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# **Practical Implications of Current Domestic Violence Research**

## **Part III: Judges**

**Andrew R. Klein**

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# Practical Implications of Current Domestic Violence Research

## Part III: Judges

**Andrew R. Klein**

### *Preface*

*The purpose of this work is to describe to practitioners what the research tells us about domestic violence, including its perpetrators and victims, and the impact of current responses to it and, more particularly, the implications of that research for day to day real world responses to domestic violence by law enforcement officers, prosecutors and judges.*

*While many state and federal statutes define “domestic violence” broadly, for the purposes of this work, it is confined to current or former intimate partners, married or unmarried, with or without children.*

*Most but not all of the research reports used in this manuscript are from National Institute of Justice funded studies and/or a variety of refereed journals. For example, several studies of women seeking hospital emergency room treatment for injuries inflicted by intimate partners are included because, although of primary concern to the medical community, these studies underscore victim characteristics found in criminal justice related research suggesting how representative the latter research is.*

*Less rigorous research reports are also included based on the quality of their data collected or because they provide accurate examples of performance measures. For example, several performance evaluations of specific programs are included, not because they address program effectiveness in terms of reabuse, but they provide concrete examples of what specific programs can achieve in terms of important program outputs such as arrests rates. Some of the most extensive examinations of prosecution practices have been initiated by newspaper-initiated investigations where reporters gained access to state court data tapes of thousands of cases.*

*While some research findings may be questionable because researchers employed less than rigorous research methodology, the research may be cited here because it contains accurate data illustrating an important phenomenon. The data are unaffected by the research design employed by the researchers. For example, while Gottman and Jacobson’s findings regarding the typology of batterers<sup>1</sup> have been questioned, their reported observations, if not their conclusions, have been confirmed.<sup>2</sup> They are cited supporting the proposition that batterer reaction to their violence is not uniform, not their more controversial conclusion that all batterers fall into two distinct categories.*

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<sup>1</sup> Jacobson, N. & Gottman, J. (1998). *When Men Batter Women*. New York, NY: Simon and Schuster.

<sup>2</sup> Meehan, J., Holtzworth-Monroe, A. & Herron, K. (2001). *Maritally Violent Men’s Heart Rate Reactivity to Martial Interactions: A Failure to Replicate the Gottman et. al. (1995) Typology*, *Journal of Family Psychology*, *13*, 409-414.

*The policy and practice implications are based on the evidence provided by the research and are therefore confined to areas specifically addressed by researchers. Consequently, the implications listed do not constitute a comprehensive listing of promising practices or even policies and procedures widely recognized to be effective. Whenever possible, policy implications are based on multiple studies. However, in some instances, where only one study examined an issue deemed to be important to practitioners, the policy implications may be drawn from just that one study. In such cases, the narrative will alert readers that the research has not yet been replicated.*

**Note to Judges:**

*While the following research and its implications are designed to address issues of concern to judges, judges wear different hats. Some of the research has implications for judges in their administrative role and other for their magisterial roles in criminal and civil courts. Obviously in the former role, judges need not be the same neutral arbiters they are in the latter. And, of course, once an abuser has been convicted, judges' concerns necessarily broaden to include many victim-related issues.*

*In regard to the judges' magisterial role in civil courts, the research mostly addresses issues relating to civil protective orders. The research reviewed does not directly address judges' roles in juvenile, divorce, and custody courts, other than addressing what is known about abusers, their victims, and domestic abuse in general.*

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## I. How widespread is the problem?

### How widespread is nonfatal domestic violence:

According to the latest 2005 National Crime Victimization Survey (NCVS), over the decade from 1993 to 2005, the average annual domestic violence rate per 1,000 population (age 12 or older) for intimate partners and/or relatives was 5.9 for females and 2.1 for males. About a third of the victims reported they were physically attacked; two-thirds were threatened with attack or death. A little more than half of the female victims suffered an injury, but only 5% were seriously injured. A little over 3% were sexually assaulted. Fewer male victims, 41.5%, reported injuries, less than 5% seriously. Those who were separated (or divorced) experienced more nonfatal domestic violence than those who were together.<sup>3</sup>

Victimization rates vary among different subpopulations. The highest reported rates are for Native American women.<sup>4</sup>

### What percent of police calls are for domestic violence?

Reflecting the extent of domestic violence, domestic violence-related police calls have been found to constitute the single largest category of calls received by police, accounting for between 15 and more than 50% of all calls.<sup>5</sup> Not all domestic violence calls are for activities that constitute crimes. Several New York studies, for example, found that 65% of such calls in upstate New York pertained to criminal conduct. In New York City, the police department found that 35% of reports pertained to specific chargeable index or other criminal offenses.<sup>6</sup> In San Diego, approximately 25% of calls for service in domestic violence cases result in an arrest.<sup>7</sup>

**Implications: Given the large numbers adversely affected by domestic violence, the fact that victims' prime countermeasure, separating from their abuser, does not stop the abuse, coupled with the amount of time committed to responding to domestic violence calls, arresting and prosecuting alleged offenders, judges must commit sufficient resources and attention to assure domestic violence cases are handled efficiently and effectively.**

**Research Basis:** *Disparate national surveys, supplemented by local police department and prosecution studies.*

<sup>3</sup> Catalano, S. (2007). Intimate Partner Violence in the United States, Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics ([www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs)).

<sup>4</sup> Malcoe, L. & Duran, B. (2004). Intimate Partner Violence and Injury in the Lives of Low-Income Native American Women, Washington D.C.: U.S. Department of Justice, National Institute of Justice, NCJ 199703.

<sup>5</sup> Hendricks, J. (ed.) (1991). Crises Intervention in Criminal Justice and Social Services. Springfield, IL: Charles C. Thomas Publishers; Friday, P., Lord, V., Exum, M. & Hartman, J. (2006). Evaluating the Impact of a Specialized Domestic Violence Police Unit. Washington DC: US Department of Justice, 2004-WG-BX-0004, National Institute of Justice, NCJ 215916.

<sup>6</sup> Family Protection and Domestic Violence Intervention Act of 1994: Evaluation of the Mandatory Arrest Provisions, Final Report, (2001) Albany, NY: Division of Criminal Justice Services and Office for the Prevention of Domestic Violence; Raiford, L. (2002). Report, New York City, NY: New York City Police Department, Domestic Violence Unit cited in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Wadsworth/Thomson.

<sup>7</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

### How widespread is stalking?

Estimates of stalking vary depending upon how it is defined. A 1995-1996 National Violence Against Women Survey (NVAWS) found that 5 per 1,000 females (18 and over) and 2 per 1,000 males report being stalked annually using a conservative definition that requires victims to suffer a high level of fear. Eighty percent of stalking victims are women, 87% of stalkers male. Most women were stalked by spouses/ex-spouses (38%), current or former intimates (10%), dating partners (14%), other relatives (4%), acquaintances (19%), and strangers (23%). Males were more likely than females to be stalked by strangers (36%) and acquaintances (34%).<sup>8</sup> Further, research suggests a close association between stalking and femicide. One study, for example, found more than half, 54%, of female intimate partner murder victims had reported stalking to police prior to their murders by the stalkers.<sup>9</sup>

**Implications: Whether specifically charged or not, it is important for judges to correctly identify stalking behavior and recognize its significance in order to afford victims maximum protection against potentially lethal abusers.**

**Research Basis:** *National study of 141 femicides and 65 attempted femicides, and confirmed in other stalking studies.*

### How widespread are intimate sexual assaults?

If there is physical abuse in domestic violence, studies suggest that there is most probably sexual abuse, also. A Texas study found almost 70% of women seeking protective orders were raped, most (79%) repeatedly.<sup>10</sup> Though lower, an earlier Massachusetts study found 55% of female restraining order petitioners reported to interviewers that they had been sexually assaulted by their abusers, although *none* included this in her affidavit requesting a protective order.<sup>11</sup> Female victims similarly underreported sexual abuse in a Colorado study. While 20% to 50% of women seeking protective orders had been subject to a variety of abuse, including forced sex within the preceding year, only 4% listed forced sex on the complaint form requesting the temporary restraining order.<sup>12</sup>

**Implications: Judges should be aware that sexual abuse is often part of domestic violence although victims may not report it or be prepared to cooperate in its prosecution. Evidence of sexual assaults should be taken into account when judges**

<sup>8</sup> Tjaden, P. & Thoennes, N. (1998). Stalking in America: Findings from the National Violence Against Women Survey, Research in Brief. Washington DC: US Department of Justice, 93-IJ-CX-0012, National Institute of Justice, NCJ 169592.; Winn, R. (1990). *Gender and Homicide: A Comparison on Men and Women who Kill, Violence and Victims*, 5(4), 236.,

<sup>9</sup> McFarlane, J., Campbell, J. C., & Wilt, S. (1999). *Stalking and Intimate Partner Femicide*. Homicide Studies 3 (4):300-316.

<sup>10</sup> McFarlane, J. & Malecha, A. (October 2005). *Sexual Assault Among Intimates: Frequency, Consequences and Treatments*. Washington D. NCJ 155284 C.: U.S. Department of Justice, 2002-WG-BX-0003, National Institute of Justice, NCJ 11678.

<sup>11</sup> Kramer, R. (1989). Alcohol and Victimization Factors in the Histories of Abused Women Who Come to Court: A Retrospective Case-Control Study. Ann Arbor, MI: UMI Dissertation Services.

<sup>12</sup> Harrell, A. & Smith, B. (1996). *Effects of Restraining Orders on Domestic Violence Victims*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 214-243.\

**consider abuser risk and victim vulnerability in terms of bail decisions, issuance of protective orders and sentencing abusers after pleas or convictions.**

**Research Basis:** *National survey as well as disparate individual studies from multiple regions.*

### **How widespread is fatal domestic violence?**

According to the Supplementary Homicide Reports of the FBI's Uniform Crime Reporting Program in 2005, 1,181 females and 329 males were killed by their intimate partners.<sup>13</sup> The number of men killed has dropped by almost three-quarters since 1976 while the number of women killed has only dropped by a quarter. The number of white females killed has declined the least, only 6%. Intimate homicides constituted 11% of all homicides between 1976 and 2005, about a third of all female murders and 3% of all male murders. The proportion of female homicide victims killed by an intimate is increasing. Unlike nonfatal domestic violence, most intimate homicides (54%) involve spouses or ex-spouses although intimate homicides for unmarried couples are approaching that for married or divorced couples.

Intimate partner homicides may also involve third parties, including children, bystanders, employers, and lawyers among others. For example, according to the Washington State Domestic Violence Fatality Review, between 1997 and 2004, there were 313 domestic violence fatalities cases in that state involving 416 homicides, including 23 children, 32 friends/family members of primary intimate victims, 19 new boyfriends of primary intimate victim, one co-worker of primary intimate victim, three law enforcement officers responding to the intimate homicide, 9 abusers killed by law enforcement, 10 abusers killed by friend or family of victims, as well as 93 abusers who committed suicide.<sup>14</sup>

**Implications: To reduce female homicides generally, judges must give priority to the protection of female intimates. Reduction of female intimate homicides will also reduce collateral homicides of children, other family members, and responding law enforcement officers as well as abuser suicides.**

**Research Basis:** *National data collected by Federal Bureau of Investigation.*

### **How widespread is multiple domestic violence victimization?**

Analysis of NVAWS data reveal that 18% of women who experienced abuse, experienced "systemic abuse," meaning they were likely to suffer physical attacks, with and without weapons, and strangulation, with a quarter also experiencing sexual assaults, and almost half experiencing stalking.<sup>15</sup> A study of dating violence similarly found substantial overlap between physical and sexual victimization.<sup>16</sup>

<sup>13</sup> Catalano, S. (2007). *Intimate Partner Violence in the United States*, Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics ([www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs)).

<sup>14</sup> Starr, K., Hobart, M., & Fawcett, J. (2004). *Findings and Recommendations from the Washington State Domestic Violence Fatality Review*, Seattle, WA: Washington Coalition Against Domestic Violence.

<sup>15</sup> Macmillan, R. & Kruttschnitt, C. (2005). *Patterns of Violence Against Women: Risk Factors and Consequences*. Washington D.C.: U.S. Department of Justice, 2002-II-CX-0011, National Institute of Justice, NCJ 208346.

<sup>16</sup> White, J. & Smith, P. (2004). *A Longitudinal Perspective on Physical and Sexual Intimate Partner Violence Against Women*, Washington D.C.: U.S. Department of Justice, National Institute of Justice, NCJ199708.,

**Implications: Although called upon to respond to discrete criminal charges, judges must insist they receive sufficient information to reveal any pattern of systemic, abusive behaviors in order to accurately understand victim vulnerability.**

**Research Basis:** *National survey and five year longitudinal study of college students from school considered representative of state colleges where 80% of all U.S. college students attend.*

## II. What domestic violence actually reaches courts?

As with any crime, not all incidents of domestic violence are reported to law enforcement and not all that are reported to law enforcement are forwarded to prosecutors. Finally, even less is generally prosecuted in court.

Both the older NVAWS and the more contemporary NCVS reports agree that victims do not report all cases of their victimization to police. According to NVAWS, 27% of women and 13.5% of men who are physically assaulted by an intimate reported their assault to law enforcement. Less than 20% of women reported intimate partner rapes to police. Reporting rates for stalking are higher with 52% of women and 36% of men reporting them to law enforcement.

A succession of NCVS surveys over the last several decades finds much higher reporting rates (but for a far lesser number of victimizations). According to these surveys, reporting to police of nonfatal partner victimization has increased for all victims, male and female to over 62% with no gap between male and female victim reporting rates. The highest reporting is for black females (70.2%) and the lowest is black males (46.5%).<sup>17</sup>

Comparing hundreds of actual police domestic violence incident reports with victim statements in four sites in three different states, researchers found a proportion of victims deny abuse documented by police. Researchers found 29% of victims reported “no assault,” contradicting police findings. Ironically, their alleged assailants were more likely to admit to the assaults with only 19% reporting “no assault” Suspects, however, were more likely to minimize the severity of the assaults compared to their victims.<sup>18</sup> Researcher also finds that some victims do not report repeated incidents of abuse to police. A review of NCVS data from 1992 through 2002 found that although 60% of the victims had been assaulted by their intimate partners before, only half of the subsequent survey assaults were reported to police, and these included reports made by persons other than the victim. Prior unreported domestic violence may be more serious than the incident actually reported.<sup>19</sup>

Reasons for not reporting found in the 2005 NCVS included belief that the abuse was a private or personal matter (22% for female and 39% for male); fear of reprisal (12% for female, 5% for male); desire to protect the suspect (14% for female, 16% for male); and belief police won’t do anything (8% for female and male).<sup>20</sup>

<sup>17</sup> Catalano, S. (2007).

<sup>18</sup>Felson, R., Ackerman, J. & Gallagher, C. (2005). Police Intervention and the Repeat of Domestic Assault. Washington D.C.: U.S. Department of Justice, 2002-WG-BX-2002, National Institute of Justice, NCJ 210301.

<sup>19</sup> Felson, R., Ackerman, J. & Gallagher, C. (2005). Police Intervention and the Repeat of Domestic Assault. Washington D.C.: U.S. Department of Justice, 2002-WG-BX-2002, National Institute of Justice, NCJ 210301.

<sup>20</sup> Catalano, S. (2007); Felson, R., Ackerman, J. & Gallagher, C. (2005). Police Intervention and the Repeat of Domestic Assault. Washington D.C.: U.S. Department of Justice, 2002-WG-BX-2002, National Institute of Justice, NCJ 210301.

Once reported, police arrest rates vary depending upon the jurisdiction and how each defines domestic violence. Arrests for domestic violence per 1,000 population range from 3.2 in Omaha, Nebraska (2003) to 12.2 in Wichita, Kansas (2000).<sup>21</sup>

Prosecution rates similarly vary. A review of 26 domestic violence prosecution studies from across the country found prosecution per arrest ranged from 4.6% in Milwaukee reported in 1992 to 94% reported in Hamilton, Ohio in 2005. The average rate was 63.8% and the median rate was 59.5%.<sup>22</sup>

**Implications: Judges typically see only a small minority of domestic violence cases that actually occur.**

**Research Basis:** *Multiple studies across the country based on victim surveys, police arrest records, and court cases.*

### **When do victims report?**

Victims do not generally report their initial intimate victimization, but typically suffer multiple assaults and/or related victimizations before they contact authorities and/or apply for protective orders.<sup>23</sup> A Texas protective order study, like others conducted across the country, for example, found 68% of the victims taking out orders had been physically abused by their partners in the preceding two years before they took out orders.<sup>24</sup> A Massachusetts arrest study found that a majority of intimate victims (55%) sampled who called police reported that either the frequency or severity of on-going abuse was increasing at the time. Another 11% reported no increases in either but increased controlling behaviors such as restrictions on freedom of movement, access to money, medical or counseling services, or social support.<sup>25</sup>

The NCVS found victims were more likely to report re-assaults, than initial assaults.<sup>26</sup>

**Implications: Judges should not assume that the civil petition or criminal case before them represents isolated, unique behaviors on the part of the involved parties, particularly the abuser. While this assumption may not be relevant until after the specific petition or case has been decided, it must be considered in terms of fashioning remedies/sanctions.**

<sup>21</sup> Klein (2004). *The Criminal Justice Response to Domestic Violence*. Belmont, CA: Wadsworth/Thomson.

<sup>22</sup> Garner, Joel H., and Christopher D. Maxwell (2008). *Prosecution and Conviction Rates for Intimate Partner Violence*. Shepherdstown, WV: Joint Centers for Justice Studies, Inc. 49.

<sup>23</sup> Felson, R., Ackerman, J. & Gallagher, C. (2005). *Police Intervention and the Repeat of Domestic Assault*. Washington D.C.: U.S. Department of Justice, 2002-WG-BX-2002, National Institute of Justice, NCJ 210301; Harrell, A. & Smith, B. (1996). *Effects of Restraining Orders on Domestic Violence Victims*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 214-243; Keilitz, S., Hannaford, P. & Efken, H. (1997). *Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence*. Washington D.C.: U.S. Department of Justice, 93-IJ-CX-0035 National Institute of Justice.

<sup>24</sup> Carlson, M., Harris, S., & Holden, G. (1999). *Protective Orders and Domestic Violence: Risk Factors for Reabuse*. *Journal of Family Violence*, 14 (2), 205-226.

<sup>25</sup> Buzawa, et. al. (1999).

<sup>26</sup> Felson, R., Ackerman, J. & Gallagher, C. (2005). *Police Intervention and the Repeat of Domestic Assault*. Washington D.C.: U.S. Department of Justice, 2002-WG-BX-2002, National Institute of Justice, NCJ 210301.

**Research Basis:** *Both national and a multitude of disparate individual jurisdictional studies agree that battering likely to come to the attention of the criminal justice system represents repeated activity.*

### **Are there are other major sources of domestic violence reporting?**

Unlike most crimes, there are parallel tracks for victim reporting domestic violence. They can call law enforcement or they can petition courts directly for civil protective orders. In many jurisdictions, *more* victims report intimate assaults and related crimes to civil courts than to law enforcement.<sup>27</sup> Research from both sides of the country, Massachusetts<sup>28</sup> and the state of Washington,<sup>29</sup> however, indicates that the abuse reported in this civil setting is not significantly different from that reported to law enforcement.

**Implications:** *Notwithstanding the court arena, civil or criminal, the abuse reported is typically as serious in one as the other. The major differences are the responses courts can offer.*

**Research Basis:** *Disparate observational studies across the country as well as reported data from multiple states.*

### **Which domestic violence offenses are generally reported to law enforcement and prosecuted?**

Notwithstanding varying number and types of crimes that constitute “domestic violence” in different state and federal codes, most, almost two-thirds to three-quarters of domestic violence cited in law enforcement incident reports are for assaults.<sup>30</sup> Similarly, in terms of cases selected by prosecutors for prosecution, assaults predominate. A study of domestic violence prosecutions in California, Oregon, Nebraska and Washington, for example, found assaults formed from 59% to 81% of all prosecuted domestic violence cases.<sup>31</sup>

<sup>27</sup> Klein, A. (2004). *The Criminal Justice Response to Domestic Violence*. Belmont, CA: Thomson/Wadsworth.

<sup>28</sup> Cochran, D., Adams, S., & O'Brien, P. (June/July 1998). *From Chaos to Clarity in Understanding Domestic Violence, Domestic Violence Report 3*, (5); Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 192-214.

<sup>29</sup> Holt, V., Kernic, M., Wolf, M., & Rivara, F. (2003). *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?* *American Journal of Preventive Medicine*, 24 (1), 16-21.

<sup>30</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). *Response to Domestic Violence in a Pro-Active Court Setting, Final Report*. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Friday, P., Lord, V., Exum, M. & Hartman, J. (2006). *Evaluating the Impact of a Specialized Domestic Violence Police Unit*. Washington D.C.: U.S. Department of Justice, 2004-WG-BX-0004, National Institute of Justice, NCJ 215916.; Holt, V., Kernic, M., Lumley, T., Wolf, M., & Rivara, F. (2002). *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*. *Journal of American Medical Association*, 288 (5), 598-594; Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). *An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report*, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029 National Institute of Justice, NCJ 187772; Wordes, M. (2000). *Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence*, Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781

<sup>31</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). *An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report*, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

The percentage of felony assaults varies widely reflecting specific state felony enhancement statutes and the like. The highest percent of felony assault domestic violence charges documented, 41%, is in California where injurious domestic assaults are classified as felonies.<sup>32</sup> However, most studies find much smaller percentages of felony assault charges, including 13.7% in Charlotte, N.C.<sup>33</sup> to only 5.5% in Massachusetts<sup>34</sup> as most physical injuries are minor and most cases do not involve the use of weapons. The NVCS found simple assaults against female intimates to be almost five times greater than aggravated assaults in 2005. Most assaults (80.5%) do not involve weapons.<sup>35</sup>

**Implications: Reducing assault charges to non-assault charges allows convicted abusers to retain firearms otherwise prohibited pursuant to federal law, 18 U.S.C. §922(g)(9), that prohibits abusers convicted of misdemeanor assaults from possessing firearms or ammunition. Qualifying offenses must include the use or attempted use of physical force or the threatened use of a deadly weapon. Judges can facilitate application of the federal prohibition by making specific findings of these necessary elements in the federal law.**

**Research Basis:** *Numerous observational studies from across the country as well as finding of national victim surveys, 1993 – 2004.*

### III. Should arrest be encouraged?

A major re-examination of a series of fairly rigorous experiments in multiple jurisdictions finds that arrest deters repeat reabuse, whether suspects are employed or not. In none of the sites was arrest associated with increased reabuse among intimate partners.<sup>36</sup> Another major study based on 2,564 partner assaults reported in the NCVS (1992-2002) found that whether police arrested the suspect or not, their involvement has a strong deterrent effect. The positive effects of police involvement and arrest are not dependent upon whether or not the victim or a third party reported the incident to law enforcement. Nor are they dependent upon the seriousness of the incident assault, whether a misdemeanor or felony.<sup>37</sup>

A Berkeley arrest study found, for example, that action taken by responding officers, including arrest, providing victims with information pamphlets, taking down witness statements, and helping victims secure protective orders, all were associated with reduced reabuse. By contrast, the highest reabuse rates were found where the responding

<sup>32</sup> Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence, Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice, NCJ 182781

<sup>33</sup> Friday, P., Lord, V., Exum, M. & Hartman, J. (2006). Evaluating the Impact of a Specialized Domestic Violence Police Unit, Washington D.C.: U.S. Department of Justice, 2004-WG-BX-0004, National Institute of Justice, NCJ 215916.

<sup>34</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report, Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>35</sup> Catalano, S. (2007). Intimate Partner Violence in the United States, Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics ([www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs)).

<sup>36</sup> Maxwell, C., Garner, J. and Fagan, J. (June, 2001). The Effects of Arrest on Intimate Partner Violence: New Evidence from the Spouse Assault Replication Program, National Institute of Justice Research in Brief, Washington D.C.:U.S. Department of Justice, National Institute of Justice, NCJ 188199.

<sup>37</sup> Felson, R., Ackerman, J. & Gallagher, C. (2005). Police Intervention and the Repeat of Domestic Assault, Washington D.C.: U.S. Department of Justice, 2002-WG-BX-2002, National Institute of Justice, NCJ 210301.,

officers left it to the victim to make a “citizen arrest,” swearing out a complaint herself.<sup>38</sup> Research has also shown that police response also significantly increases the likelihood that victims’ will secure protective orders.<sup>39</sup> Further, studies have found that police arrests over victims’ objections do not reduce likelihood of victims reporting new abuse to police.<sup>40</sup>

**Implications: Judges encourage the arrest of abusers by ensuring that domestic violence cases that reach court are heard and not dismissed out of hand.**

**Research Basis:** *The efficacy of arrests has been widely researched; the influence of prosecutors on law enforcement arrest behavior has been found in studies that find pro-arrest departmental policies mitigate anti-arrest personal views of individual officers.*<sup>41</sup>

### **What should the response be when the suspect is brought in on an arrest or court default warrant?**

A large percentage of alleged abusers leave the crime scene before law enforcement arrives. Where noted, absence rates range from 42% to 66%.<sup>42</sup> Pursuing them, including the issuance of warrants, is associated with reduced re-victimization.<sup>43</sup> Pursuing absent suspects may be of particular utility because limited research finds suspects who flee the scene before police arrive are significantly more likely to have prior

<sup>38</sup> Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence. Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781

<sup>39</sup> Jolin, A., Feyerherm, W., Fountain, R., & Friedman, S. (1998). Beyond Arrest: The Portland, Oregon Domestic Violence Experiment. Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0054, National Institute of Justice, NCJ 179968; Lyon, E. (2002). Special Session Domestic Violence Courts: Enhanced Advocacy and Interventions, Final Report Summary. Washington D.C.: U.S. Department of Justice, 98-WE-VX-0031, National Institute of Justice, NCJ 197860; Lyons, E. (2005). Impact Evaluation of Special Sessions Domestic Violence: Enhanced Advocacy and Interventions. Washington D.C.: U.S. Department of Justice, 2000-WE-VX-0014, National Institute of Justice, NCJ 210362.

<sup>40</sup> Apsler, R., Cummins, M. & Carl, S. (2003). *Perceptions of the Police by Female Victims of Domestic Partner Violence*, Violence Against Women, 9,1318.

<sup>41</sup> Feder, L.(1999). *Police Handling of Domestic Violence Calls: An Overview and Further Investigation*. In L. Feder (Ed.) Women and Domestic Violence, An Interdisciplinary Approach. New York, N.Y.: Haworth Press, 49-69.

<sup>42</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Dunford, F. (1990). *System Initiated Warrants for Suspects of Misdemeanor Domestic Assault: A Pilot Study*. Justice Quarterly, 7, 631-653; Hirschel, D., Buzawa, E., Pattavina, A., Faggiana, D. & Ruelan, M. (2007). Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases. Washington D.C.: U.S. Department of Justice, 2001-WT-BX-0501, National Institute of Justice, NCJ 218355.; A. (2001). Models of Community Coordination in Partner Violence Cases: A Multi-side Comparative Analysis, Final Report. Washington D.C.: U.S. Department of Justice, 95-WT-NX-0006, National Institute of Justice, NCJ 187351; Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence, Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781; <sup>42</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

<sup>43</sup> Dunford, F. (1990). *System Initiated Warrants for Suspects of Misdemeanor Domestic Assault: A Pilot Study* Justice Quarterly, 7, 631-653.

criminal histories and higher reabuse rates than those arrested at the scene.<sup>44</sup> Similarly, another single study also finds higher reabuse if the *victim* is gone when officers arrive.<sup>45</sup>

Decreasing defendant defaults may also be associated with reduced reabuse. A study of Cook County's four misdemeanor domestic violence courts found, for example, that no show defendants had a significantly greater number of new arrests than those who showed in court, .778 compared to .456.<sup>46</sup>

**Implications: Judges should treat alleged abusers brought to court on warrants at least as seriously as those arrested at the scene, even if the defendant appeared “voluntarily” to clear up the warrant.**

**Research Basis:** *Numerous studies confirm a large proportion of abusers flee the scene, only one has looked at differences in records of those that flee and those that remain.*

### Who is the Primary/Predominant Aggressor?

A substantial percent of victims of domestic violence hit their perpetrators back in retaliation or self defense.<sup>47</sup> In Massachusetts, more than a third of the female victims fought back in the incident in which their male abuser was arrested, although most (59.1%) of those who did found it made their abuser more violent.<sup>48</sup> Further, a substantial number of victims will not self-disclose their victimization.<sup>49</sup> Consequently, determination of the primary or predominant aggressor may not be self-evident or easy. Nonetheless, data on police action in 2,819 jurisdictions in 19 states reveal only 1.9% of incidents resulted in dual arrests for intimate partner violence (and intimidation). In other words, less than 4% of all intimate partner arrests were dual arrests.<sup>50</sup>

However, this same study suggests that officers' determination of primary or predominate aggressor is particularly problematic when the intimate partner violence occurs between same-sex couples. Although police are equally likely to make arrests in same-sex as heterosexual partner abuse cases, a study of more than 1,000 same sex intimate partner violence reports found officers were substantially more likely to arrest both parties in same sex cases. Specifically, 26.1% of female same sex cases and 27.3%

<sup>44</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>45</sup> Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence, Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice, NCJ 182781

<sup>46</sup> Hartley, C. & Frohmann, L. (2003).Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>47</sup> Gelles, R. (1997). Intimate Violence in Families, 3<sup>rd</sup> edition. Thousand Oaks, Ca: Sage.

<sup>48</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>49</sup> Bureau of Justice Statistics Factbook (1998). Violence by Intimates: An Analysis of Data on Crimes by Current and Former Spouses, Boyfriends and Girlfriends. Washington D.C.: Bureau of Justice Statistics, NCJ-167237.

<sup>50</sup> Hirschel, D., Buzawa, E., Pattavina, A., Faggiana, D. & Ruelan, M. (2007). Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases. Washington D.C.: U.S. Department of Justice, 2001-WT-BX-0501, National Institute of Justice, NCJ 218355.

of male same sex cases were dual arrests compared to only 0.8% with male offenders and female victims and 3% with female offenders and male victims.<sup>51</sup>

**Implications:** In dual arrest cases, judges should insist prosecutors provide evidence that one of the parties was the primary or predominant aggressor and the other the victim. This may be particularly important as advocates caution that female victims who are arrested along with their abusers may nonetheless plead guilty in order to be able to return home to care for minor children. Further, it appears that law enforcement finds it particularly challenging to determine primary/predominant aggressor with same sex couples.

**Research Basis:** *The most significant dual arrest study was based on examination of all assault and intimidation cases in a 2000 National Incident-Based Reporting System (NIBRS) database as well as more detailed examination of these data from 25 diverse police departments across the country.*

## IV. Who are the Perpetrators?

### What is their gender?

While sociological research beginning with a national survey based on self-reporting thirty years ago,<sup>52</sup> finds equal male and female partner “conflict,” including mostly minor physical assaults, in terms of behavior likely to violate most state and federal criminal and civil (protective order) statutes, the typical perpetrator of nonfatal domestic violence is even more likely to be male than that found in the national victim surveys.<sup>53</sup>

The rate of male perpetrators that come to the attention of the criminal justice system range from 86% for both restraining order petitioners across Massachusetts<sup>54</sup> and those arrested for domestic violence in California<sup>55</sup> to 92% of all defendants placed on probation for domestic violence across Rhode Island<sup>56</sup> to 97.4% in California.<sup>57</sup> Jurisdiction with higher numbers of female suspects and male victims usually include higher number of non-intimate family violence cases as opposed to intimate partner violence cases.<sup>58</sup>

<sup>51</sup> Pattavina, A., Hirschel, D., Buzawa, E., Faggiani, D. & Bentley, H. (2007). Comparison of the Police Response to Heterosexual Versus Same-Sex Intimate Partner Violence. *Violence Against Women* 13 (4), 374-394 (Abstract in NCJ 218287).

<sup>52</sup> Straus, M., Gelles, R., & Steinmetz, S. (1980). Behind Closed Doors: Violence in American Family. Garden City, NY: Doubleday.

<sup>53</sup> Macmillan, R. & Kruttschnitt, C. (2005). Patterns of Violence Against Women: Risk Factors and Consequences. Washington D.C.: U.S. Department of Justice, 2002-IJ-CX-0011 National Institute of Justice, NCJ 208346.

<sup>54</sup> Adams, S. (1999). Serial Batterers. Boston, MA: Office of the Commissioner of Probation.

<sup>55</sup> Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence, Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781

<sup>56</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island’s Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>57</sup> Friday, P., Lord, V., Exum, M. & Hartman, J. (2006). Evaluating the Impact of a Specialized Domestic Violence Police Unit. Washington D.C.: U.S. Department of Justice, 2004-WG-BX-0004, National Institute of Justice, NCJ 215916.

<sup>58</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029 National

**Implications: If upon reviewing domestic violence dockets, judges find much higher rates of female on male abuse cases that that are typically found across the country as a whole, they should be alert to potential gender bias on the part of police and/or prosecutors and ensure that they are presented with sufficient evidence to confirm correct designation of victim and offender.**

**Research Basis:** *Multiple studies of abusers/victims brought to attention of criminal justice system, including civil protective orders, as opposed to studies focusing on family conflict, youthful aggression and the like outside of the criminal justice system.*

### **What age are they?**

Most studies find most perpetrators to be between 18 and 35 with a median age of about 33 years, although they range in age from 13 to 81.<sup>59</sup> A large West coast study of abusers subject to police incident reports or protective orders found 33% were between 20 and 29 years old, and slightly more, 33.4%, were between 30 and 39 years old.<sup>60</sup>

### **Are they likely already known to the criminal justice system?**

Most studies agree that many if not most domestic violence perpetrators that come to the attention of criminal justice or court authorities have a prior criminal history for a variety of non-violent and violent offenses, against males as well as females, domestic and non-domestic. The percent of officially identified perpetrators with criminal histories range from a low of 49% for prior arrest within five years in an arrest study in Portland, Oregon<sup>61</sup> to 89% for at least one prior non-violent misdemeanor arrest for misdemeanor domestic violence defendants arraigned in a Toledo, Ohio Municipal Court.<sup>62</sup> Not only did most of the abusers brought to the Toledo Court for domestic violence have a prior arrest history, but the average number of prior arrests was fourteen. Similarly, 84.4% of men arrested for domestic violence in Massachusetts had prior criminal records, averaging a little more than 13 prior charges (resulting from five to six arrests) for a variety of charges. A study of intimate partner arrests in Connecticut, Idaho and Virginia of more than a thousand cases documented that almost seventy percent (69.2%) had a

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Institute of Justice, NCJ 187772; Klein, A., Tobin, T., Salomon, A. (2008). A Statewide Profile of Abuse of Older Women and the Criminal Justice Response. Washington D.C.: U.S. Department of Justice, 2006-WG-BX-0009, National Institute of Justice (NCJ pending).

<sup>59</sup> Belknap, J., Graham, D., Hartman, J., Lippen, V., Allen, G., & Sutherland, J. (2000). Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables, Executive Summary. Washington D.C.: U.S. Department of Justice, 96-WT-NX-0004 National Institute of Justice, NCJ 184112; Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Friday, P., Lord, V., Exum, M. & Hartman, J. (2006). Evaluating the Impact of a Specialized Domestic Violence Police Unit. Washington D.C.: U.S. Department of Justice, 2004-WG-BX-0004, National Institute of Justice, NCJ 215916; Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence. Washington D.C.: U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice, NCJ 182781

<sup>60</sup> Holt, V., Kernic, M., Wolf, M., & Rivara, F. (2003). *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?* American Journal of Preventive Medicine, 24 (1), 16-21.

<sup>61</sup> Jolin, A., Feyerherm, W., Fountain, R., & Friedman, S. (1998). Beyond Arrest: The Portland, Oregon Domestic Violence Experiment, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0054, National Institute of Justice, NCJ 179968.

<sup>62</sup> Ventura, L. & Davis, G. (October 2004). Domestic Violence: Court Case Conviction and Recidivism in Toledo. Toledo, OH: University of Toledo Urban Affairs Center.

prior record, 41.8% for a violent crime.<sup>63</sup> A study of the Cook County (Chicago) misdemeanor domestic violence court found that 57% of the men charged with misdemeanor domestic violence had prior records for drug offenses, 52.3% for theft, 68.2% for public offenses and 61.2% for property crimes. They averaged 13 prior arrests.<sup>64</sup>

Studies of abusers brought to court for protective orders find similar high rates of criminal histories, ranging from a little more than 70% in a Texas<sup>65</sup> to 80% in Massachusetts.<sup>66</sup>

Even if abusers have no prior arrest records, they may be known to local police. In North Carolina, for example, based on police files, researchers found that 67.7% of the domestic violence arrestees had prior contact with the local criminal justice system, 64.5% were officially known by local police, and 48.3% had prior domestic violence incident reports.<sup>67</sup>

**Implications: Given the large overlap between domestic violence and general criminality, judges should carefully check domestic violence suspects' status in regard to outstanding warrants, pending cases, probationary or parole status, and other concurrent criminal justice involvement. Conversely, in sentencing defendants for other crimes, judges should look for concurrent domestic violence that may be pending or previously prosecuted.**

**Research Basis:** *Multiple studies from jurisdictions across the country confirm these findings although the extent of prior records may vary depending upon jurisdictional law enforcement and court practices and resources.*

### **Are they likely to be drug and/or alcohol abusers?**

As with criminality in general, there is a high correlation (but not necessarily causation) between substance/alcohol abuse and domestic violence for both abusers and, to a lesser extent, victims. One arrest study found up to 92 percent of assailants used drugs or alcohol on the day of the assault, nearly half of whom were described by families as daily substance abusers for the prior month.<sup>68</sup> Other studies have substantial but less use. For example, a California arrest study found alcohol and or drugs were

<sup>63</sup> Hirschel, D., Buzawa, E., Pattavina, A., Faggiana, D. & Ruelan, M. (2007). Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases. Washington D.C.: U.S. Department of Justice, 2001-WT-BX-0501, National Institute of Justice, NCJ 218355.

<sup>64</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>65</sup> Carlson, M., Harris, S., & Holden, G. (1999). Protective Orders and Domestic Violence: Risk Factors for Reabuse. Journal of Family Violence, 14 (2), 205-226.

<sup>66</sup> Klein, A. (1996). Reabuse in a Population of Court Restrained Batterers. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214.

<sup>67</sup> Friday, P., Lord, V., Exum, M. & Hartman, J. (2006). Evaluating the Impact of a Specialized Domestic Violence Police Unit. Washington D.C.: U.S. Department of Justice, 2004-WG-BX-0004, National Institute of Justice, NCJ 215916.

<sup>68</sup> Brookoff, D. (October 1997). Drugs, Alcohol, and Domestic Violence in Memphis. Research Review. Washington D.C.: U.S. Department of Justice, National Institute of Justice, NCJ 000172.

involved in 38% of the domestic violence incident arrests.<sup>69</sup> Interviews with more than 400 North Carolina female victims who called police for misdemeanor domestic assaults found almost 2/3rds of the abusers were drinking at the incident, having consumed an average of almost seven drinks resulting in more than half (58%) being drunk.<sup>70</sup>

A domestic violence fatality review study in New Mexico documented that alcohol and drugs were present in 65% of 46 domestic violence homicides between 1993 and 1996, 43% alcohol and 22% drugs.<sup>71</sup>

Both a batterer and alcohol treatment study similarly reveals a consistent, high correlation between alcohol abuse and domestic violence. In one, for example, 272 males entering treatment for battering or alcoholism, the odds of any male to female aggression were 8 to 11 times higher on days they drank than days they had not. It was 11 times higher on days the men were drinking than on days of no drinking.<sup>72</sup>

**Implications: The presence of drug and/or alcohol abuse makes continued offending more likely. While sobriety may not eliminate the risk for reabuse, research suggests it may be a necessary ingredient.**

**Research Basis: Correlation is found in multiple studies across the country.**

### **Are they likely to be mentally ill? Or have certain personality types?**

Batterers are no more likely to be mentally ill than the general population.<sup>73</sup> Although various researchers have attempted to classify abusers, ranging from agitated “pitbulls” and silent “cobras”<sup>74</sup> to “dysphoric/borderline” and “generally avoidance and anti-social,”<sup>75</sup> attempts to utilize these classifications to predict risk of reabuse have proven unhelpful.<sup>76</sup> However, researchers agree that batterers differ markedly.<sup>77</sup> While some, for example, may appear to responding police officers as emotionally overwrought, others may appear calm and collected, labeled by two researchers as “pitbulls” versus “cobras.”<sup>78</sup> Other research suggests that batterers can be classified as low, moderate and

<sup>69</sup> Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence. Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781

<sup>70</sup> Hutchison, I. (1999). The Influence of Alcohol and Drugs on Women’s Utilization of the Police for Domestic Violence. Washington D.C.: U.S. Department of Justice, 97-IJ-CX-0047, National Institute of Justice, NCJ 179277.

<sup>71</sup> Olson, L., Crandall, C., & Broudy, D. (1998). Getting Away with Murder. A Report of the New Mexico Female Intimate Partner Violence Death Review Team. Albuquerque, NM: Center for Injury Prevention Research and Education, University of New Mexico School of Medicine.

<sup>72</sup> Fals-Stewart, W. (2003). The Occurrence of Partner Physical Aggression on Days of Alcohol Consumption: A Longitudinal Diary Study. Journal of Consulting Psychology 71 (1), 41-52.

<sup>73</sup> Gondolf, E. & White, R. (2001). Batterer Program Participants Who Repeatedly Reassault: Psychopathic Tendencies and Other Disorders. Journal of Interpersonal Violence, 16, 361-380.

<sup>74</sup> Jacobson, N. & Gottman, J. (1998). When Men Batter Women. New York, NY: Simon and Schuster.

<sup>75</sup> Holtzworth-Munroe, A., & Meehan, J.C. (2004). Typologies of Men Who are Maritally Violent: Scientific and Clinical Implications. Journal of Interpersonal Violence, 18.

<sup>76</sup> Heckert, D., & Gondolf, E. (2004). Battered Women’s Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault. Journal of Interpersonal Violence, 19 (7), 778-800.

<sup>77</sup> Saunders, D.G.(1994). A Typology of Men Who Batter: Three Types Derived from Cluster Analysis. American Journal of Orthopsychiatry, 62, 264-275; Holtzworth-Munroe, A. & Stuart, G.L.(1994). Typologies of Male Batterers: Three Subtypes and the Differences Among Them. Psychological Bulletin, 116, 476-497; Chase, K.A., O’Leary, K.D., & Heyman, R.E. (2001). Categorizing partner-Violent Men Within the Reactive-Proactive Typology Model. Journal of Consulting and Clinical Psychology, 69, 567-572.

<sup>78</sup> Jacobson, N. & Gottman, J. (1998). When Men Batter Women. New York, NY: Simon and Schuster.

high and that, contrary to common beliefs, batterers remain within these categories.<sup>79</sup> Similarly, in the treatment literature the multi-state study of four batterer intervention programs consistently found that approximately a quarter of court referred batterers are high level abusers, unlikely to respond to treatment.<sup>80</sup>

**Implications: Battering does not appear to be a mental aberration, responsive to mental health counseling.**

**Research Findings:** *Multiple studies have failed to validate any classification of battering propensity based on personality types or mental illnesses although multiple observational studies reveal different patterns of behaviors among batterers.*

### **Do abusers stick with one victim?**

Deprived of their victim, many abusers will go on to abuse another intimate partner or family member. Others may abuse multiple intimate partners and family members simultaneously.<sup>81</sup> The Rhode Island probation study, for example, found that in a one year period, more than a quarter (28%) of those probationers who were re-arrested for a new crime of domestic violence abused a different partner or family member.<sup>82</sup> The Massachusetts study of persons arrested for violating a civil restraining order found that almost half (43%) had *two or more* victims over six years.<sup>83</sup> This confirms an earlier state study that found 25% of individuals who had protective orders taken out against them in 1992 had up to eight new orders taken out against them by as many victims over the subsequent six years.<sup>84</sup>

Studies have generally found that abusers who go on to abuse new partners are not substantially different from those who reabuse the same partner, with the exception they tend to be younger, and not married to their partners.<sup>85</sup>

**Implications: In fashioning protective orders or criminal sanctions, judges must be concerned with future as well as immediate intimate victims even if the immediate victims are no longer available to the abusers.**

<sup>79</sup> Cavanaugh, M. & Gelles, R. (2005). *The Utility of Male Domestic Violence Typologies*, *Journal of Interpersonal Violence* 20 (2), 155-166.

<sup>80</sup> Gondolf, E. (2001). *The Program Effects of Batterer Programs in Three Cities*. *Violence and Victims*, 16, 693-704; Gondolf, E. (1997). *Results of a Multi-site Evaluation of Batterer Intervention Systems*. Indiana, PA: Mid-Atlantic Addiction Training Institute; Gondolf, E. (2000). *A 30-month Follow-up of Court Referred Batterers in Four Cities*. *International Journal of Offender Therapy and Comparative Criminology*, 44 (1), 111-128.

<sup>81</sup> Cochran, D., Adams, S., & O'Brien, P. (June/July 1998). *From Chaos to Clarity in Understanding Domestic Violence*, *Domestic Violence Report* 3, (5).

<sup>82</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). *An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers*. BOTEC Analysis Corporation & American Probation and Parole Association. Final Report to NIJ on Grant 2002-WG-BX-0011.

<sup>83</sup> Bocko, S., Cicchetti, C., Lempicki, L. & Powell, A. (November 2004). *Restraining Order Violators, Corrective Programming and Recidivism*. Boston, MA: Office of the Commissioner of Probation.

<sup>84</sup> Adams, S. (1999). *Serial Batterers*. Boston, MA: Office of the Commissioner of Probation.

<sup>85</sup> Adams, S. (1999). *Serial Batterers*. Boston, MA: Office of the Commissioner of Probation; Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). *An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers*. BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

**Research Basis:** *While longitudinal studies of batterers are few, multiple studies that follow batterers for just a year or two confirm the serial nature of battering for some abusers.*

## V. Who are their victims?

### **Are victim characteristics and actions relevant factors in assessing abuse likelihood?**

Victims come in all shapes, sizes, ages and relationships, but these differences are largely irrelevant in terms of their victimization. Victim characteristics, other than gender and age, have generally not been found to be associated with likelihood of abuse.<sup>86</sup> For example, although many associated pregnancy with increased risk for domestic violence, research suggests that the increased risk is related to youth of the women, not their pregnancy.<sup>87</sup>

Those who leave their abusers have been found to be as or more likely to be reabused as those who remain with them.<sup>88</sup> Those who maintain civil restraining orders or criminal no contact orders against their abusers are as likely to be reabused as those who drop them.<sup>89</sup> Only one study<sup>90</sup> comparing women with orders and those without, found the former, with permanent but not temporary orders, were less likely to have new police-reported domestic violence. However, the researchers in this study excluded violations of the orders themselves including violations of no contact or stay away orders.

**Implications: Victims face a dilemma- staying or leaving; securing, maintaining or dropping a protective order, may all result in reabuse. In issuing orders, judges should advise victims of order limitations.**

**Research Basis:** *Research finding protective orders reduce reabuse exclude inclusion of order violations themselves, undervaluing the detrimental impact of order violations on victims who have secured them. The research on prosecution efficacy can be found in a subsequent section.*

### **Is victim substance abuse associated with victimization?**

<sup>86</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Catalano, S. (2006). Intimate Partner Violence in the United States, Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics (www.ojp.usdoj.gov/bjs).

<sup>87</sup> Weiss, H., Lawrence, B., & Miller, T. (2004). Pregnancy-Associated Assault Hospitalizations: Prevalence and Risk of Hospitalized Assaults Against Women During Pregnancy. Washington D.C.: U.S. Department of Justice, 1998-WT-VX-0V16, National Institute of Justice, NCJ 199706.

<sup>88</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>89</sup> Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214; Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>90</sup> Holt, V., Kernic, M., Lumley, T., Wolf, M., & Rivara, F. (2002). *Civil Protection Orders and Risk of Subsequent Police-reported Violence*. Journal of the American Medical Association, 288(5), 589-594.

Victim abuse of drugs and alcohol is also associated with domestic violence victimization.<sup>91</sup> In the most dramatic findings, victims or (their families) reported in the Memphis night arrest study that 42% of victims were drinking or taking illicit drugs the day of their assault.<sup>92</sup> The New Mexico fatality review study documented that a third of the female victims had alcohol in their system at the autopsy, with a blood-alcohol content twice the legal limit allowable for driving; a little less than a quarter had drugs in their system.<sup>93</sup> Among women treated in emergency rooms for injuries caused by their abusers, those who suffered from substance abuse were found to have increased risk of violence from partners. However, if the partners' use of alcohol and drugs are controlled for, victim substance abuse is not associated with increased risk of violence.<sup>94</sup> Another hospital study also found victims who were injured by partners were more likely than other injured women in an emergency room to test positive for substance abuse.<sup>95</sup>

Victim substance abuse has been found to be associated with abuser use. For example, while one in five North Carolina victims reported being high at the time of abuse or binge drinkers, almost three-quarters (72%) of these victims are in relationships with men who were high or binge drinkers.<sup>96</sup>

Victim substance abuse has also been identified as consequences of the ongoing abuse. In other words, victims abuse drugs as a form of self-medication to deal with their abuse trauma.<sup>97</sup>

**Implications: Drug or alcohol abusing victims may make them more vulnerable to continued abuse. If evidence of a victim's drug use is offered, judges should conduct a hearing to determine if the evidence related to a victim's "bad" character, including substance abuse, should be excluded if it does not directly relate to the abuse incident prosecuted and/or the victim's ability to perceive or remember the incident.**

**Research Basis:** *There are multiple single jurisdiction observational studies of victims as well as findings from a national victim survey of a representative sample of 8,000 women between November 1995 and May 1996.*

## Why do some victims behave as they do?

<sup>91</sup> Macmillan, R. & Kruttschnitt, C. (2005). *Patterns of Violence Against Women: Risk Factors and Consequences*. Washington D.C.: U.S. Department of Justice, 2002-IJ-CX-0011 National Institute of Justice, NCJ 208346.

<sup>92</sup> Brookoff, D. (October 1997). *Drugs, Alcohol, and Domestic Violence in Memphis, Research Review*. Washington D.C.: U.S. Department of Justice, National Institute of Justice, NCJ 000172.

<sup>93</sup> Olson, L., Crandall, C., & Broudy, D. (1998). *Getting Away with Murder, A Report of the New Mexico Female Intimate Partner Violence Death Review Team*. Albuquerque, NM: Center for Injury Prevention Research and Education, University of New Mexico School of Medicine.

<sup>94</sup> Kyriacou, D., Anglin, D., Taliaferro, E., Stone, S., Tubb, T., Linden, J., Muelleman, R., Barton, E., & Kraus, J. (1999). *Risk Factors for Injury to Women from Domestic Violence*. *New England Journal of Medicine*, 341, (25), 1892-1898.

<sup>95</sup> Grisso, J., Schwarz, D., Hirschinger, N., Sammel, M., Brensinger, C., Santanna, J., Lowe, R., Anderson, E., Shaw, L., Bethel, C., & Teeple, L. (1999). *Violent Injuries among Women in an Urban Area*. *New England Journal of Medicine*, 341, 25, 1899-1930.

<sup>96</sup> Hutchison, I. (1999). *The Influence of Alcohol and Drugs on Women's Utilization of the Police for Domestic Violence*. Washington D.C.: U.S. Department of Justice, 97-IJ-CX-0047, National Institute of Justice, NCJ 179277.

<sup>97</sup> Macmillan, R. & Kruttschnitt, C. (2005). *Patterns of Violence Against Women: Risk Factors and Consequences*. Washington D.C.: U.S. Department of Justice, 2002-IJ-CX-0011 National Institute of Justice, NCJ 208346., 106A

Not all victims react similarly to being abused. Studies have documented that a significant portion of victims of intimate partner violence and sexual assault suffer from trauma.<sup>98</sup> Studies have found up to 88% of battered women in shelters suffer from Post Traumatic Stress Disorder (PTSD).<sup>99</sup> Other studies have found up to 72% suffer depression<sup>100</sup> and 75% anxiety.<sup>101</sup> A meta-analysis across multiple samples of battered women found a weighted mean prevalence of 48% for depression and 64% for PTSD.<sup>102</sup>

Also, short of PTSD, the victims most vulnerable to injury have been found to have social isolation and low self-esteem, fewer social and financial resources than those injured and treated in hospitals who were not injured by a partner.<sup>103</sup>

Research also suggests that some victims of intimate partner abuse have experienced multifaceted violence that stretches across their life span, beginning as children.<sup>104</sup> Such prior victimization has been found to be associated with greater risk of more serious (adult) partner violence, particularly “systemic abuse” which includes physical, sexual and stalking abuse.<sup>105</sup> In short, some of the adult victims who suffer the greatest abuse may be the least able to protect themselves.

**Implications: Judges should be prepared to allow appropriate expert witnesses to educate juries as necessary to explain problematic or counter-intuitive victim behavior as a result of abuse related trauma.**

**Research Basis:** *There have been multiple victim studies documenting PTSD rates, although many studies use samples likely to include the most severely abused victims such as shelters.*

## Do male victims differ from female domestic violence victims?

<sup>98</sup> Albucher R. & Liberzon, I. (2002), *Journal of Psychiatric Research* 36(6):355-367; Macmillan, R. & Kruttschnitt, C. (2005). *Patterns of Violence Against Women: Risk Factors and Consequences*. Washington D.C.: U.S. Department of Justice, 2002-IJ-CX-0011 National Institute of Justice, NCJ 208346.

<sup>99</sup> Arias, I. & Pape, K. (Spring, 1999). *Psychological Abuse: Implications for Adjustment and Commitment to Leave Violent Partner, Violence and Victims* 14 (1): 55-67.

<sup>100</sup> Torres, S., & Han, H. (2000). *Psychological Distress in Non-Hispanic White and Hispanic Abused Women. Archives of Psychiatric Nursing* 14, 19-29.

<sup>101</sup> Gleason, W. (1993). *Mental Disorders in Battered Women: An Empirical Study. Violence and Victims*, 8 (1), 53-68.

<sup>102</sup> Golding J. (1999). *Intimate Partner Violence as a Risk Factor for Mental Disorders: A Meta-analysis. Journal of Family Violence* 14(2):99-132.

<sup>103</sup> Grisso, J., Schwarz, D., Hirschinger, N., Sammel, M., Brensinger, C., Santanna, J., Lowe, R., Anderson, E., Shaw, L., Bethel, C., & Teeple, L. (1999). *Violent Injuries Among Women in an Urban Area. New England Journal of Medicine*, 341, 25, 1899-1930.; Macmillan, R. & Kruttschnitt, C. (2005). *Patterns of Violence Against Women: Risk Factors and Consequences*. Washington D.C.: U.S. Department of Justice, 2002-IJ-CX-0011 National Institute of Justice, NCJ 208346.

<sup>104</sup> Kramer, R. (1989). *Alcohol and Victimization Factors in the Histories of Abused women Who Come to Court: A Retrospective Case-Control Study*, Ann Arbor, MI: UMI Dissertation Services; Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). *Response to Domestic Violence in a Pro-Active Court Setting*, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>105</sup> Macmillan, R. & Kruttschnitt, C. (2005). *Patterns of Violence Against Women: Risk Factors and Consequences*. Washington D.C.: U.S. Department of Justice, 2002-IJ-CX-0011 National Institute of Justice, NCJ 208346.

Research on domestic violence victims brought to the attention of law enforcement and the courts find male victims differ substantially from female victims.<sup>106</sup> First and foremost, male victims of any specific domestic violence incident are more likely than female victims to be future *suspects* for domestic violence. In one of the only studies to track abusers and victims over time, the Charlotte, North Carolina law enforcement study found that 41% of males identified as *victims*, who were involved in new incidents of domestic violence within two years were subsequently identified by police as *suspects*. This compares to only 26.3% of females with such role reversals. On the other hand, males identified as *suspects* were much less likely to be identified later as *victims* than females *suspects*, 26% compared to 44.4%.<sup>107</sup>

Similarly, male victims of domestic violence homicides are much more likely than female victims to have been identified previously as abusers of their eventual killers.<sup>108</sup> Several treatises suggest that the abuse experienced by male victims by female intimates is contextually different than that experienced by women victims of male intimates.<sup>109</sup>

Just as male victims differ, so too do females convicted of abusing male partners. Consequently, standard batterer programs often imposed by courts against abusers have been found to be inappropriate for these defendants.<sup>110</sup>

**Implications: Specific incidents of domestic violence may not reveal longer term domestic violence patterns, particularly if the suspect is a female and the victim is a male. Judges should be sensitive to this fact in issuing protective orders or fashioning sentences for such defendants. Typical batterer intervention programs may not be indicated for females convicted of an isolated abuse incident.**

**Research Basis:** *The North Carolina process evaluation of the Charlotte-Mecklenburg police specialized domestic violence unit is unique in looking at subsequent status of victims and suspects in repeat incidents. The study looked at all police complaints involving domestic violence in 2003 followed for the next two years, totaling 6,892 domestic violence complaints in all. The findings are analogous to numerous findings regarding the prior status of male homicide victims as abusers. The analysis of batterer programs for court referred female defendants is based on limited qualitative research which focused on content relevance based on defendant abuse histories.*

<sup>106</sup> Macmillan, R. & Kruttschnitt, C. (2005). *Patterns of Violence Against Women: Risk Factors and Consequences*. Washington D.C.: U.S. Department of Justice, 2002-IJ-CX-0011 National Institute of Justice, NCJ 208346.

<sup>107</sup> Friday, P., Lord, V., Exum, M. & Hartman, J. (2006). *Evaluating the Impact of a Specialized Domestic Violence Police Unit*. Washington DC: US Department of Justice, 2004-WG-BX-0004, National Institute of Justice, NCJ 215916.

<sup>108</sup> Starr, K., Hobart, M., & Fawcett, J. (2004). *Findings and Recommendations from the Washington State Domestic Violence Fatality Review*, Seattle, WA: Washington Coalition Against Domestic Violence; Websdale, N., Sheeran, M., & Johnson, B. (1998). *Reviewing Domestic Violence Fatalities: Summarizing National Developments*, Violence Against Women Online Resources; Winn, R. (1990). *Gender and Homicide: A Comparison on Men and Women Who Kill*, *Violence and Victims*, 5 (4), 236., R. (1990). *Gender and Homicide: A Comparison on Men and Women Who Kill*, *Violence and Victims*, 5 (4), 236.

<sup>109</sup> Stark, E. (2007). *Coercive Control: How Men Entrap Women in Personal Life*. New York, N.Y.: Oxford University Press; Pence, E. & Dasgupta, S. (2006). *Re-Examining 'Battering': Are All Acts of Violence Against Intimate Partners the Same?* Duluth, MN: Praxis International (U.S. Department of Justice, 1998-WR-VX-K001, Office of Victims on Violence Against Women).

<sup>110</sup> Miller, S. & Meloy, M. (2006). Women's use of Force: Voices of Women Arrested for Domestic Violence, *Violence Against Women*, 12 (1), 89-115.

## VI. How many abusers are going to do it again?

Depending upon how reabuse is measured, over what period of time, and what countermeasures either the victim (e.g. getting protective order, going into hiding) or the criminal justice system (arresting, locking up abuser) take, a hard core of a third of abusers will reabuse in the short run and more will reabuse in the longer run.

In Rhode Island, within two years of being placed on probation supervision for a misdemeanor domestic violence offense, 38.4% were arrested for a new domestic violence offense.<sup>111</sup> A half dozen batterer program studies published between 1988 and 2001 conducted across the United States documented reabuse as reported by victims to range from 26 to 41% within five to 30 months.<sup>112</sup> Five studies published between 1985 and 1999 of court-restrained abusers in multiple states found reabuse rates as measured by arrest and/or victim reports to range within four months to two years from 24 to 60%.<sup>113</sup>

Where studies have found substantially lower re-arrest rates for abuse, it appears the lower rate is a result of police behavior, not abuser behavior. In these jurisdictions, victims report equivalent reabuse, notwithstanding low rearrest rates. For example, studies of over 1,000 female victims in Florida, New York City and Los Angeles found while only four to six percent of their abusers were arrested for reabuse within one year, 31% of the victims reported being physically abused with half reported being burned, strangled, beaten up or seriously injured, and 16% reported being stalked or threatened.<sup>114</sup> Similarly, in a Bronx domestic court study, while only 14 to 15% percent

<sup>111</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>112</sup> Aldarondo, E. (2002). *Evaluating the Efficacy of Interventions with Men Who Batter*. In E. Aldarondo & F. Mederos (Eds.) Programs for Men Who Batter. Kingston, NJ: Civic Research Institute, 3-12; Dobash, R., Dobash, R., Cavanaugh, K., & Lewis, R. (1996). *Reeducation Programs for Violent Men: An Evaluation*. Research Findings, 64, 309-322; Edleson, J. & Grusznski, R. (1988). *Treating Men Who Batter: Four Years of Outcome Data from the Domestic Abuse Project*. Journal of Social Service Research, 12, 3-12; Gondolf, E. (2001). *The Program Effects of Batterer Programs in Three Cities*. Violence and Victims, 16, 693-704; Gondolf, E. (1997). Results of a Multi-site Evaluation of Batterer Intervention Systems. Indiana, PA: Mid-Atlantic Addiction Training Institute; Gondolf, E. (2000). *A 30-Month Follow-Up of Court Referred Batterers in Four Cities*. International Journal of Offender Therapy and Comparative Criminology, 44 (1), 111-128; Gondolf, E. & White, R. (2001). *Batterer Program Participants Who Repeatedly Reassault: Psychopathic Tendencies and Other Disorders*. Journal of Interpersonal Violence, 16, 361-380; Hamberger, K. & Hastings, J. (1988). *Skills Training for Spouse Abuse: An Outcome Study*. Journal of Family Violence, 3, 121-130

<sup>113</sup> Aldarondo, E. (2002). *Evaluating the Efficacy of Interventions with Men Who Batter*. In E. Aldarondo & F. Mederos (Eds.) Programs for Men Who Batter. Kingston, NJ: Civic Research Institute, 3-12; Carlson, M., Harris, S., & Holden, G. (1999). *Protective Orders and Domestic Violence: Risk Factors for Reabuse*. Journal of Family Violence, 14 (2), 205-226; Harrell, A. & Smith, B. (1996). *Effects of restraining orders on domestic violence victims*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 214-243; Keilitz, S., Hannaford, P. & Efkenman, H. (1997). Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence. Washington D.C.: U.S. Department of Justice, 93-IJ-CX-0035 National Institute of Justice; Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214.

<sup>114</sup> Roehl, J., O'Sullivan, C., Webster, D., & Campbell, J. (2005). Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study-Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0011 National Institute of Justice. NCJ 209731; Feder, L. & Forde, D. (2000). A Test of the Efficacy of Court-Mandated Counseling for Domestic Violence Offenders: The Broward Experiment. Washington D.C.: U.S. Department of Justice, 96-WT-NX-0008 National Institute of Justice, NCJ 184752.

of defendants convicted of domestic violence misdemeanors or violations were rearrested after one year, victims reported reabuse of 48%.<sup>115</sup>

Reabuse has found to be substantially higher in longer term studies. A Massachusetts study tracked 350 male abusers arrested for intimate female victim abuse over a decade, 1995 to 2005. It found that 60% were re-arrested for a new domestic assault or had a protective order taken out against them, even though some went for three to four years between arrests.<sup>116</sup> An equivalently high rearrest rate for domestic violence was also documented in Colorado between 1994 and 2005. During that time, of 84,431 defendants arrested for domestic violence, according to the state Bureau of Investigation, more than 50,000, nearly 60%, were arrested for domestic violence charges more than once. In other words, the domestic violence rearrest rate was almost 60% for arrested abusers over an average of five years.<sup>117</sup>

**Implications: Given the substantial risk for reabuse in the short run and even greater risk in the longer run, judges should fashion civil or criminal remedies/sanctions that maximize protection for current and/or future victims from the abuser.**

**Research Findings:** *While observational studies vary on reabuse depending how it is measured, there is widespread consensus that reported reabuse is substantially less than actual reabuse experienced by victims which is typically found to be over 50%. The few longitudinal studies of more than a year or two suggests that some abusers continue to reabuse notwithstanding gaps of several years between initial and subsequent reported incidents.*

### **Are abusers at risk for committing new non-domestic violence crimes, too?**

Given extensive prior criminal histories, abusers typically do not confine their re-offending to domestic violence alone. Studies concur that abusers are also likely to commit new non-domestic violence crimes in addition to domestic violence-related crimes. Two New York City studies, one in the Bronx Misdemeanor Domestic Violence Court and the other the Brooklyn Felony Domestic Violence Court, found 58% rearrests for any crime within 30 months in the former from study arrest<sup>118</sup> and 44% within two years in the latter.<sup>119</sup> Most of the new arrests, based on the face of the complaints, were for non-domestic violence related crimes, such as drug possession and/or sale or property offenses.

<sup>115</sup> Rempel, M., Labriola, M., & Davis, R. (2008) *Does Judicial Monitoring Deter Domestic Violence Recidivism? Violence Against Women*, 14(2), 185-207. (<http://www.courtinnovation.org/publicationsall.html>)

<sup>116</sup> Klein, A. & Tobin, T. (2008). *Longitudinal Study of Arrested Batterers, 1995-2005: Career Criminals. Violence Against Women*, 14(2) 136-157; Wilson, D. & Klein, A. (2006). *A Longitudinal Study of a Cohort of Batterers Arraigned in a Massachusetts District Court 1995-2004*. Washington D.C.: U.S. Department of Justice, 2004-WB-GX-0011 National Institute of Justice, NCJ 215346.

<sup>117</sup> Huntley, S. & Kilzer, L. (February 9, 2005). *Battered Justice Series. Rocky Mountain News*.

<sup>118</sup> Newmark, L., Rempel, M., Diffily, & Kane, K. (2001). *Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience*. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0005 National Institute of Justice, NCJ 191861.

<sup>119</sup> Puffett, N. & Gavin, C. (April 2004). *Predictors of program outcome & recidivism at the Bronx Misdemeanor Domestic Violence Court*. New York, NY: Center for Court Innovation.

Similarly, while 51% of the Massachusetts abuser arrestees were rearrested for new domestic violence over ten years, 57% were rearrested for non-domestic violence, including 15% who were not also arrested for new domestic violence.<sup>120</sup> Among Cook County domestic violence misdemeanants, 26.1% were arrested within 2.4 years on average for new domestic violence while 46.5% were arrested for any offense.<sup>121</sup>

It is not surprising that research from the National Youth Survey found that most men (76%) who engage in domestic violence report also engaging in one or more deviant acts concurrently, including illegal or socially proscribed behavior such as stealing or illicit drug use.<sup>122</sup> Nor is abuser violence limited to their households. In Cook County (Chicago, Illinois), the majority of prosecuted misdemeanor domestic violence offenders (55.6%) were found to have been violent with others, in addition to their partners.<sup>123</sup>

**Implications: Judges have power to not only protect victims and their children, but also reduce non-domestic offenses often committed by abusers.**

**Research Basis:** *While multiple disparate studies document that abusers identified by the criminal justice system are likely to have nondomestic criminal histories, at least one study of non-arrested young married or cohabiting men also finds domestic violence and other deviant behavior were associated both concurrently and prospectively.*

### When will abusers reabuse?

Studies agree that those abusers who re-offend, a majority do so relatively quickly although a minority may avoid arrests for new abuse for multiple years. In states where no-contact orders are automatically imposed after an arrest for domestic violence, re-arrests for order violations begin to occur immediately upon the defendant's release from the police station and/or court. For example, in both a Massachusetts Misdemeanor arrest study and a Brooklyn, New York, felony arrest study, the majority of defendants re-arrested for new abuse were arrested while their initial abuse cases were still pending in court.<sup>124</sup> The latter included a 16% arrest rate for violation of no contact orders and 14% for a new felony offense.<sup>125</sup> Similarly, a little more than one-third of the domestic violence probationers in Rhode Island who were rearrested for domestic violence were re-arrested within two months of being placed under probation supervision. More than

<sup>120</sup> Klein, A. & Tobin, T. (2008). *Longitudinal Study of Arrested Batterers, 1995-2005: Career Criminals. Violence Against Women*, 14(2) 136-157.

<sup>121</sup> Bennett, L., Stoops, C., Call, C., & Flett, H. (2007). *Program Completion and Re-arrest in a Batterer Intervention System. Research on Social Work Practice*, 17 (42), 42-54.

<sup>122</sup> Norwood, W., Jouriles, E., McDonald, R. & Swank, P. (2004). *Domestic Violence and Deviant Behavior*. Washington D.C.: U.S. Department of Justice, 98-WT-VX-005 National Institute of Justice, NCJ 199713.

<sup>123</sup> Hartley, C. & Frohmann, L. (2003). *Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court*. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>124</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). *Response to Domestic Violence in a Pro-Active Court Setting, Final Report*. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Newmark, L., Rempel, M., Diffily, & Kane, K. (2001). *Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience*. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0005 National Institute of Justice, NCJ 191861

<sup>125</sup> Newmark, L., Rempel, M., Diffily, & Kane, K. (2001). *Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience*. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0005 National Institute of Justice, NCJ 191861

half (60%) were arrested within six months.<sup>126</sup> A multi-state study of abusers referred to batterer programs found that almost half of the men (44%) who re-assaulted their partners did so within three months after batterer program intake and two-thirds within six months. The men who re-assaulted within the first three months were more likely to repeatedly re-assault their partners than the men who committed the first re-assault after the first three months.<sup>127</sup> In the Bronx, similarly, re-offending happened early among those convicted for misdemeanor or domestic violence violations. Of those re-arrested for domestic violence, approximately two-thirds re-offended within the first six months.<sup>128</sup>

**Implications: Arrest is only the first step in stopping abuse. If abusers are automatically released pending trial, the worst abusers will reabuse the most vulnerable victims. This reabuse may further inhibit subsequent victim cooperation with prosecutors resulting in subsequent dismissals for lack of prosecution. This in turn may further encourage abusers to continue their abuse.**

**Research Basis:** *Multiple studies from disparate jurisdictions have all found relatively quick reabuse by those that reabuse within the first year or two.*

## VII. Which abusers are likely to do it again in the short-term?

The research consistently finds that the basic information usually available on most defendants provides as accurate a prediction of abuser risk to the victim as more extensive and time consuming investigations involving more sources, including clinical assessments.<sup>129</sup> As a Bronx study on batterer treatment concluded, intensive individual assessments of attitudes or personality are not required to make reasonable judgments regarding abusers' risk.<sup>130</sup>

### Is gender important?

Of course, the most powerful predictor of risk is gender. All of the research concurs that males are more likely to reabuse than females.<sup>131</sup>

### Is age important?

<sup>126</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>127</sup> Gondolf, E. (1987). Evaluating Programs for Men Who Batter: Problems and Prospects. Journal of Family Violence, 2 (2), 177-191; Gondolf, E. (December 1997). Patterns of Re-assault in Batterer Programs. Indiana, PA: Mid-Atlantic Addiction Training Program; Gondolf, E. (1997). Results of a Multi-site Evaluation of Batterer Intervention Systems. Indiana, PA: Mid-Atlantic Addiction Training Institute.

<sup>128</sup> Rempel, M., Labriola, M., & Davis, R. ( ) Does Judicial Monitoring Deter Domestic Violence Recidivism? New York: Center for Court Innovation.

<sup>129</sup> Heckert, D. & Gondolf, E. (June 2000). Assessing Assault Self-reports by Batterer Program Participants and Their Partners. Journal of Family Violence 15 (2), 181-197; Heckert, D. & Gondolf, E. (2004). Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault, Journal of Interpersonal Violence, 19 (7), 778-800; Heckert, D. & Gondolf, E. (2005). Do Multiple Outcomes and Conditional Factors Improve Prediction of Batterer Reassault? Violence and Victims, 20 (1), 3-24; Roehl, J. & Guertin, K. (2000). Intimate Partner Violence: The Current Use of Risk Assessments in Sentencing Offenders', The Justice System Journal, 21, (2), 171-198.

<sup>130</sup> Puffett, N. & Gavin, C. (April 2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York, NY: Center for Court Innovation.

<sup>131</sup> See, e.g., Puffett, N. & Gavin, C. (April 2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York, NY: Center for Court Innovation

Younger defendants are more likely to reabuse and recidivate than older defendants.<sup>132</sup> This has been found true in studies of arrested abusers, batterers in treatment programs, as well as court restrained abusers.<sup>133</sup>

### **Is prior arrest history important?**

If the abuser has just **one** prior arrest on his criminal record for **any** crime, not just domestic violence, he is more likely to reabuse than if he has no prior arrest.<sup>134</sup> A multi-state study of more than 3,000 police arrests found that offenders with a prior arrest record for any offense were over seven times more likely than those without prior records to be rearrested.<sup>135</sup> I

The length of prior record is predictive of reabuse as well as general recidivism.<sup>136</sup> In looking at all restrained male abusers over two years, Massachusetts research, for example, documented that if the restrained abuser had just one prior arrest for any offense on his criminal record, his reabuse rate of the same victim rose from 15 to 25%; if he had five to six prior arrests, it rose to 50%.<sup>137</sup> In the Rhode Island abuser

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<sup>132</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.; Puffett, N. & Gavin, C. (April 2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York, NY: Center for Court Innovation; Rempel, M., Labriola, M., & Davis, R. (2008) Does Judicial Monitoring Deter Domestic Violence Recidivism? Violence Against Women, 14(2), 185-207; Ventura, L. & Davis, G. (October 2004). Domestic Violence: Court Case Conviction and Recidivism in Toledo. Toledo, OH: University of Toledo Urban Affairs Center; Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence, Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781

<sup>133</sup> Klein, A. (1996). Reabuse in a Population of Court Restrained Batterers. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214; Heckert, D. & Gondolf, E. (2004). Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault, Journal of Interpersonal Violence, 19 (7), 778-800; Heckert, D. & Gondolf, E. (June 2000). Assessing Assault Self-reports by Batterer Program Participants and Their Partners. Journal of Family Violence 15 (2), 181-197; Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence, Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781; Macmillan, R. & Kruttschnitt, C. (2005). Patterns of Violence Against Women: Risk Factors and Consequences. Washington D.C.: U.S. Department of Justice, 2002-IJ-CX-0011 National Institute of Justice, NCJ 208346.

<sup>134</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report, Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Davis, R., Smith, B. & Nickles, L. (1998). The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors. Crime & Delinquency, 44 (3), 434-443; Gondolf, E. (2000). A 30-Month Follow-Up of Court Referred Batterers in Four Cities. International Journal of Offender Therapy and Comparative Criminology, 44 (1), 111-128; see also Rempel, M., Labriola, M., & Davis, R. (2008). Does Judicial Monitoring Deter Domestic Violence Recidivism? Violence Against Women, 14 (2), 185-207; Orchowsky, S. (1999). Evaluation of a Coordinated Community Response to Domestic Violence: The Alexandria Domestic Violence Intervention Project-Final Report. Washington D.C.: U.S. Department of Justice, 95-WT-NX-0004, National Institute of Justice, NCJ 179974.

<sup>135</sup> Hirschel, D., Buzawa, E., Pattavina, A., Faggiana, D. & Ruelan, M. (2007). Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases. U.S. Department of Justice, 2001-WT-BX-0501 National Institute of Justice, NCJ 218355.

<sup>136</sup> Newmark, L., Rempel, M., Diffily, K. & Kane, K. (October 2001). Specialized Felony Domestic Violence Courts: Lessons on Implementation and Impacts from the Kings County Experience. Washington D.C.: Urban Institute.

<sup>137</sup> Klein, A. (1996). Reabuse in a Population of Court Restrained Batterers. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214.

probation study, abusers with one prior arrest for any crime were almost twice as likely to reabuse within the year compared to those with no prior arrest, 40% compared to 22.6%. And if they had more than one, reabuse increased to 73.3%.<sup>138</sup>

Of course, prior civil or criminal records specifically for abuse also increase the likelihood for reabuse.<sup>139</sup>

Related to the correlation between prior arrest history and reabuse, research also finds similar increased risk for reabuse if suspects are on warrants. In the Berkeley study, for example, researchers documented that having a pending warrant at time of the domestic violence incident for a prior non-domestic violence offense was a better predictor of reabuse than a prior domestic violence record alone.<sup>140</sup> Similarly, in the one study that looked at it, suspects gone at arrival of police were twice as likely to reabuse as those found on the scene by police.<sup>141</sup>

Similarly, one large state study found that if the suspect before the court for domestic violence is already on probation for anything else or another domestic violence case was also pending at the time of a subsequent arrest for domestic violence, that defendant was more likely than not to be arrested again for domestic violence within one year.<sup>142</sup>

**Implications: The absence of a prior domestic violence arrest is not as powerful a predictor of no reabuse as the absence of a prior arrest for anything. On the other hand, a prior record for *any* crime is as accurate a predictor of subsequent domestic violence as a prior record of domestic violence. Judges should understand that if an abuser has a prior record for *any* crime, he is a high risk domestic violence offender, not a low risk “first” offender. Judges should demand access to prior criminal and abuse histories before fashioning civil orders, making pretrial release decisions, or sentencing abusers.**

**Research Basis: Multiple studies in disparate jurisdictions find both prior criminal history as well as prior domestic violence correlate with reabuse, although the power of prior domestic violence history may be less revealing if domestic violence arrest rates are low in that specific jurisdiction and vice versa.**

<sup>138</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island’s Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>139</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Ventura, L. & Davis, G. (October 2004). Domestic Violence: Court Case Conviction and Recidivism in Toledo. Toledo, OH: University of Toledo Urban Affairs Center; Friday, P., Lord, V., Exum, M. & Hartman, J. (2006). Evaluating the Impact of a Specialized Domestic Violence Police Unit. Washington DC: US Department of Justice, 2004-WG-BX-0004, National Institute of Justice, NCJ 215916; Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence. Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781.

<sup>140</sup> Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence. Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781

<sup>141</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>142</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island’s Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

### Is substance abuse important?

Acute and chronic alcohol and drug use are well established risk factors.<sup>143</sup> This also applies to domestic violence. Prior arrests for drug and alcohol also correlate with higher rates of reabuse.<sup>144</sup> Just one prior arrest for any alcohol or drug offense (e.g. drunk driving, possession of a controlled substance), for example, doubled the reabuse rate from 20% (no prior drug/alcohol arrest) to 40% (at least one arrest for drugs/alcohol) in a restraining order study over two years.<sup>145</sup>

Defendant alcohol and substance abuse, similarly, are predictive of reabuse and recidivism.<sup>146</sup> The multi-state batterer program referral study found “heavy drinking” to be a significant predictor for reabuse. For the same reason, it found that abuser participation in drug treatment predicted repeated reassaults.<sup>147</sup> Batterers who complete batterer intervention are three times more likely to reabuse if they are intoxicated at any three month interval.<sup>148</sup>

Multiple,<sup>149</sup> but not all studies,<sup>150</sup> have found that abuser and/or victim abusing drugs or alcohol *at the time* of the incident to be a consistent risk marker.

<sup>143</sup> Hirschel, J.D. & Dawson, D. (2003). Violence Against Women: Synthesis of Research for Law Enforcement Officials, Washington D.C.: U.S. Department of Justice, 98-WT-VX-K001 National Institute of Justice, NCJ 198372; Wekerle, C. & Wall, A. (2002). The violence and addiction equation: Theoretical and clinical issues in substance abuse and relationship violence. New York, NY: Brunner-Routledge.

<sup>144</sup> Goldkamp, J. (1996). The Role of Drug and Alcohol Abuse in Domestic Violence and its Treatment: Dade County's Domestic Violence Court Experiment. Washington D.C.: U.S. Department of Justice, National Institute of Justice.

<sup>145</sup> Klein, A. (1996). Reabuse in a Population of Court Restrained Batterers. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214.

<sup>146</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting. Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Klein, A. (1996). Reabuse in a Population of Court Restrained Batterers. In E. Buzawa & C. Buzawa (Eds.)

Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214; Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.; Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence, Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781

<sup>147</sup> Heckert, D., & Gondolf, E. (2005). Do Multiple Outcomes and Conditional Factors Improve Prediction of Batterer Reassault? Violence and Victims, 20 (1), 3-24.

<sup>148</sup> Gondolf, E. (December 1997). Patterns of Re-assault in Batterer Programs. Indiana, PA: Mid-Atlantic Addiction Training Program; Gondolf, E. (2001). The Program Effects of Batterer Programs in Three Cities. Violence and Victims, 16, 693-704; Gondolf, E. (1997). Results of a Multi-site Evaluation of Batterer Intervention Systems. Indiana, PA: Mid-Atlantic Addiction Training Institute; Gondolf, E. (2000). A 30-Month Follow-Up of Court Referred Batterers in Four Cities. International Journal of Offender Therapy and Comparative Criminology, 44 (1), 111-128.

<sup>149</sup> Felson, R., Ackerman, J. & Gallagher, C. (2005). Police Intervention and the Repeat of Domestic Assault. Washington D.C.: U.S. Department of Justice, 2002-WG-BX-2002, National Institute of Justice, NCJ 210301.

<sup>149</sup> Hirschel, D., Buzawa, E., Pattavina, A., Faggiana, D. & Ruelan, M. (2007). Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases. U.S. Department of Justice, 2001-WT-BX-0501 National Institute of Justice, NCJ 218355; Felson, R., Ackerman, J. & Gallagher, C. (2005). Police Intervention and the Repeat of Domestic Assault. Washington D.C.: U.S. Department of Justice, 2002-WG-BX-2002, National Institute of Justice, NCJ 210301; Orchowsky, S. (1999). Evaluation of a Coordinated Community Response to Domestic Violence: The Alexandria Domestic Violence Intervention Project-Final Report. Washington D.C.: U.S. Department of Justice, 95-WT-NX-0004, National Institute of Justice, NCJ 179974.

<sup>150</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting. Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

**Implications: Seemingly unrelated, nonviolent offenses like drunk driving or drug possession that suggest substance abuse by the abuser should be considered as risk markers for continued abuse. Substance and alcohol abuse should be considered by judges in bail, sentencing and fashioning civil orders.**

**Research Basis:** *Multiple disparate studies suggest that any disagreement regarding the relationship between domestic abuse and substance abuse has to do with whether or not substance abuse “causes” domestic violence, not that the correlation exists.*

### **Are victims accurate predictors of reabuse?**

Victim perception of risk has been found to be largely accurate.<sup>151</sup> Victim perception of risk, for example, significantly improve the accuracy of prediction over other risk factors, increasing prediction sensitivity from 55 to 70% (Sensitivity is the proportion of true positives that are correctly identified by the test).<sup>152</sup>

However, researchers find that women’s perceptions have to be interpreted. Women who felt very safe were less likely to be repeatedly reassaulted than those that felt somewhat safe. But women who were uncertain or felt somewhat unsafe were **more** likely to be reassaulted repeatedly than those who felt in much danger. The reason for this apparent contradiction is that women who felt in greatest danger took effective counter measures during the study. In other words, the research suggests that if women are not certain they will be safe, they err by giving the benefit of the doubt to their abuser. For these reasons, these researchers conclude the best predictions of repeated reassaults can be obtained by using risk markers, including women’s perceptions.<sup>153</sup> The researchers concern over victim underassessment of risk is born out by a large study of more than 1,000 women who sought protective orders or shelter or whose abusers were arrested in Los Angeles and New York City. Almost a quarter of these victims who thought their risk of reassault was low were, in fact, reassaulted within one year.<sup>154</sup>

Victim perception of risk also affects their reaction to criminal justice intervention. Arrest study research finds that victims who were not re-victimized over two years were twice as likely to have opposed arrest over those who were revictimized. Those who thought police and court intervention did not go far enough were also accurate. Those who said police actions were too weak were three times more likely to

<sup>151</sup> DeBecker, G. (1997). The Gift of Fear. Boston, MA: Little, Brown & Co.; Heckert, D., & Gondolf, E. (2004). Battered Women’s Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault, Journal of Interpersonal Violence, 19 (7), 778-800; Roehl, J., O’Sullivan, C., Webster, D., & Campbell, J. (2005). ). Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study-Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0011 National Institute of Justice. NCJ 209731.

<sup>152</sup> Heckert, D. & Gondolf, E. (2004). Battered Women’s Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault, Journal of Interpersonal Violence, 19 (7), 778-800.

<sup>153</sup> DeBecker, G. (1997). The Gift of Fear. Boston, MA: Little, Brown & Co.; Heckert, D., & Gondolf, E. (2004). Battered Women’s Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault, Journal of Interpersonal Violence, 19 (7), 778-800.

<sup>154</sup> Roehl, J., O’Sullivan, C., Webster, D., & Campbell, J. (2005). ). Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study-Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0011 National Institute of Justice. NCJ 209731.

experience revictimization; those that said courts failed them were seven times more likely to experience revictimization.<sup>155</sup>

**Implications: Victim input should be an important part of any risk calculation. If victims are in doubt as to their safety, judges should assume the worst.**

**Research Basis:** *Extensive examination of multiple domestic violence risk studies agree.*

### **Are there other common risk factors associated with reabuse?**

Several studies have found other consistent risk markers for reabuse, many associated with the variables described above. These include increased risk associated with abusers who flee the scene of a domestic,<sup>156</sup> abusers who are unemployed,<sup>157</sup> economically disadvantaged and living in disadvantaged neighborhoods,<sup>158</sup> live in a household with firearms,<sup>159</sup> and if the abuser is not the father of children in the household.<sup>160</sup>

**Implications: Judges should review the status of the above variables for determination of risk to be used in bail hearings, sentencing and fashioning civil orders.**

**Research Basis:** *These specific risk factors generally have been found in multiple studies as cited but may vary in relevance and power across jurisdictions.*

<sup>155</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>156</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>157</sup> Benson, M. & Fox, G. (2004). Concentrated Disadvantage, Economic Distress, and Violence Against Women in Intimate Relationships. Washington D.C.: U.S. Department of Justice, National Institute of Justice, NCJ 199709; Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., Glass, N., McFarlane, C., J. Sachs, C., Sharps, P. Ulrich, Y., Wilt, S., Manganello, X, Xu, X., Schollenberger, J., Frye, V.. & Laughon, K. (2003). Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study. American Journal of Public Health, 93 (7), 1089-1097; Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., McFarlane, J. Sachs, C., Sharps, P. Ulrich, Y. & Wilt, S. (2003). Assessing Risk Factors for Intimate Partner Homicide, National Institute of Justice Journal 250, 14-19. NCJ 196547; Malcoe, L. & Duran, B. (2004). Intimate Partner Violence and Injury in the Lives of Low-Income Native American Women, Washington D.C.: U.S. Department of Justice, National Institute of Justice, NCJ 199703.; Orchowsky, S. (1999). Evaluation of a Coordinated Community Response to Domestic Violence: The Alexandria Domestic Violence Intervention Project-Final Report. Washington D.C.: U.S. Department of Justice, 95-WT-NX-0004, National Institute of Justice, NCJ 179974.

<sup>158</sup> Macmillan, R. & Kruttschnitt, C. (2005). Patterns of Violence Against Women: Risk Factors and Consequences. Washington D.C.: U.S. Department of Justice, 2002-IJ-CX-0011 National Institute of Justice, NCJ 208346.

<sup>159</sup> Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., Glass, N., McFarlane, C., J. Sachs, C., Sharps, P. Ulrich, Y., Wilt, S., Manganello, X, Xu, X., Schollenberger, J., Frye, V.. & Laughon, K. (2003). Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study. American Journal of Public Health, 93 (7), 1089-1097; Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., McFarlane, J. Sachs, C., Sharps, P. Ulrich, Y. & Wilt, S. (2003). Assessing Risk Factors for Intimate Partner Homicide, National Institute of Justice Journal 250, 14-19. NCJ 196547.

<sup>160</sup> Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., Glass, N., McFarlane, C., J. Sachs, C., Sharps, P. Ulrich, Y., Wilt, S., Manganello, X, Xu, X., Schollenberger, J., Frye, V.. & Laughon, K. (2003). Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study. American Journal of Public Health, 93 (7), 1089-1097; Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., McFarlane, J. Sachs, C., Sharps, P. Ulrich, Y. & Wilt, S. (2003). I Homicide, National Institute of Justice Journal 250, 14-19. NCJ 196547.

### What factors are *not* associated with reabuse?

Generally, the seriousness of the presenting incident does not predict reabuse, whether felony or misdemeanor, including whether there were injuries or not, or what the specific charge is.<sup>161</sup> Abuser personality types have not been found to be associated with increased risk of reabuse.<sup>162</sup> Actuarial data offer improvement over clinical data.<sup>163</sup> Victim characteristics, including relationship with abuser, marital status and whether the parties are living together or separated, have not been found to predict reabuse.<sup>164</sup> At least one study has found that victim cooperation does not predict recidivism.<sup>165</sup>

**Implications: Charges should not be confused with criteria for determining future risk. Abusers charged with misdemeanors are as likely to be as dangerous as those charged with felonies. Although constrained by statute, judges should seek to minimize offender risk to the maximum extent allowed by law.**

**Research Basis: Wide agreement among multiple studies across the nation involving different abuser populations.**

### VIII. Which abusers are most likely to try to kill their victims?

Prediction of lethality is much more difficult than predicting reabuse and recidivism because, fortunately, it is much rarer. Also, the risk of lethality may increase due to situational circumstances, as opposed to static abuser characteristics. Nonetheless, researchers have found some key factors that increase the likelihood of homicide and/or significant injuries.

#### How critical are firearms?

According to a Centers for Disease Control (CDC) study, more female intimate partners are killed by firearms than all other means combined.<sup>166</sup> Firearms in the household increase the odds of lethal as opposed to nonlethal violence 6.1 to 1. Women

<sup>161</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting. Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Davis, R., Smith, B. & Nickles, L. (1998). *The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors*. *Crime & Delinquency*, 44 (3), 434-443; Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 192-214; Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.; Labriola, M. Rempel, M. & Davis, R. (2005). Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a randomized Trial. New York, Center for Court Innovation (NIJ); Orchowsky, S. (1999). Evaluation of a Coordinated Community Response to Domestic Violence: The Alexandria Domestic Violence Intervention Project-Final Report. Washington D.C.: U.S. Department of Justice, 95-WT-NX-0004, National Institute of Justice, NCJ 179974.

<sup>162</sup> Heckert, D., & Gondolf, E. (2005). *Do Multiple Outcomes and Conditional Factors Improve Prediction of Batterer Reassault? Violence and Victims*, 20 (1), 3-24.

<sup>163</sup> Roehl, J. & Guertin, K. (2000). *Intimate Partner Violence: The Current Use of Risk Assessments in Sentencing Offenders'*, *The Justice System Journal*, 21, (2), 171-198.

<sup>164</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting. Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>165</sup> Labriola, M. Rempel, M. & Davis, R. (2005). Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a randomized Trial. New York, Center for Court Innovation (NIJ)

<sup>166</sup> Paulkossi, L. (October 2001). *Surveillance for Homicide among Intimate Partners-United States, 1991-1998*, *Morbidity and Mortality Weekly Surveillance Summaries*, 5, 1-16.

who were previously threatened or assaulted with a firearm or other weapon are 20 times more likely to be murdered by their abuser than other women.<sup>167</sup> Prior firearm use includes threats to shoot victim; cleaning, holding, or loading a gun during an argument; threatening to shoot a pet or a person the victim cares about; and shooting a gun during an argument.<sup>168</sup>

A significant Massachusetts study of 31 men imprisoned for murdering their female partners willing to talk to researchers found that almost two-thirds of the guns used by men who shot their partners were illegal because the suspect had a prior abuse assault conviction or contemporary protective orders.<sup>169</sup>

**Implications: One of the most crucial steps to prevent lethal violence is to disarm abusers and keep them disarmed. Judges should take all steps possible to have firearms prohibitions enforced and refuse to approve alternative sanctions that preclude federal firearm prohibitions (18 U.S.C. § 922(g)(9)). Victims in criminal cases should be advised to obtain protective orders if firearms cannot be removed through the criminal process (18 U.S.C. § 922(g)(8)) and vice versa. In 2007, in *Weissenburger vs. Iowa District Court for Warren County, No. 47 / 05-0279, Filed October 26, 2007*, the Iowa Supreme Court reminded judges they are legally obligated to enforce federal domestic violence firearm prohibitions notwithstanding contrary(or silent) state statutes.**

**Research Basis: Multiple studies, national, state, and local, support this as does a state by state correlation between existence of restrictive gun laws for batterers, state registries to enforce them and lower domestic homicide rates.<sup>170</sup>**

### What are other lethality risk markers?

Other lethality markers that multiply the odds of homicide five times or more over non-fatal abuse have been found in a national study to include: a) threats to kill (14.9); b) prior attempts to strangle (9.9); c) forced sex (7.6); d) escalating physical violence severity over time (5.2); and e) partner control over the victim's daily activities (5.1).<sup>171</sup> A Chicago study found death was more likely if the partner threatened or used a knife or

<sup>167</sup> Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., McFarlane, J. Sachs, C., Sharps, P. Ulrich, Y. & Wilt, S. (2003). *Assessing Risk Factors for Intimate Partner Homicide*, National Institute of Justice Journal 250, 14-19. NCJ 196547.

<sup>168</sup>Block, C. (2004). *Risk Factors for Death or Life-Threatening Injury for Abused Women in Chicago*. Washington D.C.: U.S. Department of Justice, 96-IJ-CX-0020, National Institute of Justice, NCJ 199732; Rothman, E., Hemenway, D., Miller, M. & Azrel, D. (2004). *Batterers' Use of Guns to Threaten Intimate Partners*. (Winter 2005). Journal of the American Medical Women's Association 60(1).

<sup>169</sup> Adams, D. (2007). *Why do they kill? Men who murder their intimate partners*. Nashville, TN: Vanderbilt University Press.

<sup>170</sup> Vigdor, E.& Mercy, J. (2006). *Do laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?* Evaluation Review, 30 (3), 313-346.

<sup>171</sup> Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., Glass, N., McFarlane, C., J. Sachs, C., Sharps, P. Ulrich, Y., Wilt, S., Manganello, X, Xu, X., Schollenberger, J., Frye, V.. & Laughon, K. (2003). *Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study*. American Journal of Public Health, 93 (7), 1089-1097; Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., McFarlane, J. Sachs, C., Sharps, P. Ulrich, Y. & Wilt, S. (2003). *Assessing Risk Factors for Intimate Partner Homicide*, National Institute of Justice Journal 250, 14-19. NCJ 196547.

gun; strangled his partner or grabbed her around her neck, and both were drunk.<sup>172</sup> Research has also found that male abusers are more likely to kill if the children in the household are his partner's by another man.<sup>173</sup>

A series of interviews with 31 men imprisoned for partner murders revealed how quickly abusers turned lethal. Relationships with short courtships were much more likely to end in murder or attempted murder, and also to have quicker ends to the relationships than those following longer term courtships. Half of the murderers had relationships of no more than three months and almost a third, only one month.<sup>174</sup>

In terms of female murders of male partners, the research suggests abused women who killed their partners had experienced more severe and increasing violence over the prior year. They also had fewer resources, such as employment or high school education, and were in a long-term relationship.<sup>175</sup>

**Implications: For judges to make safe decisions about bail, sentencing or fashioning civil orders, they must insist on appropriate information about prior activities including at least those associated with increased risk for lethality.**

**Research Basis:** *Multiple studies have found similar risk factors for lethality. While all suffer from false positives, their consideration will avoid false negatives that prove deadly for victims.*

### **What are risk markers for severe injury?**

While most domestic homicides appear to be purposeful, some may be the unintended result of severe abuse.<sup>176</sup>

Medical researchers have looked at severe injuries, those causing victims to seek hospital emergency room treatment. They have found alcohol abuse, drug use, intermittent employment or recent unemployment, and having less than high school education to distinguish partners of women seeking medical treatment from domestic violence injuries compared to partners of women seeking treatment for non-domestic violence injuries. In one study, researchers found 63.7% of the abusive partners were alcohol abusers, 36.7% abused drugs; a slight majority, 51.6%, was drinking at the time

<sup>172</sup> Block, C. (2004). Risk Factors for Death or Life-Threatening Injury for Abused Women in Chicago. Washington D.C.: U.S. Department of Justice, 96-IJ-CX-0020, National Institute of Justice, NCJ 199732

<sup>173</sup> Block, C. (2004). Risk Factors for Death or Life-Threatening Injury for Abused Women in Chicago. Washington D.C.: U.S. Department of Justice, 96-IJ-CX-0020, National Institute of Justice, NCJ 199732, Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., Glass, N., McFarlane, C., J. Sachs, C., Sharps, P. Ulrich, Y., Wilt, S., Manganello, X, Xu, X., Schollenberger, J., Frye, V.. & Laughon, K. (2003). *Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study*. American Journal of Public Health, 93 (7), 1089-1097; Campbell, J., Webster, D., Koziol-McLain, Block, R., Campbell, D., Curry, M., Gary, F., McFarlane, J. Sachs, C., Sharps, P. Urich, Y. & Wilt, S. (2003). *Assessing Risk Factors for Intimate Partner Homicide*, National Institute of Justice Journal 250, 14-19. NCJ 196547.

<sup>174</sup> Adams, D. (2007). Why do they kill? Men who murder their intimate partners. Nashville, TN:Vanderbilt University Press.

<sup>175</sup> Block, C. (2004). Risk Factors for Death or Life-Threatening Injury for Abused Women in Chicago. Washington D.C.: U.S. Department of Justice, 96-IJ-CX-0020, National Institute of Justice, NCJ 199732.

<sup>176</sup> Adams, D. (2007). Why Do They Kill? Men Who Murder Their Intimate Partners. Nashville, TN: Vanderbilt University Press.

of the assault, and 14.8% admitted to drug use at the time.<sup>177</sup> A similar hospital study found cocaine use and prior arrests distinguished the violent partners from the non-violent partners of women admitted to hospitals for treatment of injuries.<sup>178</sup>

**Implications: Prior threats to kill, prior strangulation, stalking, and sexual assaults should be taken very seriously as well as drinking and drugging histories and current use in considering offender danger.**

**Research Basis:** *Although not exact, repeated studies overlap with the same or similar risk factors for injury and lethality, including hospital studies (of severe injuries) of victims not necessarily involved in the criminal justice system.*

## **IX. Does prosecuting and sentencing domestic violence offenders deter reabuse?**

The research is fairly consistent. Simply prosecuting without regard to the specific risk they pose, unlike arresting domestic violence defendants, does not deter further criminal abuse.<sup>179</sup> The minority of abusers arrested who are low risk are unlikely to reabuse in the short run whether prosecuted or not. Alternatively, without the imposition of significant sanctions including incarceration, the majority of arrested abusers who are high risk will reabuse regardless of prosecution.

A study of a large number of arrests in three states, Connecticut, Idaho and Virginia, found that those who were prosecuted and convicted for domestic violence were *more* likely to be rearrested than offenders who were not convicted. However, in this study, those prosecuted and convicted were significantly more likely to be higher risk offenders as measured by prior criminal history.<sup>180</sup>

A number of studies have found prosecution **can** reduce subsequent arrests and violence.<sup>181</sup> The key to reduced reabuse may not be whether the case is prosecuted or

<sup>177</sup> Kyriacou, D., Anglin, D., Taliaferro, E., Stone, S., Tubb, T., Linden, J., Muelleman, R., Barton, E., & Kraus, J. (1999). *Risk Factors for Injury to Women from Domestic Violence*. *New England Journal of Medicine*, 341, (25), 1892-1898.

<sup>178</sup> Grisso, J., Schwarz, D., Hirschinger, N., Sammel, M., Brensinger, C., Santanna, J., Lowe, R., Anderson, E., Shaw, L., Bethel, C., & Teeple, L. (1999). *Violent Injuries among Women in an Urban Area*. *New England Journal of Medicine*, 341, 25, 1899-1930.

<sup>179</sup> Davis, R., Smith, B. & Nickles, L. (1998). *The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors*. *Crime & Delinquency*, 44 (3), 434-443; Friday, P., Lord, V., Exum, M. & Hartman, J. (2006). *Evaluating the Impact of a Specialized Domestic Violence Police Unit*. Washington DC: US Department of Justice, 2004-WG-BX-0004, National Institute of Justice, NCJ 215916; Fagan, J., Friedman, E., Wexler, S., & Lewis, V. (1984). *The National Family Violence Program: Final Evaluation Report*, San Francisco, CA: URSA Institute; Belknap, J., Graham, D., Hartman, J., Lippen, V., Allen, G., & Sutherland, J. (2000). *Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables, Executive Summary*. Washington D.C.: U.S. Department of Justice, 96-WT-NX-0004 National Institute of Justice, NCJ 184112, Gross, M., Cramer, E., Forte, J., Gordon, J., Kunkel, T. , & Moriarty, L. (2000). *The impact of sentencing options on recidivism among domestic violence offenders: A case study*. *American Journal of Criminal Justice*, 24, 301-312.

<sup>180</sup> Hirschel, D., Buzawa, E., Pattavina, A., Faggiana, D. & Ruelan, M. (2007). *Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases*. Washington D.C.: U.S. Department of Justice, 2001-WT-BX-0501, National Institute of Justice, NCJ 218355.

<sup>181</sup> Ford, D. and Regoli, J. (1992). *The Prevention Impacts of Policies for Preventing Wife Batterers*, in E. Buzawa & C. Buzawa, Eds, *Domestic Violence: The Changing Criminal Justice Response*, Westport, CN: Auburn Press; Tolman, R. & Weisz, A. (1995). *Coordinated Community Interventions for Domestic*

not, but the dispositions imposed. For example, a Toledo, Ohio misdemeanor court study found conviction was significantly associated with reduced rearrests for domestic violence one year following court disposition, even when controlling for batterers' prior history of domestic violence arrests, age, gender, education, employment and marital status. The specific disposition, however, mattered. The more intrusive sentences, including jail, work release, electronic monitoring and/or probation, significantly reduced rearrest for domestic violence over the less intrusive sentences of fines or suspended sentences without probation. The difference was statistically significant with rearrests at 23.3% for defendants with more intrusive dispositions compared to 66% for those with less.<sup>182</sup>

Another study of 683 defendants in Hamilton County (Cincinnati), Ohio arrested for misdemeanor domestic violence also confirmed that sentence severity was significantly associated with reduced recidivism, especially for unmarried defendants, although in this study the actual sentence length (number of days in jail) was not found to be significant.<sup>183</sup> Similar research looking at the cumulative effects of arrest followed by prosecution and court dispositions, including those with batterer treatment, has found modest reductions in reabuse to be associated with greater post-arrest criminal justice involvement.<sup>184</sup> Research of almost 2,000 domestic violence defendants in Alexandria, Virginia found that repeat offenders over 3 and ½ years were associated with those who had a prior criminal history and **not** sentenced to incarceration for the study arrest during that period, leading researchers to recommend jail sentences for domestic violence defendants with any prior criminal history.<sup>185</sup>

The Ohio felony study, however, found mixed results. While jail sentences were significantly related to lower odds of subsequent misdemeanor or felony intimate assaults after two years, prison sentences were not. While likelihood of these new charges were 9% less for those jailed, compared to those probated, it was only 2% lower for those imprisoned compared to those placed on probation.<sup>186</sup>

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*Violence: The Effects of Arrest and Prosecution on Recidivism of Women Abuse Perpetrators*, Crime & Delinquency, 41 (4), 481-495); Jolin, A., Feyerherm, W., Fountain, R., & Friedman, S. (1998). Beyond Arrest: The Portland, Oregon Domestic Violence Experiment, Final Report, Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0054, National Institute of Justice, NCJ 179968; Gover, A., MacDonald, J., & Alpert, G. (2003). *Combating domestic violence: Findings from an evaluation of a local domestic violence court*. Criminology and Public Policy, 3, 109-129; Wooldredge, J. (2007). *Convicting and incarcerating felony offenders of intimate assault and the odds of new assault charges*. Journal of Criminal Justice, 35, 379-389; Wooldredge, J. & Thistlethwaite, A. (2005). *Court Dispositions and Rearrest for Intimate Assault*. Crime & Delinquency, 51 (76).

<sup>182</sup> Ventura, L. & Davis, G. (October 2004). Domestic Violence: Court Case Conviction and Recidivism in Toledo. Toledo, OH: University of Toledo Urban Affairs Center.

<sup>183</sup> Thistlethwaite, A., Wooldredge, J. & Gibbs, D. (1998). *Severity of Dispositions and Domestic Violence Recidivism*. Crime and Delinquency, 44 (3), 388-399.

<sup>184</sup> Murphy, C.M., Musser, P.H., Maton, K.I. (1998). *Coordinated community intervention for domestic abusers: Intervention system involvement and criminal recidivism*. Journal of Family Violence, 13, 263-284. Syers & Edleson (1992). Syers, M. & Edleson, J.L. (1992). *The combined effects of coordinated criminal justice intervention in woman abuse*. Journal of Interpersonal Violence, 7, 490-502.

<sup>185</sup> Orchowsky, S. (1999). Evaluation of a Coordinated Community Response to Domestic Violence: The Alexandria Domestic Violence Intervention Project-Final Report. Washington D.C.: U.S. Department of Justice, 95-WT-NX-0004, National Institute of Justice, NCJ 179974.

<sup>186</sup> Wooldredge, J. (2007). *Convicting and incarcerating felony offenders of intimate assault and the odds of new assault charges*. Journal of Criminal Justice, 35, 379-389.

**Implications: Prosecution and convictions of high risk abusers alone have not been shown to reduce the risk of reabuse. Judges should consider more intrusive sentences, including incarceration, for repeat abusers and those with prior criminal histories.**

**Research Basis:** Although studies are conflicting on abuse prosecution, several sentencing studies suggest that more intrusive sentences may significantly deter reabuse.

### **Should judges follow victim preferences in terms of fashioning sentences?**

While victim perceptions of the dangerousness of suspects have been found to be a good predictor of subsequent re-victimization,<sup>187</sup> victim preferences of how the case should be disposed are not. Those victims, in the Quincy study, for example, who wanted charges dropped were as likely as those who did not want them dropped to be re-victimized, 51% compared to 48% after one year.<sup>188</sup> Similarly, studies in New York found that victim cooperation with prosecutors did not predict recidivism. In other words, where judges imposed sentences objected to by victims, these victims were no more or less likely to be re-victimized than victims that wanted their abusers to be prosecuted and sentenced.<sup>189</sup>

**Implications: Although judges should be open to the victims views, they should explain to victims (and, as important, to defendants) that the court is obligated to sentence as it deems best, with or without victim agreement.**

**Research Implication:** *Only one study directly compared victim prosecution wishes and subsequent reabuse.*

### **X. Will aggressive prosecution and sentencing increase the demand for trials?**

A study of four prosecution programs in four states where prosecutors specifically adopted (what they claimed to be) “no drop” prosecution policies (and in fact proceeded with the majority of all cases brought by law enforcement) found that trial rates ranged from a high of 13% to just one percent. Further researchers suggested the highest rates would recede after the aggressive prosecution programs were more established. In San Diego, which had adopted a “no drop” a decade earlier, only 2% of the cases

<sup>187</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Heckert, D., & Gondolf, E. (2004). *Battered Women’s Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault*, Journal of Interpersonal Violence, 19 (7), 778-800; Heckert, D., & Gondolf, E. (2005). Do Multiple Outcomes and Conditional Factors Improve Prediction of Batterer Reassault? Violence and Victims, 20 (1), 3-24.

<sup>188</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427

<sup>189</sup> Labriola, M. Rempel, M. & Davis, R. (2005). Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a Randomized Trial. New York, Center for Court Innovation. (<http://www.courtinnovation.org/publicationsall.html>).

subsequently went to trial. Further, in these “no drop” jurisdictions, sentencing included incarceration in 21 to 76% of the four jurisdictions.<sup>190</sup>

**Implications: Judicial administrators need not fear that aggressive domestic violence prosecution will result in dramatically increased and sustained demand for jury or bench trials.**

**Research Basis:** *While this is based on one study, the study looked at four different no drop prosecution programs in four states.*

### **Do victims want their abusers prosecuted/sentenced?**

If asked to declare publicly in court in front of their abusers, victims may express ambivalence about the prosecution and/or sentencing of their abusers. However, in interviews with researchers, often a majority of victims support domestic violence prosecutions and sentencing, especially mandatory referral to batterer programs. In a Chicago Misdemeanor Court Study, for example, a little more than two-thirds of victims (67.6%) reported they wanted their abusers to be prosecuted **and** jailed.<sup>191</sup> A study of four prosecution programs in California, Washington, Oregon and Nebraska, found three-quarter (76%) of the victims interviewed wanted their abusers arrested, and 55% want them prosecuted. Further, 59% expressed satisfaction with the outcome, although 67% expressed satisfaction with the judge.<sup>192</sup>

Even where the majority of victims opposed prosecution, after trial they may change their mind. In the Quincy arrest study, for example, only 46.8% wanted their abusers to be prosecuted as charged or wanted more serious charges filed. However, after trial, 53.4% said the court experience gave them a “sense of control,” while 36.9% said it motivated them to end the relationship with their abuser and 38.8% said it “made them safer.” Most victims (71%) who did not want the case to go to court expressed satisfaction after trial.<sup>193</sup>

**Implications: Judges should not fear allowing cases to proceed over victim objections will necessarily embitter or jeopardize victim safety.**

**Research Basis:** *Numerous studies from disparate jurisdictions on victim attitudes on prosecution, but only several on court sentencing.*

### **Why do a minority of victims oppose prosecution?**

<sup>190</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

<sup>191</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court, Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>192</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

<sup>193</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report, Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427

Although studies have found multiple reasons for victim opposition to prosecution, fear is among the leading reason expressed by victims. Fear of the abuser is first and foremost, followed by fear of testifying in court.

A study of five jurisdictions in three states found that victims across all sites reported that fear of defendant retaliation was their most common barrier to participation with prosecutors.<sup>194</sup> Even in a Chicago study where the majority of Chicago victims wanted their abusers prosecuted, fear was the biggest factor for those who opposed prosecution, representing 55% of all victims opposing prosecution. A quarter of victims opposing prosecution reported being threatened by their abusers against prosecution. Others expressed fear that their abusers would become more violent. In addition, almost half who wanted prosecution dropped thought it wouldn't make any difference. A minority, about a third opposed prosecution because they depended upon their abuser for housing.<sup>195</sup>

In addition to fear of the abuser, an Ohio study, found that more victims were actually afraid of testifying in court than they were of the defendant or compromising their relationship with the defendant. Specifically, victims expressed fear that the prosecutors would not prepare them adequately to testify. They were also concerned that the defendant might be found not guilty.<sup>196</sup>

### **Is victim fear of prosecution well founded?**

Victim fear of their abusers appears well founded. Multiple prosecution and arrest studies broadly concur that abusers who come to the attention of the criminal justice system who reabuse are likely to do so sooner rather than later. In the Quincy court study, for example, about 40% of the arrested abusers reabused their victim within a year. Forty-four percent (44%) did so **before** the study arrest was prosecuted in court. The average case took about six months from arraignment to prosecution.<sup>197</sup> Similarly in a Cook County study, 30% of the defendants were rearrested within six months after their study arrest, including half for a new domestic violence offense. The average rearrest time was only 29 days after initial arrest. In addition, in almost half of the cases, 45.9%, defendants tried to talk women out of testifying. Moreover, 29.1% of these defendants stalked their victims pretrial and 8.7% specifically threatened them.<sup>198</sup>

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<sup>194</sup> Harrell, A., Catro, J., Newmark, L., & Visher, C. (2007). Final Report on the Evaluation of the Judicial Oversight Demonstration: Executive Summary. Washington D.C.: U.S. Department of Justice 1999-WT-VX-K005, National Institute of Justice, NCJ 219386.

<sup>195</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>196</sup> Belknap, J., Graham, D., Hartman, J., Lippen, V., Allen, G., & Sutherland, J. (2000). Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables, Executive Summary. Washington D.C.: U.S. Department of Justice, 96-WT-NX-0004 National Institute of Justice, NCJ 184112.

<sup>197</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>198</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

In the Brooklyn Specialized Felony Domestic Violence Court, where it took on average 6.5 to seven months for cases to be disposed, 51% of defendants charged with domestic felonies other than violation of protective orders were rearrested pre-disposition, 14% for a crime of violence and 16% for violation of a protection order. Among those charged with order violations, a felony in New York, the rearrest rate was 47%, including more than a third, 37%, for violating the protective order again.<sup>199</sup>

While these studies do not demonstrate that prosecution causes reabuse, they indicate that pending prosecution in and of itself does not deter recidivist abusers.

**Implications: Judges should insist that police and/or prosecutors document and inform the court if defendants reabuse, threaten or intimidate victims while cases are pending so that the court can fairly allow for substitute hearsay testimony if the victim does not appear at trial. The equitable doctrine of forfeiture, affirmed in *Davis v. Washington*, 126 S. Ct. 2266, 2280 (2006), precludes a defendant from using his right to confrontation to bar the admission of a victim's statements when his wrongdoing caused her unavailability at trial.**

**Research Basis:** *Rapid reabuse rates are documented in multiple studies from disparate jurisdictions. Victim fear is documented in several victim studies in different jurisdictions.*

## XI. What does the research reveal about sentencing abusers?

### What are current abuser sentencing practices?

Just as prosecution rates vary widely, so does sentencing of domestic violence perpetrators even though the vast majority of domestic violence defendants are prosecuted for misdemeanor assaults. Although the United States Civil Rights Commission and National Council of Juvenile and Family Court Judges have opposed the practice,<sup>200</sup> many jurisdictions routinely divert abuse cases. In the Brooklyn Misdemeanor Domestic Violence Court study of 9,157 cases in 2002, of those pleading or found guilty, 51% received a conditional discharge, 35% received jail, 7% received probation, 5% were ordered to complete community service, and 1% were fined.<sup>201</sup> In Chicago, a little less than a third was given conditional discharges, 24 % probation or court supervision, and 23 % jail (including time served pending trial).<sup>202</sup> While in

<sup>199</sup> Newmark, L., Rempel, M., Diffily, & Kane, K. (2001). Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0005, National Institute of Justice, NCJ 191861.

<sup>200</sup> United States Civil Rights Commission (1982). Under the Rule of Thumb: Battered Women and the Administration of Justice, Washington D.C.:U.S. Department of Justice; Family Violence Project (1990). *Family Violence: Improving Court Practice*, Juvenile and Family Court Journal, 41 (4), 14-15.

<sup>201</sup> Cissner, A. & Puffett, N. (2006). Do Batterer Program Length or Approach Affect Completion or Re-Arrest Rates? A Comparison of Outcomes Between Defendants Sentenced to Two Batterer Programs in Brooklyn. New York, NY: Center for Court Innovation (<http://www.courtinnovation.org/publicationsall.html>).

<sup>202</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An

Massachusetts, where three quarters of the suspects (74.1%) were charged with some form of assault and/or battery, a quarter of the defendants was diverted, a quarter placed on probation and 13.5% imprisoned.<sup>203</sup> In Ohio, of those found guilty, almost 70% were incarcerated with the largest number incarcerated between 30 and 45 days, although 18.8% were incarcerated 150 to 180 days.<sup>204</sup> The number of domestic violence offenders sent to Ohio prisons increased nine-fold between 1991 and 2005.<sup>205</sup> In three different states with specialized prosecution programs, 52% to 76% of convicted abusers were incarcerated.<sup>206</sup>

If placed on probation, supervision ranges from unsupervised to intensive with a variety of special conditions. Most defendants in the specialized prosecution courts along with jail were placed on probation with a condition of no victim contact, batterer treatment, drug and alcohol abstinence and testing, attendance at fatherhood programs or women's groups for female offenders, mental health evaluations, mandatory employment, and restrictions on weapons.<sup>207</sup> A study of over a thousand domestic violence arrests across three states, Connecticut, Idaho and Virginia, found of those convicted, a little less than half (46.7%) was ordered into either anger management or batterer programs.<sup>208</sup>

By statute, Cal. Penal Code § 1203.097, California batterers must be sentenced to three years probation; criminal protective orders must be incorporated to protect victims from further violence, threats, stalking, sexual abuse and harassment; the defendant must complete a batterer program of no less than a year, make a minimum \$200 payment, perform a specified amount of community service, as well as attend as needed substance abuse treatment, pay restitution and in lieu of fine pay up to \$5,000 to a battered women's shelter. However, a 2005 study revealed widespread variance with the law in practice by

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Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>203</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427

<sup>204</sup> Belknap, J., Graham, D., Hartman, J., Lippen, V., Allen, G., & Sutherland, J. (2000). Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables, Executive Summary. Washington D.C.: U.S. Department of Justice, 96-WT-NX-0004 National Institute of Justice, NCJ 184112.

<sup>205</sup> Wooldredge, J. (2007). *Convicting and incarcerating felony offenders of intimate assault and the odds of new assault charges*. Journal of Criminal Justice, 35, 379-389, quoting Bates, J., Gonzales, C., Muncy, V., Boyd, R., Easter, R., & Van Dine, S. (2005). 2005 Intake reports, Ohio Department of Rehabilitation and Correction (<http://www.drc.state.oh.us/web/reports/reports12asp>).

<sup>206</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

<sup>207</sup> Harrell, A., Catro, J., Newmark, L., & Visser, C. (2007). Final Report on the Evaluation of the Judicial Oversight Demonstration: Executive Summary. Washington D.C.: U.S. Department of Justice 1999-WT-VX-K005, National Institute of Justice, NCJ 219386.

<sup>208</sup> Hirschel, D., Buzawa, E., Pattavina, A., Faggiana, D. & Ruelan, M. (2007). Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases. Washington D.C.: U.S. Department of Justice, 2001-WT-BX-0501, National Institute of Justice, NCJ 218355.

allowing defendants to plead guilty to non-domestic violence crimes such as assault or trespass.<sup>209</sup>

### **What accounts for dispositions?**

The research suggests that domestic violence dispositions do not always follow standard sentencing patterns, often not reflecting defendants' prior criminal histories, suggesting that prosecutors and judges disregard prior records that are not domestic violence-related. In a large Ohio court study, for example, researchers found no correlation between offenders' prior criminal histories and sentence severity.<sup>210</sup> Similarly and surprisingly, the Toledo, Ohio study found defendants with prior **felony** convictions were the least likely to be prosecuted and sentenced.<sup>211</sup> In contrast, in both Quincy, Massachusetts and Rhode Island, prior criminal history was significantly associated with severity of sentences.<sup>212</sup>

Victim preference was not found to be a significant factor in sentencing in Quincy, Ohio, Everett, Klamath Falls, Omaha and San Diego studies of court cases.<sup>213</sup> In these jurisdictions, factors associated with more severe sentences varied considerably and included whether there was strangulation, the gender of the defendant, whether the defendant and victim were living together, the size of the prosecutor's caseload, and so on. There were no consistent patterns noted from study to study.

**Implications: Sentences should reflect defendants' prior criminal histories as well as abuse histories as both indicate risk of reabuse as well as general criminality. It is a mistake for judges to consider abusers with prior criminal histories as "first offenders," simply because they have no prior record specifically for domestic violence.**

<sup>209</sup> Task Force on Local Criminal Justice Response to Domestic Violence. (2005). Domestic Violence: Keeping the Promise, Victim Safety and Batterer Accountability. Sacramento, CA: Office of the Attorney General.

<sup>210</sup> Belknap, J., Graham, D., Hartman, J., Lippen, V., Allen, G., & Sutherland, J. (2000). Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables, Executive Summary. Washington D.C.:U.S. Department of Justice, 96-WT-NX-0004 National Institute of Justice, NCJ 184112.

<sup>211</sup> Ventura, L. & Davis, G. (October 2004). Domestic Violence: Court Case Conviction and Recidivism in Toledo. Toledo, OH: University of Toledo Urban Affairs Center.

<sup>212</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011..

<sup>213</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Belknap, J., Graham, D., Hartman, J., Lippen, V., Allen, G., & Sutherland, J. (2000). Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables, Executive Summary. Washington D.C.:U.S. Department of Justice, 96-WT-NX-0004 National Institute of Justice, NCJ 184112; Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

**Research Basis:** *Disparate sentencing studies find inconsistent variables including consideration of prior records.*

### **Are defendants who don't show in court more at risk for reabuse than those that do?**

The Chicago study found that no-show defendants prosecuted by specialized prosecution team had significantly greater number of post-arrests than those that showed, .778 compared to .456.<sup>214</sup> While this has not been examined elsewhere, in a Berkeley arrest study, researchers similarly documented that having a pending warrant at time of the domestic violence incident was a significant predictor of reabuse.<sup>215</sup> The Quincy arrest study also found that suspects who flee the scene before police arrived were significantly more likely to reabuse than those arrested at the scene.<sup>216</sup>

**Implications: If defendants default in court prior to sentencing, judges should consider them higher risk for reabuse for purposes of bail, fashioning civil orders and sentencing.**

**Research Basis:** *While only one study looked at this issue directly, several others found the same association between defendant conduct and reabuse pre-prosecution.*

### **Can “first” offenders be safely diverted/discharged?**

The few studies that have examined reabuse among diverted or discharged abusers have consistently found a steady minority continued to reabuse notwithstanding none or minimal prior records.

In the Quincy arrest study, for example, a quarter of the arrested defendants were continued without a finding to be dismissed if they remained arrest free for six months to a year, a disposition reserved for first or lesser defendants. A quarter were arrested or had new protective orders taken out against them within two years of their study arrest. Although this reabuse rate was still half that of defendants with more substantial prior criminal histories, it was substantially higher than prosecutors and judges had anticipated.<sup>217</sup> Similarly, a little over a quarter of the abusers (27.5%) given a conditional discharge in Cook County violated the conditional discharge.<sup>218</sup> While those placed on probation in Rhode Island with guilty findings was higher than those placed on probation

<sup>214</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>215</sup> Wordes, M. (2000). Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence, Washington D.C.:U.S. Department of Justice, 96-IJ-CX-0098, National Institute of Justice. NCJ 182781

<sup>216</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>217</sup> Klein, A. & Tobin, T. (2008). *Longitudinal Study of Arrested Batterers, 1995-2005: Career Criminals. Violence Against Women, 14* (2), 136-147.

<sup>218</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

without guilty findings, the rearrest rate for domestic violence over one year was still 35%.<sup>219</sup>

**Implications: Judges cannot assume that defendants with no or limited prior records for domestic violence can be diverted pre-adjudication or given conditional discharges without consistently compromising safety for at least a quarter of their victims.**

**Research Basis:** *Limited site studies as well as broader research on offender risk previously cited.*

## XII. Do Batterer Intervention Programs Prevent Reabuse?

Commonly, whether diverted, probated, even jailed, a high proportion of domestic violence offenders are required to attend batterer treatment programs. There have been more than 35 evaluations of batterer intervention programs. They have yielded inconsistent results. Two meta-analyses of the more rigorous studies find they have, at best, a “modest” treatment effect, producing a minimal reduction in re-arrests for domestic violence.<sup>220</sup> In one of the meta-analyses, the treatment effect translated to a five percent improvement rate in cessation of reassaults due to the treatment.<sup>221</sup> In the other, it ranged from none to .26, roughly representing a reduction in recidivism from 13 to 20%.<sup>222</sup>

On the other hand, only a few studies have found batterer programs make abusers more likely to reabuse,<sup>223</sup> while most that have not found positive effects have found none at all.<sup>224</sup>

The multi-state study of four batterer programs concludes that a hard core of approximately a quarter of batterers appears to be unresponsive and resistant to batterer intervention. In this long term study, approximately half of the men reassaulted their initial or new partners sometime during the 30-month follow-up based on victim, abuser,

<sup>219</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island’s Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011..

<sup>220</sup> Babcock, J., Green, C. & Robie, C. (2004). *Does Batterer Treatment Work? A Meta-analytic Review of Domestic Violence Treatment*. Clinical Psychology Review, *23*, 1023-1053; Feder, L. & Wilson, D. (2005). *A Meta-Analytic Review of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers’ Behaviors?* Journal of Experimental Criminology, *1*, 239-262.

<sup>221</sup> Babcock, J., Green, C. & Robie, C. (2004). *Does Batterer Treatment Work? A Meta-analytic Review of Domestic Violence Treatment*. Clinical Psychology Review, *23*, 1023-1053.

<sup>222</sup> Feder, L. & Wilson, D. (2005). *A Meta-Analytic Review of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers’ Behaviors?* Journal of Experimental Criminology, *1*, 239-262.

<sup>223</sup> Harrell, A. (1991). Evaluation of a Court-Ordered Treatment For Domestic Violence Offenders. Washington, D.C.: U.S. Department of Justice, National Institute of Justice; Gordon, J. & Moriarty, L. (2003). *The Effects of Domestic Violence Batterer Treatment on Domestic Violence Recidivism*. Criminal Justice and Behavior *30* (1), 118-134.

<sup>224</sup> Feder, L. & Forde, D. (2000). A Test of the Efficacy of Court-Mandated Counseling for Domestic Violence Offenders: The Broward Experiment. Washington D.C.: U.S. Department of Justice, 96-WT-NX-0008, National Institute of Justice, NCJ 184752; Davis, R., Taylor, B. & Maxwell, C. (2000). Does Batterer Treatment Reduce Violence? A Randomized Experiment in Brooklyn. Washington D.C.: U.S. Department of Justice, 94-IJ-CX-004, National Institute of Justice (NCJ 180772) (Eight Week Program); Daly, J. & Pelowski, S. (2000). *Predictors of Drop Out Among Men Who Batter: A Review of Studies with Implications fro Research and Practice*. Violence and Victims, *15*, 137-160.

or police arrests, although most of the reassaults occurred within the first 6-months of program intake. Nearly a quarter (23%) of the men repeatedly reassaulted their partners during the follow-up. These men also accounted for nearly all of the severe assaults and injuries.<sup>225</sup>

**Implications: Batterer Programs, alone, are not likely to protect most victims or new intimate partners of referred abusers from further harm from higher risk abusers. Consequently, if mandated or utilized, judges should supplement batterer programs with other measures to assure victim safety from these abusers.**

**Research Basis: Multiple single studies as well as two meta-analyses of studies from disparate jurisdictions in different contexts across the country.**

### **Does the type or length of batterer intervention programs make a difference?**

Several studies have found that the type of batterer program, whether feminist, psycho-educational, or cognitive-behavioral, does not make a difference in terms of reabuse.<sup>226</sup> One study also found that a “culturally focused” program specifically designed for African American male abusers did no better than the regular program offered all abusers. In fact, those assigned to a conventional, racially mixed group were half as likely to be arrested for reassaults compared to those assigned to a completely African American culturally-focused counseling group or a conventional group of all African Americans.<sup>227</sup>

However, a rigorous New York City study found the length of the program (26 weeks compared to 8 weeks) may make a difference, with the longer program proving more effective at deterring reabuse. The researchers suggest that the longer program’s increased effectiveness was due to its longer suppression effect while abusers were mandated to attend, whether or not they actually attended.<sup>228</sup> On the other hand, a multi-state study of four programs in lengths from 3 to 9 months found no difference in subsequent reabuse.<sup>229</sup>

<sup>225</sup> Gondolf, E. (1997). Results of a Multi-site Evaluation of Batterer Intervention Systems. Indiana, PA: Mid-Atlantic Addiction Training Institute; Gondolf, E. (2000). A 30-month Follow-up of Court Referred Batterers in Four Cities. International Journal of Offender Therapy and Comparative Criminology, 44 (1), 111-128; Gondolf, E. (2001). The Program Effects of Batterer Programs in Three Cities. Violence and Victims, 16, 693-704..

<sup>226</sup> Babcock, J., Green, C. & Robie, C. (2004). Does Batterer Treatment Work? A Meta-analytic Review of Domestic Violence Treatment. Clinical Psychology Review, 23, 1023-1053; Dunford, F. (2000). The San Diego Navy Experiment: An Assessment of Interventions for Men Who Assault Their Wives. Journal of Consulting and Clinical Psychology 68, 468-476; Gondolf, E. (2001). The Program Effects of Batterer Programs in Three Cities. Violence and Victims, 16, 693-704.

<sup>227</sup> Gondolf, E. & Williams, O. (2005). Culturally Focused Batterer Counseling for African American Men. Washington D.C.; U.S. Department of Justice, 2001-WT-BX-0003, National Institute of Justice (NCJ 210828).

<sup>228</sup> Davis, R., Taylor, B. & Maxwell, C. (2000). Does Batterer Treatment Reduce Violence? A Randomized Experiment in Brooklyn. Washington D.C.: U.S. Department of Justice, 94-IJ-CX-004, National Institute of Justice (NCJ 180772).

<sup>229</sup> Gondolf, E. (1997). Results of a Multi-site Evaluation of Batterer Intervention Systems. Indiana, PA: Mid-Atlantic Addiction Training Institute; Gondolf, E. (2000). A 30-month Follow-up of Court Referred Batterers in Four Cities. International Journal of Offender Therapy and Comparative Criminology, 44 (1), 111-128; Gondolf, E. (2001). The Program Effects of Batterer Programs in Three Cities. Violence and Victims, 16, 693-704.

**Implications: As long as the batterer program is focused on preventing reabuse, the type of program makes no difference. However, longer batterer programs are better than shorter programs.**

**Research Basis:** *While only one study speaks to the suppression effects of batterer programs, the findings that batterer programs provide little treatment effect suggest that programs' effectiveness may result from their suppression effect and/or the context in which they operate including probation supervision or periodic court compliance hearings. These findings argue for longer programs.*

### **Do couples counseling or anger management treatment programs prevent reabuse?**

There has been little recent research on the application of couples counseling involving batterers and their victims<sup>230</sup> as most batterer treatment standards prohibit couples counseling.<sup>231</sup> While an early study in 1985 found it ineffective with half of the couples reporting new violence within six weeks of couples counseling,<sup>232</sup> other studies found lower reabuse rates.<sup>233</sup> A small study suggests that couples counseling *after* separate counseling for batterers and victims may be safe and beneficial for couples who want to remain together.<sup>234</sup>

While anger management is often a part of batterer intervention programs based on cognitive psychology, generic anger management programs, by themselves, like couples counseling, have been generally prohibited by most state batterer treatment standards.<sup>235</sup>

In one of the largest studies to date, the Office of the Commissioner of Probation in Massachusetts studied a sample of 945 defendants arraigned for violating a protective order and as part of their subsequent disposition were ordered into a program, including a certified batterer intervention program, anger management, mental health treatment and/or substance abuse treatment, although 13% were sent to multiple programs. The study found those referred to 12 to 20 week anger management programs had a higher completion rate than those referred to the much longer 40 week batterer intervention programs. Notwithstanding higher completion rates, unlike those referred to batterer intervention programs, there was no difference in rearrest rates for those who completed anger management and those that failed to complete it. Further those who completed anger management recidivated at higher rates than those that completed batterer intervention programs even though those referred to batterer programs had significantly more criminal history, including more past order violations, more long standing substance abuse histories, and less education than those referred to anger management.<sup>236</sup>

<sup>230</sup> Stith, S., Rosen, K., & McCollum, E. (2003). *Effectiveness of Couples Treatment for Spouse Abuse*, *Journal of Marital and Family Therapy*, 29 (3), 407-426.

<sup>231</sup> A Review of Standards for Batterer Intervention Programs (www.vaw.umn.edu/Vawnet.standard.htm.).

<sup>232</sup> Lindquist, C., Telch, C. & Taylor, J. (1985). *Evaluation of a Conjugal Violence Treatment Program: A Pilot Study*. *Behavioral Counseling and Community Interventions*, 3, 76-90.

<sup>233</sup> Deschner, J.P., McNeil, J.S., & Moore, M.G. (1986). *A treatment model for batterers*. *Social Casework*, 67, 55-60.

<sup>234</sup> Johansson, M. & Tutty, L. (1998). *An Evaluation of After-Treatment Couples' Groups for Wife Abuse*, *Family Relations*, 47 (1), 27-35.

<sup>235</sup> A Review of Standards for Batterer Intervention Programs (www.vaw.umn.edu/Vawnet.standard.htm.).

<sup>236</sup> Bocko, S., Cicchetti, C., Lempicki, L. & Powell, A. (November 2004). Restraining Order Violators, Corrective Programming and Recidivism. Boston, MA: Office of the Commissioner of Probation.

An earlier study of a program in Pittsburgh found that abusers who relied on anger management control techniques were more likely to reabuse their partners than those who relied on increased empathy, a redefinition of their manhood, and more cooperative decision-making as a means to ending their abuse.<sup>237</sup>

**Implications: There is no evidence that anger management or couples counseling programs effectively prevent court mandated abusers from reabusing or committing new offenses after treatment.**

**Research Basis:** *The limited research that has been conducted has been at best inconclusive regarding the effectiveness of these programs while one large state study finds court referred batterers are less apt to commit new offenses, including both domestic and non-domestic violent offenses, if they complete batterer programs compared to those that complete anger management programs. The difference, however, may also be accounted for by the fact that the batterer programs were twice as long as the anger control programs.*

### **Does alcohol and drug treatment prevent reabuse?**

The correlation between alcohol and drug treatment has been confirmed in numerous studies previously cited.<sup>238</sup> It is therefore not surprising that studies find substance abuse treatment can be effective in reducing domestic violence.<sup>239</sup> In one such study, for example, researchers found that among 301 alcoholic male partner abusers, of whom 56% had physically abused their partners the year before treatment, partner violence significantly decreased in half a year after alcohol treatments, but still was not as low as the non-alcoholic control group. Among those patients who no longer drank at all, reabuse dropped to 15%, the same as the non-alcoholic control group and half that of treated alcoholics who failed to maintain sobriety.<sup>240</sup> As this study suggests, however, alcohol and drug treatment, in and of itself, may not be sufficient for all abusers. This is supported by the Massachusetts treatment study of 945 defendants convicted of violating protective orders and ordered into a program. It found that those who completed a variety of alcohol and drug treatment programs had higher rates of re-arrestment over six years for any crime or violations of protective orders than those who completed batterer programs (57.9% vs. 47.7% for any crime and 21.1% v. 17.4% for violation of protective orders). Further, there was no significant difference in re-arrestment rates between the substance abuse treatment completers and non-completers.<sup>241</sup>

On the other hand, studies suggest alcohol and drug treatment may be a necessary component of successful intervention to prevent reabuse. The multi-state study of four

<sup>237</sup> Gondolf, E. (1984). How Some Men Stop Battering: An Evaluation of a Group Counseling Program (Paper, Second National Conference on Family Violence, Durham, NH), cited in Gondolf, E. & Russell, D. (1986). *The Case Against Anger Control Treatment Programs for Batterers*, Response 9 (3), 2-5.

<sup>238</sup> See **IV D. Are they likely to be drug and/or alcohol abusers?**

<sup>239</sup> Stuart, G. (2005). *Improving Violence Intervention Outcomes Integrating Alcohol Treatment*. Journal of Interpersonal Violence 20 (4), 388-393.

<sup>240</sup> O'Farrell, T., Fals-Stewart, W., Murphy, M. & Murphy, C. (2003). *Partner Violence Before and After Individually Based Alcoholism Treatment for Male Alcoholic Patients*. Journal of Consulting Clinical Psychology 71 (1), 92-102.

<sup>241</sup> Bocko, S., Cicchetti, C., Lempicki, L. & Powell, A. (November 2004). Restraining Order Violators, Corrective Programming and Recidivism. Boston, MA: Office of the Commissioner of Probation.

batterer programs, for example, found that among program completers, those that became intoxicated within a three month period were three times more likely to reassault their partners than those that did not.<sup>242</sup>

**Implications: Incorporating alcohol and/or drug treatment as a standard component of batterer intervention adds to the likelihood of reductions in reabuse among batterers, many of whom abuse alcohol and drugs. Effective treatment should include abstinence testing to assure sobriety and no drug use.**

**Research Basis:** *Extensive research in both clinical and court settings confirm the correlation between substance abuse and increased likelihood of reabuse as well as reduction in reabuse among offender successfully treated for drug abuse.*

### **Are court referred batterers likely to complete batterer programs?**

Multiple studies of disparate programs around the country have found high non-completion rates ranging from 25% to 89% with most at around 50%.<sup>243</sup> Rates vary as different programs have different standards for monitoring attendance, as well as policies regarding re-enrollment, missed meetings, and the like. A study in California, for example, found that of ten counties examined, only one maintained a database to track offender participation in the mandated batterer program and it reported 89% did not complete the program.<sup>244</sup>

Not surprisingly, adding on additional treatment programs increases non-completion. For example, while 42% of the referred batterers in the Bronx failed to complete the batterer program, that increased to 67% for those also required to also complete drug treatment. For those required to complete drug treatment alone, the non-completion rate was 60%.<sup>245</sup>

High technical violation rates are common in general for probationers sentenced for domestic violence for all common conditions, including no contact orders, drug abstinence, as well as batterer intervention programs. Various probation studies find technical violation (non-crime) rates ranging from 34% of those sentenced in the Brooklyn Felony Domestic Violence Court,<sup>246</sup> 41% in Colorado,<sup>247</sup> 61% in Champaign

<sup>242</sup> Gondolf, E. (1997). Results of a Multi-site Evaluation of Batterer Intervention Systems. Indiana, PA: Mid-Atlantic Addiction Training Institute; Gondolf, E. (2000). A 30-month Follow-up of Court Referred Batterers in Four Cities. International Journal of Offender Therapy and Comparative Criminology, 44 (1), 111-128; Gondolf, E. (2001). The Program Effects of Batterer Programs in Three Cities. Violence and Victims, 16, 693-704.

<sup>243</sup> Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York: Center for Court Innovation; Daly, J. & Pelowski, S. (2000). Predictors of Drop Out Among Men Who Batter: A Review of Studies with Implications fro Research and Practice. Violence and Victims, 15, 137-160; Gondolf, E. (2005). Culturally-Focused Batterer Counseling for African-American Men, Final Report. Washington D.C.: U.S. Department of Justice, 2001-WT-BX-003, National Institute of Justice (NCJ 210828).

<sup>244</sup> Lockyer, B. (2005). Domestic Violence: Keeping the Promise, Victim Safety and Batterer Accountability, Report to the California Attorney General from the task Force on Local Criminal Justice Response to Domestic Violence. Sacramento, CA: Office of the Attorney General ([www.safestate.org/domesticviolence](http://www.safestate.org/domesticviolence)).

<sup>245</sup> Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York: Center for Court Innovation.

<sup>246</sup> Newmark, L., Rempel, M., Diffily, & Kane, K. (2001). Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0005, National Institute of Justice, NCJ 191861.

<sup>247</sup> Huntley, S. & Kilzer, L. (February 9, 2005). Battered Justice Series. Rocky Mountain News.

County, Illinois,<sup>248</sup> and 25 to 44% Rhode Island (regular compared to specialized domestic violence supervision).<sup>249</sup>

**Implication: Judges should take all appropriate steps to make sure that court conditions are enforced, violators are returned to court promptly, and heard expeditiously.**

**Research Basis: Multiple studies from disparate jurisdictions across the country.**

### **Do batterer program completers do better than those who fail?**

Abusers who complete batterer programs are less likely to reabuse than those that fail to attend, are noncompliant, or drop out.<sup>250</sup> The differences can be substantial.

A Chicago study of more than 500 court referred batterers referred to 30 different programs, for example, found that completers' recidivism after an average of 2.4 years was 14.3% while that for non-completers was more than twice that at 34.6%.<sup>251</sup> Those who did not complete their program mandate in the Bronx court study were four times more likely to recidivate than those that completed their program.<sup>252</sup>

The multi-state study of four programs found program completion reduced risk of reassault from 46 to 66%.<sup>253</sup> A Florida study found that the odds that abusers who completed the program would be rearrested was half that of a control group of those not assigned the program while the odds of rearrest for those who failed to attend the program as ordered was 2.53 higher than the control group.<sup>254</sup>

A Massachusetts study found that over a six year period, those who completed a certified batterer intervention program were significantly less likely to be re-arraigned for any type of offense, a violent offense, or a protection order violation. (Massachusetts does not have a domestic violence statute so researchers could not differentiate domestic

<sup>248</sup> Hayler, B., Ford, N., & Addison-Lamb, M. (December 1999). An Implementation Evaluation of the Enhanced Domestic Violence Probation Program in Champaign County. Springfield, IL: University of Illinois at Springfield.

<sup>249</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>250</sup> Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York: Center for Court Innovation; Gordon, J. & Moriarty, L. (2003). The Effects of Domestic Violence Batterer Treatment on Domestic Violence Recidivism: The Chesterfield County Experience. Criminal Justice and Behavior, 30, 118-134; Dobash, R., Dobash, R.E., Cavanagh, K. & Lewis, R. (1996). Reeducation Programs for Violent Men: An Evaluation. Research Findings, 46, 309-322.; Edleson, J. & Grusznski, R. (1988). Treating Men Who batter: Four Years of Outcome data from the Domestic Abuse Project, Journal of Social Service Research, 12, 3-12.; Chen, H., Bersani, S., Myersm S., & Denton, T. (1989). Evaluating the Effectiveness of Court-Sponsored Abuser Treatment Programs. Journal of Family Violence, 4, 137-160.; Babcock, J. & Steiner, R. (1999). The Relationship Between Treatment, Incarceration, and Recidivism of battering: A Program Evaluation of Seattle's Coordinated Community response to Domestic Violence. Journal of Family Psychology, 1, 46-59; Gondolf, E. (2005). Culturally-Focused Batterer Counseling for African-American Men. Final Report. Washington D.C.: U.S. Department of Justice, 2001-WT-BX-003, National Institute of Justice (NCJ 210828).

<sup>251</sup> Bennett, L., Stoops, C., Call, C., & Flett, H. (2007). Program Completion and Re-arrest in a Batterer Intervention System. Research on Social Work Practice, 17 (42), 42-54.

<sup>252</sup> Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York: Center for Court Innovation.

<sup>253</sup> Gondolf, E. (2002). Batterer Intervention Systems. Thousand Oaks, CA: Sage.

<sup>254</sup> Feder, L. & Dugan, L. (2004). Testing a Court-Mandated Treatment Program for Domestic Violence Offenders: The Broward Experiment, Washington D.C.: U.S. Department of Justice, 96-WT-NX-008, National Institute of Justice, NCJ 199729.

from non-domestic violent offenses.) The rate differences for these offenses between completers and non-completers was 47.7% vs. 83.6% for any crime, 33.7% vs. 64.2% for crime of violence, and 17.4% vs. 41.8% for violation of protective order.<sup>255</sup> The Dallas study found that twice as many program drop outs were rearrested within 13 months than completers, 39.7% vs. 17.9%, for any charge and 8.1% vs. 2.8% for assault arrests.<sup>256</sup> An Alexandria, Virginia study of almost 2,000 domestic violence defendants found that non-compliance with court ordered treatment was significantly associated with being a repeat offender.<sup>257</sup>

While also finding reduced reabuse for completers, a few studies have found the reductions to be less dramatic, including Broward County where the difference was only 4% v. 5%<sup>258</sup> and Brooklyn where it was 16% v. 26%.<sup>259</sup>

**Implications: Compliance with mandated batterer programs provide judges with a dynamic risk instrument based on defendant's on-going current behavior. Reabuse can be reduced if courts respond appropriately and expeditiously to batterers who fail to attend or comply with court referred batterer programs.**

**Research Basis: Multiple studies of batterer programs in diverse jurisdictions across the country.**

### **Can batterer program attendance be enhanced by court monitoring?**

Batterer program attendance rates can be increased by court monitoring, specifically through periodic court compliance hearings. In the multi-state evaluation of four difference programs, researchers found that batterer program completion rates rose from under 50% to 65% after a court introduced a mandatory appearance 30 days following imposition of batterer program mandate.<sup>260</sup> Similarly, implementation of a specialized domestic violence court in San Diego significantly increased attendance. Among other changes, the court instituted post-dispositional compliance hearings.<sup>261</sup> Other domestic violence courts have demonstrated completion rates over 50% including the Brooklyn Misdemeanor Domestic Violence Court where completion rates for batterers referred to two different batterer programs was documented at 68 and 77%. The

<sup>255</sup> Bocko, S., Cicchetti, C., Lempicki, L. & Powell, A. (November 2004). Restraining Order Violators, Corrective Programming and Recidivism. Boston, MA: Office of the Commissioner of Probation.

<sup>256</sup> Eckhardt, C. (2003). Stages and Processes of Change and Associated Treatment Outcomes in Partner Assaultive Men, Final Report. Washington D.C.: U.S. Department of Justice, 99-WT-VX-0012, National Institute of Justice (NCJ 205022).

<sup>257</sup> Orchowsky, S. (1999). Evaluation of a Coordinated Community Response to Domestic Violence: The Alexandria Domestic Violence Intervention Project-Final Report. Washington D.C.: U.S. Department of Justice, 95-WT-NX-0004, National Institute of Justice, NCJ 179974.

<sup>258</sup> Feder, L. & Forde, D. (2000). A Test of the Efficacy of Court-Mandated Counseling for Domestic Violence Offenders: The Broward Experiment. Washington D.C.: U.S. Department of Justice, 96-WT-NX-0008, National Institute of Justice, NCJ 184752

<sup>259</sup> Taylor, B., Davis, R., & Maxwell, C. (2001). The Effects of a Group Batterer Treatment Program: A Randomized Experiment in Brooklyn, Justice Quarterly 18 (1), 171-201.

<sup>260</sup> Gondolf, E. (1998). The Impact of Mandatory Court Review on Batterer Program Compliance: An Evaluation of the Pittsburgh Municipal Courts and Domestic Violence Abuse Counseling Center, Indiana, PA: Mid-Atlantic Training Institute.

<sup>261</sup> San Diego Superior Court (2000). Evaluation report for the San Diego County Domestic Violence Courts, Report submitted to State Justice Institute.

26-week program had only a slightly higher completion rate than the 12-week program.<sup>262</sup>

In a related finding, the large Massachusetts study found those defendants ordered to attend programs as a condition of probation had a completion rate of 62% while those ordered to attend without probation supervision had a completion rate of only 30%.<sup>263</sup> A Rhode Island found that a specialized probation domestic violence supervision program more aggressively monitored and enforced program compliance as measured by the number of violation hearings brought to court than the state's regular probation program involving officers with mixed caseloads.<sup>264</sup> A study of three domestic violence courts in Michigan, Wisconsin and Massachusetts found significantly increased offender compliance with batterer programs, both in showing up and staying enrolled. All three courts featured post-dispositional review hearings.<sup>265</sup>

**Implications: To increase program participation, judges should hold post-dispositional compliance hearings as well as the place abusers on supervised probation even if their convictions were for misdemeanors or ordinance violations. Research Basis:** *Limited research has been conducted on this issue but none suggests increased judicial monitoring does anything but increase attendance.*

**Performance measures:** A 75% completion rate has been documented for batterers referred from the Circuit Court of Cook County (Chicago) to 30 area batterer programs. **Research Basis:** Single study of 549 male domestic violence probationers who were referred to 30 area batterer intervention programs and completed them or were terminated at the time of the study.<sup>266</sup>

### **Which batterers are likely to fail to attend mandated batterer treatment?**

Researchers generally agree that there are a number of variables associated with likelihood of program completion. They include being younger, having less education, having greater criminal histories and violence in their family of origin, being less employed and less motivated to change, having substance abuse problems, having children, and a lack of court sanctions for non-compliance.<sup>267</sup> A number of studies

<sup>262</sup> Cissner, A. & Puffett, N. (2006). Do Batterer Program Length or Approach Affect Completion or Re-Arrest Rates? A Comparison of Outcomes between Defendants Sentenced to Two Batterer Programs in Brooklyn. New York, NY: Center for Court Innovation (<http://www.courtinnovation.org/publicationsall.html>).

<sup>263</sup> Bocko, S., Cicchetti, C., Lempicki, L. & Powell, A. (November 2004). Restraining Order Violators, Corrective Programming and Recidivism. Boston, MA: Office of the Commissioner of Probation.

<sup>264</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>265</sup> Harrell, A., Catro, J., Newmark, L., & Visser, C. (2007). Final Report on the Evaluation of the Judicial Oversight Demonstration: Executive Summary. Washington D.C.: U.S. Department of Justice 1999-WT-VX-K005, National Institute of Justice, NCJ 219386.

<sup>266</sup> Bennett, L., Stoops, C., Call, C., & Flett, H. (2007). Program Completion and Re-arrest in a Batterer Intervention System. Research on Social Work Practice, 17 (42), 42-54.

<sup>267</sup> Bersani & Chen (1988); DeHart, Kennerly, Burke, & Follingstad (1999); DeMaris (1989), Gondolf (1999); Grusznski & Carrillo (1988); Hamberger & Hastings (1989), Pirog-Good & Stets (1986); Saunders & Parker (1989); Feder, L. & Forde, D.

emphasize the positive correlation between program completion and “stakes in conformity,” including specifically age, marital status, and employment.<sup>268</sup>

Studies also find that many of the same variables that predict non-completion also predict reabuse or general recidivism. In the Florida probation study, for example, an examination of the court referred batterers found that the same characteristics that predicted rearrest, including prior criminal history and stakes in conformity, also predicted missing at least one court-mandated program session.<sup>269</sup> Other studies, including the study of two Brooklyn batterer programs, also found employment positively correlated with both completion and negatively with rearrest.<sup>270</sup>

However, prior criminal history remains the strongest and most consistent predictor of non-completion and new arrests. For example, defendants with a prior arrest history were found to be four times more likely than defendant without prior arrests to fail to complete programs in Brooklyn.<sup>271</sup> The Bronx court study similarly found that prior arrests as well as history of drug abuse predicted both non-completion and recidivism, similarly finding background demographics to be less important.<sup>272</sup>

**Implications: Program failure can be reduced by screening referrals based on the common variables found to correlate with successful completion, including age, prior criminal history, and substance abuse. Alternatively, supplemental conditions targeting abusers with these characteristics may be necessary to assure successful program participation.**

**Research Basis:** *While not all studies find the same exact array of variables that predict program completion and/or reabuse and general recidivism, almost all of them find overlapping variables including age, prior criminal history and substance abuse.*

### **When will non-compliant abusers drop out of batterer programs?**

Several studies have found that batterers who do not complete batterer programs are likely to be noncompliant from the start. Further, it has been found that non-compliance at the first court monitoring predicted both program failure and recidivism. In the Brooklyn study, for example, the strongest predictor of program failure was early non-compliance: defendants who had not enrolled in a program by the time of their first compliance hearing were significantly less likely to complete the program than those

<sup>268</sup> Feder, L. & Forde, D. (2000). A Test of the Efficacy of Court-Mandated Counseling for Domestic Violence Offenders: The Broward Experiment. Washington D.C.: U.S. Department of Justice, 96-WT-NX-0008, National Institute of Justice, NCJ 184752; Bennett, L., Stoops, C., Call, C., & Flett, H. (2007). *Program Completion and Re-arrest in a Batterer Intervention System*. Research on Social Work Practice, 17 (42), 42-54.

<sup>269</sup> Feder, L. & Forde, D. (2000). A Test of the Efficacy of Court-Mandated Counseling for Domestic Violence Offenders: The Broward Experiment. Washington D.C.: U.S. Department of Justice, 96-WT-NX-0008, National Institute of Justice, NCJ 184752.

<sup>270</sup> Cissner, A. & Puffett, N. (2006). Do Batterer Program Length or Approach Affect Completion or Re-Arrest Rates? A Comparison of Outcomes between Defendants Sentenced to Two Batterer Programs in Brooklyn. New York, NY: Center for Court Innovation (<http://www.courtinnovation.org/publicationsall.html>).

<sup>271</sup> Cissner, A. & Puffett, N. (2006). Do Batterer Program Length or Approach Affect Completion or Re-Arrest Rates? A Comparison of Outcomes between Defendants Sentenced to Two Batterer Programs in Brooklyn. New York, NY: Center for Court Innovation (<http://www.courtinnovation.org/publicationsall.html>).

<sup>272</sup> Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York: Center for Court Innovation.

enrolled by the first hearing.<sup>273</sup> These findings are similar to those found in the Bronx. Defendants who were not in compliance at their first monitoring appearance were six times more likely to fail to complete the program than those in compliance at that time.<sup>274</sup>

These findings are consistent with extensive research indicating that the largest proportion of court identified abusers who re-abuse are likely to do so sooner rather than later.<sup>275</sup>

**Implications: To safeguard victims and/or new partners, courts should respond immediately to an abuser's first failure to enroll or attend a court-mandated batterer program.**

**Research Basis:** *Although most studies do not report when non-compliant abusers failed their programs, the consistent findings among abusers referred to multiple programs utilized by two different courts in New York strongly support their findings.*

### **What should the judge's response be if court referred abusers are noncompliant with programs?**

Among lower risk abusers on probation for domestic violence, one study found that increased enforcement of batterer program compliance as indicated by significantly more violations brought in court by probation for non-compliance was one of the major ingredient that correlated with reduced reabuse over two year compared to a control group of probationers were also referred to batterer programs but who were not as rigorously monitored or brought back to court to answer for noncompliance. As a result of the court violation hearings, most of the non-compliant probationers were required to attend weekly compliance court sessions until they completed the program. Low risk abusers included those who had not previously been probated for domestic violence. In addition to increase revocation hearings, these probationers had slightly more contact with probation officers, officers attempted to contact victims at least once, and the supervising probation officers supervised specialized domestic violence caseloads.<sup>276</sup>

An evaluation of two model domestic violence courts found that victims in the court with significantly more probation revocations for non-compliance, 12% compared to only 1% in the other court, reported significantly less repeat reabuse than in a comparison court. Victims from the other model court reported no difference with victims in a comparison court. In the court with more revocations, victims reported lower frequency of physical assaults up to eleven months after the study incident. Noteworthy, the defendants in the high revocation court had a significantly higher number of prior arrest that those in the comparison court defendants, 8.3 compared to 3.7. Researchers posited that lower domestic violence arrests were obtained primarily through early

<sup>273</sup> Cissner, A. & Puffett, N. (2006). Do Batterer Program Length or Approach Affect Completion or Re-Arrest Rates? A Comparison of Outcomes between Defendants Sentenced to Two Batterer Programs in Brooklyn. New York, NY: Center for Court Innovation (<http://www.courtinnovation.org/publicationsall.html>).

<sup>274</sup> Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court. New York: Center for Court Innovation

<sup>275</sup> See, **VI. C. When will abusers reabuse?**

<sup>276</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

detection and incarceration of probationers who either continued to reabuse or failed to comply with conditions.<sup>277</sup>

The correlation between program non-compliance and reabuse is suggested by the Broward County probation study researchers who conclude that if abusers are not afraid of violating their court orders, they are not afraid of the consequences of committing new offenses either.<sup>278</sup>

**Implications: Judges should react immediately to respond to non-compliant abusers in order to safeguard victims.**

**Research Basis:** *Multiple studies have found that doing nothing in regard to non-compliant court referred abusers results in significantly higher rates of reabuse. Two studies involving jurisdictions across four states suggest that vigorous enforcement of conditions is the key in deterring reabuse.*

### **What should the judge's response be to abusers who reoffend while enrolled in a batterer program or after completion?**

Batterers who are rearrested while enrolled or afterwards are high-risk for still more abuse.<sup>279</sup> For example, the multi-state batterer program study found that the majority of court referred batterers who reassaulted, did so more than once.<sup>280</sup> Similarly, a Rhode Island probation study found that batterers who were arrested for domestic violence while their prior arrest was still pending or while they were still on probation for an earlier offense (domestic or non-domestic) had the highest reabuse rates of any abusers released on probation, averaging over 50%.<sup>281</sup>

**Implications: To protect victims, judges should incarcerate abusers who reabuse while enrolled in batterer programs or after they have completed the program. Re-enrollment in programs endanger victims.**

**Research Basis:** *Repeatedly arrested abusers have been found to be chronic in their abusive behavior by batterer program studies as well as general studies on court identified batterers.*

### **What effect do batterer program referrals have on victims?**

Studies find that most victims are satisfied with their abuser's referral to a batterer program. In the Bronx study, for example, 77% of victims were satisfied with case

<sup>277</sup> Harrell, A., Catro, J., Newmark, L., & Visher, C. (2007). Final Report on the Evaluation of the Judicial Oversight Demonstration: Executive Summary. Washington D.C.: U.S. Department of Justice 1999-WT-VX-K005, National Institute of Justice, NCJ 219386.

<sup>278</sup> Feder, L. & Dugan, L. (2004). Testing a Court-Mandated Treatment Program for Domestic Violence Offenders: The Broward Experiment, Washington D.C.: U.S. Department of Justice, 96-WT-NX-008, National Institute of Justice, NCJ 199729.

<sup>279</sup> See, **VI. How many abusers are going to do it again?**

<sup>280</sup> Gondolf, E. (1998). Multi-Site Evaluation of Batterer Intervention System: A 30-Month Follow-Up of Court-Mandated Batterers in Four Cities, Indiana, PA: Mid-Atlantic Addiction Training Institute (<http://www.iup.edu/maati/publications/30MonthFollowup.shtml>)

<sup>281</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

outcome if the abuser was sentenced to attend a program compared to only 55% where they were not referred to a program.<sup>282</sup> A survey of victims of men attending batterer programs throughout Rhode Island found most of the female victims were enthusiastic about the batterer programs. Interestingly, the enthusiasm expressed included victims who were re-assaulted but who felt the program still made things better for them.<sup>283</sup>

**Implications: Either judges, batterer program, or other court personnel should warn victims that attendance at batterer programs does not assure abuse cessation during or after the program.**

**Research Basis:** *Consistent findings of victim surveys in multiple settings across the country as well as a study with a control group of victims whose abusers were not sent to a program.*

**Bottom Line: *On the whole, unless batterer intervention programs are closely monitored and program compliance is rigorously enforced, batterer intervention programs may be ineffective and give false hope to victims.***

### XIII. Civil Protective Orders and Criminal No Contact Orders

#### Who obtains civil protective orders?

The research suggests that abusers brought to court for civil protective orders differ little from their peers arrested by police for domestic abuse. Studies have found that each have equivalent criminal histories, ranging from 65% in a study of respondents in Denver, Delaware and the District of Columbia,<sup>284</sup> to a little more than 70% in a Texas study<sup>285</sup> and 80% in a Massachusetts study.<sup>286</sup> Another Massachusetts study of protective order violators found 80% had a prior record, 69% for a non-domestic, but violent offense.<sup>287</sup>

One of the reasons for the substantial overlap between abusers brought to court for civil orders and those arrested for abuse by police is that many petitioners come to civil court as a result of police encouragement following an abuse incident involving police. In a multi-court study, 43% of victims who obtained civil protective orders said

<sup>282</sup> Labriola, M. Rempel, M. & Davis, R. (2005). Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a Randomized Trial. New York, Center for Court Innovation. (<http://www.courtinnovation.org/publicationsall.html>).

<sup>283</sup> Klein, A. & Wilson, D. (2003). A Victim Survey on the Effects of a Court Mandated Batterer Intervention Program in Rhode Island. Waltham, MA: BOTEK Analysis Corporation (<http://www.rijustice.state.ri.us/sac/Reports/BI%20Program.pdf>)

<sup>284</sup> Keilitz, S., Hannaford, P. & Efke, H. (1997). Civil Protective Orders: The Benefits and Limitations for Victim of Domestic Violence. Washington D.C.: U.S. Department of Justice, 93-IJ-CX-0035, National Institute of Justice.

<sup>285</sup> Carlson, M., Harris, S., & Holden, G. (1999). *Protective Orders and Domestic Violence: Risk Factors for Reabuse*. *Journal of Family Violence*, 14 (2), 205-226.

<sup>286</sup> Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 192-214.

<sup>287</sup> Adams, S. (1999). Serial Batterers. Boston, MA: Office of the Commissioner of Probation.

they either learned of the orders or were encouraged to apply for them from police responding to a domestic violence incident.<sup>288</sup>

**Implications: Victims seeking civil remedies for abuse are at the same level of risk for reabuse as victims of abusers arrested for abusing them.**

**Research Basis:** Extensive research of civil petitioners conducted in disparate jurisdictions.

### When and why do victims ask for orders?

The research agrees that most victims do not request civil orders after the first abuse incident or assault. According to the NVAW survey, only 16.4% of rape victims, 17.1% of assault victims and 36.6% of stalking victims petitioned for protective orders following an abuse incident.<sup>289</sup> A survey of victims in battered women shelters found only 40% had obtained orders prior to entering the shelter.<sup>290</sup> Finally, several studies based on samples of women who reported abuse to police found only 12 to 22% secured protective orders.<sup>291</sup>

Often, victims petition courts for orders after failing to stem the abuse through other means. In a multi-court study involving both an inner city minority jurisdiction and a suburban non-minority city south of Boston, prior to petitioning court for an order, female victims had tried to protect themselves in a variety of other ways first. Perhaps most significantly, more than two-thirds, 68%, had left their abuser at least once and 15% had kicked their abuser out at least once before petitioning the courts for orders. In addition, three-quarters, 78%, had called police at least once before, 30% had obtained counseling, 25% had called a hotline or gone to a shelter.<sup>292</sup> In a Colorado study, half of the petitioners had left their abusers at the time of the incident that provoked the protective order petition.<sup>293</sup> Studies have found between 27 and 50% of victims are living with their abuser at the time of the incident that prompted the order request,<sup>294</sup> while between 37 and 46% file for orders after they have left.<sup>295</sup>

<sup>288</sup> Ptacek, J. (1999). *Battered Women in the Courtroom: The Power of Judicial Responses*. Boston, MA: Northeastern University Press.

<sup>289</sup> Tjaden, P. & Thoennes, N. (2000). *Extent, Nature, and Consequences of Intimate Partner Violence, Findings from the National Violence Against Women Survey*. Washington D.C.: U.S. Department of Justice, 93-IJ-CX-0012, National Institute of Justice, NCJ 181867.

<sup>290</sup> Pennel, S., Burke, C. & Mulmat, D. (2002). *Violence Against Women in San Diego, Final Report to the National Institute of Justice*. Washington, DC, NCJ# 191838

<sup>291</sup> Holt, V., Kernic, M., Lumley, T., Wolf, M., & Rivara, F. (2002). *Civil Protection Orders and Risk of Subsequent Police-reported Violence*. *Journal of American Medical Association*, 288 (5), 598-594; Weisz, A., Canales-Portalatin, D., & Nahan, N. (2001). *An Evaluation Of Victim Advocacy Within A Team Approach*. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0006, National Institute of Justice. NCJ 187107

<sup>292</sup> Ptacek, J. (1999). *Battered Women in the Courtroom: The Power of Judicial Responses*. Boston, MA: Northeastern University Press.

<sup>293</sup> Harrell, A. & Smith, B. (1996). *Effects of Restraining Orders on Domestic Violence Victims*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 214-243.

<sup>294</sup> Gondolf 1994; Harrell (1993); Keilitz, S., Hannaford, P. & Efke, H. (1997). *Civil Protective Orders: The Benefits and Limitations for Victim of Domestic Violence*. Washington D.C.: U.S. Department of Justice, 93-IJ-CX-0035, National Institute of Justice; Ptacek, J. (1999). *Battered Women in the Courtroom: The Power of Judicial Responses*. Boston, MA: Northeastern University Press; Zoellner,

<sup>295</sup> Gist, J., McFarlane, J., Malecha, A., Fredland, N., Schultz, P., & Willson, P., et al. (2001). Women in danger: Intimate partner violence experienced by women that qualify and do not qualify for a protective order. *Behavioral Sciences & the Law*, 19, 637-647; Gist, J., McFarlane, J., Malecha, A., Willson, P.,

As a result, most victims who petition courts for protection orders have suffered several years of abuse with the same abuser before coming to court for the first time. In a multi-state and District of Columbia study, researchers found 10% sought protection orders after only a week of abuse, 15% experienced abuse for one to two years and nearly a quarter had endured abuse for more than five years.<sup>296</sup> In a Colorado study, the average female petitioner suffered 12.74 abusive behaviors in the year prior to requesting their orders, from being sworn at to raped. A fifth reported their prior abuse included the more serious behaviors, including strangling, forced sex and beating. The duration ranged from once to 31 years with a median of 2.4 years.<sup>297</sup>

The specific incident that promoted victims to petition for protective orders generally involves physical abuse. In the multi-state and District of Columbia study, more than a third had been threatened or injured with a weapon (36.8%), more than half (54.4%) had experienced severe physical abuse, 83.9% experienced mild physical abuse and almost all, 98.9%, had been intimidated through threats, stalking and harassment.<sup>298</sup> In Quincy, Massachusetts, similarly, 64.4% of the victims were physically assaulted, another third had been threatened with death or harm to them, their children or a relative.<sup>299</sup> Similarly in a Colorado study, 56% of the female petitioners had sustained physical injuries during the incident that led to the order requests.<sup>300</sup> In the two courts studied in Massachusetts, one located in a minority neighborhood of Boston and the other a south shore mid-sized city, 92% of the petitions filed by female victims described incidents that constituted criminal acts, 70% assault and batteries. Breaking down the affidavits further, the researcher found 48% described separation violence, 22% punishment, coercion, and retaliation concerning children, and 12% retaliation for calling police. Two-thirds of the female petitioners (65%) told the researcher that the abuser had threatened them with death, 35% had visited hospitals as a result of prior violence in past, 30% suffered sexual abuse, and of those who were mothers, 51% reported threats to take children from them or report them as unfit to child protective services.<sup>301</sup>

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Watson, K., Fredland, N., Schultz, P., Walsh, T., Hall, I. & Smith, S. (2001). Protection orders and assault charges: Do justice interventions reduce violence against women? *American Journal of Family Law*, 15(1), 59-71; McFarlane (2004).

<sup>296</sup> Keilitz, S., Hannaford, P. & Efke, H. (1997). Civil Protective Orders: The Benefits and Limitations for Victim of Domestic Violence. Washington D.C.: U.S. Department of Justice, 93-IJ-CX-0035, National Institute of Justice.

<sup>297</sup> Harrell, A. & Smith, B. (1996). *Effects of Restraining Orders on Domestic Violence Victims*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 214-243

<sup>298</sup> Keilitz, S., Hannaford, P. & Efke, H. (1997). Civil Protective Orders: The Benefits and Limitations for Victim of Domestic Violence. Washington D.C.: U.S. Department of Justice, 93-IJ-CX-0035, National Institute of Justice.

<sup>299</sup> Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214.

<sup>300</sup> Harrell, A. & Smith, B. (1996). *Effects of Restraining Orders on Domestic Violence Victims*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 214-243.

<sup>301</sup> Ptacek, J. (1999). Battered Women in the Courtroom: The Power of Judicial Responses. Boston, MA: Northeastern University Press.

On the other hand, the incident that prompts victims to seek orders may not be the most serious incident they experienced at the hand of their abusers. Research finds that the seriousness of incident itself is not predictive of future risk of reabuse.<sup>302</sup>

**Implications: Although petitions focus on the most recent, discreet incident, the incident rarely fully reveals the nature of the abuse suffered by the petitioner and risk for future abuse. Post-separation abuse frequently involves stalking behavior, a risk factor for further abuse, even lethality. To obtain more information, judges need to further question victims and/or review respondents' prior criminal and civil history. Research Implications: Extensive studies of petitioners in disparate jurisdictions as well as multiple abuser studies.**

### How many abusers violate court protective orders?

Research varies but violation rates have been found to range from 23% over two years,<sup>303</sup> 35% within six months,<sup>304</sup> to 60% within twelve months,<sup>305</sup> and in between at 48.8% within two years.<sup>306</sup> A Rhode Island study found consistent violation of criminal no contact orders imposed after domestic violence arrests resulting in subsequent concurrent sentences for both the initial domestic violence offense and the no contact violation. Further, the study also found that the majority (51%) of abusers sentenced concurrently for abuse-related offenses **and** no contact violations reabused. The rearrest rate for new abuse for abusers specifically convicted of civil protection orders violations was 44% and for criminal no contact orders it was 48%, higher than all other domestic violence offenses that ranged from 25 to 39%.<sup>307</sup>

<sup>302</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting. Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427; Davis, R., Smith, B. & Nickles, L. (1998). *The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors*. Crime & Delinquency, 44 (3), 434-443; Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214; Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.; Labriola, M. Rempel, M. & Davis, R. (2005). Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a randomized Trial. New York, Center for Court Innovation (NIJ); Orchowsky, S. (1999). Evaluation of a Coordinated Community Response to Domestic Violence: The Alexandria Domestic Violence Intervention Project-Final Report. Washington D.C.: U.S. Department of Justice, 95-WT-NX-0004, National Institute of Justice, NCJ 179974.

<sup>303</sup> Carlson, M., Harris, S., & Holden, G. (1999). *Protective Orders and Domestic Violence: Risk Factors for Reabuse*. Journal of Family Violence, 14 (2), 205-226.

<sup>304</sup> Keilitz, S., Hannaford, P. & Efke, H. (1997). Civil Protective Orders: The Benefits and Limitations for Victim of Domestic Violence. Washington D.C.: U.S. Department of Justice, 93-IJ-CX-0035, National Institute of Justice.

<sup>305</sup> Harrell, A. & Smith, B. (1996). *Effects of Restraining Orders on Domestic Violence Victims*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 214-243.

<sup>306</sup> Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) Do Arrest and Restraining Orders Work? Thousand Oaks, CA: Sage, 192-214

<sup>307</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011..

The rates are higher depending upon whether reabuse is measured by new domestic violence arrests or victim self-reports. In addition, order violation rates may not accurately reflect reabuse over a specific period of time because many victims do not retain or drop orders. Although “permanent orders” in Massachusetts are for one year, almost half subsequently returned to court to drop their orders before the year ended.<sup>308</sup> A review of disparate jurisdiction revealed retention rates varied from a low of just 16% in Omaha, Nebraska in 2003<sup>309</sup> to a high of 69% in the District of Columbia in 2000<sup>310</sup> and 80% in East Norfolk, Massachusetts in 1995.<sup>311</sup>

**Implications: Like arrest of abusers, the issuance of protective orders, alone, do not assure victim safety. Judges should advise victims of order limitations**

**Research basis:** Multiple studies in disparate jurisdictions.

### Do Protective Orders Work?

The research has not been able to answer this definitively, mainly because it is ethically impermissible to randomly grant and/or deny orders in order to compare results. Further, these orders may “work” at different levels.

First, in terms of their effectiveness in deterring repeat abuse, before and after studies suggest orders may deter select abusers. In Travis County, Texas, for example, two years before and after order issuance, physical abuse dropped from 68% to 23% after the orders were obtained if victims maintained the order. If the abusers were also arrested at the time of the order issuance, the physical abuse dropped further; if they had children, it dropped less.<sup>312</sup> These studies cannot reveal whether or not the abuse would have naturally declined overtime without the orders simply because, for example, the victims were more likely to have left abusers against whom they obtained the orders.

Several Seattle studies compared women who obtained orders to women who were abused as indicated by a police incident report but did not obtain orders. They found that women with “permanent” orders were less likely to be physically abused than women without them, but women who only had temporary orders that lasted two weeks were more likely to be psychologically abused than women who did not obtain any orders. However, the women who did not obtain orders appeared higher risk for abuse, being more alcohol and drug involved, more likely to have been assaulted and injured as a result of the study incident, and less likely to have been married to their abuser. Further, the study did not look at violations of the orders themselves that did not involve physical

<sup>308</sup> Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 192-214

<sup>309</sup> Klein, A. (2004). *The Criminal Justice Response to Domestic Violence*. Belmont, CA: Wadsworth/Thomson.

<sup>310</sup> Steketee, M., Levey, L. & Keilitz, S. (2000). *Implementing an Integrated Domestic Violence Court: Systemic Change in the District of Columbia*. Washington D.C.: National Center for State Courts & State Justice Institute.

<sup>311</sup> Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 192-214.

<sup>312</sup> Carlson, M., Harris, S., & Holden, G. (1999). *Protective Orders and Domestic Violence: Risk Factors for Reabuse*. *Journal of Family Violence*, 14 (2), 205-226.

assaults.<sup>313</sup> The second Seattle study found that the orders were more effective nine months after they were obtained than during the first five month period, significantly reducing likelihood of contact, threats with weapons, injuries, and medical care.<sup>314</sup>

Finally, several other studies that compared women who maintained orders and those that dropped them, or did not return for “permanent” orders, found that order retention made no difference in reabuse rates.<sup>315</sup> A Rhode Island study involving criminal no contact orders, issued automatically upon a domestic violence arrest, similarly found that whether victims allowed the orders to be continued for the length of the criminal case and probationary sentences that followed (usually one year) or not, the reabuse rates did not vary.<sup>316</sup>

At least one study suggests that the specific stipulations of the protective orders may make a difference. Specifically, victims are more likely to be reabused if their orders bar abusive contact but not all contact. Compared to women whose orders barred all contact, those that barred only abusive contact were significantly more likely to suffer psychological violence, physical violence, sexual insistence, and injuries within a year.<sup>317</sup>

Nonetheless, the research consistently finds that victims largely express satisfaction with civil orders, even if they are violated by their abusers.<sup>318</sup> For example, in the multiple-site study in Massachusetts, 86% of the women who obtained a “permanent” order said the order either stopped or reduced the abuse notwithstanding the fact that 59% called police to report an order violation. Upon further questioning, the women expressed the feeling that the order demonstrated to the abuser that the “law was on her side.”<sup>319</sup> Victims who obtained orders in the multi-state study reported the orders improved their overall well being, especially if the abuser had a prior criminal history and were more likely to reabuse.<sup>320</sup> It may be that while orders do not stop abuse, they reduce the severity of the reabuse. Or, although they don’t effect the reabuse, they make victims feel vindicated and empowered.

While not studied directly, it appears to be significantly easier for law enforcement to monitor and enforce protective and no contact orders than abuse in general. This may explain why abusers are significantly more likely to be arrested for

<sup>313</sup> Holt, V., Kernic, M., Lumley, T., Wolf, M., & Rivara, F. (2002). *Civil Protection Orders and Risk of Subsequent Police-reported Violence*. *Journal of American Medical Association*, 288 (5), 598-594.

<sup>314</sup> Holt, V., Kernic, M., Wolf, M., & Rivara, F. (2003). *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?* *American Journal of Preventive Medicine*, 24 (1), 16-21.

<sup>315</sup> Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 192-214; Harrell, A. & Smith, B. (1996). *Effects of Restraining Orders on Domestic Violence Victims*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 214-243.

<sup>316</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). *An Evaluation of Rhode Island’s Specialized Supervision of Domestic Violence Probationers*. Waltham, MA: BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011..

<sup>317</sup> Logan, T., Shannon, L., Walker, R., & Faragher, T. (2006). *Protective Orders: Questions and Conundrums*. *Trauma, Violence & Abuse*, 7, 175-205.

<sup>318</sup> Klein, A. (1996). *Reabuse in a Population of Court Restrained Batterers*. In E. Buzawa & C. Buzawa (Eds.) *Do Arrest and Restraining Orders Work?* Thousand Oaks, CA: Sage, 192-214

<sup>319</sup> Ptacek, J. (1999). *Battered Women in the Courtroom: The Power of Judicial Responses*. Boston, MA: Northeastern University Press.

<sup>320</sup> Keilitz, S., Hannaford, P. & Efke, H. (1997). *Civil Protective Orders: The Benefits and Limitations for Victim of Domestic Violence*. Washington D.C.: U.S. Department of Justice, 93-IJ-CX-0035, National Institute of Justice.

protective order violators than other common domestic violence offense. For example, the rearrest rate for abusers initially arrested for violation of protection or no contact orders was 45.6% over one year compared to 37.6% for domestic assaults, disorderly or vandalism.<sup>321</sup> Of course, it may also be that abusers with orders are generally higher risk for reabuse than abusers without orders.

**Implications: Victims should be encouraged to take out orders and retain them, but also advised that the orders do not deter all abusers and may be more effective when accompanied by criminal prosecution of the abuser.**

**Research Basis:** Numerous studies indicating consistent victim satisfaction with orders, complemented by studies that consistently find orders do not appear to significantly increase risk of reabuse and may deter some abusers.

### Does Judicial Demeanor Make a Difference?

Although few studies have looked at judicial conduct specifically, a multi-site study in Massachusetts found judges issuing orders fell into three categories: 1) those with “good natured demeanors,” who were supportive and informative with victims and firm with abusers; 2) those with “bureaucratic demeanors,” who were firm and formal with all parties; and 3) those with “condescending, harsh and demeaning demeanors,” but who were often good natured with abusers. The research found that victims felt more empowered, listened to, and were more likely to retain orders issued by the former than the two other groups of judges. They were also more likely to cooperate with prosecutors on concurrent criminal charges against their abusers. Most of the judges were found to be in the first group.<sup>322</sup>

Another study compared two Massachusetts courts within ten miles of each other. One court was characterized as “user friendly” for victims, complete with a special office for victims to complete forms as well as special court sessions so petitioners did not have to wait to see judges. The other was more bureaucratic, with no special offices or sessions for victims. Victims in the first court had an 80% retention rate (i.e. returned to obtain “permanent orders” after the temporary orders expired) while those in the latter had a 20% return rate.<sup>323</sup> Similarly and perhaps for the same reason, specialized domestic violence courts have also been found to increase victim order retention rates. A study of the District of Columbia Domestic Violence Court found it increased retention from 40% to 55% after imposition of the specialized domestic violence sessions.<sup>324</sup>

In a related study of upstate New York courts, a multi-jurisdictional study found that the demeanor of the judge also reverberated across the criminal justice system. It found, for example that while a “rights-oriented” judge held police and prosecutors to

<sup>321</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island’s Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>322</sup> Patek, J. (1999). Battered Women in the Courtroom: The Power of Judicial Responses. Boston, MA: Northeastern University Press.

<sup>323</sup> Hardeman, J. (1995). Implementation of the Abuse Prevention Act (209A). Waltham, MA: Heller School, Brandeis University.

<sup>324</sup> Steketee, M., Levey, L. & Keiolitz, S. (2000). Implementing an Integrated Domestic Violence Court: Systemic Change in the District of Columbia. Washington D.C.: National Center for State Courts & State Justice Institute.

high evidentiary standard (which they often met), a judge who strongly believed that domestic violence cases did not belong in court stifled and discouraged both domestic violence arrests in the community and prosecutions in court.<sup>325</sup>

**Implications: Judges should strive to create user friendly, safe court environments for petitioners, be sympathetic to parties before them, but firm with respondents once abuse has been determined validating victim concerns and clearly condemning respondent's abusive behavior.**

**Research basis:** Limited studies confined to three different court jurisdictions in Massachusetts.

#### **XIV. Do Specialized Domestic Violence Courts Work?**

Although relatively new, there is some research that specialized domestic violence courts are associated with decreased reoffending and reabuse. The reduction may be due to the reform of the court or corresponding specialization of domestic violence prosecution and/or probation supervision, or all three. In any case, a study of Milwaukee's federally funded domestic violence court, for example, found arrests halved for domestic violence defendant's sentenced to probation compared to those sentenced to probation before court reform. The rearrest rate dropped from 8% to 4.2%. The average number of new arrests also dropped significantly. Researchers posit that one of the prime explanations for the drop was a corresponding rise in the use of incarceration. As a result of tight judicial monitoring and enforcement of release conditions, the post-reform probationers spent 13,902 days confined compared to the 1,059 days pre-reform probationers spent jailed. In other words, those sentenced by the special domestic violence court had less time on the streets to reabuse and reoffend.<sup>326</sup>

Studies also found reduced reabuse rates at one other federally-funded domestic violence court in Dorchester, Massachusetts over eleven months, but not in a third model domestic violence court examined in Michigan. In all three sites, researchers found the courts were most effective with 18-29 year old defendants, offenders with seven or more prior arrests, whose victims had moderate to high support, did not have children with their abusers, and whose relationship with them was less than three years. While reabuse declined in two of the courts, overall new arrests were not statistically different although they were in the expected direction, 22% for the domestic violence courts and 28% for the comparison, non-domestic violence courts.<sup>327</sup>

<sup>325</sup> Worden, A. (2001). Models of Community Coordination in Partner Violence Cases: A Multi-side comparative analysis, final report. Washington D.C.: U.S. Department of Justice, 95-WT-NX-0006, National Institute of Justice, NCJ 187351.

<sup>326</sup> Harrell, A., Schaffer, M., DeStefano, C. & Castro, J. (2006). The Evaluation of Milwaukee's Judicial Oversight Demonstration, Final Research Report. Washington D.C.: U.S Department of Justice, 99-WT-VX-K005, Urban Institute (<http://www.urban.org/publications/411315.html>.)

<sup>327</sup> Harrell, A., Catro, J., Newmark, L., & Visser, C. (2007). Final Report on the Evaluation of the Judicial Oversight Demonstration: Executive Summary. Washington D.C.: U.S. Department of Justice 1999-WT-VX-K005, National Institute of Justice, NCJ 219386. (<http://www.urban.org/publications/411498.html>).

Three other studies of specialized domestic violence courts have found small but significant reductions in reoffending,<sup>328</sup> including a study of the San Diego Superior Court where rearrests dropped over one year from 21 to 14%.<sup>329</sup> An evaluation of the Cook County's four domestic violence courts, on the other hand, found no differences in rearrest rates over six months.<sup>330</sup>

Apart from reabuse rates, domestic violence courts are associated with increased convictions and decreased dismissals.<sup>331</sup> In Cook County, for example, the four misdemeanor domestic violence courts significantly increased the likelihood of victim appearance over general courts, 73% compared to 40%. This, in turn, correlated with increased conviction rates of 73% compared to 22.9% for that obtained in comparison general courts.<sup>332</sup>

Although domestic violence victims generally rate their court experiences highly, they rate domestic violence courts even more highly.<sup>333</sup> One study found if victims knew that there was a domestic violence court, most, three-quarters, would be more likely to report future violence.<sup>334</sup> One of the reasons for victim preference for domestic violence courts may be court linkage with increase victim service and advocacy referral documented in several of the studies.<sup>335</sup> It may be for these reasons, that the District of Columbia Domestic Violence Court was associated with an increased rate of civil protective order retention from 40% to 55%.<sup>336</sup> Domestic violence courts are also associated with more efficient processing of cases. The study of Manhattan's domestic

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<sup>328</sup> Goldkamp, J. D Weiland, M Collins, M White (1996) Role of Drug and Alcohol Abuse in Domestic Violence and Its Treatment: Dade County's Domestic Violence Court Experiment, Final Report, NCJ 163408; Gover, A., MacDonald, J., & Alpert, G. (2003). *Combating domestic violence: Findings from an evaluation of a local domestic violence court*. *Criminology and Public Policy*, 3, 109-129.

<sup>329</sup> San Diego Superior Court (2000). Evaluation report for the San Diego County Domestic Violence Courts, Report submitted to the State Justice Institute. San Diego, CA; San Diego Superior Court.

<sup>330</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>331</sup> Davis, Smith, & Rabbitt, 2001; Harrell 2006; Henning and Klesges, 1999, Newmark, L., Rempel, M., Diffily, & Kane, K. (2001). Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0005, National Institute of Justice, NCJ 191861.

<sup>332</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>333</sup> Eckberg & Podkopacz 2002; Gover, MacDonald & Alpert, 2004; Hotaling, G., Buzawa, E.(2003) Victim Satisfaction with Criminal Justice Case Processing in a Model Court Setting. Washington, D.C.: U.S. Department of Justice, 2000-WT-VX-0019, National Institute of Justice, NCJ 195668.

<sup>334</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

<sup>335</sup> Harrell, A., Catro, J., Newmark, L., & Visher, C. (2007). Final Report on the Evaluation of the Judicial Oversight Demonstration: Executive Summary. Washington D.C.: U.S. Department of Justice 1999-WT-VX-K005, National Institute of Justice, NCJ 219386. (<http://www.urban.org/publications/411498.html>); Henning & Klesges, 1999, Newmark Rempel, Diffily, & Kane, 2001);

<sup>336</sup> Steketee, M., Levey, L. & Keiolitz, S. (2000). Implementing an Integrated Domestic Violence Court: Systemic Change in the District of Columbia. Washington D.C.: National Center for State Courts & State Justice Institute.

violence misdemeanor court found, for example, faster case processing, as well as improved identification of domestic violence cases.<sup>337</sup>

The research also finds that domestic violence courts increase offender compliance with court-ordered conditions as well as the penalties for non-compliance.<sup>338</sup> The study of Manhattan's domestic violence misdemeanor court documented, for example, enhanced monitoring of offenders post-conviction.<sup>339</sup> Defendants in Milwaukee were required to attend post disposition court reviews 60 to 90 days after disposition. In 2002, the court conducted 1,347 such reviews. Revocations increased dramatically.<sup>340</sup>

**Implications: Specialized Domestic Violence Courts are associated with beneficial reforms in several areas, including victim safety and satisfaction, offender accountability, and more efficient case flow processing.**

**Research Basis:** *The research is based mainly on disparate process evaluations of specialized domestic violence courts. It does not suggest that judges sitting in regular trial courts who adopt similar practices cannot achieve the same results on a case by case basis.*

### **What makes specialized domestic violence courts different?**

A 2004 study found 160 jurisdictions across the country with specialized domestic violence courts. The majority of these courts had the following traits in common: 1) effective management of domestic violence cases, coordinating all of the cases involving the relevant parties, and integrating requisite information for the court; 2) specialized intake and courts staffing for domestic violence cases; 3) improved victim access, expedited hearings, and assistance for victims by court staff, often assisted by related specialized, vertical domestic violence prosecution units; 4) court processed to ensure victims safety, from court metal detectors, separate waiting rooms to specialized orders and victim referrals; 5) increased court monitoring and enforcement of batterer compliance with court orders, often exercised by related specialized probation supervision units; 6) consideration of children involved in domestic violence; and 7) enhanced domestic violence training for judges.<sup>341</sup>

#### **Pretrial Monitoring of Defendants**

<sup>337</sup> Peterson, R. & Dixon, J. (2005), *Examining prosecutorial discretion in domestic violence cases*. Paper presented at the Annual Meeting of the American Society of Criminology, Toronto, Canada.

<sup>338</sup> Harrell, A., Schaffer, M., DeStefano, C. & Castro, J. (2006). The Evaluation of Milwaukee's Judicial Oversight Demonstration, Final Research Report. Washington D.C.: U.S Department of Justice, 99-WT-VX-K005, Urban Institute (<http://www.urban.org/publications/411315.html>); Newmark, L., Rempel, M., Diffily, & Kane, K. (2001). Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0005, National Institute of Justice, NCJ 191861.

<sup>339</sup> Peterson, R. & Dixon, J. (2005), *Examining prosecutorial discretion in domestic violence cases*. Paper presented at the Annual Meeting of the American Society of Criminology, Toronto, Canada.

<sup>340</sup> Harrell, A., Schaffer, M., DeStefano, C. & Castro, J. (2006). The Evaluation of Milwaukee's Judicial Oversight Demonstration, Final Research Report. Washington D.C.: U.S Department of Justice, 99-WT-VX-K005, Urban Institute (<http://www.urban.org/publications/411315.html>.)

<sup>341</sup> Keilitz, S. (2004). Specialization of Domestic Violence Case Management in the Courts: A National Survey, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0002, National Institute of Justice, NCJ 199724.

In the specialized domestic violence courts in San Diego, California and Everett, Washington providing for \$10,000 bail, \$1,000 cash, for each misdemeanor domestic violence charge in the former and \$10,000 without cash alternative in the latter, increases in defendants held pretrial increased pleas at arraignment. In San Diego, for example, 46% of defendants were found to plead at arraignment.<sup>342</sup> After establishment of a specialized domestic violence court in Milwaukee, 20% plead guilty before assigned a trial date.<sup>343</sup> Increased restrictions on defendant-victim contact has also been found to increase likelihood of conviction.<sup>344</sup>

Decreasing defendant defaults may also be associated with reduced reabuse. A study of Cook County's four misdemeanor domestic violence courts found, for example, that no show defendants had a significantly greater number of new arrests than those that showed in court, .778 compared to .456.<sup>345</sup> This is consistent with research that similarly found that defendants that flee the abuse incident before police arrive are twice as likely to reabuse than those that remain on the scene of the incident.<sup>346</sup>

As a result of enhanced pretrial processing, while the conviction rate in the Brooklyn (Kings County) felony domestic violence court remained the same after establishment of the specialized court, convictions by guilty pleas increased and trials decreased.<sup>347</sup>

**Implications: Judicial attention to address the risk posed by alleged abusers will result in quicker case resolution and decrease reabuse by defendants who fail to show for trial.**

**Research Basis:** *Multiple studies from multiple jurisdictions.*

<sup>342</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

<sup>343</sup> Harrell, A., Catro, J., Newmark, L., & Visser, C. (2007). Final Report on the Evaluation of the Judicial Oversight Demonstration: Executive Summary. Washington D.C.: U.S. Department of Justice 1999-WT-VX-K005, National Institute of Justice, NCJ 219386.

(<http://www.urban.org/publications/411498.html>); Harrell, A., Schaffer, M., DeStefano, C. & Castro, J. (2006). The Evaluation of Milwaukee's Judicial Oversight Demonstration, Final Research Report.

Washington D.C.: U.S Department of Justice, 99-WT-VX-K005, Urban Institute

(<http://www.urban.org/publications/411315.html>.)

<sup>344</sup> Harrell, A., Catro, J., Newmark, L., & Visser, C. (2007). Final Report on the Evaluation of the Judicial Oversight Demonstration: Executive Summary. Washington D.C.: U.S. Department of Justice 1999-WT-VX-K005, National Institute of Justice, NCJ 219386 (<http://www.urban.org/publications/411498.html>);

Harrell, A., Schaffer, M., DeStefano, C. & Castro, J. (2006). The Evaluation of Milwaukee's Judicial Oversight Demonstration, Final Research Report. Washington D.C.: U.S Department of Justice, 99-WT-VX-K005, Urban Institute (<http://www.urban.org/publications/411315.html>.)

<sup>345</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court. Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>346</sup> Buzawa, E., Hotaling, G., Klein, A. & Byrnes, J. (1999). Response to Domestic Violence in a Pro-Active Court Setting, Final Report. Washington D.C.: U.S. Department of Justice, 95-IJ-CX-0027, National Institute of Justice, NCJ 181427.

<sup>347</sup> Newmark, L., Rempel, M., Diffily, & Kane, K. (2001). Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0005, National Institute of Justice, NCJ 191861.

### Enhanced Court Dispositions

Court dispositions in specialized domestic violence courts tend to be more substantial than elsewhere and more rigorously enforced. In Everett, Washington and Klamath Falls, Oregon, defendants were more likely to be ordered to attend batterer programs and drug counseling, and be ordered to abstain from drugs and submit to testing. Further the batterer programs increased in length and cost. In these and other sites with specialized court programs, defendants were more likely to be ordered to have no contact with their victims.<sup>348</sup> In terms of enforcement, in Milwaukee, for example, the study revealed that after implementation of the specialized domestic violence court, there was a dramatic increase in probation revocations, 27% compared to 2% before. Most, 70%, were for technical violations such as failure to attend batterer programs.<sup>349</sup>

In Massachusetts and Cook County, Illinois, specialized domestic violence courts reduced deferred prosecutions and increased the percent of defendants committed. In the latter, for example, court conviction rates rose from 50% to 71.4%; the likelihood of jail increased significantly from 6.7% to 31.3%.<sup>350</sup>

**Implications: Judges sitting in specialized domestic violence courts appear more likely to impose more intrusive sanctions against convicted abusers.**

**Research Basis:** *Disparate studies demonstrate a correlation, although specialized domestic violence courts may offer judges enhanced dispositional options, including specialized probationary supervision programs for abusers. They may also include judges who are better informed about domestic violence.*

### Do enhanced domestic violence dispositions require enhanced post-disposition court time and resources?

Studies have found that enhanced sentencing of abusers involving probation with relevant conditions, including batterer programs, abstinence and/or no contact orders, requires enhanced monitoring because many abuser probationers typically fail to comply. Studies have documented that noncompliance rates prompting formal revocations ranged from 12% in the Dorchester, Massachusetts to 27% in Milwaukee misdemeanor domestic violence courts.<sup>351</sup> In Cook County's four misdemeanor domestic violence courts the revocation rate was 27.5%.<sup>352</sup> Higher rates were found in a series of other studies of domestic violence supervision programs across Illinois, including 38.5% in Sangamond

<sup>348</sup> Smith, B., Davis, R., Nickles, L. & Davies, H. (2001). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict, Final Report, Washington D.C.: U.S. Department of Justice, 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

<sup>349</sup> Harrell, A., Schaffer, M., DeStefano, C. & Castro, J. (2006). The Evaluation of Milwaukee's Judicial Oversight Demonstration, Final Research Report, Washington D.C.: U.S. Department of Justice, 99-WT-VX-K005, Urban Institute (<http://www.urban.org/publications/411315.html>).

<sup>350</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court, Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

<sup>351</sup> Harrell, A., Catro, J., Newmark, L., & Visher, C. (2007). Final Report on the Evaluation of the Judicial Oversight Demonstration: Executive Summary, Washington D.C.: U.S. Department of Justice 1999-WT-VX-K005, National Institute of Justice, NCJ 219386. (<http://www.urban.org/publications/411498.html>).

<sup>352</sup> Hartley, C. & Frohmann, L. (2003). Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court, Washington D.C.: U.S. Department of Justice, 2000-WT-VX-0003, National Institute of Justice, NCJ 202944.

(Springfield) County, 33% in Peoria, and 22.8% in Tazewell County and over 50% in Quincy, Massachusetts.<sup>353</sup> In Brooklyn's felony domestic violence court, the rate was 33%.<sup>354</sup>

Revocation rates may also reflect probation resources and policies as much as probationer conduct. For example, an evaluation of Rhode Island's specialized domestic violence probation supervision unit found the unit's revocation rate was 44% while the rate for comparable abuser probationers supervised in larger mixed caseloads was only 24.7%. Almost all of the violations were for noncompliance with the state's mandated batterer program.<sup>355</sup>

**Implications: Enhanced dispositions increase technical violations which require additional judicial time if defendants are to be held accountable.**

**Research Basis: Multiple studies in disparate jurisdictions.**

### **Does the type of post-dispositional monitoring matter?**

Studies are mixed concerning the impact of post-disposition judicial monitoring that probably should not be surprising as the quality of judicial monitoring is undoubtedly mixed as well. For example, a quasi-experiment involving the Bronx domestic violence court found judicial monitoring did not reduce recidivism, although it had a modest, but transitory one year reduction in domestic violence arrests. However, the same study found the quality of the monitoring program to be problematic.<sup>356</sup> A study of the San Diego Court attributed judicial monitoring to a decrease in rearrests from 21 to 14% over one year.<sup>357</sup> Similarly, other studies suggest that longer period of court control are associated with reduced reabuse,<sup>358</sup> including pretrial with an increased number of court appearances pending trial.<sup>359</sup>

Studies have also found that probation supervision increases batterer program completion. A multi-year study across Massachusetts found batterer program completion

<sup>353</sup> Hayler, B., Ford, N., & Addison-Lamb, M. (December 1999). An Implementation Evaluation of the Enhanced Domestic Violence Probation Program in Champaign County. Springfield, IL: University of Illinois at Springfield; Hayler, B. & Addison-Lamb, M. (November 2000). A Process and Implementation Evaluation of the Specialized Domestic Violence Probation Projects in Illinois's Peoria, Sangamon, and Tazewell Counties. Springfield, IL: University of Illinois at Springfield; Klein, A. & Tobin, T. (2008). *Longitudinal Study of Arrested Batterers, 1995-2005: Career Criminals*. *Violence Against Women*, 14 (2), 136-157.

<sup>354</sup> Newmark, L., Rempel, M., Diffily, & Kane, K. (2001). Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0005, National Institute of Justice, NCJ 191861.

<sup>355</sup> Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEK Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011.

<sup>356</sup> Rempel, M., Labriola, M., & Davis, R. (2008). *Does Judicial Monitoring Deter Domestic Violence Recidivism?* *Violence Against Women*, 14 (2), 185-207.

<sup>357</sup> San Diego Superior Court (2000). Evaluation report for the San Diego County Domestic Violence Courts, Report submitted to the State Justice Institute. San Diego, CA; San Diego Superior Court.

<sup>358</sup> Davis, R., Taylor, B. & Maxwell, C. (2000). Does Batterer Treatment Reduce Violence? A Randomized Experiment in Brooklyn. Washington D.C.: U.S. Department of Justice, 94-IJ-CX-004, National Institute of Justice (NCJ 180772).

<sup>359</sup> Peterson, R. & Dixon, J. (2005). *Examining prosecutorial discretion in domestic violence cases*. Paper presented at the Annual Meeting of the American Society of Criminology, Toronto, Canada.

rates was 62% for those supervised and only 30% for those who cases were unsupervised.<sup>360</sup>

**Implications: Post-dispositional patterns of compliance and judicial enforcement should be reviewed periodically in order to assure that the crucial role of judges post-disposition is being fulfilled.**

**Research Basis:** *Several studies in disparate jurisdictions are suggestive, but given the variety in court contexts, no specific model post-dispositional monitoring program has emerged (or is likely to emerge) as better than any other.*

### **Does probation supervision of abusers reduce likelihood of reabuse?**

There have been few studies of probation supervision of abusers. A quasi-experimental study across the state of Rhode Island found that those abusers supervised in a specialized domestic violence probation program, featuring victim contact, slightly more intensive supervision of abusers (twice a month), intensive monitoring of mandated batterer programs, and volunteer probation officers, were significantly less likely to commit new offenses and abuse within one year, but only for those probationers who had not already been on probation before.<sup>361</sup>

While specialized domestic violence courts often involve specialized probation supervision programs, probation's contribution to these courts' successes (and failures) have not been isolated.

**Implications: Specialized supervision of abusers may help reduce reabuse.**

**Research Basis:** Tentative findings based on only one state study.

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<sup>361</sup> Klein, A. & Crowe, A. (2008). Findings from and Outcome Examination of Rhode Island's Specialized Domestic Violence Probation Supervision Program, Violence Against Women, 14 (2), 226-246; Klein, A., Wilson, D., Crowe, A., & DeMichele, M. (2005). An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers. Waltham, MA: BOTEC Analysis Corporation & American Probation and Parole Association. Final Report on Grant 2002-WG-BX-0011..

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