

# EFFECTIVE COURT RESPONSES TO PERSONS CHARGED WITH DOMESTIC VIOLENCE OFFENSES

## UNDERSTANDING THE PROBLEM: DOMESTIC VIOLENCE

Domestic abuse accounts for 15% of all violent crime in the United States<sup>1</sup> and affects survivors' physical safety, emotional well-being, and ability to function in their day-to-day lives. On one day alone, domestic violence hotlines nationwide answered approximately 20,352 calls.<sup>2</sup> A national survey reports that over 1 in 3 women (37.3%) experienced intimate partner physical violence in their lifetime, and 36.6% to 57.2% experienced psychological aggression by an intimate partner in their lifetime.<sup>3</sup> In 2016, 49 states, the District of Columbia, Guam, and Puerto Rico reported a total caseload of over 928,128 civil protection orders.<sup>4</sup>

Domestic violence has a substantial economic impact. The cost of domestic violence exceeds \$8.3 billion per year, and victims lose a total of 8 million days of paid work each year.<sup>5</sup> This cost also extends to health care, with domestic violence resulting in nearly 2 million injuries, more than 550,000 of which require medical attention.<sup>6</sup> This number likely does not capture the full extent of injuries resulting from domestic violence needing medical attention, as only 34% of people who are injured by intimate partners receive medical care for their injuries.<sup>7</sup> The injuries suffered by victims of domestic violence also extend to their children. Approximately 324,000 pregnant women are abused each year in the United States; and domestic violence has been associated with poor pregnancy weight gain, infection, anemia, tobacco use, stillbirth, pelvic fracture, placental abruption, fetal injury, preterm delivery, and low birth weight.<sup>8</sup> One in fifteen children are exposed to intimate partner violence each year, and 90% of these children are eyewitnesses to this violence.<sup>9</sup>

Domestic violence often co-occurs with substance abuse. Several studies have found 40% to 60% of intimate partner violence incidences involve substance abuse.<sup>10</sup> One study also found that 92% of persons arrested for domestic violence crimes used alcohol or drugs on the day they assaulted the victim, 44% had prior arrests for charges involving violence, and 72% had substance abuse related arrests.<sup>11</sup>

Treatment programs, typically called batterer intervention programs, are a common sentencing outcome for persons convicted of domestic violence crimes. Although the goal of these programs is to reduce recidivism and promote victim safety, most evaluations indicate they are not effective in reaching these



goals.<sup>12</sup> More recently, lessons learned from implementation in a variety of settings suggest that these programs are more effective when they are part of a robust coordinated community response.<sup>13</sup>

A key challenge for courts in finding effective responses to domestic violence is the relationship between the victim and the person charged with a domestic violence offense. Unlike in other crimes, the person charged is or has been an intimate partner of the victim and, in many cases, is likely to remain in a relationship with the victim. Accountability of the person convicted of domestic violence often is not sought primarily through severity of punishment but through effective supervision and compliance with court orders, including protective orders and those mandating treatment services.<sup>14</sup> Broad goals for addressing domestic violence, such as the victim's long-term safety and well-being, are difficult to measure,<sup>15</sup> and the wide variety of court responses to domestic violence in different communities with varying resources makes sound comparative empirical research challenging.

## KEY FINDINGS: ELEMENTS OF EFFECTIVE COURT RESPONSES

As part of the development of a curriculum for judges, the National Center for State Courts reviewed the literature and consulted with researchers and practitioners regarding effective court responses to address domestic violence at three key points in the criminal justice process: pretrial, sentencing, and probation supervision. This brief summarizes eight key conclusions that emerged from the review.

- 1. Respect that the primary focus of the criminal justice system in domestic violence cases, especially at the outset, should be on managing risk to the victim's safety and well-being, rather than general recidivism risk reduction.**

Court responses to domestic violence must address not only accountability of the person charged with a domestic violence offense and recidivism risk reduction, but also the needs of the victim, which include safety, restitution, well-being, and empowerment. Risk to the victim includes the related

concept of the defendant's dangerousness and potential for lethality, which often is the highest when the victim has engaged the justice system to stop the abusive behavior.<sup>16</sup> The Battered Women's Justice Project has developed "Practice Checklists" to account for risk and danger at each step of the criminal justice process, from 911 dispatch through probation, and including civil protection orders.<sup>17</sup>

Accountability and effective treatment also contribute to long-term victim safety and well-being. All these goals are best achieved through a "Coordinated Community Response," which entails civic and criminal justice agency education and training, preventative and wrap-around services for victims and children, stay-away and protective orders, offender monitoring and accountability, use of planning and assessment tools, probation supervision practices, and treatment programs.<sup>18</sup>

**2. Use actuarial and clinical screening and assessment tools to assess risk of both repeat domestic violence and general recidivism. Domestic violence specific tools are important in identifying the treatment needs of persons convicted of domestic violence offenses.**

Because of the emphasis on protecting and promoting the safety and welfare of victims of domestic violence, most interventions in domestic violence cases focus on reducing the risk of further domestic violence, not on reducing the risk of general recidivism. Risk assessment tools include actuarial and clinical support tools (structured decision-making).<sup>19</sup> The actuarial tools often assess risk of general recidivism as well as repeated domestic violence. In fact, persons convicted of domestic violence crimes are roughly twice as likely to be re-arrested for a crime other than domestic violence as for domestic violence, e.g., about 40% compared to 20% re-arrested within 1 year.<sup>20</sup>

General risk assessment tools like the LSI-R and COMPAS are accurate in predicting domestic violence reoffending;<sup>21</sup> but some of the specialized domestic violence tools are less reliable in predicting general reoffending,<sup>22</sup> especially among low-risk person convicted of domestic violence. Most of the factors predicting general recidivism also predict domestic violence reoffending. Use of domestic violence specific tools are important in identifying the treatment needs of persons convicted of domestic violence. These tools include the Ontario Domestic Assault Risk Assessment (ODARA), an actuarial tool, and the Spousal Assault Risk Assessment Guide (SARA) and Danger Assessment Scale (DA), structured clinical judgment tools. Screening tools such as the Domestic Violence Screening Instrument (DVSI) can also be used to screen out low-risk persons charged with domestic violence crimes.<sup>23</sup>

**3. Consider using GPS devices to monitor compliance with no-contact orders for persons determined to present an on-going and significant risk to the safety of the victim.**

As part of a larger study of the use of GPS technology to enforce no-contact orders in domestic violence cases, researchers examined the impact of GPS technology in three jurisdictions on program compliance, re-arrests during the pretrial period, and re-arrests in a 1-year follow-up period after case disposition. The study compared outcomes for persons enrolled in the GPS program with those with other pretrial conditions (e.g., in jail, under house arrest with traditional electronic monitoring (RF), or released on bond without supervision). The researchers found that during the pretrial period, persons enrolled in the GPS program had fewer program violations compared to those under house arrest with RF monitoring, virtually no attempts to contact the victim, and fewer re-arrests. In the 1-year follow-up period, researchers compared GPS enrollees with those under any pretrial condition. In one jurisdiction, GPS enrollees had a lower probability of re-arrest for a domestic violence offense; while in another jurisdiction, they had a lower probability of re-arrest for any offence.<sup>24</sup>

**4. Consider using specialized probation supervision units providing enhanced contact with the victim and convicted person, consistent and appropriate follow-up on violations, and appropriate treatment, especially for higher risk persons.**

Mere monitoring of a convicted person's compliance with court orders or a person's progress in domestic violence treatment programs, by either probation or the court, has not been effective in reducing recidivism.<sup>25</sup> Guidelines of the American Probation and Parole Association recognize the superiority of specialized caseloads supervised by probation officers with special expertise in supervising persons convicted of domestic violence where feasible, such as in urban areas.<sup>26</sup> In one study, specialized probation supervision that provided enhanced probation contact with the victim and the convicted person, and more follow-up on technical violations, reduced risk of re-offense for lower risk persons.<sup>27</sup> Without treatment aimed at their specific risk, needs, and responsivity factors, however, supervision of higher risk persons is insufficient to reduce recidivism.<sup>28</sup>

**5. Do not place low-risk persons convicted of domestic violence on low-risk probation supervision caseloads at the outset.**

There is a group of low-risk persons convicted of domestic violence who rarely reoffend,<sup>29</sup> and in some studies two-thirds of those who do reoffend do so within the first 6 months.<sup>30</sup> These findings align with the recommendations of a national group of probation experts that low-risk persons convicted of domestic

violence not be placed on low-risk caseloads, especially at the outset.<sup>31</sup>

**6. Be aware that most research has found no solid empirical evidence for either the effectiveness or relative superiority of any of the traditionally popular batterer intervention programs including the often-used Duluth model.**

At least 28 states require the use of group-based batterer intervention programs (BIPs) based on the Duluth model developed in the 1980's in Duluth, Minnesota.<sup>32</sup> Yet, virtually every meta-analysis of the Duluth model has concluded that it has no statistically significant effect on recidivism. The same holds true for the broader set of group interventions.<sup>33</sup> However, several researchers advise against an over-reliance on meta-analyses to assess the impact of treatment programs. They emphasize the importance of including feedback from practitioners in interpreting research findings.<sup>34</sup> These researchers and others also point out that the most effective BIPs are in communities with well-resourced coordinated community response systems.<sup>35</sup>

Factors cited to explain the ineffectiveness of most BIPs include: (1) failure to tailor the treatment responses to the specific needs of the individual person convicted of domestic violence and account for the specific risk and needs factors of individuals (including substance abuse, mental health, age, criminal history, and education), (2) failure to link treatment to victim support and offender accountability mechanisms, (3) the use of a strictly educational approach that does not include sufficient skill building exercises needed to change convicted individuals' behaviors,<sup>36</sup> (4) and failure to address stages of change and motivation issues.<sup>37</sup>

There also are few standards of effectiveness for BIPs. Although 47 states had legislated standards for BIPs as of 2017, most state program standards are merely process-oriented (e.g. beginning on time, accurate reporting of absences, payment of fees).<sup>38</sup> Some researchers have emphasized the importance of setting and maintaining higher state standards that include program elements that hold individuals accountable for their abusive behavior, explain the dynamics and negative impacts of domestic violence, and address issues of coercive control where these are evident.<sup>39</sup> Some questions have also arisen whether the fee-paying requirements of most BIPs undermine their effectiveness.<sup>40</sup>

**7. Consider using treatment programs that have shown more success in changing behaviors of persons convicted of domestic violence offenses.**

Some researchers point to the success of "gender-based cognitive behavioral interventions" in which male narcissism and anti-social attitudes are

considered important responsivity factors. They also emphasize the importance of engagement with the convicted person; the provision of substance abuse treatment and mental health services where appropriate; supplementing cognitive behavioral treatment with the use of swift, certain, and fair sanctions in response to violations; and paying special attention to a cohort of high-risk individuals, estimated to be 20%, who are responsible for a high proportion of further and lethal assaults.<sup>41</sup>

In recent years, alternative, less confrontational types of treatment programs have also emerged. Some of these models draw upon principles of mindfulness and restorative justice.<sup>42</sup> One example is Achieving Change Through Values-Based Behavior (ACTV), which applies mindfulness techniques in addressing domestic violence and may offer an alternative for men engaged in situational couple violence. A recent study of an ACTV program compared ACTV participants with participants in a combination Duluth and Cognitive Behavioral Therapy program. Significantly fewer of the ACTV participants, both treatment completers and non-completers, acquired any new charges, domestic assault charges, or violent charges either during the treatment period or during the 1-year period after treatment ended.<sup>43</sup>

**8. Consider establishing a domestic violence docket within a coordinated community response to more effectively enhance accountability of persons convicted of domestic violence crimes, manage and reduce risk, and promote victim safety and well-being.**

Over the past 25 years, courts have responded to domestic violence by establishing specialized dockets or courts to address domestic violence. In 2010, the Center for Court Innovation identified 208 domestic violence courts, and since then numerous other jurisdictions have created some type of specialized domestic violence docket or court (civil protection orders; criminal cases, both civil and criminal; and integrated civil, criminal, and family).<sup>44</sup>

While domestic violence courts are one of the most common court responses to domestic violence, there has been relatively little research on their effectiveness in reducing recidivism and enhancing victim safety. Most of the research, which was conducted over 15 years ago, has indicated that domestic violence courts are no more effective than traditional courts in reducing batterer recidivism.<sup>45</sup> An early study of a specialized felony domestic violence court found that arrests actually increased.<sup>46</sup> One exception in the research literature is the domestic violence misdemeanor court in Lexington County, South Carolina. In a pre-post study, researchers found that the court's problem-solving court and procedural justice strategies, coupled with staying a 30-day jail sentence pending completion of 6 months of treatment, were effective in reducing recidivism

compared to the court's historical performance utilizing traditional processes to serve similar individuals during the pre-implementation period.

Although the research literature does not support domestic violence courts as an evidence-based practice, they have been considered a best practice when implemented within the context of a coordinated community response. Since 1998, the 15th Judicial District Court in Ann Arbor, MI, has found success with a specialized domestic violence docket that meets every other week with about 100 cases per year. The docket is attended by victims, defendants, specially trained victim advocates, prosecution and defense counsel, law enforcement, probation staff, BIP representatives, and a specially trained court officer. The court utilizes swift and certain sanctions and procedural fairness within this coordinated response to maximize the safety of victims and their families and enhance accountability for persons convicted of domestic violence crimes.<sup>47</sup>

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46. Newmark, L., Rempel, M., Diffily, K., & Kane, K. M. (2001). Specialized felony domestic violence courts: Lessons on implementation and impacts from the Kings County experience. Washington DC: Urban Institute. Retrieved from <https://www.courtinnovation.org/sites/default/files/documents/SpecializedFelonyDomesticViolenceCourts.pdf>.
47. See 15th Judicial District Court, Specialty Courts, Domestic Violence Specialty Docket [Webpage]. Retrieved from <https://www.a2gov.org/departments/15D/Pages/Specialty-Courts-.aspx>. Also see, Cawthon, J., Bennetts, J., & Wishkoski, M. (2018, April 6). Towards a coordinated criminal justice response: Improving pretrial practice in domestic violence cases [Webinar]. Retrieved from <https://drive.google.com/file/d/1JEdn7EK3amwg38eY0tTFriPUiPIMWHHt/view>.