



Chapter 8

The Bench and Court Administration

THE BENCH AND COURT ADMINISTRATION

THE BLUEPRINT FRAMEWORK

For almost four 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, previous institutional contacts with the offender, including what is known about the offender's use of, experience with, and access to firearms. 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 announce 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 conscience 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.

The following appendices are included as part of the policy and protocols on court administration of domestic violence cases and as guidance for the bench:

- *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 1G: Training Memo: Enhancing a Coordinated Response to the Intersection of Domestic Violence Crimes and Access to Firearms*
- *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*
- *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.

EFFECTIVE JUDICIAL RESPONSE TO DOMESTIC VIOLENCE

All judges and court personnel will familiarize themselves with *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*, *Appendix 1B: Training Memo—Risk and Dangerousness*, *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*, and *Appendix 1G: Training Memo: Enhancing a Coordinated Response to the Intersection of Domestic Violence Crimes and Access to Firearms*.

A. 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.

A. 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 to 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*:
 - Conditions 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, disturbing, telephoning, texting, posting on and messaging through social media, 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 firearms or other weapons specified by the court and ordering their surrender if applicable;
 - 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 childcare 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.
- g. Provide copies of any pretrial release order, including a DANCO or order for protection to the defendant and the victim.
 - If available, provide copies in the defendant's and victim's preferred language(s). If not available, provide for sight translation.

4. Firearms restrictions

- a. In qualifying cases, the court will generally issue an order prohibiting the defendant from possessing firearms and requiring temporary surrender of any firearms or ammunition in the defendant's possession.

- b. Review the defendant's record and the current charge to determine whether there is an extant qualifying conviction prohibiting firearms possession, including:
 - Whether the conviction has been vacated, expunged or set aside
 - Whether the defendant's civil rights have been restored
 - Whether the convicting jurisdiction placed any lingering firearms restrictions on the defendant, such as restrictions on the ability to obtain a concealed carry permit, possession of a handgun in the home or business, etc.
- c. Where the defendant is subject to a civil protection order, the bail or conditional release order should not incorporate the conditions of that order by reference, but rather should duplicate the conditions of the protection order to the extent allowable by law to ensure that bail conditions will survive in the event the civil case is withdrawn or dismissed.
- d. Orders should include language regarding the use or threat of force alleged in the complaint and information about the nature of the relationship between the defendant and victim.
- e. Orders should include firearms surrender as a condition of bond along with clear, specific information about when, where and how to surrender firearms in his or her possession, as well as what type of proof is required.
- f. Address the question of victim notification with the prosecutor to guarantee that proper notification is made.
- g. Provide both written and oral notification to the defendant of firearm restrictions in his or her preferred language and method of communication in accordance with *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*.
- h. Ensure that orders involving firearms restrictions are entered promptly into state, tribal and federal databases.

B. 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, violation of firearms prohibitions, refusal to conform to monitoring requirements, or continued use of alcohol or drugs.

C. 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 be directed to 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. A copy of the modified no-contact order will be forwarded to the victim, in her or his preferred language. Offer sight translation to those with LEP if translated versions are not available in the victim's preferred language. Do not assume Deaf/HOH individuals are fluent in written English.
- 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.
- 6. Communicate in the victim's preferred language and method of communication in accordance with agency policy and *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*. Provide written materials in the victim's preferred language. Provide sight translation to those with LEP if translated versions are not available in the victim's preferred language. Do not assume Deaf/HOH individuals are fluent in written English.

D. 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*.

E. 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.** Whether the proposed plea agreement will trigger firearms prohibitions pursuant to tribal, state or federal law.
 - b.** 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.
 - c.** 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.
 - d.** 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.
- 3.** 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.** Ensure that a qualified interpreter is utilized when accepting a plea from a defendant who is LEP, Deaf/HOH or prefers communicating in a language other than English.
 - b.** A plea of guilty accepted and recorded by the court constitutes a conviction. [Minn. Stat. §609.02, subd. 5]

- c. 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.
 - d. 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.*)

F. Presentence Investigation

1. A presentence investigation is required whenever a defendant is convicted of the following offenses. [Minn. Stat. § 609.2244, subd. 1]
 - a. Any domestic abuse offense (per statutory definition)
 - b. Any other offense arising out of the same circumstances surrounding a domestic abuse arrest
 - c. 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.

G. 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 impose 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. See also *Appendix 1G: Training Memo: Enhancing a Coordinated Response to the Intersection of Domestic Violence Crimes and Access to Firearms*.
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*)
 - a. 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.
- g. The court should direct probation to make diligent efforts to refer defendants who are LEP or Deaf/HOH to a program that is language accessible and culturally appropriate.

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. Provide a copy in the victim and defendant’s preferred language if available. Provide sight translation to those with LEP if translated versions are not available in the victim’s preferred language. Do not assume Deaf/HOH individuals are fluent in written English.
- e. When the defendant is LEP, Deaf/HOH or prefers communicating in a language other than 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. Firearms restrictions. When considering whether to issue an order restricting the defendant's access to firearms, the court should take the following steps:
 - a. Address firearms prohibitions on the record.
 - b. Confirm the applicability of firearms prohibitions.
 - c. Seek and receive information about the defendant's firearms access and use from multiple sources, including type and location if possible.
 - d. Order surrender to predetermined law enforcement personnel or a Federal Firearms Licensed (FFL) dealer. The court may consider an order to surrender to a third party if appropriate.
 - Provide the defendant with written instructions on the surrender process, including where and how to surrender, timeline and proof required. Make written communication available in multiple languages and offer sight translation, if requested.

- e. Include in the order the actual elements of the applicable criminal statute under which the defendant was convicted and the qualifying intimate partner relationship between the parties.
- f. Make a record that the defendant was represented by counsel or knowingly and intelligently waived representation, and that the defendant had a trial by jury or willingly waived that right.
- g. Schedule a compliance hearing.
- h. Notify law enforcement of the order.
- i. Address the question of victim notification with the prosecutor to guarantee that proper notification is made.

9. 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]

- 10.** In domestic violence cases the court should generally order the defendant to begin serving any executed sentence immediately. If the court considers

whether to let the defendant report to the custodial agency at a later date, it must determine that the defendant will not use the delay as an opportunity to harm or in any way retaliate against the victim.

- 11. Victim's Rights at Sentencing.** In many states the victim has the right to:
- Be present at sentencing.
 - Express orally or in writing any objection to the proposed disposition. [Minn. Stat. § 611A.03]
 - 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]

Under federal law and policy, victims who are LEP, are Deaf/HOH or prefer communicating in a language other than English, have the right to language access services in all criminal court proceedings to promote the interests of justice and protection of the community.

- 12.** 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.

H. Probation Violations

- 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 judge's familiarity with the case, the probation violation should generally be heard the sentencing judge.
- The bench should hear probation violations based upon new criminal behavior without waiting for resolution of the new charge when:
 - The violation is based upon a new act of violence or threatening behavior against any person; or,
 - 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 and violation of firearms restrictions.

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.

POLICY: COURT ADMINISTRATION

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:

- d. Ensure that domestic violence–related cases are handled with the timeliness required by statute and local policy.
- e. Ensure that all defendants appearing on domestic violence–related matters have been booked.
- f. 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
- g. Ensure that qualifying pretrial release orders, including orders prohibiting contact and orders prohibiting the defendant from possessing firearms, are promptly entered into state, tribal and federal databases
- h. As necessary, notify the agency supervising pre-trial release of all cases in which the defendant is conditionally released.
- i. Notify necessary parties of any hearing regarding modification of a no-contact order.
- j. On all warrants of commitment, correctly identify those cases in which a no-contact order remains in effect.
- k. At all times ensure that confidential information is not disclosed to unauthorized parties.
- l. Work with the Bench to adopt, whenever practical, dedicated domestic violence calendars or courts.
- m. Adopt a comprehensive language access policy for the courts:
 - Ensure timely and appropriate language access for people with Limited English Proficiency (LEP) or who are Deaf/Hard of Hearing (HOH) throughout the court process.

- Maintain a list of qualified interpreters for multiple spoken languages and American Sign Language (ASL).
- Ensure that forms routinely used by the court are available in multiple languages.
- Arrange promptly for a qualified interpreter upon learning that a case is scheduled involving a party who is LEP or Deaf/HOH.

Protocol 1: Court Administration Response to Domestic Violence-Related Cases

1. 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*). Court administration will:
 - a. 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 qualified interpreters are scheduled and translated documents are available in cases involving people who are LEP, Deaf/HOH or prefer communicating in a language other than English. Promptly arrange for language access services as soon as the need is identified.
 - c. 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.
 - d. Work with the bench to explore, design and implement dedicated domestic violence calendars/courts whenever practical.
2. Determine whether booking has been completed before first appearance in all domestic violence related cases. In any case where booking has not been completed, inform the first appearance judge so that a booking order can be issued.
3. 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, 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.

I. No Contact Orders

- 5.** Ensure that there is a supply of blank no-contact orders in multiple languages available in all courtrooms.
- 6.** When entering no-contact orders, whenever applicable, ensure that the orders are correctly identified as either a DANCO or NCO.
- 7.** Retain the original order in the court file
- 8.** Unless the responsibility is undertaken by another agency, distribute no-contact orders to all necessary parties including at least 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
- 9.** Any time a no-contact order is modified or cancelled, enter and distribute the modifying/cancelling order in the same manner as the original order.
- 10.** 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, provide notice to the following:
 - 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
- 11.** Ensure that all orders, including later modifications or cancellations, are entered into the applicable databases.
- 12.** On all warrants of commitment, indicate whether the no-contact order remains in effect.
- 13.** 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

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).