phase to ensure that the victim's wishes and safety needs are made central to case management.

- a. Be diligent in efforts to contact the victim by:
 - Calling all numbers provided in the law enforcement report
 - Checking the location of the family through school records
 - Contacting the local advocacy program to see if they have talked with the victim and have permission to share information to help you connect.
 - Sending a letter to the victim's last known address with information about charges, the defendant's custody status, the conditions of release, the defendant's next appearance, the rights of crime victims, how to reach the advocate, and how the advocate can assist the victim.
- b. Communicate in the appropriate language with the victim. If uncertain of victim's language, send written communication in a variety of languages.
- c. Offer support, resources, information and opportunities to participate in the process.
- d. Orient the victim to the criminal justice system by answering her/his questions about:
 - Bail, conditional release and no-contact orders
 - The charges and what they mean
 - The criminal process and the role of the various players
- e. Emphasize the state's responsibility in carrying the case forward and how and where the victim can affect the prosecutor's decision-making.
- f. Explore the victim's concerns about safety and problem solve regarding the use of bail, no-contact orders and conditions of release to enhance safety.
 - Refer to shelter, local legal advocates and other community resources
 - Discuss with the victim what information she/he wants brought to the attention of the court.
- g. In cases where the victim does not want a no-contact order, explore her/his concerns about the impact of an order.
 - Explore whether the victim's safety might actually be enhanced if some contact with the defendant is permitted.

- Try to determine if the victim is being intimidated by the defendant or others; if so, do safety problem solving.
 - Talk with the victim about specific safety concerns. See *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*.
 - Communicate the victim's wishes and concerns as well as crucial information regarding risk and danger to the prosecutor.
 - h. If the victim indicates the defendant has made implied or direct threats regarding her/his participation in the case, notify the law enforcement investigator and ask the victim to call him or her.
 - i. Be available to address victim concerns and answer questions throughout the pre-trial phase.
2. Provide required victim notification pursuant to state law and assist victims in exercising their rights under the law.
- a. Notify verbally and send copies of pertinent documents, including:
 - No-contact and pre-trial release orders
 - Notification of court hearings
 - Notice of victim's rights and victim/witness services (check state law for specific rights of crime victims.)
- Financial assistance available to crime victims in the form of restitution and reparations
 - How to access VINE (Victim Information and Notification Everyday) for information about changes in the defendant's custody status
- b. Make written information available in major languages spoken in the community.
3. Seek input from the victim on case resolution and explore its impact on her/his life.
- a. Explore the victim's wishes concerning any proposed negotiation, including:
 - Incarceration
 - Batterers' groups
 - Evaluation, treatment, and level and frequency of monitoring of the defendant's alcohol/drug use
 - Mental health evaluation, treatment or requirement that the defendant be compliant with medications or other treatment
 - Offender contact with the victim and/or children
 - Potential impact of the criminal case outcome on family and/or juvenile court cases
- b. Forward this information to the prosecutor.
 - c. If the victim disagrees with a proposed negotiation, ensure that the victim's arguments are thoroughly considered and that she/he understands the prosecutor's reasoning.
 - d. If disagreements cannot be resolved and the victim wishes to state her/his opposition on the record, ensure that the judge is made aware of the victim's stance.
4. Assist the victim with restitution and reparations requests.
- a. Make necessary forms and procedural information available, and help complete forms and gather information to substantiate the victim's financial losses.
5. Assist the victim in preparing a victim impact statement and ensure that the statement is presented to the court in accordance with the victim's wishes. See *Appendix 6A: Training Memo—Victim Impact Statements*.
- C. Assistance at Trial**
1. Facilitate the preparation of the victim and other witnesses to testify at trial.
 - a. Use all avenues to locate victims and other witnesses, including:

- Contacting shelters or advocacy programs.
 - Leave messages requesting that the victim call the victim/witness advocate.
 - Checking the location of the family through school records
 - Asking witnesses if they know how to find the victim
 - Requesting assistance from law enforcement investigators
2. Communicate with witnesses regarding subpoenas and the trial schedule.
3. Arrange transportation, lodging, interpreter services or other logistical support for victims and other witnesses.
- a. Intercede with employers to secure witness availability.
 - b. Arrange for the payment of witness fees, childcare expenses and lost wages as allowed by state statute and office resources.
 - c. Arrange for safe waiting space as requested by the victim or witnesses.
4. Orient victims and other witnesses to the court proceedings.
- a. Give particular attention to the needs of child witnesses by:
 - Meeting with them in a child-friendly setting
- Talking with them about what to expect
 - Taking them on a tour of the courtroom
 - Taking other steps necessary to minimize her/his discomfort.
- b. Support the needs of adult victims with disabilities. See *Appendix 6B: Training Memo—Responding to Victims with Disabilities*.
5. Escort victims and other witnesses to the courtroom and remain to provide support.
6. Wait with or maintain contact with the victim while the jury deliberates and prepare to assist and support the victim following the verdict.
- a. Communicate the case outcome, answer questions and explain options.
 - b. Be particularly attentive to victim safety in the case of an acquittal.
- D. Post-Conviction Assistance**
1. Enhance safety by providing post-conviction information and support.
- a. Facilitate victim connection to probation following a guilty plea or verdict.
 - Notify the PSI writer supervisor of updated contact information for the victim, unless the victim has requested otherwise.
- Provide the number of the probation supervisor if the victim is unsuccessful in making a connection with the PSI writer.
- b. Contact victim prior to sentencing to discuss the sentencing hearing. Determine whether the victim has talked to the PSI writer or plans to attend the sentencing hearing.
- c. Attend the sentencing hearing.
- Provide support if the victim is present.
 - Ensure that the victim impact statement is presented to the court in accordance with her/his wishes.
 - Call the victim to discuss the sentence if she/he does not attend.
2. Reduce the financial impact of the violence by assisting with restitution and reparations.
3. Make sure the victim has contact information for the probation supervisor to report violations. Work with the probation officer and prosecutor to address violations promptly.
4. When the sentence involves jail or prison time, inform the victim how to request notification of inmate release. Help the victim prepare for release by assisting with obtaining a restraining order, providing referrals to shelter or community advocacy,

providing information about how to legally relocate and other safety measures.

5. Notify the victim of any post-conviction motions filed by the defense for appeal or expungement of the record. Talk with the victim about the process and assist her or

him in communicating any concerns to the court.

Appendices to Victim/Witness Policy

The following appendices are included as part of this 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 5D: Sample Policy Language—When to Compel a Victim to Testify*
- *Appendix 6A: Training Memo—Victim Impact Statements*

- *Appendix 6B: Training Memo—Responding to Victims with Disabilities*
- *Appendix 6C: Victim Witness Advocacy 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.

CHAPTER 6 ENDNOTES

[no endnotes]

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 process.

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.¹ 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 warrant. 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.

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.
- 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.
- 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

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.

- 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 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.
 - 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. 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, pretrial 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.
- 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 risk assessment and bail evaluation about dangerousness.
- 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 risk assessment and bail evaluation about dangerousness.

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.
 - c. 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.
 - Prepare a report for the defense attorney, prosecutor and court summarizing the conditions of release and the violation 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, 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.
- Prepare a violation report requesting an arrest warrant outlining the conditions of release and the violation(s). Complete the necessary paperwork for activating an arrest warrant.
- 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,

* Conditions of probation related to offender rehabilitation in domestic violence cases should provide for ongoing monitoring; allow for swift, sure responses to violations; and provide treatment or counseling groups specific to the context and severity of the violence being used by the offender as well as addressing other high risk needs.

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 violence. 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 cases. 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.² 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.³

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.
 - 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:
- Information about the full scope of domestic violence used by the offender
 - Impact of the violence in this incident
 - Impact of any related patterns of abuse by the offender
6. Identify and include the following items in the written report:
- The sentence allowed by law
 - A statement regarding any statutorily mandated minimum period of incarceration, fines or fees, and programming
 - Information regarding statutorily mandated notices and firearms forfeiture
 - Recommendations for jail time to be served and/or stayed, conditions of probation, no-contact orders, and restitution
 - 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

- 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
 - 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.*⁴ 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.

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- 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.)
 - c. Explore whether the victim wishes to provide a Victim Impact Statement to the court. If available, link victim to 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
3. 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.
- 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.
 - 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.
 - 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.
- 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.
 - Inform the victim of the probation office goals regarding public safety, victim safety, and offender accountability and rehabilitation.
 - 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.
 - 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.
 - 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.
- Encourage victims to keep the supervising agent informed of changes in their lives related to their safety and the offender's compliance.
 - 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.
 - 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.
 - Unless the victim has asked not to be contacted, contact the victim periodically throughout the probationary period. Check on the victim's welfare.
 - When acting on a violation of probation, particularly those related to the victim:
 - 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.
 - Obtain victim input on the probation response to the violation.
 - Obtain victim input on whether the violation has an impact on her or his safety.

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- 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 violence⁵—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 abuse. 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.⁶ 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.⁷ 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.⁸

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.⁹

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:
- 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.
 - 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 proceed new assaults:
- Inability of probationer to stop excessive drug or alcohol use
 - The victim making a permanent break with the probationer
 - The victim entering a new relationship
 - The victim cooperating with any adversarial legal action against the probationer
 - Obsessive behaviors toward the victim or children
 - Stalking or surveillance of the victim or her/his family and/or friends
 - Pressuring his/her way back into the victim's home
 - 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.
- 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
 - Indicators of probability of reoffending include:
 - Inability to stop drug and alcohol use
 - 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.
- Not having access to or not using prescribed medication
 - Becoming homeless
 - 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:
- Failure to maintain abstinence when use is associated with violence
 - Failure to complete treatment when use is associated with violence
 - Becoming homeless
- 12.** Conduct routine monitoring for:
- Compliance with all probation conditions
 - New no-contact orders, orders for protection, and police contact
 - Changes in life circumstances that might indicate risk
 - 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:

 - 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
 - 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 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.
- 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 probationers domestic violence offenses
 - h. Juvenile court records
- 19.** Conduct program evaluation and quality control specific to Blueprint policies and
- 20.** Institute a combination of hiring practices and training that result in an understanding

protocols and communicate with probation officers to clarify and reinforce policies and protocols.

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:

- *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.

To us,

implementing the Blueprint is homicide prevention.

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

CHAPTER 7 ENDNOTES

1. Catteneo and Goodman (2005).
2. 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 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)
3. Belknap and Sullivan (2003); Ford and Breall (2000); Ptacek (1999).
4. For discussions of assessment tools and risk factors, see Campbell (2005); Campbell et al. (2003); Goodman et al. (2000); Kropp (2008); and Websdale (2000).
5. 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 (2004) and Saunders (2008).
For a critique of experimental studies, see Gondolf (2001).
6. 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.
7. 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).
8. 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).

9. 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).

BENCH AND COURT ADMINISTRATION: THE BLUEPRINT

THE BLUEPRINT FRAMEWORK

For almost three decades, advocates have voiced concern that too little is being done to stop domestic violence. Researchers have sent mixed messages about what works and what does not. Organized opposition to reform has grown. As one criminal court judge shared with a colleague:

I've always thought that in domestic violence cases I could be the only person in the courtroom—no defendant, no victim, no attorneys; not a clerk or deputy in sight, not a motion to rule on or decision to make—and still I'd be absolutely sure I was doing something wrong.

The judge's frustrations are shared by many in the criminal justice system. Intimate partner violence is a complex crime. The offender's control over the victim can make effective intervention incredibly difficult and time-consuming for a resource-starved institution.

The good news is that our overall national strategy of using the legal system to stop the violence has made a difference, particularly in homicide rates. Spousal homicides have dropped by 46% between 1976 and 2004. The number of black males killed by their partners dropped an astounding 82%, black females by 56%, and white males by 55%. Severe violence also dropped by 48% between 1976 and 1992.¹

Battered women and their children face a very different reality today than did our grandmothers and mothers. Yet few in the "system" are comforted by these statistics when law enforcement calls and courtroom calendars are still overflowing with domestic violence-related cases. The Blueprint for Safety (Blueprint) proposes the next level of change. It relies on years of experience in interagency coordination; research on arrests, sentencing, and treatment of batterers; and statistical trends. And, it relies on the practical experience of numerous communities (notably, Saint Paul,

Minnesota) which are trying to implement interconnected policies and procedures that focus on case outcome, rather than on an individual agency correctly doing its particular task.

The Blueprint is anchored in six foundational principles that we have identified as essential characteristics of intervention. These principles maximize safety for victims of domestic violence and hold offenders accountable while offering them opportunities to change. The principles are:

1. Adhere to an **interagency approach** and **collective intervention goals**.
2. Build attention to the **context and severity** of abuse into each intervention.
3. Recognize that most domestic violence is a **patterned crime requiring continuing engagement with victims and offenders**.
4. Ensure **sure and swift consequences** for continued abuse.
5. Use the power of the criminal justice system to **send messages of help and accountability**.
6. Act in ways that **reduce unintended consequences and the disparity of impact** on victims and offenders.

The Blueprint's model is to work with agencies, from 911 through probation, on centralizing attention to victim safety and offender accountability at every stage of case processing. The Blueprint focuses on organizing each intervening practitioner's role through a set of carefully crafted agency policies and protocols. These policies and protocols are buttressed by multi-agency training programs and a series of supervisory

oversight agreements within and between agencies. Agencies that adopt Blueprint practices will rely on the bench to support the Blueprint's basic tenets: (1) an over-reliance on victims (those most vulnerable to the violence) for offender accountability will not be successful in reducing levels of violence in the community; (2) through sure and swift responses to patterns of aggression, violence, coercion, and intimidation the criminal justice system can reduce recidivism, escalation, and severity of offender violence; and (3) a just system requires that interveners have the capacity to (a) make visible the specifics of the violence and their impact on the community and the victim, and (b) craft resolutions that link the response to the context and severity of the offense.

If the bench operates in harmony with the Blueprint's coordinated approach, the likelihood of successfully enhancing the community's ability to reduce recidivism, protect victims from additional harm, and hold offenders accountable is significantly increased. The Blueprint is an attempt

to integrate into practitioners' daily work routines practices that centralize safety and accountability.²

Chapters 2 to 7 in the Blueprint provide a policy and procedural manual for key points of intervention in domestic violence cases, from 911 through probation. Because of the unique role and responsibility of the Bench, it is not appropriate to adopt policies that will dictate the resolution of a particular case that may come before the Court. However, the Court can set policy grounded in the six foundational principles regarding the procedures to be utilized in domestic violence-related cases. Therefore, this chapter is a combination of both policy and suggested practices. The policies and practices contained in this chapter are those that have been found to reduce recidivism and enhance victim safety. The goal is to describe appropriate courses of action in domestic violence-related cases unless special circumstances indicate otherwise.

POLICY CHANGES UNDER THE BLUEPRINT FOR SAFETY: LAW ENFORCEMENT, BAIL EVALUATORS, PROSECUTION, AND PROBATION

During implementation of the Blueprint, law enforcement, sheriff's offices (including jail, courthouse security, and warrants), bail evaluators, city and county attorney offices, probation, and court administration³ will review and update their policies in accordance with the Blueprint's six foundations of effective intervention and common goals. Most agency procedures will remain the same, but with several key changes in its response to domestic violence cases. Some of these changes, as highlighted below, are likely to affect the cases before the bench, either in the presentation of the case or the relief requested.

NOTE: Below is a sample description of Blueprint changes the bench can anticipate. Adjust what is described here to reflect local changes that will be implemented.

Risk information

All practitioners will be trained to identify and document the presence of risk and danger factors—some of which relate to specific actions of an offender and some to high-risk circumstances. This risk alert system will result in everyone, particularly the bench, having more details about the scope of the abuse in a case. This information should be available at many points of intervention, from charging and bail setting to sentencing and revocation hearings. The Blueprint's documentation system is designed to help each intervening practitioner, including the judge, understand the context of a given domestic abuse-related incident. Responding patrol officers will now ask the victim at the scene three risk questions and record the information in the incident report: (1) Do you think she or he will seriously injure you or your children? (2) What was the incident when you

were most harmed or afraid? (3) What is the frequency of the violence and is it changing? In felony cases, investigators will follow up with a more extensive interview focused on risk. A victim's perception that she or he is at risk is among the most accurate predictors of severe danger. Unfortunately, a victim's perception of low danger may not be similarly accurate and an engaged discussion with a victim can alert intervening practitioners to the more likely level of risk.

Asking risk questions at the scene will frequently result in information being available to prosecutors, bail evaluators, defense attorneys, probation, and the court even when the victim cannot be reached before the first appearance. This information may be used in relation to charging, bail, and no-contact order requests. Bail evaluators will use this information as one of the elements in preparing a domestic violence-specific risk assessment for the court. Prosecutors may also present information to the court concerning the context and severity of the violence based on this incident and previous institutional contacts with the offender. This additional information will allow prosecutors to identify higher risk cases and request higher bail as well as conditions of release. It may also increase requests to surrender firearms. At the same time, the bench can expect that in some cases the identified risk will be lower, and prosecutors will request bail and conditions of release accordingly.

Stalking

Patrol officers are being instructed and trained to recognize signs that a particular event may be part of an overall pattern of stalking, which is a significant marker of dangerousness in domestic violence cases. While stalking often involves celebrities, the largest numbers of stalkers are former partners of women. Most of this group are men who have a history of sexual or physical violence in the relationship. 76% of females murdered by an intimate partner had been stalked during the preceding year.⁴ Yet with the exception of a few cities, this commonly committed domestic violence crime is under reported, identified, and charged. Under the Blueprint, investigators and prosecutors will pay increased attention to

whether the current incident is part of an overall pattern of stalking. Greater attention to this crime is likely to result in an increase in the number of harassment/stalking charges in domestic violence-related cases. Even when the case is not charged as harassment or stalking, recognizing the elements of such behavior is important for overall risk management.

Gone-on-arrival cases

As a group, domestic violence suspects who are gone when officers arrive at the scene are twice as likely to re-offend as those who stay after a call to law enforcement has been made. Gone-on-arrival cases can and do easily get put on the back burner in a system that is stretched to the limits of its capacity to function. The attention goes to in-custody cases which must be processed more quickly. Under the Blueprint, investigators and prosecutors will give gone-on-arrival cases high priority when they include: (1) multiple high-risk factors, (2) suspects who are on probation or supervised release, or (3) chronic offenders. As a result, some of these cases should come before the court more quickly. In the past, defendants have often been released without bail, or comparatively low bail, in gone-on-arrival cases because the person has essentially been out without bail for some time. In high risk cases, the court is likely to see increase requests for warrants and higher bail requests.

More differentiation of cases

Domestic violence covers a wide variety of offenses including: the one-time single push, the batterer who repeatedly and relentlessly beats the victim, the victim who fights back illegally in response to ongoing battering, and the defendant whose violence springs from mental illness. The Blueprint provides mechanisms to adjust the level of intervention to the level of violence and the context in which it is committed, both of which are indicators of danger. The policies for a batterer—someone who engages in a patterned use of violence, intimidation, coercion, and entrapment—are different from interventions with someone who assaults his or her partner but is not engaging in a patterned set of abusive behaviors. Under the

Blueprint, the charges and requests made to the court should be more tailored to the level of violence and dangerousness in the particular case. In high risk cases, prosecutors may request higher bail or insist on plea agreements with higher caps on time to serve. In some circumstances, such as when the defendant is a victim of on-going violence, prosecutors may agree to recommend a deferred sentence. Where allowed by law, probation officers may elect to use negotiated, non-incarceration responses to some probation violations in low risk cases. Probation is likely to pursue an immediate judicial response where the probation violation involves renewed violence or increased risk to the victim.

Increased attention to the context of the violence will also be apparent to the bench at sentencing. Presentence investigation (PSI) writers will have more ready access to information about the extent of violence occurring in the case. Blueprint protocols call for a more uniform treatment of information related to domestic violence risk factors. The protocols prioritize contact with victims in order to bring an increased understanding of the context of violence to the court. When preparing the PSI, probation will include information regarding past violence. This information will assist the judge in evaluating: whether the defendant is an offender who is at high risk to continue, escalate, or turn lethal in his or her use of violence; whether this is a defendant with minimal or no history of violence; or whether the defendant is a victim of ongoing abuse who appears to be responding with violence. The public information from this section of the PSI will be abstracted as a summary and made available to rehabilitation programs, supervising probation officers dealing with the current offense, law enforcement, charging attorneys, bail evaluators, probation, and judges in any subsequent cases involving the same offender.

All practitioners are being asked to pay attention to cases where victims of ongoing abuse are now the suspects or defendants in a domestic violence case. (See Appendix 1C: *Training Memo—Intervention with Victims of Battering as Suspects or Defendants*).

A framework for sentencing and standardized language for probation conditions

PSI writers and prosecutors have agreed to follow a Framework in making sentencing recommendations and plea agreements (see Appendix 5G: *Framework for Recommending Time to Serve and Length of Probation* and Appendix 5H: *Sentencing Guidelines Departure in Domestic Violence Cases*). Although PSI writers and prosecutors may disagree on a recommendation in a given case, the Framework will ensure that they are using the same factors to evaluate the response to a particular incident. Differences will arise in a number of ways. In addition to considering the event and the history of violence, the prosecutor must also consider the strength of the case when negotiating a plea agreement. This may lead to a plea agreement different from what would result from consideration of the Framework factors alone. On the other hand, probation officers will have far more information regarding the case when they make their recommendations and are not constrained by the practicalities of obtaining a conviction. When the additional information reveals aggravating or mitigating circumstances the probation officer may recommend a response that is correspondingly more or less severe than called for by the plea agreement. And, finally, there will simply be differences in opinion regarding the meaning and validity of the information which may lead to different recommendations to the court. Even though the differences will remain, the Framework will ensure that considerations of context and severity will be the touchstone for both offices' evaluation of its cases.

To be effective and enforceable, probation conditions must be clearly communicated to the defendant, as well as the various practitioners who will work with the defendant. Too frequently, miscommunication arises from failure to clearly annunciate what is required. Sometimes failure arises from imprecision in the language of the condition. Other times it arises from referring to conditions without fully stating the conditions. For example, a probationer is directed to "abide by the standard conditions of probation" without further explanation. In an effort to (1) be consistent in what PSI writers recommend in these cases and (2) ensure clarity in the probation

officer's and probationer's understanding of the meaning of a condition, the Blueprint includes standardized and more precise language when recommending possible conditions. The list of possible probation conditions in these cases is quite extensive, not with an eye toward increasing the number of conditions the bench orders, but in an effort to cover all the possible conditions that a specific case might warrant. More precise language during sentencing will promote a common understanding of what is required of the defendant. The standard conditions developed by probation are available in *Appendix 7B: Training Memo—Conditions of Probation* for those judges who elect to utilize them, either "as is" or as a starting point in developing their own standard conditions for use during sentencing. This list identifies standard conditions for all cases as well as a set of standard conditions for domestic violence-related cases. It also includes more specialized, less frequently needed conditions.

Making the violence visible

At each point of intervention, beginning with the 911 call taker, there is an expectation that practitioners will look for, identify, document, and account for the context of individual acts of violence. As described previously in this chapter, each practitioner has instructions on what to ask, what to document, where to disseminate that information, and how to adjust the response based on knowledge of the violence. The purpose of this process is not solely to identify risk. It is also to allow practitioners dealing with offenders or victims in their offices and the courtroom to speak openly about the violence. Under the Blueprint, it is no longer possible to process an entire case and find that no one gave voice to the harm, violence, and indignities perpetrated by one person (the offender), against another (the victim). This approach has a number of implications for the bench. At bail and pre-trial hearings, prosecutors will make a conscious effort to ensure that the reason for the criminal proceeding does not disappear. They will more frequently articulate the acts of violence being alleged and the severity of those acts (see *Appendix 1D: History of Domestic Violence Summary Instructions and Sample*). This will make clear to the victim and

defendant what is being condemned. And, making the violence more visible can help the court determine the proper response in a particular case by focusing on the specific behavior rather than the broad range of behaviors covered by the criminal charge or the term "domestic violence." The Blueprint anticipates that the bench will take various opportunities to let victims and offenders know that the court understands the nature of the violence and does not dismiss or deem it irrelevant to what happens in the courtroom. Such a response counters what one victim noted in a focus group conducted during the writing of the Blueprint:

Anyone would have thought we were there on a dispute between neighbors about a dog. There was no mention of what he did, what my children saw and suffered through, or what scars we will live with for years to come. He walked out with a grin. That can't be right.

Probation violations based on new offenses

In accordance with the principle of sure and swift consequences, in most cases, when there is a probation violation based on assaultive or threatening behavior against any person or any crime directed at the victim of the current offense, probation officers will request that the probation violation be heard prior to the resolution of the new criminal charge. The prosecutor will discuss these violations with the probation officer, and be available to handle the violations hearings starting with the admit/deny hearing. The prosecutors will not seek to have these cases continued until after the new charge is resolved, unless special circumstances apply.

Appendix 7H: Training Memo—Legal Considerations in Probation Violations Based on a New Offense addresses the legal implications of the Blueprint practice. Chapter 7's **Protocol 4: Violation and Revocation of Probation** incorporates the argument made for immediate revocations in cases involving new acts of violence or coercion into the probation supervision practice.

Messages

The vast majority of domestic violence-related cases that come into the criminal justice system involve battering. These cases are rarely isolated incidents or someone who has assaulted another person with no pattern of abuse. Battering is not meant here as a legal term but as a sociological term describing a pattern of ongoing violence used to control the behavior of an intimate partner. It is not a single event, nor can it be understood simply by counting the number of events in an offender's case file. In many instances, the behavior has been reinforced over months or years. It often intensifies and is most lethal when a victim seeks to make a permanent break in the relationship. It always involves a coercive pattern of behaviors that are in themselves harmful and often debilitating to the victim. As with any patterned behavior, change generally requires continuing intervention over a period of time.

Under the Blueprint, criminal justice interveners—including 911 operators, law enforcement, prosecutors, and probation officers—will coordinate their efforts to ensure that batterers and victims receive consistent messages of accountability and victim safety. *You are here because it is alleged that you did ____... If you want to stop the violence there is help... If you are doing what is alleged and you don't stop the violence there will be consequences... The violence is not the victim's fault...* Consistent messages from multiple practitioners in multiple settings promote change by challenging the beliefs used to justify the battering. A judge's attention to the alleged violence is not inconsistent with his or her obligation to avoid prejudging a particular case. Prior to a determination of guilt, statements can be focused on the alleged violence without comment on the defendant's responsibility. At the point of sentencing and during probation, a judge can relay direct messages

that challenge justifications for battering. As the person embodying society's response to breaches of its core values, the judge is in a unique position to challenge a batterer's rationalizations. The judge can achieve this by articulating the societal values underlying the criminal code and the basis for the sentence or enforcement action. As one mother of a victim stated:

I watched him as the judge sentenced him and I thought, finally, he is listening to someone. He knows all the lying is not going to help him right now. It didn't matter to me that he only got six months of jail time; I could see he was shook to the core. Something had gotten through to him. The judge just said it, 'I can't with any good conscious look at the pictures of your wife and think of her testimony in this trial and then do as you ask and simply let you move on. I want you to stop; stop for a good while and think about what you have done and what it is likely you will continue to do until you finally stop looking for someone else or something else to blame for what you've become.' He just said it all right there.

Such statements reinforce the expectation of behavioral change and place responsibility for the behavior on the defendant. They enlist the authority of the judiciary to reinforce the efforts of other practitioners to support change in those who wish to stop their use of violence, and to hold accountable those who do not.

Likewise, the way business is conducted in the courtroom constitutes another important message that can go far in emphasizing that domestic violence is a crime and that the court will ensure victim safety and offender accountability.

THE BLUEPRINT AND THE BENCH

The bench holds one of the keys that unlocks the door to successful criminal justice interventions. The bench—as a group and as an individual judge—has a number of concrete ways to impact recidivism. While the Blueprint

focuses on the criminal cases arising from domestic violence, the ability to impact recidivism extends to cases in civil, juvenile, and family court as well. These opportunities include: expediting domestic violence cases;

recognizing the need for victims to have adequate family financial support; enforcing violations of protection orders and family support orders strictly and promptly; ensuring victim confidentiality; expecting high quality work from prosecutors and probation officers representing the state; responding to every act of aggression, intimidation, and coercion by an abuser with sure and swift though not always harsh) consequences; (providing domestic violence training for its members and related court personnel; providing clear information to unrepresented parties about court procedures; protecting unrepresented parties and victims from abusive litigation tactics; understanding and accounting for the differences in domestic violence offenders; and working with community and criminal justice agencies for a coordinated policy concerning domestic violence.

In communities where the volume of cases is high enough to support it, the use of a dedicated domestic violence court or calendar can assist in coordinating cases, avoiding multiple continuances, and providing consistency in the bench's response to domestic violence cases. Regardless of whether a dedicated calendar or court is employed, the judge or court's designee should regularly ensure that cases get the priority for trial required by the seriousness of the behavior and the risk posed to the victim.

The following section includes a list of policies and practices that complement the policies and protocols of intervening agencies. These policies and practices highlight areas of case processing where domestic violence cases should be treated in specific ways to achieve the best chance

of reducing recidivism, increasing victim safety and promoting offender accountability. Throughout this section, there are references to public and/or victim safety. Victim safety is used in this section to emphasize the special circumstances of domestic violence victims. However, it should be remembered that this is not an expansion of the goals of criminal justice intervention. Rather, it is a recognition that in domestic violence the threat to public safety is focused on particular members of the public.

The bench also has a responsibility to work with court administration to ensure the proper handling of all domestic violence-related cases that come before the criminal court. In domestic-violence cases court administration has several key roles, including: managing a timely response by scheduling hearings and appearances as expeditiously as possible, notifying involved parties and intervening agencies, entering and distributing court orders and protecting confidential information.

Included in the following are court administration policies and protocols for domestic violence-related cases. The policies and protocols included are those that are generally applicable across most jurisdictions. It is also anticipated that every local jurisdiction will have to adopt supplemental court administration policies and protocols to reflect local resources and general practices.

See the Blueprint Supplement for appendices and training memos referenced in the Bench Book and elsewhere in this chapter.

EFFECTIVE JUDICIAL RESPONSE TO DOMESTIC VIOLENCE

All judges will familiarize themselves with

Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases and *Appendix 1B: Training Memo—Risk and Dangerousness*.

A. Court Administration

1. In addition to adhering to general policy, in domestic-violence related cases, using **Protocol 1: Court Administration** which is included as part of this policy, Court Administration will:

- a. Ensure that domestic violence-related cases are handled with the timeliness required by statute and local policy.
- b. Ensure that all defendants appearing on domestic violence-related matters have been booked.

- c. Correctly enter and distribute court orders to all required and specified parties. Such orders include:
 - Conditional release orders
 - Pretrial no-contact orders
 - Modifications and cancellations of pretrial no-contact orders
 - Probation no-contact orders
- d. As necessary, notify the agency supervising pre-trial release of all cases in which the defendant is conditionally released.
- e. Notify necessary parties of any hearing regarding modification of a no-contact order.
- f. On all warrants of commitment, correctly identify those cases in which a no-contact order remains in effect.
- g. At all times ensure that confidential information is not disclosed to unauthorized parties.
- h. Work with the Bench to adopt, whenever practical, dedicated domestic violence calendars or courts.

B. Release Prior to First Appearance

In cases of arrest for domestic violence-related offenses including domestic abuse, harassment, stalking, violation of an order for protection,

violation of an harassment restraining order, violation of a domestic abuse no-contact order (DANCO) or other domestic violence related offense the Court will generally not set bail or conditions of release prior to the first appearance.

C. First Appearance

- 1. Booking
 - a. If advised by the clerk that booking has not occurred, the court will issue a booking order.
 - 2. Pre-Trial Release
 - a. In making the pre-trial release determination for a person arrested for domestic abuse, harassment, stalking, violation of an order for protection, violation of an harassment restraining order; violation of a domestic abuse no-contact order (DANCO) or other domestic violence related offenses, the judge shall review the facts and determine:
 - Whether release poses a threat to the alleged victim, another family or household member, or to public safety; and
 - Whether release involves a substantial likelihood that the arrested person will fail to appear at subsequent proceedings.
- b. If not already presented, the judge will ask for the information contained in the bail evaluation policy and protocols (see Chapter 7) and ask the prosecutor for information regarding the victim's, or victim's family's, account of the alleged crime.
 - c. When requested to do so by the victim or victim's advocate, the judge will allow the victim, or victim's advocate, to address the Court regarding pre-trial release, but will not ask the victim in open court whether she wishes to be heard regarding pre-trial release or is afraid of the defendant.
 - d. In determining release requirements, the judge will be guided by the following principles, *inter alia*:
 - Condition of release should be tailored to enhance the safety of the domestic violence victim, as well as the public in general, and ensure the appearance of the defendant.
 - The safety of the domestic violence victim is equally, if not more, important to the goal of public safety as the appearance of the defendant.
 - Conditions of release may be appropriate for low-risk defendants. However, they should not be reserved for the least dangerous defendants.

- Both conditions of release and bail are appropriate where the risk to the victim is significant. In these cases it is generally appropriate to use substantial conditions of release as well as high, though not maximum, bail in order to reduce the risk to the victim.
- Continued release of out-of-custody defendants making a first appearance:
 - The circumstances of the defendant's absence from the scene of the crime can be a risk factor justifying bail or conditions of release for defendants who are out of custody when they make their first appearance. If the defendant knowingly avoided law enforcement's attempts to investigate the crime or locate him or her, there is a substantially elevated risk of re-offense during pre-trial release. In those cases, it is appropriate to consider whether bail or conditions of release should be required for out-of-custody defendants.
 - Use the same factors to set bail and conditions of release for out-of-custody defendants as used for those in custody. In some cases this may dictate the detention of

defendants who were not in custody prior to the hearing.

- Monitoring the defendant along with requirements that the defendant report to pre-trial release personnel reduces new offenses.
- e. The judge will consider whether any of the following conditions of pre-trial release should be ordered:
- Enjoining the defendant from further domestic abuse or harassment;
 - Prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, directly or indirectly;
 - Directing the defendant to stay away from the alleged victim's home, work, family members or any other location the alleged victim is likely to be;
 - Prohibiting the defendant from possessing a firearm or other weapon specified by the court;
 - Prohibiting the defendant from possessing or consuming alcohol or controlled substances;
 - Restraining the defendant from damaging, selling or encumbering any jointly-held property;

- Ordering the defendant to be accompanied by an officer when retrieving personal property from the victim's residence;
- Ordering no contact with children, if any, except through a family court order; and
- Any other specific condition required to protect the safety of the alleged victim and to ensure the appearance of the defendant at subsequent proceedings.

3. Pre-Trial No-Contact Orders

- a. A no-contact order will generally be issued in domestic violence-related cases. However, pre-trial no-contact orders can have negative, unintended consequences for parties, particularly when the defendants are themselves the victims of ongoing abuse or when the victim is dependent on the defendant for physical care, financial or child care support, or housing. Careful evaluation of the need for a no-contact order is necessary in any case in which the victim objects to the order. In many cases, victims are making a reasoned choice between the better of two extremely poor options.
- b. When the victim objects to the issuance of a DANCO (or NCO), the presiding judge will review patrol reports, risk indicators, and any other information relevant to

danger assessment and victim safety. This review should include the basis for the victim's objection and the likelihood that the defendant will make future appearances. The court will consider, among other appropriate factors, the risk to the victim if a no-contact order is not issued and the difficulty faced by the victim if it is ordered.

- c. The Court will also consider whether the victim's objection appears to result from intimidation or coercion (see *Appendix 8A: Training Memo—Use of No-Contact Orders in Domestic Violence Criminal Cases*).
- d. DANCOS and a photo of the defendant, if the photo is verified by the court, should be entered into available statewide data communication networks.
 - If a photo is available to the court, the court should verify on the record that the photo is an image of the defendant in order to enter the photo into the database along with the order.
- e. Whenever either DANCOs or a standard NCO are available, ensure that the type of order is clearly identified.
- f. Although in some jurisdictions criminal courts issuing a no-contact order may also issue an order for protection (OFP) judges generally will not do so. Obtaining the OFP separately in family court is

recommended because that court is set up to handle family issues—such as visitation and support—which are beyond the criminal court's purview.

D. Violation of Pre-trial Release Conditions

1. Judge shall issue a warrant for violation of pre-trial release if the judge:
 - a. Receives an application alleging violation; and
 - b. Finds probable cause for the violation.
2. Revocation of release, forfeiture of bail, and the imposition of high bail with restrictive conditions of release may be appropriate under any of the following circumstances: (Note: forfeiture may not be appropriate if the defendant has no stake in the bail)
 - a. The release violation involved a new act of violence, destruction of property, using a child to coerce or intimidate, sexual aggression, or any form of physical intimidation against the victim;
 - b. The defendant was already at high risk for continued or escalating violence; or
 - c. The new offense involves stalking behavior, threats of harm to the victim, refusal to conform to monitoring requirements, or continued use of alcohol or drugs.

E. Modification of Pre-trial No-Contact Orders

1. When the victim requests that a no-contact order be cancelled or modified, court personnel will notify the prosecutor and the defendant of the request.
2. When the defense or prosecution requests modification or cancellation of the no-contact order, the prosecutor will notify the victim.
3. In determining whether to cancel or modify a no-contact order the court will consider, in addition to any other appropriate factors, the:
 - a. Preference of the (1) victim, (2) defendant, and (3) prosecutor
 - b. Reason for each party's preference
 - c. Facts of the case
 - d. Defendant's history
 - e. Victim safety
 - f. A review of danger and lethality considerations (per *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*).
4. When a pre-trial no-contact order is modified—but not cancelled—the court will issue a new written pre-trial NCO.

- a. The new order will be forwarded to the appropriate law enforcement agency in the same manner as the original NCO.
- b. Copies of the modified no-contact order will be forwarded to the victim.
5. When a NCO is cancelled or, after sentencing, replaced by a permanent probation NCO, notice of cancellation will be forwarded to all previously noticed parties.

F. Trial

1. When ordering cases for trial, domestic assault cases should be assigned priority in the following order:
 - a. Felony with defendant in custody
 - b. Misdemeanor with defendant in custody
 - c. Child abuse cases with defendant on bail
 - d. Domestic abuse cases with defendant on bail
 - e. Other felonies with defendant on bail
 - f. Other misdemeanors with defendant on bail
2. Issuing a warrant to force a victim's testimony is inconsistent with Blueprint victim engagement guidelines and will almost always be counterproductive. Warrants should be issued to compel victim testimony only in very rare cases when the community or children are at high risk of

serious or lethal harm. In deciding whether to issue a warrant the Court will keep in mind that there is a reasonable likelihood that the perpetrator may use severe violence against the victim in retaliation for testifying. See *Appendix 5D: Sample Policy Language—When to Compel a Victim to Testify*.

G. Pleas

1. In many jurisdictions plea petitions are required for all felony and gross misdemeanor pleas and for all enhanceable misdemeanors.
2. At the time of the plea, a clear advisory to the defendant of the court's position regarding sentencing will increase the likelihood that sentencing will occur in an orderly and timely manner. The following advisories will generally be given at the plea hearing:
 - a. If the defendant violates conditions of release, the court will not be bound by the plea agreement (including any cap on time to serve) and the defendant will not be allowed to withdraw his or her plea.
 - b. Inform the defendant of the court's practice regarding whether the defendant will be allowed to withdraw the plea if:
 - The court decides not to follow the plea agreement; or
 - The court decides not to follow the plea agreement because the PSI contains new information bearing on sentencing of which the court or attorneys were not aware at the time of the plea; or
 - The court decides not to follow the plea agreement because the PSI contains new negative information regarding the defendant of which the defendant was aware, but the court or attorneys were not.
3. The defendant will not be allowed to withdraw an otherwise valid plea simply because the defendant does not like the court's subsequent sentencing decision.
4. The victim has the right to be present at the plea hearing and to be heard on any objection to the plea agreement. [Minn.Stat. §611A.03, subd. 1 (b).]
4. The judge generally will accept the plea on the record at the time it is entered.
 - a. A plea of guilty accepted and recorded by the court constitutes a conviction. [Minn. Stat. §609.02, subd. 5]
 - b. Pleas that are not accepted at the time of the plea cannot be used for enhancement of an offense that occurs between plea and sentencing.
 - c. Because acceptance of responsibility is a first step toward rehabilitation, pleas

- without admission of guilt (Alford/Goulette and Norgaard/Crossley Pleas in Minnesota) will not generally be accepted in domestic violence related offenses. This consideration does not apply when the defendant is sentenced to an executed felony sentence or a misdemeanor or gross misdemeanor sentence is being fully executed.
5. In cases where the defendant is a victim of ongoing abuse (battering), the court should consider a disposition that prevents entering a permanent record for the victim/defendant and reduces the opportunity of a batterer to use the State intervention to further harm the victim/defendant. (For discussion, see Appendix 1C: *Training Memo—Intervention with Victims of Battering as Suspects or Defendants.*)
- ## H. Presentence Investigation
1. A presentence investigation is required whenever a defendant is convicted of the following offenses. [Minn. Stat. § 609.2244, subd. 1]
- Any domestic abuse offense (per statutory definition)
 - Any other offense arising out of the same circumstances surrounding a domestic abuse arrest
 - Violation against a family or household member of:
- Order for protection
• Harassment restraining order
• Obscene or harassing phone calls
- d. Terroristic threats
2. No PSI is required if the defendant has either already served expiration of the maximum applicable misdemeanor or gross misdemeanor sentence; or agrees at the time of the plea to serve the maximum sentence.
3. Regardless of whether a PSI is ordered, the victim will be contacted regarding a victim impact statement and restitution. [Minn. Stat. §§611A.038 and 611A.04]
4. Whenever a PSI is not ordered, the court should consider ordering the preparation of a history of violence summary in order to address risk and danger should the defendant come back into the system.
- ## I. Sentencing
1. Judges will expect prosecutors and probation officers to utilize *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* when recommending whether to grant probation, the amount of time to be served and probation conditions.
2. *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* will be considered in determining the appropriate sentence, including whether to grant probation, the amount of time to be served and probation conditions.
3. In some states, firearms forfeiture is statutorily mandated in certain cases. State law may imposes a ban on the possession of firearms in domestic violence cases. In some cases, the court can determine the length of the ban. As an example, *Appendix 7D: Firearms Prohibitions* includes a chart of the Minnesota firearms possession prohibitions.
4. In jurisdictions with a number of judges, the bench will adopt guidelines regarding sentences to increase uniformity of sentences in domestic violence-related cases. (See *Appendix 5G: Framework for Recommending Time to Serve and Length of Probation*, *Appendix 5H: Sentencing Guidelines Departure in Domestic Violence Cases*, and *Appendix 8B: Memorandum on Consecutive Sentencing in Domestic Abuse Cases*).
5. In all cases involving battering by the defendant, domestic abuse counseling or educational programs will be ordered if the defendant is being placed on probation. (See *Appendix 7A: Rehabilitation Program Considerations in Domestic Violence Cases*)
- Anger management classes do not meet this requirement.

- b. It is not appropriate to require marriage or couples counseling in cases where there has been battering.
- c. Judges should not order victims who are not defendants to participate in programming.
- d. *Appendix 7B: Training Memo—Conditions of Probation* (attachment 1) includes a chart of Minnesota's statutorily- mandated programming in domestic violence cases.
- e. Programs using a cognitive-behavioral approach will generally be preferred.
- f. The defendant will not generally be ordered to participate in programming that mixes men and women in the same groups.

6. Probation Conditions

- a. Probation officers will use standardized language when recommending conditions of probation in order to reinforce the defendant's clear understanding of the conditions of probation and to help to ensure that the conditions are accurately conveyed to others, including the supervising probation officer and the victim.
- b. In order to clearly convey what is being required, the judge should use the standard language from *Appendix 7B: Training Memo—Conditions of*

Probation, for each condition unless it is the judge's intent to impose a nonstandard condition. When imposing a nonstandard condition, a description of the difference intended by the Court will help to ensure that the defendant, probation officer, victim, and attorneys understand what is being required.

- c. Judges will review the conditions of probation on the record during sentencing to ensure that the defendant has the notice necessary to allow enforcement of probation conditions.
 - d. A written copy of the conditions of probation will be provided to the following people at sentencing: defendant, defense attorney, prosecutor, probation officer, victim, and if present, victim's advocate.
 - e. When the defendant is not fluent in English, the court must ensure that the probation conditions have been translated to the defendant. The defendant should, on the record, inform the court that she or he understands them.
- 7. Probation No-Contact Orders.** Probation no-contact orders should not be ordered over the objection of the victim, except in rare circumstances.
- a. When the victim objects to the issuance of a DANCO (or NCO), the presiding

judge will review patrol reports, risk indicators, and any other information relevant to danger assessment and victim safety. This review should include the basis for the victim's objection.

- b. The court will consider, among other appropriate factors, the risk to the victim if a no-contact order is not issued and the difficulty faced by the victim if it is ordered.
- c. Because of the length of time the no-contact order will be in effect, probation no-contact orders are not appropriate over the victim's objection solely because a pre-trial no-contact order was issued over the victim's objection.
- d. When the victim objects to a no-contact order the Court will consider whether a less restrictive order is appropriate. Examples of a less restrictive order include an order allowing contact through third parties or an order allowing contact but prohibiting the defendant from being at the victim's residence.

8. Restitution

- a. Victims are entitled to restitution. In most jurisdictions this generally includes the following: [This list will need to be amended based upon the local jurisdictions applicable statutory and case law.]

- Out-of-pocket losses resulting from the crime, including medical and therapy costs
 - Replacement of wages and services
 - Funeral expenses
- b. Whenever possible, at sentencing judges should set the amount of restitution owed.
- c. Restitution requests should be submitted in affidavit form.
- d. When necessary, the restitution order should address the following in addition to specifying the amount to be paid:
- Whether restitution is to be collected from prison wages when a felony defendant is committed to the Commissioner of Corrections.
 - Specify that restitution shall be made to the victim or, if the victim is reimbursed by the reparations board, to the board.
 - Specify the full amount of restitution that may be docketed as a civil judgment when only partial restitution is ordered. [Minn. Stat. §611A.04, subds. 1(c) and 3]
9. Unless the court finds that the defendant will not use the delay as an opportunity to harm or in any way retaliate against the victim, in domestic violence cases the court

should order the defendant to begin serving any executed sentence immediately.

- 10. Victim's Rights at Sentencing.** In many states the victim has the right to:
- a. Be present at sentencing.
 - b. Express orally or in writing any objection to the proposed disposition. [Minn. Stat. § 611A.03]
 - c. Submit a victim impact statement and choose whether to submit the statement orally, in writing, or by having the prosecutor read it. [Minn. Stat. § 611A.038]
- 11.** To maximize the defendant's opportunity to understand the harm caused by the crime, and to assist the victim during this difficult process, the court should insist that no business be conducted when a victim is reading a victim impact statement.
- J. Probation Violations**
1. In jurisdictions where probation violations may be heard by a judge other than the sentencing judge, the signing judge shall specify on the pick-up order whether the defendant must appear before the sentencing judge for resolution of the probation violation. Due to the sentencing judges familiarity with the case, the probation violation should generally be heard the sentencing judge.

- 2.** The bench should hear probation violations based upon new criminal behavior without waiting for resolution of the new charge when:
- a. The violation is based upon a new act of violence or threatening behavior against any person; or,
 - b. When the violation is based upon any of the following targeted against the victim of the probation offense: destruction of property, using a child to coerce or intimidate, sexual aggression or any form of physical intimidation or actions which place the victim in fear of harm.
- 3.** When a violation is found:
- a. In cases involving a new act of violence or threatening behavior against any person or any of the following targeted against the victim: destruction of property, using a child to coerce or intimidate, sexual aggression, or any form of physical intimidation, considerations of public and victim safety will generally dictate revocation of probation.
 - b. In cases involving defendants at high risk of reoffending, or defendants with multiple charges and convictions, public and victim safety will generally dictate revocation of probation even if the new offense does not meet the criteria above.

- c. In all other cases, the court should consider continuing probation with

heightened monitoring or increased restrictions on the defendant.

Protocol 1: Court Administration

1. Court administration will correctly calendar all court appearances in domestic-violence related cases (see *Appendix 8C: Weekend Post-Arrest Procedures* and *Appendix 8D: Court Administration in Domestic Violence-Related Cases*).
 - a. Court administration will ensure that all cases are calendared as required by law, the seriousness of the behavior and the risk posed to the victim.
 - b. Ensure that an alternate judge is available to hear requests for probation violation warrant whenever the sentencing judge is not available within a reasonable time.
 - c. Work with the bench to explore, design and implement dedicated domestic violence calendars/courts whenever practical.
2. Court administration will determine whether booking has been completed before first appearance in all domestic violence related cases. In any case where booking has not been completed, court administration will inform the first appearance judge so that a booking order can be issued.

3. Court administration will immediately distribute a copy of any pre-trial release order to all necessary parties. Unless the responsibility has been undertaken by another agency, the necessary parties include: the agency having custody of the defendant, the defendant, the defense attorney, the prosecutor, the agency supervising pre-trial release, the victim and the community advocacy agency, if any.
4. If the agency having custody of the defendant is responsible for notifying the victim of release, court administration will provide that agency with any available information regarding the victim's location. The information shall be provided in a manner that protects the victim's safety and, where applicable, the confidentiality of the information.
5. Any time a no-contact order is modified or cancelled court administration shall enter and distribute the modifying/cancelling order in the same manner as the original order.
6. Whenever the hearing is requested by the defendant, community advocacy agency or the victim, upon scheduling a hearing regarding modification or cancellation of a no-contact order, court administration will provide notice to the following:
 - a. Defendant/defendant's attorney
 - b. Prosecutor
 - c. Victim/community advocacy agency
 - d. Police/police emergency communication channel
 - e. Agency supervising release; and
 - f. If applicable, agency having custody of the defendant

A. No Contact Orders

1. Court Administration will ensure that there is a supply of blank no-contact orders available in all courtrooms.
2. When entering no-contact orders, whenever applicable, court administration will ensure that the orders are correctly identified as either a DANCO or a NCO.

- a. The prosecutor
 - b. The defendant/defense attorney
 - c. The victim/community advocacy agency
 - d. The agency supervising the defendant's release/probation, if any
7. Court administration will ensure that all orders, including later modifications or

cancellations, are entered into the applicable databases.

- 8. On all warrants of commitment, court administration will indicate whether the no-contact order remains in effect.
- 9. Court administration will take the following actions whenever a court file contains confidential material.

- a. Remove all confidential material from the file before allowing *pro se* defendants to have access to the file.
- b. Obtain authorization from the Court prior to allowing a *pro se* defendant access to the court file if confidential materials remain in the file

Appendices to Bench and Court Administration

The following appendices are included as part of this bench book and published in the Blueprint Supplement.

- 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 5D: Sample Policy Language—When to Compel a Victim to Testify

- Appendix 5G: Framework for Recommending Time to Serve and Length of Probation
- Appendix 5H: Sentencing Guidelines Departure in Domestic Violence Cases
- Appendix 7A: Rehabilitation Program Considerations in Domestic Violence Cases
- Appendix 7B: Training Memo—Conditions of Probation
- Appendix 7D: Firearms Prohibitions
- Appendix 7H: Training Memo—Legal Considerations in Probation Violations Based on a New Offense

- Appendix 8A: Training Memo—Use of No-Contact Orders in Domestic Violence Criminal Cases
- Appendix 8B: Memorandum on Consecutive Sentencing in Domestic Abuse Cases
- Appendix 8C: Weekend Post-Arrest Procedures
- Appendix 8D: Court Administration in Domestic Violence—Related 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.

CHAPTER 8 ENDNOTES

1. For a summary of homicide trends in intimate relationships, visit the Bureau of Justice Statistics report at <http://www.ojp.usdoj.gov/bjs/homicide/intimtes.htm>
For a discussion of national data sources and statistics, see Stark (2007).
2. See Chapter 1, Foundation, for a discussion of the Blueprint's foundational principles, basic assumptions underlying its recommended policies, and *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*.
3. Because court administrations vary drastically from county to county and state to state, it is addressed in an appendix in the supplement rather than as an individual Blueprint chapter.
4. McFarlane et al., (1999, p. 311).
Klein (2008, Part I, p. 40).

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