

Appendix 7B

Training Memo—Conditions of Probation

Generally, to be effective and enforceable, probation conditions must clearly identify the behavior prohibited or required. When the sentencing court imposes a probation condition, a number of people—including the defendant, the court clerk, the defense attorney, the prosecutor and the probation officer—need to accurately understand, and in some cases record, what is being required. The Blueprint adopts standard language for probation conditions. Use of standard language by the sentencing court, which is carried through to the court forms filled out by probation officers and court clerks, will help ensure that everyone has a common understanding of the probation conditions imposed.

Standardizing the probation conditions will eliminate ambiguities in the conditions currently in common use. The requirement that a defendant “remain law-abiding” is an example of a condition in current use which does not have a common understanding. In interviews, some practitioners interpreted this phrase to mean that there was no violation of the condition unless and until there was a new criminal conviction. Others interpreted the condition to require clear and convincing proof of a law violation, regardless of whether there had been a conviction.

Lastly, to reflect current best practices, the Blueprint incorporates probation conditions in use in other jurisdictions as well as conditions in use in Ramsey County for domestic violence cases.

Note: This training memo should be read and cross-referenced with the corresponding policy *Writing the Presentence Investigation Report* (Blueprint, Chapter 7) and these attachments:

- ***Attachment 1: Statutory Mandates in Domestic Violence Cases***
- ***Attachment 2: Written Notice of Firearms Prohibitions***
- ***Attachment 3: Probation Conditions***
- ***Attachment 4: Use of Firearms Special Conditions***

Attachment 1: Statutory Mandates in Domestic Violence Cases

This grid includes sentencing minimums, mandated programming, and mandated firearms forfeiture in domestic violence–related cases. It addresses statutory mandates related to sentencing in misdemeanor, gross misdemeanor, and felony cases.

SENTENCING MINIMUMS				
Offense	Other Conditions	Minimum Duration	Stay of Execution/ Imposition Allowed	Statute
Misdemeanor:				
Violation of Order for Protection		3 days	Yes Stay of Imp. also allowed: 3 days applies if revoked	518B.01, subd 14(b)
Gross Misdemeanor:				
Domestic Assault		20 days, at least 96 hours of which must be served consecutively	Yes, if anger therapy or other counseling ordered	609.2243, subd.1
Domestic Abuse No Contact Order Violation		10 days		518B.01, subds. 14(c) and 22(c)
Violation. of Order for Protection		10 days	No	518B.01, subds. 14(c) and 22(c)
Felony:				
Domestic Abuse	Stayed sentence	“Presume” at least 45 days incarceration as condition of probation with at least 15 days being served consecutively		
Domestic Abuse No Contact Order		30 days	No	518B.01, subds. 14(d) and 22(d)
Violation of Order for Protection		30 days	No	518B.01, subds. 14(d) and 22(d)

SEE ALSO:

1. 609.1095: execute sentence of at least presumptive guideline if two or more prior violent crimes
2. 609.1095: increased sentence for dangerous offenders who commit a third violent crime

MANDATED PROGRAMMING			
Offense	Other Conditions	Required Programming	Statute
Any Level:			
Domestic Assault	Stay of imposition or stay of execution	Domestic abuse counseling or educational program	518B.02, Subd. 1
Assault on spouse or other person with whom offender resides	Stay of imposition or stay of execution	Counseling or other appropriate program chosen by Court	609.125., Subd. 5
Violation of Order for Protection		Counseling or other appropriate program chosen by Court	518B.2, Subd. 14(b)(c)(d)
Gross Misdemeanor or Felony:			
Domestic Abuse No Contact Order Violation		Counseling or other appropriate program chosen by Court	518B.2, Subd. 22(c)(d)

MANDATED FIREARM FORFEITURE			
Offense	Offense Level	Other Requirements	Statute
Violation of Order for Protection	Misdemeanor or Gross Misdemeanor	1. Owns and possesses firearm AND 2. used it in any way	518B.01, subd. 14(m)
Assault 1, 2, 3 or 5		1. Against a family or household member AND 2. Owns and possesses firearm AND 3. used it in any way	609.2242, subd.3
Stalking/Harassment		1. Owns and possesses firearm AND 2. used it in any way	609.749 Subd. 8(d)
Domestic Assault by Strangulation		1. Against a family or household member AND 2. Owns and possesses firearm AND 3. used it in any way	609.2242, subd.3

Attachment 2: Written Notice of Firearms Prohibitions

A template suitable for distribution, with straightforward language describing the more common firearms prohibitions.

POSSESSION OF FIREARMS AND AMMUNITION

There are a number of statutes which prohibit possession of firearms and/or ammunition after a domestic violence related incident. The following are some of the most commonly applicable prohibitions. **This is not a complete list of prohibitions.**

You are responsible for compliance with all applicable statutes. If you have any questions regarding what prohibitions apply to you, contact your attorney or a public legal service for clarification.

If you have been convicted of any felony you are prohibited from possessing and/or using firearms and/or ammunition for the remainder of your life. Failure to abide by this prohibition is a gross misdemeanor and/or a felony under state and/or federal law.

If you have been convicted of any qualifying misdemeanor crime of domestic violence (MCDV) you are prohibited from possessing and/or using any firearms or ammunition for the remainder of your life. Failure to abide by this prohibition is a felony under federal law. (see below for the definition of a MCDV)

If you have been convicted of Domestic Assault, 5th Degree Assault involving a household or family member, False Imprisonment, 4th Degree Burglary, Gross Misdemeanor Harassment/Stalking, Neglect/Endangerment of a Child or Violation of an Order for Protection you are prohibited from possessing a firearm and/or a pistol for 3 years to life. Failure to abide by the prohibition is either a gross misdemeanor or felony violation of state law and is in addition to any applicable federal prohibition.

If you have been ordered by a court not to harass, stalk or threaten an intimate partner, or ordered not to engage in other conduct that would place an intimate partner in reasonable fear of bodily injury, you are prohibited from possessing firearms or ammunition for the duration of the order. Violation of this prohibition is a felony under federal law.

PROTECTION ORDERS AND FEDERAL FIREARMS PROHIBITIONS

Persons subject to a qualifying protection order under federal law are generally prohibited from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). Violation of this prohibition while the order remains in effect is a federal offense punishable by up to ten years imprisonment, 18 U.S.C. §§ 922(g)(8), 924(a)(2).

The following list enumerates the elements that define a qualifying protection order under the federal firearms prohibition. **Generally, a defendant/respondent subject to a protection order that includes one element (indicated by a diamond) from each section listed below is covered by the federal firearms prohibition.**

I. HEARING

- ❖ Defendant/Respondent received **actual notice** and had an **opportunity to participate**.

II. INTIMATE PARTNER

Plaintiff/Petitioner is an **intimate partner** of the Defendant/Respondent, (18 U.S.C. § 921 (a)(32)) that is:

- ❖ a **spouse** of Defendant/Respondent;
- ❖ a **formerspouse** of Defendant/Respondent;
- ❖ an individual who is a **parent** of a child of Defendant/Respondent; **or**
- ❖ an individual who **cohabitates or has cohabited** with Defendant/Respondent.

III. RESTRAINS FUTURE CONDUCT

- ❖ The order **restrains** Defendant/Respondent from **harassing, stalking, or threatening** the intimate partner, child of the Defendant/Respondent, or child of the Defendant/Respondent's intimate partner; **or**
- ❖ The order **restrains** Defendant/Respondent from engaging in other conduct that would place the intimate partner in **reasonable fear of bodily injury** to the partner or child.

IV. CREDIBLE THREAT OR PHYSICAL FORCE

- ❖ The order includes a finding that Defendant/Respondent is a **credible threat** to the physical safety of the intimate partner or child; **or**
- ❖ The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of **physical force** against the intimate partner or child that would reasonably be expected to cause bodily injury.

For further information about firearms prohibitions or section 922(g)(8), contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855. For general information about protection orders and firearms, contact the Full Faith and Credit Project at (800) 256-5883.

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MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE AND FEDERAL FIREARMS PROHIBITIONS

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV) generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

A qualifying MCDV is an offense that:

- ❖ Is a federal, state, or local offense that is a misdemeanor under federal or state law;
- ❖ Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- ❖ At the time the MCDV was committed, the defendant was:
 - ◆ A current or former spouse, parent, or guardian of the victim;
 - ◆ A person with whom the victim shared a child in common;
 - ◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or,
 - ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

EXCEPTIONS: A person has not been convicted of a qualifying MCDV:

- ❖ IF the person was not represented by counsel — unless he or she knowingly and intelligently waived the right to counsel;
- ❖ IF the person was entitled to a jury trial AND the case was not tried by a jury — unless the person knowingly and intelligently waived the right to jury trial; or,
- ❖ IF the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights — the right to vote, sit on a jury, and hold elected office — were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

BUT: This exception does NOT lift the federal firearms prohibition if:

- ◆ the expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or,
- ◆ the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(9) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS BY CALLING (800) 800-3855. FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE GENERALLY, CONTACT THE NATIONAL CENTER ON FULL FAITH AND CREDIT AT (800) 256-5883 EXT. 2.

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Attachment 3: Probation Conditions

The probation conditions are broken into four categories, as noted in the key: (1) general conditions, (2) domestic violence standard conditions, (3) domestic violence special conditions, and (4) atypical conditions.

1. **General conditions** (key = 1) include those which are routinely imposed on all probationers, often via the directive that the probationer obey “the standard probation conditions.” These conditions include provisions such as “remain law-abiding” and “report to your probation officer”. While not unique to domestic violence cases, they are basic to successful probation supervision. They were addressed by the Blueprint to standardize the language and understanding of these conditions.
2. **Domestic violence standard conditions** (key =2) will generally be imposed in all domestic violence cases unless there is a reason to omit a condition in a particular case. All of these conditions reflect concerns that are characteristic of domestic violence and, therefore, appropriate standard conditions in domestic violence cases.

The domestic violence standard conditions attempt to interrupt the cycle of coercion and intimidation often present in domestic violence cases by making explicit the requirement that there be no violence, threats, intimidation or coercion. When violence is prohibited, it is not unusual in cases of battering for the batterer to move to other forms of coercion in an attempt to maintain or regain control over the victim. While this can take many forms, harassment, violation of no contact orders or use of the children are probably among the most common. The domestic violence standard conditions address these concerns by requiring the probationer, as a probation condition, to obey all court orders including no contact orders, orders for protection, custody orders, and orders regarding the return of children from parenting time.

The flow of information among the various interveners is essential to ensuring offender accountability, enhancing victim safety and promoting behavior change. A probation officer who is unaware of the probationer’s behavior in the community, unable to communicate with the various treatment programs or unable to verify the probationer’s representations is less able to effectively respond to the probationer’s behavior. The domestic violence standard

conditions address this concern by requiring the probationer to sign releases necessary to supervision. However, it is not necessary that all information from the probationer to the various programs and interveners be shared with the probation officer. To protect the probationer's privacy, the Blueprint uses specific, rather than general, releases of information. The domestic violence standard conditions make explicit the limits on the information which the probationer must release to the probation officer.

The domestic violence standard conditions also include domestic violence programming which will, in most cases, be mandated by statute.

When recommending probation conditions for a probationer who has also been subjected to a pattern of violence at the hands of the victim in the current case, the probation officer should consider whether a particular condition will actually increase the risk of further abuse to the probationer or secondary victims. When that situation arises, the probation officer should consider omitting that condition, even if it is a domestic violence standard condition.

3. **Domestic violence special probation conditions** (key = 3) were compiled from conditions in common use in Ramsey County as well as special conditions in use in other jurisdictions or recommended by groups such as the American Probation and Parole Association. To implement the goal of standardized language, the domestic violence special probation conditions include an exhaustive list of conditions that might be used in domestic violence cases. If even a fraction of the conditions on the list are imposed, the probationer would be subject to numerous special conditions. The Blueprint recognizes that this is not necessary, or desirable, in most cases. It is assumed that the probation officer will use his/her professional judgment to choose from conditions on the list considering the probationer's needs, any statutory mandates, the severity of risk in the particular case, the offense level, the length of supervision, the length of the stayed sentence, the history of violence and any other factor appropriate to the particular case. Some special conditions will be appropriate for only the highest risk offenders and the number of special conditions may need to be limited in light of the length of supervision and the length of the stayed sentence.

To promote some measure of uniformity, and therefore proportionality, in the use of special conditions by various probation officers, the Blueprint includes guidelines regarding the use of special conditions, as addressed in this attachment and Attachment 4 (Use of Firearms Special Conditions). These are guidelines only; the Blueprint recognizes that it is not possible for a system of mandated probation conditions to adequately reflect the multiple factors relevant to a decision in an individual case.

While the list of special conditions is exhaustive, it does not cover every possible condition. In some cases it may be necessary to write conditions of probation tailored to the unique characteristics of the case. In stalking cases, for instance, the probationer may have an internet bulletin board where he posts items about the victim, may constantly dedicate songs to the victim on a favorite radio show, may post items on the internet purporting to be from the victim, etc. In those cases it may be necessary to craft particular conditions if the more general conditions do not, or arguably may not, cover the harassing behavior.

- **Conditions Related to Drug or Alcohol Use**

No possession of illegal drugs is already included within the requirement that the probationer obey all state, federal and local laws. Nonetheless, it is included in the standard conditions to emphasize the need to follow the laws regarding drug possession. Moreover, because drug use, as opposed to possession, is not prohibited by the criminal code, no drug use needs to be included as an explicit condition.

Not every domestic violence offender has issues with drug or alcohol use and not every offender is more prone to violence when using drugs or alcohol. Therefore, abstinence from alcohol is not included in the standard conditions. However, the standard conditions give the probation officer the authority to require random testing for the presence of drugs or alcohol. This will ensure that the supervising probation officer has the authority to investigate drug or alcohol use when indicated.

The special probation conditions include several conditions that are appropriate when there appears to be a relationship between violence and drug or alcohol use, or when the probationer's drug or alcohol use interferes or is likely to interfere with probationer's ability to comply with

other probation conditions. These include a prohibition on the possession or use of alcohol, attendance at a 12 step program and chemical dependency evaluation and treatment.

- **Conditions Related to Employment**

In some cases, requiring employment, schooling, training and/or a job search may help the probationer meet other probation conditions such as restitution, may enhance victim safety, may increase offender accountability or may support positive change by the probationer. However, the benefits from an employment or school condition vary widely from case to case. Therefore, no employment or school condition is included in the domestic violence standard conditions. The requirement that the probationer make no change in employment without the prior approval of the probation officer can be impractical and may hinder a probationer's efforts to stabilize or improve his financial situation. For this reason, the condition was not included in the standard probation conditions.

The need for an employment or school condition should be evaluated as a possible special probation condition. Among the factors to be considered in deciding whether to recommend an employment or school condition are the need for employment to make restitution, pay fines or fulfill other probation conditions; the victim's economic dependence upon the probationer; and whether the probationer has a history of engaging in economic coercion of the victim.

The condition that the probationer not change employment to the victim's employer without prior approval of the probation officer, is intended for use primarily in cases of a continuing no contact or stay away order.

Several conditions included in this section, including no voluntary employment changes which reduce hours or result in unemployment without probation officer approval, job search requirements and a requirement that the probationer engage in education or vocational programming if not employed a specified number of hours per week are included in the Blueprint because economic coercion is a major form of control in some battering relationships. In such cases use of one or more of these conditions may improve victim safety and increase offender

accountability by limiting the probationer's ability to utilize economic coercion. Such conditions will most often be appropriate in more severe cases.

As always, the benefits of any special condition in this area must be balanced against the other conditions being considered, the priority of this area of concern, the length of probation and the length of the suspended sentence.

- **Conditions Related to Fines**

Because there is a mandatory minimum fine in all cases, the payment of a fine is included within the standard probation conditions. The fine recommended must be at least equal to the mandatory minimum. When recommending fines above that amount the Blueprint uses the concept of "day-fines." When day-fines are utilized the amount of the fine is adjusted to what the defendant earns in a day. Thus, a fine for a person earning, or having the ability to earn, \$8 per hour, would generally be a third of the fine for a person earning \$24 per hour.

Because of the research indicating that jail time has a more significant impact on re-assault than fines, the Blueprint does not include the use of fines in lieu of jail. A provision for community service in lieu of fines should be considered only if the jurisdiction has adequate community service opportunities for these offenders.

For jurisdictions that have a unit that handles collection of fines, the general direction to pay as directed appears to be sufficient to ensure compliance. In jurisdictions with a less structured system for collecting fines, additional conditions to delineate due dates, installments and order of payment may be desirable.

- **Conditions Related to Firearms**

People on probation for domestic violence-related offenses are subject to restrictions on their ability to possess firearms which arise from two sources. First, they may be prohibited from possessing firearms under state or federal law as the result of the conviction, regardless of the probation conditions imposed by the court. Second, they may be prohibited from possessing firearms by the probation conditions imposed by the court. The

application of a statutory prohibition may not be clear in a particular case. Moreover, even when the prohibition clearly applies, federal law prohibitions might not be enforced by state courts.

The Blueprint handles firearms prohibitions in two ways: first, by imposing a prohibition as a probation condition and second, by imposing a requirement that the probationer become familiar with the statutory bans and giving notice of some of the more common bans. As mentioned above, the standard domestic violence conditions prohibit the possession of a firearm for the duration of probation. The additional firearms special conditions are all based upon Minnesota law which prohibits firearm (or in some cases pistol only) possession for various lengths of time. The Blueprint contemplates that the probation officer will also include one of these special conditions whenever those conditions are applicable. Because the prohibitions arise from the conviction itself, a statutory prohibition will operate whether or not it is a probation condition and whether or not the Court gives the statutorily required notice of the prohibition. The Blueprint makes the prohibition an explicit probation condition for several reasons. First, in some cases, the length of the prohibition can be determined by the Court, with the minimum period being three years and the maximum being life. In those cases it is necessary for the Court to determine the length of the prohibition as a part of the sentencing. Second, even where the length of the prohibition is determined by statute, making it a probation condition will emphasize the prohibition and ensure that the probationer has clear notice of the ban.

Because a number of unresolved questions exist regarding application of the federal prohibitions, the Blueprint takes a different approach to bans which arise from federal law. The Blueprint includes as one of the domestic violence standard conditions that the probationer review the notice of weapons prohibitions. This notice includes at least some of the federal prohibitions, puts the probationer on notice that the notice is not comprehensive and directs the probationer to consult an attorney whenever there is a question regarding whether there is a prohibition which applies to the particular probationer. This approach was adopted for several reasons. First, it makes the probationer aware that there are federal statutory prohibitions. Second, it gives the probationer notice of the more

commonly applicable prohibitions. Third, it puts the responsibility on the probationer to seek legal advice regarding the applicability to the federal statutes to the individual probationer. By doing so, the Blueprint puts the onus on the probationer and the probationer's attorney to resolve any issues and avoids placing either the Court or the probation officer in the position of giving legal advice as to the applicability of any particular ban.

- **Conditions Related to Remaining Law-Abiding**

The Blueprint makes clear that the “law-abiding” standard probation condition does not require a new conviction before there has been a violation of probation. Waiting for the new charge to be resolved increases the possibility that the violation will be dismissed as part of a plea agreement. And, even when the violation is not dismissed, the delay diminishes the impact of the eventual response. In either event, both the probationer and the victim are likely to perceive that “he’s gotten away with it.” Because battering is a patterned behavior which is most likely to change when there is a sure, swift and consistent response, delaying the response until the new charge is resolved diminishes both offender accountability and victim safety. When there is new assaultive behavior, probation officers will bring probation violations without waiting for the new charge to be resolved as long as the new behavior can be proved by clear and convincing evidence. As *Appendix 7H: Legal Considerations for Probation Violations Based on a New Offense*, makes clear, there is no legal prohibition preventing the probation violation from being heard prior to the resolution of the new charge.

The Blueprint intentionally omits the use of the phrase “no same or similar” to describe additional behavior which is prohibited. There did not appear to be a common understanding among those interviewed regarding the meaning of the phrase. If the condition is meant to limit non-criminal behavior, the Blueprint already includes in the standard probation conditions specific prohibitions on threats, intimidation and coercion. These give clearer notice of the prohibited conduct than “no same or similar”. If the phrase is meant to prohibit criminal behavior, the general condition to remain law-abiding already accomplishes this. Because it is otherwise unnecessary, adding “no same or similar” to prohibit criminal behavior opens up the argument that it is intended as a limitation on the criminal

behavior prohibited. (For instance, in a reckless driving case, no same or similar arguably limits the criminal behavior that will violate probation to other driving offenses.)

Victims who have children with the probationer are vulnerable to retaliation or coercion through the children, particularly by the probationer ignoring custody orders or failing to return a child after visitation. A probationer's violation of these orders with impunity undermines the victim's confidence that the legal system can protect her/him and her/his children, reinforces the batterer's message that "It doesn't matter what you do, I can get you" and places the children in the middle of the conflict. Only a willful violation of these orders can be punished by contempt or as a probation violation. However, enforcement of these orders through the civil contempt process is frequently more cumbersome and less effective than through the probation violation process. For these reasons, when there has been violence in the relationship, the Blueprint includes compliance with court orders as a domestic violence standard condition.

Victims who are economically dependent upon the probationer are also subject to coercion through the willful withholding of child support. Because the effect on the victim's sense of personal safety is more attenuated and because the children are not placed directly in the middle, the Blueprint does not include compliance with child support as a domestic violence standard condition. However, it is included in the domestic violence special conditions. It is anticipated that the condition will be used only in cases where there is a history of economic coercion and a moderate to high severity level.

- **Miscellaneous Conditions**

As discussed above, the domestic violence standard conditions include a number of provisions designed to ensure that the probation officer has the information necessary for effective supervision. In addition, the Blueprint includes special conditions related to disclosures when the probationer is involved with child protection, child custody or other civil proceedings. It is not anticipated that this condition will be used frequently.

The Blueprint also includes a special condition allowing the probation officer to impose a curfew. This is most appropriate in the rare case where



stalking or severe abuse is involved and imposing a curfew is likely to increase the victim's safety.

Also included in this category is a condition requiring the probationer to maintain pre-existing health insurance. Again, this is not expected to be a common condition. It is most appropriate in cases where there is a history of economic coercion, the victim does not have access to insurance of her own and there is a moderate to high severity level.

- **Conditions Related to No Contact Orders**

Because of the variation in circumstances and needs of the victims, and any affected children, the Blueprint does not include a no contact and/or a stay away order in every case.

The probation officer will recommend that no contact and stay away orders in existence at the time of sentencing be continued if requested by the victim or if the victim cannot be reached. The probation officer will not generally recommend continuation or imposition of no contact or stay away orders over the objection of the victim. In deciding whether to recommend these orders over the victim's objection, the probation officer shall consider the severity of abuse, whether there are children in the household, the seriousness of the risk to children or other secondary victims, whether the probationer has been subjected to a pattern of abuse by the victim in the present case, and whether the victim is particularly vulnerable. Generally, vulnerability in this regard is vulnerability which arises from physical or mental impairment that affects the victim's judgment.

In considering whether to recommend a no contact or stay away order, the probation officer should keep in mind that it is not generally appropriate to recommend a no contact order which would have the effect of changing custody. And, it is important to consider the impact of a no contact order on the victim, including whether the order will result in the victim being homeless or not having child care, when recommending a no contact order over the objection of the victim.

When no contact or stay away orders are recommended, they should include those persons and places necessary to promote the victim's safety

and reduce the opportunities for retaliation or coercion by the offender. The best source of information regarding the persons and places to be included is the victim. Whenever possible, the victim should be consulted regarding the persons and places to be included in the orders. The list of possibilities in the Blueprint conditions includes the people and places most commonly included in no contact orders. However, given the circumstances in a particular case there may be a need to include other places or persons, or no need to include some of the listed persons or places.

Because of the multiple variables involved, the Blueprint does not include any policy on no contact orders for the victim's children when the children are not the direct victims of the violence but have been drawn into, or placed at risk, by the event.

- **Conditions Related to Programming**

Pursuant to Minn. Stat. §§ 518A.02, subd. 1 and 609.135, subd. 5, domestic violence treatment will be required for most offenders convicted of domestic violence. This domestic violence standard condition gives the probation officer the authority to choose the most appropriate program and when the offender should enter the program.

One of the issues with domestic violence treatment is that entry into the treatment program can be delayed for a number of reasons, including the need to complete chemical dependency programming, start dates for new groups or financial issues. Delays in entry increase risk of re-offense because the monitoring and educational benefits of the programs are absent during a time when there is a high risk for re-offense. Use of a general group that offenders can start immediately while waiting for entry into domestic violence programming will provide additional monitoring and can be used to work with offenders on general life skills. The Domestic Violence Standard Conditions give the probation officers the authority to place offenders in this general group if available and appropriate.

The availability of victim impact panels will vary from jurisdiction to jurisdiction. Where available, probation officers should consider whether a condition requiring attendance at victim impact panels is appropriate.

Mental Health: Offenders with significant mental health issues are more likely to be successful on probation if their mental health issues are addressed effectively. A mental health evaluation should be recommended if there appears to be a substantial question regarding possible mental health issues and there is no current treating professional able to provide recommendations on the probationer's current needs. In cases where there is not an existing diagnosis of mental health problems, the victim's input may be helpful in identifying cases whether mental health issues may exist.

For offenders with identified mental health issues, requiring compliance with medication, therapy or other mental health programming can assist the offender in complying with probation. Some offenders with mental health issues may qualify for case management, a community mental health worker or other community programming. Probation officers should have the authority to require compliance with that programming in order to maximize the offender's ability to adjust to probation.

- **Conditions Related to Residence**

Effective supervision requires that the probation officer be able to locate the probationer when necessary. The general standard conditions include several conditions designed to ensure that the probationer can be located.

Supervision of domestic violence offenders and interventions which reduce re-offense are more difficult because of the offender's access to the victim. In addition, to the standard residence condition, the special conditions include a condition requiring prior approval of the probation officer before a residence change. Because of the practical problems involved when this condition is used, particularly for a mobile probationer without a permanent residence, this condition is included only for use in cases of severe abuse where it appears that the condition may increase the victim's safety.

- **Conditions Related to Restitution**

Generally, restitution will be recommended in any case where an appropriate claim is made. For jurisdictions that have a restitution unit that handles collection of restitution the general direction to pay as directed appears to be sufficient to ensure compliance with the payment program implemented by the restitution unit. In jurisdictions with a less



structured system for collecting restitution, additional conditions to delineate due dates, installments and order of payment may be desirable.

In some circumstances, payment of restitution to third parties may actually have an adverse impact on the direct victim. For instance, if the probationer has kicked in a door of a leased unit, restitution may be owed to the owner of the unit. If the probationer also owes child support to the victim, giving priority to restitution may have the effect of depriving the victim of necessary support for the children. Because of this when recommending when and how restitution should be paid, the effect on the victim should be considered.

- **Conditions Related to Weapons other than Firearms**

A prohibition on weapons other than firearms is not included as a standard probation condition. However, a prohibition on non-firearm weapons is included as a special condition. It is contemplated that this condition will be recommended if the probationer has ever threatened to kill the victim, threatened the victim with a weapon or used a weapon during a domestic violence incident involving the victim.

When a non-firearm weapons prohibition is being imposed, the Blueprint defines a dangerous weapon as an object which is designed as a weapon or which is intended to be used as a weapon. This definition will include objects that would not otherwise be considered weapons if it can be shown by clear and convincing evidence that the probationer intended to use the object as a weapon. The definition will also help to clarify the status of dangerous objects such as box cutters and kitchen knives which may or may not be a weapon in a particular context.

4. Atypical conditions (key = 4) include provisions to consider when needed in particular cases, such as those involving custody disputes or allegations of child abuse and neglect.

5.

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
1. Drugs/Alcohol	
1	a. You may not use or possess any controlled substances except in the manner and amount prescribed for you by a doctor.
3	b. You may not use or possess alcoholic beverages.
3	c. You must attend Alcoholics Anonymous or an equivalent program weekly as directed by your probation officer.
3	d. You must cooperate with a chemical dependency evaluation and follow any recommendations of the evaluation, including aftercare, as directed by your probation officer.
1	e. You must submit to random testing for the presence of controlled substances or alcoholic beverages as directed by your probation officer.
2. Employment/School	
3	a. You must obtain and maintain employment as directed by probation officer.
3	b. You must report any changes in employment to your probation officer within 72 hours of the change. The obligation to report includes any involuntary changes such as being fired or laid off.
3	c. You must attend and cooperate with any job-seeking programming as directed by your probation officer.

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
3	d. You must attend and cooperate with any life skills programming as directed by your probation officer.
3	e. You must attend and cooperate with any high school equivalency program as directed by your probation officer.
3	f. You may not change employment without the prior permission of your probation officer if, as a result, you would be working for the same employer as _____ (victim).
3. Fines/Community Service:	
1	a. You must pay a fine of \$_____. You must make the payment as directed by the probation department.
4. Law Abiding:	
1	a. You must refrain from any action which is prohibited by any state, federal or local law. An action, or inaction, prohibited by state, federal or local law violates probation even if it is not charged as a crime or does not result in a criminal conviction.
2	b. You must obey all court orders, including any orders for protection or no contact orders. An action, or inaction, prohibited by court order violates probation even if it is not charged as a crime or does not result in a criminal conviction.
2	c. You must not use threats, intimidation or coercion against any person
2	d. You must not use illegal violence against any person.

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
2	e. You must obey all court orders including protection orders, child support and custody orders, and orders regarding return of children from parenting time.
4A. Other provisions to consider when needed in particular cases:	
4	a. You must obey all court orders including orders regarding child support.
5. Miscellaneous:	
1	a. You must be truthful with your probation officer in all matters, and reply promptly to any communication from your probation officer
1	b. You must waive extradition to the State of Minnesota from any jurisdiction in or outside the United States where you may be found. You must agree not to contest any further effort by any jurisdiction to return you to the State of Minnesota. c. NOTE: Reviewers raised the issue of whether these waivers are enforceable. The concept, though not the language, is from Ramsey's standard conditions.
1	d. You may not leave the State of Minnesota without first obtaining written permission from your probation officer.

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
2	<p>e. If requested by your probation officer, you must sign releases of information related to:</p> <ul style="list-style-type: none"> i. Victim of this offense: A release sufficient to allow your probation officer to discuss and review with the victim statements made by you to the probation officer writing the presentence investigation. ii. Medical/Mental Health programs or professionals. These releases must be sufficient to allow your probation officer to verify if you are attending and complying with your treatment and medication programs. iii. Chemical Dependency programs. These releases must be sufficient to allow your probation officer to verify that you are attending and complying with the chemical dependency program and to allow any person working with the program to be informed if you use alcohol or drugs. iv. Domestic Violence Programs. These releases must be sufficient to allow your probation officer to: <ul style="list-style-type: none"> • Verify that you are attending and complying with the domestic violence program. • Release to the domestic violence program the non-confidential portion of the PSI. • Discuss with the program any concerns about your compliance with, or adjustment to, probation.

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
	v. Other Third Parties. Releases as necessary to monitor your compliance with the conditions of your probation.
2	f. You must provide to your probation officer all court documents relating to the victim in this case: <ul style="list-style-type: none"> i. Protection orders ii. Harassment restraining orders iii. No-contact orders iv. Custody and visitation orders or agreements v. Civil court judgments
5A. Other provisions to consider when needed in particular cases:	
4	1. You must make full disclosure of the status of any child custody investigations, paternity actions, adoption proceedings and other family or civil matters.

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
4	2. You must cooperate with child or adult protection services and make full disclosure of criminal history and status
4	3. You must obey any curfew imposed by your probation officer.
6. No Contact Orders:	
3	a. You must have no contact, directly or indirectly, with the people listed below. Prohibited contact includes, but is not limited to, physical, verbal, visual, letters, phone calls, computer transmissions, videos, visits, photographs or text messaging. Prohibited contact also includes any form of contact through a third party. Contact for the purpose of arranging parenting time with joint children is also prohibited except as provided for by the court order granting parenting time.
	i. the victim of this offense, _____;
	ii. the victim's children;
	iii. others residing in victim's home;
	iv. the victim's employer; or
	v. the following other individuals: _____.
3	b. You must stay away from the area within _____ feet/blocks of:
	i. the victim's current and all future residences;
	ii. the victim's school;

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
	iii. the victim's current and any future employment;
	iv. the school attended by the victim's children. You may not be within this area even if the victim's children are also your children. If there is a school program or other special event at the school that you wish to attend, you may be in the school area only if with prior written approval from your probation officer. You may be in the area only in the manner and at the time specified by that written approval. If you have an existing court order for parenting time which requires you to pick up or drop off the children at school, you may be within the school area for that purpose only with prior written approval of your probation officer and only in the manner and at the time specified in that written approval.
	v. the childcare facility attended by the victim's children. You may not be within this area even if the victim's children are also your children. If there is a program or other special event at the childcare facility that you wish to attend, you may attend only with prior written approval from your probation officer. You may be in the area only in the manner and at the time specified by your probation officer. In the event that you have an existing court order for parenting time which requires you to pick up or drop off the children at daycare, you may be within the school area for that purpose only with the prior written approval of your probation officer and only in the manner and at the time specified in that written approval.;

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
	vi. the following additional locations: _____.
3	c. You may not have unsupervised contact with the following children _____.
6A. Other provisions to consider when needed in particular cases:	
4	a. You must have no contact with persons specified by your probation officer.
4	b. You must stay away from places specified by your probation officer.
7. Programming:	
	a. Domestic Violence:
2	i. You must attend, cooperate with and complete domestic violence treatment as directed by your probation officer.
3	ii. You must attend and cooperate with any other designated domestic violence group if, and for long as, required by your probation officer.
3	iii. You must attend the Victim Impact panel as directed by your probation officer.
3	iv. You must attend a domestic violence parenting program as directed by your probation officer
3	v. You must attend a domestic violence sexual education program as directed by your probation officer.

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
	b. Chemical Dependency:
3	i. You must cooperate with a chemical dependency evaluation and follow any recommendations of the evaluation, including aftercare, as directed by your probation officer.
3	ii. You must attend Alcoholics Anonymous or an equivalent program weekly, as directed by your probation officer.
	c. Mental Health:
3	i. You must cooperate with a psychological evaluation, and follow any recommendations of the evaluations, as directed by your probation officer.
3	ii. You must cooperate with your current mental health treatment program, including: <ul style="list-style-type: none"> • Taking all prescribed medications as directed; and, • Attending and cooperating with appointments with your psychiatrist and/or therapist and counseling group(s).
3	iii. You must cooperate with case manager/AMHRS worker/other mental health professional or civil commitment requirements as directed by your probation officer.
8. Reporting:	

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
1	a. You must meet with or contact your probation officer as directed by your probation officer.
1	b. You must at all times ensure that your probation officer has the current telephone number at which you can be reached. If there is no number at which you can be reached, you must ensure that probation officer has a number at which a message can be left.
1	c. You must report all police contacts to your probation officer within 48 hours of the contact.
1	d. You must report any new arrests, charges, orders for protection or no contact orders to your probation officer within 72 hours of the arrest, charge or issuance of the order.
1	e. You must report all changes of employment to your probation officer within 7 days of the change.
1	f. You must report all changes of residence to your probation officer within 7 days of the change.
9. Residence:	
4	a. You must make no change in residence without prior written approval of your probation officer.
10. Restitution:	
3	a. You must pay restitution in the amount of \$_____. You must pay the restitution as directed by the probation department.

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
11. Weapons other than Firearms:	
3	a. You must not use or possess any weapon. For the purposes of this provision a weapon is any device designed as a weapon or any device which is used, or intended to be used, as a weapon.
12. Firearms:	
2	a. You may not use or possess any firearm. This prohibition is in addition to any prohibition imposed as a special condition of probation in your case. For the purposes of this provision a firearm is any weapon which discharges a projectile by means of an explosive, a gas or compressed air.
2	b. In addition to these conditions of probation, state and federal law prohibit use and possession of guns, silencers, destructive devices, tear gas and other devices. Some of those prohibitions are summarized in the Notice of Probation Obligations and Responsibilities which your probation officer will review with you. This is a partial list only. You should not assume that you may possess because a device just because it is not on that list. If you have any questions about whether you are prohibited from possessing any device you are responsible for consulting with your attorney before possessing it.
12A. Other provisions to consider when needed in particular cases:	
3	a. You may not use or possess a pistol for 3 years. The length of this prohibition may be extended by a new conviction within those 3 years.

Type of Condition	Probation Conditions
Key	1= general standard 2=DV standard 3=DV special condition, 4=atypical condition
3	b. You may not use or possess any firearms for 3 years. The length of this prohibition may be extended by a new conviction within those 3 years.
3	c. You may not use or possess any firearms for _____ years.
3	d. You may not use or possess any firearms for the duration of your life.

Attachment 4: Use of Firearms Special Conditions

In many domestic violence-related cases, there will be a statutory ban on pistol or firearm possession which is independent of the length of probation. There is a possibility of confusion about whether the ban is limited by the standard condition prohibiting the possession of firearms for the duration of probation. In addition, in some cases, the court will also have the authority to determine the length of the ban. To address both issues, this grid includes provisions regarding firearms and pistol bans to be used in addition to, or in some cases in lieu of, the standard condition.

Because of the high correlation between firearms and serious or lethal violence in domestic violence cases, the Blueprint includes a condition prohibiting the probationer from possessing firearms for the duration of probation. While the possession of firearms will be prohibited in many cases under state and/or federal law, inclusion of this provision makes the requirement explicit; includes cases of domestic violence where the conviction offense would not trigger the statutory ban, or would trigger the statutory ban on pistols only; and avoids the question of whether the federal prohibition can be enforced in state courts.

To ensure that the probationer understands what he is prohibited from possessing, the domestic violence standard conditions includes a definition of a firearm. This will help to ensure that the probationer understands the range of weapons included within the prohibition.

Because of the complexity of the multiple statutes imposing firearms bans, the domestic violence standard conditions generally do not incorporate statutorily imposed bans as a probation condition. Rather, they make clear to the probationer that there are statutory firearms prohibitions which operate in addition to the probation conditions, and, they impose on the probationer the obligation to become familiar with those prohibitions and to consult with his/her attorney if clarification is needed. Attachment 2 can be used to provide written notice of the more common firearms prohibitions when desired.

Condition	When to Use	Reason
Banned from possessing a pistol for 3 years, or longer if there is a qualifying subsequent conviction (12.b.)	<p>1. Misdemeanor or Gross Misdemeanor convictions under:</p> <ul style="list-style-type: none">• 609.2242 or 609.224 or 609.729 <p>AND</p> <ul style="list-style-type: none">• Victim was family or household member <p>AND</p> <ul style="list-style-type: none">• did not involve the “use of a firearm in anyway”.	This condition should be used in addition to the standard firearms prohibition to ensure that there is a ban on pistol possession which extends beyond the termination of probation.
	<p>2. Misdemeanor or Gross Misdemeanor convictions under:</p> <ul style="list-style-type: none">• 518B.01, subd. 14(k) <p>AND</p> <ul style="list-style-type: none">• did not involve the “use of a firearm in anyway”.	This condition should be used in addition to the standard firearms prohibition to ensure that there is a ban on pistol possession which extends beyond the termination of probation.
	<p>3. Misdemeanor or Gross Misdemeanor conviction under:</p>	This condition should be used in addition to the standard firearms prohibition to ensure that

Condition	When to Use	Reason
	<ul style="list-style-type: none"> • 609.224 AND <ul style="list-style-type: none"> • committed within three years of prior conviction under 609.221 to 609.224 	there is a ban on pistol possession which extends beyond the termination of probation.
Banned from possessing firearms for 3 years, or longer if there is a qualifying subsequent conviction (12.c.)	1. Gross Misdemeanor convictions under: <ul style="list-style-type: none"> • 609.255 false imprisonment OR <ul style="list-style-type: none"> • 609.378 neglect or endangerment of a child OR <ul style="list-style-type: none"> • 609.582, subd 4 Burglary 4 OR <ul style="list-style-type: none"> • 609.749 Harassment/Stalking 	This condition should be used in lieu of the standard firearms prohibition to ensure that the firearms ban extends beyond the termination of probation.
Banned for _____ years. (12.d.)	1. Misdemeanor or Gross Misdemeanor convictions under: <ul style="list-style-type: none"> • 609.2242 or 609.224 AND	Minimum of 3 years, maximum of life, to be determined by the court

Condition	When to Use	Reason
	<ul style="list-style-type: none"> Victim was family or household member AND <ul style="list-style-type: none"> used of a firearm in anyway 	This condition should be used in lieu of the standard firearms prohibition to ensure that the firearms ban extends beyond the termination of probation.
	2. Misdemeanor or Gross Misdemeanor convictions under: <ul style="list-style-type: none"> 518B.01, subd. 14 (j) AND used of a firearm in anyway	minimum of 3 years, maximum of life, to be determined by the court This condition should be used in lieu of the standard firearms prohibition to ensure that the firearms ban extends beyond the termination of probation.
	3. Gross Misdemeanor conviction under 609.749 AND <ul style="list-style-type: none"> used of a firearm in anyway 	minimum of 3 years, maximum of life, to be determined by the court This condition should be used in lieu of the standard firearms prohibition to ensure that the firearms ban extends beyond the termination of probation.
Banned for life.(12.e.)	Crime of violence	This condition should be used in lieu of the standard firearms prohibition to ensure that the firearms ban extends beyond the termination of probation.