

The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:

**Document Title: Practical Implications of Current Domestic
Violence Research

 Part II: Prosecution**

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Document No.: 222320

Date Received: April 2008

Award Number: 2007 M-07032

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Practical Implications of Current Domestic Violence Research

Part II: Prosecution

Andrew R. Klein

This is one of three final reports submitted to the National Institute of Justice on Contract 2007M-07032 which was awarded to Advocates for Human Potential. Points of view are those of the author and do not necessarily represent the official position of the United States Department of Justice.

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Practical Implications of Current Domestic Violence Research

Part II: Prosecution

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 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 batterers¹ have been questioned, their reported observations, if not their conclusions, have been confirmed.² 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.

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

² 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.

Performance Measures

“Performance Measures” include examples of specific programs or specific jurisdictions’ achievements or surveys of multiple departments. The performance measures are included to provide examples of what at least a specific, real life program or jurisdiction(s) accomplished. As jurisdictions vary, these measures may not be replicable in all other jurisdictions but suggest what may be achieved in similar jurisdictions.

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Practical Implications of Current Domestic Violence Research for Prosecutors

I. How widespread is nonfatal domestic violence:

- What percent of police calls are for domestic violence?
- How widespread is stalking?
- How widespread are intimate sexual assaults?
- How widespread is fatal domestic violence?
- How widespread is multiple domestic violence victimization?

II. What domestic violence actually reaches courts?

- When do victims report?
- Who else reports domestic violence?
- Are there are other major sources of domestic violence reporting?
- Which domestic violence offenses are generally reported to law enforcement?

III. Is arrest the best response?

- What should the response be when the suspect is gone when law enforcement arrives?
- Who is the Primary/Predominant Aggressor?

IV. Who are the Perpetrators?

- What is their gender?
- What age are they?
- Are they likely already known to the criminal justice system?
- Are they likely to be drug and/or alcohol abusers?
- Are they likely to be mentally ill? Or have certain personality types?
- Do abusers stick with one victim?

V. Who are their victims?

- Are victim characteristics relevant in assessing abuse likelihood?
- Is victim substance abuse associated with victimization?
- Why do some victims behave as they do?
- Do male victims differ from female domestic violence victims?

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

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

When will abusers reabuse?

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

Is gender important?

Is age important?

Is prior arrest history important?

Is substance abuse important?

Are victims accurate predictors of reabuse?

Are there other common risk factors associated with reabuse?

What factors are *not* associated with reabuse?

Do the widely used risk instruments accurately predict reabuse?

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

How critical are firearms and other weapons?

What are other lethality risk markers?

What are risk markers for severe injury?

IX. Does prosecuting domestic violence offenders deter reabuse?

X. What is the current level of domestic violence prosecution across the country?

Can most domestic violence arrest cases be successfully prosecuted in court?

Will aggressive prosecutions increase the demand for trials?

Do victims want their abusers prosecuted?

Why do a minority of victims oppose prosecution?

Is victim fear of prosecution well founded?

Can prosecutors increase victim cooperation?

Should prosecutors follow victim preferences in terms of prosecution and sentencing?

XI. What evidence is typically available to prosecute domestic violence cases?

Can cases be successfully prosecuted without the victim?

Can successful prosecutions be increased?

What does adoption of “no drop” policies actually mean?

XII. What kind of dispositions do most suspects receive?

Why sentencing of domestic violence defendants may not prevent reabuse?

XIII. Do Specialized Prosecution Units Work?

What characterize specialized prosecution units?

XIV. What should be considered in recommending sentences for convicted batterers?

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

Should "first" offenders be diverted/discharged?

XV. Do Batterer Intervention Programs Prevent Reabuse?

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

Do couples counseling or anger management treatment programs prevent reabuse?

Does alcohol and drug treatment prevent reabuse?

Are court referred batterers likely to complete batterer programs?

Do batterer program completers do better than those who fail?

Can batterer program attendance be enhanced by court monitoring?

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

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

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

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

What effect do batterer program referrals have on victims?

Practical Implications of Current Domestic Violence Research For Prosecutors

I. 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.³

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

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.⁵ 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.⁶ In San Diego, approximately 25% of calls for service in domestic violence cases result in an arrest.⁷

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, prosecutors

³ 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).

⁴ 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.

⁵ 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.

⁶ ___ (2001). Family Protection and Domestic Violence Intervention Act of 1994: Evaluation of the Mandatory Arrest Provisions, Final Report. 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.

⁷ 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.

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.*

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%).⁸ 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.⁹

Implications: It is important for prosecutors to correctly identify stalking behavior in order to invoke stalking laws appropriately that may afford victims increased protection against potentially lethal abusers.

Research Basis: *National study of 141 femicides and 65 attempted femicides, 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.¹⁰ 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.¹¹ 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.¹²

⁸ 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.,

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

¹⁰ 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.

¹¹ 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.

¹² 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.\

Implications: Prosecutors 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. Even if prosecutors cannot file or prosecute, evidence of sexual assaults should be taken into account when prosecutors consider abuser risk and victim vulnerability in terms of filing other charges and making appropriate sentencing recommendations.

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.¹³ 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.¹⁴

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

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,

¹³ 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).

¹⁴ 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.

and almost half experiencing stalking.¹⁵ A study of dating violence similarly found substantial overlap between physical and sexual victimization.¹⁶

Implications: A post-arrest investigation by the prosecutor may indicate additional, even more serious incidents of domestic violence than the one specifically noted by law enforcement officers. Rarely does the reported abuse incident represent a single isolated, atypical act. Appropriate charges should be filed covering the range of criminal behaviors of abusers. In light of Crawford's increased demand for live victim testimony, prosecutors must work with law enforcement to uncover any evidence of abuser intimidation of victims that would inhibit her testifying. Such evidence may also be used in terms of preparation of victim impact statements. 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%).¹⁷

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.¹⁸ 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

¹⁵ 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.

¹⁶ 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.,

¹⁷ Catalano, S. (2007).

¹⁸Felson, 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.

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.¹⁹

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).²⁰

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).²¹

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%.²²

Performance Measure: Based on *victim reporting* rates to law enforcement alone, law enforcement officers should be responding annually to at least 4 to 5 incidents per 1,000 females (12 and older) and 1 to 2 per 1,000 males (12 and older). If prosecutors are getting significantly fewer cases from law enforcement, prosecutors must join with law enforcement to either improve community outreach and/or work to remove barriers to reporting.

Research Basis: *Confirmed by multiple national surveys over past decades, although exact rates, as opposed to national average, may vary based on region, population density, ethnicity of population, and so on.*

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.²³ 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.²⁴ A Massachusetts arrest study found that a majority of intimate victims

¹⁹ 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.

²⁰ 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.

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

²² 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.

²³ 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.

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

(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.²⁵

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

Implications: In questioning victims, prosecutors should always inquire about *prior* unreported domestic violence for evidence of crimes that may be charged depending upon the jurisdiction's statute of limitations and/or are necessary to develop an accurate offender history to determine appropriate prosecution and sentencing recommendations.

Research Basis: Both national and a multitude of disparate individual jurisdictional studies agree that battering likely to come to the attention of the law enforcement constitutes repeated activity, much not reported to law enforcement initially.

Who else reports domestic violence?

Most reports are called in by victims with research finding victim report rates ranging from 59²⁷ to 93%.²⁸ The review of NCVS re-assaults between 1992 and 2002 found 72% of the re-assaults were reported by the victim and 28% by third parties.²⁹ A multi-state police study found 66.1% of domestic calls to the police were from victims.³⁰ Third parties include family members, relatives, even suspects themselves. In Chicago's domestic violence misdemeanor court, 26% of the calls were made by third parties on their own and another 7.3% called at the direct behest of the victim.³¹ Third parties are more likely to call police if the incident involved major injuries and/or a weapon.³² Other family members are significantly more likely to report abuse of elder women (60 years and older) by other family members, usually sons, daughters or grandsons.³³

²⁵ Buzawa, et. al. (1999).

²⁶ 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.

²⁷ 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

²⁸ 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.

²⁹ 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.

³⁰ 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.

³¹ 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.

³² 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).

³³ Klein, A., Tobin, T., Salomon, A. & Dubois, J. (2008). A Statewide Profile of Older Women Abuse and the Criminal Justice Response. Washington D.C.: U.S. Department of Justice, 2006-WG-BX-0009, National Institute of Justice, NCJ pending.

Implications: Prosecutors should ask law enforcement to catalogue and maintain 911 tapes of domestic violence calls as they may contain possible excited utterance evidence because a majority of reported incidents is made by victims (some of whom may be reluctant to testify later on). In addition, the identities and contact information for third party domestic violence callers should be elicited when possible as potential incident witnesses. Dispatchers should be trained toward these ends and this information should be forwarded to prosecutors.

Research Basis: *Multiple national and local observational studies.*

Are there are other major sources of domestic violence reporting?

Unlike most crimes, there is a parallel track for victim reporting domestic violence, namely civil courts where victims can petition for protective/restraining orders. In many jurisdictions, *more* victims report intimate assaults and related crimes to civil courts than to law enforcement.³⁴ Research from both sides of the country, Massachusetts³⁵ and the state of Washington,³⁶ however, indicates that the abuse reported in this civil setting is not significantly different from that reported to law enforcement.

Implications: Civil protective order files offer prosecutors an essential tool in identifying domestic violence victims and perpetrators, gauging victim risk, and correctly calibrating appropriate charges and sentences. They may also indicate prior uncharged crimes that may be prosecuted along with more recent charges, particularly if the same victim and or witnesses are involved in both sets of charges. They may also be used as evidence for violations of probationary sentences. Petitioner affidavits of abuse have been upheld as admissible evidence for probation violation in *Tweedie v. Garvey*, 94_CV_30139 (U.S. D. Springfield, MA, 1994).

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?

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.³⁷ Although

³⁴ Klein, A. (2004). *The Criminal Justice Response to Domestic Violence*. Belmont, CA: Thomson/Wadsworth.

³⁵ 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.

³⁶ 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.

³⁷ 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*

prosecutors screen cases, 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.³⁸

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.³⁹ However, most studies find much smaller percentages of felony assault charges, including 13.7% in Charlotte, N.C.⁴⁰ to only 5.5% in Massachusetts⁴¹ as most physical injuries are minor and most cases do not involve the use of weapons.

The NVCS, based on victim self reports, not police characterations, found simple assaults against female intimates to be more than four times greater (4.4) than aggravated assaults in 2005. Most assaults (80.5%) did not involve weapons.⁴²

Performance Measure: If the ratio of arrest reports for lesser offenses (such as disorderly or breach of the peace) is significantly greater than that for assaults, it may indicate that local law enforcement is not correctly identifying the underlying criminal behavior. Prosecutors must work with officers to correctly determine the necessary elements of specific domestic violence crimes, including assault, stalking and marital rape. Alternatively, if the majority of domestic assaults are routinely pled down to lesser offenses by prosecutors, prosecutors may be endangering victims as well as failing to hold abusers fully accountable for their violence. Federal misdemeanor firearm prohibitions (18 U.S.C. §922(g)(9)), for example, only apply to assault convictions. Where enhancement statutes are available, prosecutors should carefully review prior convictions to charge defendants as repeat offenders where appropriate.

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

III. Is arrest the best response?

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.

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

³⁸ 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.

³⁹ 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

⁴⁰ 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.

⁴¹ 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.

⁴² 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).

In none of the sites was arrest associated with increased reabuse among intimate partners.⁴³ 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.⁴⁴

A Berkeley arrest study found similarly 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 officers left it to the victim to make a “citizen arrest,” swearing out a complaint herself.⁴⁵ Research has also shown that police response also significantly increases the likelihood that victims’ will secure protective orders.⁴⁶

Research also finds that by and large the vast majority of victims when interviewed after the fact report satisfaction with the arrest of their abuser. In Massachusetts, 82% were either very or somewhat satisfied and 85.4% said they would use police again for a similar incident.⁴⁷ Similarly, the study of courts in California, Oregon, Nebraska and Washington found that 76% of the victims said they wanted their abuser arrested.⁴⁸ As important, police arrests over victims’ objections do not reduce likelihood of victims reporting new abuse to police.⁴⁹

Implications: One of the best ways prosecutors can encourage law enforcement to arrest abuser suspects is to follow through where possible by filing charges against those arrested.

⁴³ 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.

⁴⁴ 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.,

⁴⁵ 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

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ Apsler, R., Cummins, M. & Carl, S. (2003). *Perceptions of the Police by Female Victims of Domestic Partner Violence*, Violence Against Women, 9,1318.

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.*⁵⁰

What should the response be when the suspect is gone when law enforcement arrives?

A large percentage of alleged abusers leave the crime scene before law enforcement arrive. Where noted, absence rates range from 42% to 66%.⁵¹ Pursuing them, including the issuance of warrants, is associated with reduced re-victimization.⁵² 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 criminal histories and to reabuse than those arrested at the scene.⁵³ Similarly, another single study also finds higher reabuse if the *victim* is gone when officers arrive.⁵⁴

Implications: Prosecutors should encourage law enforcement officers to file warrants for abusers who flee to scene and prepare reports for subsequent prosecution when arrests are made. Similarly, prosecutors should assist victims to file criminal complaints if necessary to allow for the prosecution of abusers who have left the scene before police arrived.

Research Basis: *Numerous studies confirm 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.⁵⁵ In Massachusetts, more than a third of the female victims fought back in the incident in which their male abuser was arrested, although most

⁵⁰ 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.

⁵¹ 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;⁵¹ 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.

⁵² Dunford, F. (1990). *System Initiated Warrants for Suspects of Misdemeanor Domestic Assault: A Pilot Study* Justice Quarterly, 7, 631-653.

⁵³ 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.

⁵⁴ 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

⁵⁵ Gelles, R. (1997). Intimate Violence in Families, 3rd edition. Thousand Oaks, Ca: Sage.

(59.1%) of those who did find it made their abuser more violent.⁵⁶ Further, a substantial number of victims will not self-disclose their victimization.⁵⁷ 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.⁵⁸

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% 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.⁵⁹

Implications: If presented with a dual arrest case, prosecutors should make an independent analysis to determine the predominant aggressor and proceed against that suspect alone. Determination of primary/predominant aggressor is briefly described by the American Prosecutors Research Institute in its website- http://www.ndaa.org/apri/programs/vawa/dv_101.html

Research Basis: *The most significant dual arrest study was based on examination of all assault and intimidation cases in 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,⁶⁰ 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

⁵⁶ 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.

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ 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).

⁶⁰ Straus, M., Gelles, R., & Steinmetz, S. (1980). Behind Closed Doors: Violence in American Family. Garden City, NY: Doubleday.

domestic violence is even more likely to be male than that found in the national victim surveys.⁶¹

Perpetrators that come to the attention of the criminal justice system are overwhelmingly male. For example, 86% of abusers brought to court for restraining orders in Massachusetts have been male⁶² as were those arrested for domestic violence in California⁶³ and Charlotte, North Carolina (up to 97.4% for the most serious cases).⁶⁴ In Rhode Island 92% of those placed on probation for domestic violence were male.⁶⁵ A Cincinnati court study found 86.5% of 2,670 misdemeanor domestic violence court defendants to be male.⁶⁶

Implications: Prosecutors should be alert to gender bias in the response of local law enforcement agencies and re-screen cases if the percent of female suspects accused of abusing male victims exceeds that commonly found across the nation.

Research Basis: *Multiple studies of abusers/victims brought to attention of criminal justice system, including civil protective orders, confirm gender ratio 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 81.⁶⁷ 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.⁶⁸

⁶¹ 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.

⁶² Adams, S. (1999). Serial Batterers. Boston, MA: Office of the Commissioner of Probation.

⁶³ 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

⁶⁴ 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.

⁶⁵ 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 to NIJ on Grant 2002-WG-BX-0011; 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.

⁶⁶ 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

⁶⁷ 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

⁶⁸ 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.

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, Oregon⁶⁹ to 89% for at least one prior non-violent misdemeanor arrest for misdemeanor domestic violence defendants arraigned in a Toledo, Ohio Municipal Court.⁷⁰ 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 prior record, 41.8% for a violent crime.⁷¹ 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.⁷²

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 Texas⁷³ to 80% in Massachusetts.⁷⁴

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.⁷⁵

Implications: Given the large overlap between domestic violence and general criminality, prosecutors should carefully check domestic violence suspects' status in regard to outstanding warrants, pending cases, probationary or parole status, and

⁶⁹ 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.

⁷⁰ Ventura, L. & Davis, G. (October 2004). Domestic Violence: Court Case Conviction and Recidivism in Toledo. Toledo, OH: University of Toledo Urban Affairs Center.

⁷¹ 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.

⁷² 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.

⁷³ Carlson, M., Harris, S., & Holden, G. (1999). *Protective Orders and Domestic Violence: Risk Factors for Reabuse*. Journal of Family Violence, 14 (2), 205-226.

⁷⁴ 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.

⁷⁵ 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.

other concurrent criminal justice involvement. Conversely, in prosecuting defendants for other crimes, prosecutors should look for concurrent domestic violence that may be charged and prosecuted.

Research Basis: *Multiple studies from jurisdictions across the country confirm these findings although 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.⁷⁶ Other studies have substantial but less use. For example, a California arrest study found alcohol and or drugs were involved in 38% of the domestic violence incident arrests.⁷⁷ 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.⁷⁸

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.⁷⁹

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.⁸⁰

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?

⁷⁶ 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.

⁷⁷ 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

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ 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.

Batterers are no more likely to be mentally ill than the general population.⁸¹ Although various researchers have attempted to classify abusers, ranging from agitated “pitbulls” and silent “cobras”⁸² to “dysphoric/borderline” and “generally avoidance and anti-social,”⁸³ attempts to utilize these classifications to predict risk of reabuse have proven unhelpful.⁸⁴ However, researchers agree that batterers differ markedly.⁸⁵ 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.”⁸⁶ Other research suggests that batterers can be classified as low, moderate and high and that, contrary to common beliefs, batterers remain within these categories.⁸⁷ 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.⁸⁸

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.⁸⁹ 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.⁹⁰ The Massachusetts study of persons arrested for violating a civil restraining order found that

⁸¹ Gondolf, E. & White, R. (2001). *Batterer Program Participants Who Repeatedly Reassault: Psychopathic Tendencies and Other Disorders*. *Journal of Interpersonal Violence*, 16, 361-380.

⁸² Jacobson, N. & Gottman, J. (1998). *When Men Batter Women*. New York, NY: Simon and Schuster.

⁸³ Holtzworth-Munroe, A., & Meehan, J.C. (2004). *Typologies of Men Who are Maritally Violent: Scientific and Clinical Implications*. *Journal of Interpersonal Violence*, 18.

⁸⁴ 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.

⁸⁵ 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.

⁸⁶ Jacobson, N. & Gottman, J. (1998). *When Men Batter Women*. New York, NY: Simon and Schuster.

⁸⁷ Cavanaugh, M. & Gelles, R. (2005). *The Utility of Male Domestic Violence Typologies*. *Journal of Interpersonal Violence* 20 (2), 155-166.

⁸⁸ 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.

⁸⁹ Cochran, D., Adams, S., & O'Brien, P. (June/July 1998). *From Chaos to Clarity in Understanding Domestic Violence*. *Domestic Violence Report* 3, (5).

⁹⁰ 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.

almost half (43%) had *two or more* victims over six years.⁹¹ 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.⁹²

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.⁹³

Implications: If the abuser is no longer with the victim of the last domestic violence incident, new intimate partners are vulnerable to becoming new targets of abuse. Whether the batterer remains with the same victim or not, battering behavior brought to the prosecutor's attention is likely to reflect chronic, patterned, not isolated behavior that is victim-specific. In charging decisions and sentencing recommendations, prosecutors must be concerned with immediate as well as future intimate victims.

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 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.⁹⁴ 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.⁹⁵

Those who leave their abusers have been found to be as or more likely to be reabused as those who remain with them.⁹⁶ Those who maintain civil restraining orders or criminal no contact orders against their abusers are as likely to be reabused as those

⁹¹ 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.

⁹² Adams, S. (1999). Serial Batterers. Boston, MA: Office of the Commissioner of Probation.

⁹³ 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 to NIJ on Grant 2002-WG-BX-0011.

⁹⁴ 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).

⁹⁵ 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.

⁹⁶ 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.

who drop them.⁹⁷ Only one study⁹⁸ 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. Prosecutors should assist victims in recognizing their limitations in controlling their abusers and safeguarding themselves and their children. Prosecutors must establish effective collaboration with victim advocacy and service agencies in order to refer victims as needed. In addition, prosecutors should advise victims that prosecution, along with civil protective orders, may further victim protection.

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?

Victim abuse of drugs and alcohol is also associated with domestic violence victimization.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ 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.¹⁰² 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.¹⁰³

⁹⁷ 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. BOTEK Analysis Corporation & American Probation and Parole Association Final Report to NIJ on Grant 2002-WG-BX-0011.

⁹⁸ 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.

⁹⁹ 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.

¹⁰⁰ 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.

¹⁰¹ 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.

¹⁰² 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.

¹⁰³ 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.

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.¹⁰⁴

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.¹⁰⁵

Implications: Drug or alcohol abusing victims may make them more vulnerable to continued abuse. Prosecutors should look at victim vulnerability first and worry about tactical considerations such as what kind of witness they may make second. Further, prosecutors should be prepared to file a motion of limine to exclude evidence related to a victim's "bad" character (i.e. substance abuse) that 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?

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.¹⁰⁶ Studies have found up to 88% of battered women in shelters suffer from Post Traumatic Stress Disorder (PTSD).¹⁰⁷ Other studies have found up to 72% suffer depression¹⁰⁸ and 75% anxiety.¹⁰⁹ A meta-analysis across multiple samples of battered women found a weighted mean prevalence of 48% for depression and 64% for PTSD.¹¹⁰

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.¹¹¹

Research also suggests that some victims of intimate partner abuse have experienced multifaceted violence that stretches across their life span, beginning as

¹⁰⁴ 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.

¹⁰⁵ 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

¹⁰⁶ 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.

¹⁰⁷ Arias, I. & Pape, K. (Spring, 1999). Psychological Abuse: Implications for Adjustment and Commitment to Leave Violent Partner, Violence and Victims 14 (1): 55-67.

¹⁰⁸ Torres, S., & Han, H. (2000). Psychological Distress in Non-Hispanic White and Hispanic Abused Women. Archives of Psychiatric Nursing 14, 19-29.

¹⁰⁹ Gleason, W. (1993). Mental Disorders in Battered Women: An Empirical Study. Violence and Victims, 8 (1), 53-68.

¹¹⁰ Golding J. (1999). Intimate Partner Violence as a Risk Factor for Mental Disorders: A Meta-analysis. Journal of Family Violence 14(2):99-132.

¹¹¹ 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.

children.¹¹² 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.¹¹³ In short, some of the adult victims who suffer the greatest abuse may be the least able to protect themselves.

Implications: Prosecutors should be prepared to assist and support traumatized victims and/or make appropriate referrals to other service providers. Prosecutors should be prepared to identify expert witnesses that may be needed to educate juries and judges if victim reaction to trauma appears problematic or counter-intuitive.

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

Do male victims differ from female domestic violence victims?

Research on domestic violence victims brought to the attention of law enforcement and the courts find male victims differ substantially from female victims.¹¹⁴ 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%.¹¹⁵

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.¹¹⁶ 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.¹¹⁷

¹¹² 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.,

¹¹³ 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.

¹¹⁴ 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.

¹¹⁵ 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.

¹¹⁶ 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.

¹¹⁷ 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).

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.¹¹⁸

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. Prosecutors should be sensitive to this fact in charging and recommending sentences for such defendants. Batterer intervention programs, for example, may not be relevant for abusers engaged in isolated, reactive or defensive behavior.

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.*

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.¹¹⁹ 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.¹²⁰ 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%.¹²¹

¹¹⁸ Miller, S. & Meloy, M. (2006). Women's use of Force: Voices of Women Arrested for Domestic Violence, *Violence Against Women*, 12 (1), 89-115.

¹¹⁹ 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-BX0011 to the National Institute of Justice.

¹²⁰ 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

¹²¹ 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. & Efke, H. (1997). *Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence*.

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.¹²² Similarly, in a Bronx domestic court study, while only 14 to 15% percent of defendants convicted of domestic violence misdemeanors or violations were rearrested after one year, victims reported reabuse of 48%.¹²³

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.¹²⁴ 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.¹²⁵

Implications: It is safe to assume that more often than not, the typical abuser who makes it to the prosecutor's office has a high likelihood of continuing to abuse the same or different victim both in the short term and over the subsequent decade at least. While prosecuting specific, discrete incidents, prosecutors should recommend sentences that address long term patterns of criminal behavior based on abuser risk for reabuse.

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.*

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.

¹²² 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.

¹²³ Rempel, M., Labriola, M., & Davis, R. (2008) *Does Judicial Monitoring Deter Domestic Violence Recidivism?* Violence Against Women, 14 (2).

¹²⁴ Klein, A. & Tobin, T. (2008). *Longitudinal Study of Arrested Batterers, 1995-2005: Career Criminals*. Violence Against Women, 14 (2); 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.

¹²⁵ Huntley, S. & Kilzer, L. (February 9, 2005). *Battered Justice Series*. Rocky Mountain News.

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 arrest¹²⁶ and 44% within two years in the latter.¹²⁷ 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.

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.¹²⁸ 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.¹²⁹

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 behavior such as stealing or illicit drug use.¹³⁰ 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.¹³¹

Implications: Aggressively prosecuting abusers not only may 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?

¹²⁶ 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.

¹²⁷ 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.

¹²⁸ Klein, A. & Tobin, T. (2008). Longitudinal Study of Arrested Batterers, 1995-2005: Career Criminals. Violence Against Women, 14 (2).

¹²⁹ 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.

¹³⁰ 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.

¹³¹ 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.

Studies agree that for those abusers who re-offend, a majority do so relatively quickly although a minority may avoid arrests for new abuse for 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.¹³² The latter included a 16% arrest rate for violation of no contact orders and 14% for a new felony offense.¹³³ 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 half (60%) were arrested within six months.¹³⁴ 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 reassault their partners than the men who committed the first re-assault after the first three months.¹³⁵ 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.¹³⁶

Implications: Arrest is only the first step in stopping abuse. Once arrested, prosecutors must immediately pursue measures to safeguard victims pending trial and thereafter. If abusers are automatically released pending trial, the most vulnerable victims will be reabused by the worst abusers. This reabuse may also inhibit subsequent victim cooperation with prosecutors.

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

¹³² 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

¹³³ 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

¹³⁴ 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 to NIJ on Grant 2002-WG-BX-0011.

¹³⁵ 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.

¹³⁶ Rempel, M., Labriola, M., & Davis, R. (2008) Does Judicial Monitoring Deter Domestic Violence Recidivism? Violence Against Women, 14(2), 185-207.

assessments.¹³⁷ 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.¹³⁸

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.¹³⁹

Is age important?

Younger defendants are more likely to reabuse and recidivate than older defendants.¹⁴⁰ This has been found true in studies of arrested abusers, batterers in treatment programs, as well as court restrained abusers.¹⁴¹

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.¹⁴² A multi-

¹³⁷ 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.

¹³⁸ 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.

¹³⁹ 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

¹⁴⁰ 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 to NIJ 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. () Does Judicial Monitoring Deter Domestic Violence Recidivism? New York: Center for Court Innovation; 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

¹⁴¹ 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.

¹⁴² 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?*

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.¹⁴³

The length of prior record is predictive of reabuse as well as general recidivism.¹⁴⁴ 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%.¹⁴⁵ In the Rhode Island abuser 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%.¹⁴⁶

Of course, prior civil or criminal prior records specifically for abuse also increase the likelihood for reabuse.¹⁴⁷

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.¹⁴⁸ 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.¹⁴⁹

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

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.

¹⁴³ 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.

¹⁴⁴ 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.

¹⁴⁵ 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.

¹⁴⁶ 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 to the National Institute of Justice.

¹⁴⁷ 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.

¹⁴⁸ 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

¹⁴⁹ 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.

defendant was more likely than not to be arrested again for domestic violence within one year.¹⁵⁰

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 for domestic violence. Therefore, in making charging decisions and sentencing recommendations, prosecutors should understand that if an abuser has a prior record for *any* crime, the prosecutor should assume him to be a high risk domestic violence offender, not a low risk “first” offender. Prosecutors should carefully review defendants’ prior records for warrant status and bail status at the time of the domestic violence arrest to accurately gauge defendant risk.

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.

Is substance abuse important?

Acute and chronic alcohol and drug use are well established risk factors.¹⁵¹ This also applies to domestic violence. Prior arrests for drug and alcohol also correlate with higher rates of reabuse.¹⁵² 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.¹⁵³

Defendant alcohol and substance abuse, similarly, are predictive of reabuse and recidivism.¹⁵⁴ 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

¹⁵⁰ 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 to NIJ on Grant 2002-WG-BX-0011.

¹⁵¹ 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.

¹⁵² 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.

¹⁵³ 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.

¹⁵⁴ 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 to NIJ 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

participation in drug treatment predicted repeated reassaults.¹⁵⁵ Batterers who complete batterer intervention are three times more likely to reabuse if they are intoxicated at any three month interval.¹⁵⁶

Multiple,¹⁵⁷ but not all studies,¹⁵⁸ have found that abuser and/or victim abusing drugs or alcohol *at the time* of the incident to be a consistent risk marker.

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 in making prerelease and sentencing recommendations.

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.¹⁵⁹ Victim perception of risk, for example, significantly improves 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).¹⁶⁰

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

¹⁵⁵ Heckert, D. & Gondolf, E. (2005). *Do Multiple Outcomes and Conditional Factors Improve Prediction of Batterer Reassault?* *Violence and Victims*, 20 (1), 3-24.

¹⁵⁶ 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.

¹⁵⁷ 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; 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.

¹⁵⁸ 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.

¹⁵⁹ 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.

¹⁶⁰ 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.

these reasons, these researchers conclude the best predictions of repeated reassaults can be obtained by using risk markers, including women's perceptions.¹⁶¹ 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.¹⁶²

Victim perception of risk also affects their reaction to criminal justice intervention. Arrest research finds that victims who were not re-victimized over two years were twice as likely to have opposed arrest compared to 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 experience revictimization; those that said courts failed them were seven times more likely to experience revictimization.¹⁶³

Implications: Victim input should be an important part of any risk calculation considered by prosecutors. If victims are in doubt as to their safety, prosecutors 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,¹⁶⁴ abusers who are unemployed,¹⁶⁵ economically disadvantaged and living in disadvantaged neighborhoods,¹⁶⁶ live in a

¹⁶¹ 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.

¹⁶² 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.

¹⁶³ 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.

¹⁶⁴ 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.

¹⁶⁵ 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.

¹⁶⁶ 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.

household with firearms,¹⁶⁷ and if the abuser is not the father of children in the household.¹⁶⁸

Implications: Prosecutors should review the status of the above variables for determination of risk to be used in bail hearings, charging decisions and sentencing recommendations.

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

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.¹⁶⁹ Abuser personality types have not been found to be associated with increased risk of reabuse.¹⁷⁰ Actuarial data offer improvement over clinical data.¹⁷¹ Victim characteristics, including relationship with abuser, marital status and whether the parties are living together or separated, have not been found to predict reabuse.¹⁷² At least one study has found that victim cooperation does not predict recidivism.¹⁷³

¹⁶⁷ 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.

¹⁶⁸ 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.

¹⁶⁹ 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 to NIJ 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.

¹⁷⁰ Heckert, D., & Gondolf, E. (2005). *Do Multiple Outcomes and Conditional Factors Improve Prediction of Batterer Reassault?* Violence and Victims, 20 (1), 3-24.

¹⁷¹ 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.

¹⁷² 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.

¹⁷³ 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, Final report to the National Institute of Justice on grant 2001-WT-BX-0506.

Implications: Criteria for charging 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. If the offense against a dangerous defendant is not chargeable as a felony, prosecutors should explore the applicability of enhancement statutes for repeat offenses, multiple charges if appropriate, or maximum allowable sentencing recommendations.

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

Do the widely used risk instruments accurately predict reabuse?

All of the common risk instruments in use incorrectly predict reabuse, both with false negatives and false positives. The best instruments have found to falsely predict 40 to 43% abusers in both directions.¹⁷⁴ For example, a study of a risk instrument used by police in Berkeley found those classified at highest risk for re-offending did have the highest rate of reoffending but also had 43% false positives, over prediction. Those gauged as the lowest risk had only 2% false negatives.¹⁷⁵

Implications: Given high base rates of re-abusing, the default presumption should be that the defendant will re-offend until proven otherwise. Risk instruments do not significantly improve upon victim perception and basic actuarial data.

Research Basis: *Not only is there wide agreement among multiple studies, but the same instrument may have different results in different jurisdictions.*

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 and other weapons?

According to a CDC study, more female intimate partners are killed by firearms than all other means combined.¹⁷⁶ Firearms in the household increase the odds of lethal as opposed to nonlethal violence 6.1 to 1. Women 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 abused women.¹⁷⁷ Prior firearm use includes threats to shoot victim;

¹⁷⁴ 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.

¹⁷⁵ 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

¹⁷⁶ Paulkossi, L. (October 2001). *Surveillance for Homicide among Intimate Partners-United States, 1991-1998, Mobility and Mortality Weekly Surveillance Summaries*, 5, 1-16.

¹⁷⁷ 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; Campbell, J., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Gary,

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.¹⁷⁸

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.¹⁷⁹

Implications: One of the most crucial steps to prevent lethal violence is to disarm abusers and keep them disarmed. Prosecutors should take all steps possible to have firearms removed by the court as soon as abusers are arrested and obtain guilty verdicts so that federal firearm prohibitions apply (18 U.S.C. § 922(g)(9)). Victims should be advised to obtain protective orders or the prosecutor should ask the court to order criminal no contact orders against defendants so that federal firearm prohibitions apply (18 U.S.C. § 922(g)(8)). Prosecutors should collaborate with the U.S. Attorney to refer appropriate firearms violators for federal prosecution especially where federal penalties are more substantial than state.

Research Basis: *While multiple studies document the association between firearms and domestic violence homicides, only one examined the association between each state's restrictive gun laws for batterers and state registries to enforce them and domestic homicide rates.*¹⁸⁰

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).¹⁸¹ 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.¹⁸² A Chicago study similarly found death

F., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S., Manganello, J., Xu, X., Schollenberger, J. & Frye, V. (2003). *Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study*. American Journal of Public Health (93), 1089-1097.

¹⁷⁸Block, 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).

¹⁷⁹ Adams, D. (2007). *Why do they kill? Men who murder their intimate partners*. Nashville, TN: Vanderbilt University Press.

¹⁸⁰ 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.

¹⁸¹ 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.

¹⁸² 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.,

was more likely if the partner threatened or used a knife or gun; strangled his partner or grabbed around her neck, and both were drunk.¹⁸³

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.¹⁸⁴

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.¹⁸⁵

Implications: Prosecutors must insist law enforcement investigators provide them with appropriate information about prior activities especially 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.¹⁸⁶

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%, were drinking at the time of the assault, and 14.8% admitted to drug use at the time.¹⁸⁷ 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.¹⁸⁸

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.

¹⁸³ 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

¹⁸⁴ Adams, D. (2007). *Why do they kill? Men who murder their intimate partners*. Nashville, TN: Vanderbilt University Press.

¹⁸⁵ 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.

¹⁸⁶ Adams, D. (2007). *Why Do They Kill? Men Who Murder Their Intimate Partners*. Nashville, TN: Vanderbilt University Press.

¹⁸⁷ Kyriacou, D., Anglin, D., Taliaferro, E., Stone, S., Tubb, T., Linden, J., Muellemann, R., Barton, E., & Kraus, J. (1999). *Risk Factors for Injury to Women from Domestic Violence*. *New England Journal of Medicine*, 341, (25), 1892-1898.

¹⁸⁸ 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.

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 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.¹⁸⁹ 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.¹⁹⁰

A number of studies have found prosecution **can** reduce subsequent arrests and violence.¹⁹¹ The key to reduced reabuse may not be whether the case is prosecuted or not, but the dispositions imposed. For example, a Toledo, Ohio misdemeanor court study found conviction was significantly associated with reduced rearrests for domestic

¹⁸⁹ 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.

¹⁹⁰ 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.

¹⁹¹ 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 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).

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.¹⁹²

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.¹⁹³ 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.¹⁹⁴ Research of almost 2,000 domestic violence defendants in Alexandria, Virginia found, for example, 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.¹⁹⁵

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.¹⁹⁶

Implications: Prosecution deters domestic violence if it adequately addresses abuser risk by imposing appropriately intrusive sentences, including supervised probation, and incarceration.

Research Basis: *Although studies are conflicting on prosecution in and of itself, those that researched prosecution and resulting dispositions that address defendant risk suggest domestic violence prosecution can significantly deter reabuse.*

¹⁹² Ventura, L. & Davis, G. (October 2004). Domestic Violence: Court Case Conviction and Recidivism in Toledo. Toledo, OH: University of Toledo Urban Affairs Center.

¹⁹³ Thistlethwaite, A., Wooldredge, J. & Gibbs, D. (1998).. *Severity of Dispositions and Domestic Violence Recidivism*. Crime and Delinquency, 44 (3), 388-399.

¹⁹⁴ 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.

¹⁹⁵ 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.

¹⁹⁶ 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.

X. What is the current level of domestic violence prosecution across the country?

While there remain wide disparities in the prosecution of domestic violence cases from one jurisdiction to another, routine prosecution of domestic violence arrests is no longer exceptional or rare. In fact, prosecutors who automatically dismiss or *nolle prosequere* almost all domestic violence cases may be increasingly rare and exceptional.

There have been 120 studies from over 170 mostly urban jurisdictions in 44 states and the District of Columbia (and a few foreign countries) of intimate partner prosecutions between 1973 and 2006.¹⁹⁷ The average arrest prosecution rate was 63.8%, ranging from a low of 4.6% of 802 arrests in Milwaukee in 1988-1989 to 94% of 3,662 arrests in Cincinnati, Ohio in 1993-1996. The rate of offense prosecution was lower, with an average of 27.4%, ranging from a low of 2.6% for more than 5,000 offenses in Detroit in 1983 to 72.5% for more than 5,000 offenses reported in Boulder County, Colorado in 2003 through 2005.

Several studies demonstrate that domestic violence prosecutions can be routine across entire states, notwithstanding demographic, prosecution and law enforcement variations county by county, locality by locality. A study of 15,000 protective order violations across Massachusetts between 1992 and 1995, for example, found 60% were prosecuted in total.¹⁹⁸ A study of 4,351 felony domestic violence prosecutions in South Carolina between 1996 and 2000 found a 46% prosecution rate.¹⁹⁹ Similarly, a study of 238,000 misdemeanor domestic violence charges between 1997 and 2002 in North Carolina found a prosecution rate of 47%.²⁰⁰

Jurisdictions with specialized domestic violence prosecution programs generally boast higher rates. A study of San Diego's City Attorney's Office documented prosecutors prosecuted 70% of cases brought by police. Similarly, specialized prosecutors in Omaha, Nebraska prosecuted 88% of all police domestic violence arrests. In several of these sites, before and after implementation of the specialized prosecution program comparisons found marked increases in prosecutions. In Everett, Washington dismissals dropped from 79% to 29% and in Klamath Falls, Oregon, they dropped from 47% to 14%.²⁰¹

¹⁹⁷ 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.

¹⁹⁸ Bass, A., Nealon, P., & Armstrong, C. (September 25, 1994). *The War on Domestic Abuse*. Boston Globe, quote in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

¹⁹⁹ Brundrett, R., Roberts, R. & Leblanc, C. (May 20, 2001). *S.C. Dismisses 54% of Worst Domestic Violence Cases*, The State, quoted in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²⁰⁰ Bible, A. & Weigl, A. (May 18-20, 2003). *Cries of Abuse Unheeded, Assaults Rise to Murders*. News and Observer, quoted in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²⁰¹ 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.

On the other hand, not all domestic violence cases are equally likely to be prosecuted. The research indicates that prosecution of intimate partner stalking²⁰² and intimate sexual assault²⁰³ is rare. This also reflects very low arrest rates for these offenses.

Implications: Prosecutors that fail to prosecute the majority of domestic violence arrests made by police should examine their practices, policies and priorities to determine why they are doing less than their peers around the country.

Research Basis: Multiple studies, including at least three statewide studies.

Can most domestic violence arrest cases be successfully prosecuted in court?

Not all cases filed by prosecutors go to trial. As with most offenses, most domestic violence prosecutions are disposed of as a result of plea and sentencing negotiations. Of those that go to trial, not all result in convictions. However, studies indicate that, in general, domestic violence prosecutions that go to trial routinely result in court convictions. “Not guilty” findings are rare. Studies document such findings range from a high of only 5% in Ohio,²⁰⁴ to 2.7% in Massachusetts,²⁰⁵ to a low of 1.6% in North Carolina.²⁰⁶ A study of felony domestic violence prosecutions in Brooklyn, New York found a similarly low “not guilty” rate of only 2%.²⁰⁷

For most domestic violence cases that do not go to trial, an analysis of 85 domestic violence prosecution studies found an overall conviction rate of 35%, ranging from a low of 8.1% of 37 cases prosecuted in Milwaukee between 1988 and 1989 to a high of 90.1% in Brooklyn of 229 cases prosecuted in 1997. If one very large study of 123,507 Maryland prosecutions from 1993 to 2003 is removed, the average conviction rate increases to almost half, 47.7%.²⁰⁸ In three statewide prosecution studies of tens of

²⁰² Miller, N. (2002). Stalking Laws and Implementation Practices: A National Review for Policymakers and Practitioners. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0007, National Institute of Justice, NCJ 197066.

²⁰³ Miller, (2005). What Does Research and Evaluation Say About Domestic Violence Laws? A Compendium of Justice System Laws and Related Research Assessments. Alexandria, VA: Institute for Law and Justice (<http://www.ilj.org/publications/dv/DomesticViolenceLegislationEvaluation.pdf>).

²⁰⁴ 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.

²⁰⁵ 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.

²⁰⁶ 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.

²⁰⁷ 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.

²⁰⁸ 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.

thousands of domestic violence cases, similarly conviction rates ran from a third in North Carolina to over 55% in South Carolina.²⁰⁹

Jurisdictions with specialized domestic violence prosecution programs boast higher rates, including 96% in San Diego, 85% in Omaha, Nebraska, 78% in Klamath Falls, Oregon and 55% in Everett, Washington. The latter rate was the lowest because prosecutors maintained a diversion program that siphoned off 22% of the cases prosecuted.²¹⁰

As important, multiple studies also find that convictions can be consistently obtained that include the most intrusive disposition, sentences of incarceration. For example, in the three statewide domestic violence prosecution studies, 12.6% of the Massachusetts²¹¹ and 20% of the North Carolina²¹² misdemeanor domestic violence defendants prosecuted were sentenced to incarceration. In South Carolina, almost half (45%) of felony domestic violence defendants prosecuted were sentenced to prison.²¹³ In Brooklyn Felony Domestic Violence Court, 80 to 85% of all convicted offenders were sentenced to incarceration consistently during the study period of 1996 through 2000.²¹⁴ While the latter single court incarceration rate may have been the result of a singular effort on the part of prosecutors and others, the statewide rates include multiple prosecutors across each state.

Many other disparate court studies document incarceration rates ranging from 76% to 21%, including 76% in Klamath Falls, Oregon,²¹⁵ 70% in Ohio, with the largest number incarcerated between 150 and 180 days,²¹⁶ 56% in Everett, Washington,²¹⁷ 52%

²⁰⁹ Bible, A. & Weigl, A. (May 18-20, 2003). *Cries of Abuse Unheeded, Assaults Rise to Murders*. News and Observer, quoted in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth; Brundrett, R., Roberts, R. & Leblanc, C. (May 20, 2001). *S.C. Dismisses 54% of Worst Domestic Violence Cases*, The State, quoted in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²¹⁰ 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.

²¹¹ Bass, A., Nealon, P., & Armstrong, C. (September 25, 1994). *The War on Domestic Abuse*. Boston Globe, quote in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²¹² Bible, A. & Weigl, A. (May 18-20, 2003). *Cries of Abuse Unheeded, Assaults Rise to Murders*. News and Observer, quoted in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²¹³ Brundrett, R., Roberts, R. & Leblanc, C. (May 20, 2001). *S.C. Dismisses 54% of Worst Domestic Violence Cases*, The State, quoted in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²¹⁴ 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.

²¹⁵ 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.

²¹⁶ 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.

in Omaha, Nebraska,²¹⁸ 39% in the Bronx,²¹⁹ 35% in Brooklyn, New York,²²⁰ 30% in Milwaukee,²²¹ 23% in Chicago (the latter included time jailed pending prosecution),²²² 22.5% in Quincy, Massachusetts,²²³ and 21% in San Diego, California.²²⁴

A study of intimate partner arrests across three states, Connecticut, Idaho and Virginia, found similarly intrusive dispositions with three-quarters of those convicted incarcerated, probated or fined.²²⁵

Implications: The research suggests that domestic violence cases can be successfully prosecuted at trial, and a large proportion of cases, even most in some jurisdictions, can be disposed of short of trial even without taking incarceration off the table.

Research Basis: Multiple studies in disparate jurisdictions for both felony and misdemeanor domestic violence prosecutions.

Performance Measures: Norfolk County, Massachusetts prosecutors brought 505 charges arising out of 342 study domestic violence incidents compared to 531 initially filed by arresting police departments, a drop off of only 5%. Prosecutors enhanced assault charges of felony assaults assault from 14.1% filed by police to 23.8%. Prosecutors proceeded to *nolle prosequi* 18.5% of the cases and asked that an additional 10% be dismissed in court. With the exception of 2.5% that resulted in not guilty findings, the remaining defendants were either found guilty after trial or admitted to sufficient facts for a finding of guilty (although judges initially allowed 25% of the cases to be conditionally continued without imposition of a guilty finding).

²¹⁷Smith, 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.

²¹⁸Smith, 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.

²¹⁹Rempel, M., Labriola, M., & Davis, R. (2008). Does Judicial Monitoring Deter Domestic Violence Recidivism? Violence Against Women, 14 (2).

²²⁰Cissner, 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>).

²²¹Davis, R., Smith, B. & Nickles, L. (1998). The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors. Crime & Delinquency, 44 (3), 434-443.

²²²Hartley, 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.

²²³Buzawa, 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.

²²⁴Smith, 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.

²²⁵Hirschel, 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.

Research Basis: The studies followed 342 arrests that occurred within Eastern Norfolk County and followed them up to ten years.²²⁶

Will aggressive prosecutions 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” policy a decade earlier, only 2% of the cases subsequently went to trial.²²⁷

Implications: Increased domestic violence prosecutions may not result in a dramatically increased proportion of trials, although there may be a transitory increase as defenders test prosecution resolve.

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

Do victims want their abusers prosecuted?

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.²²⁸ 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.²²⁹

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

²²⁶ 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. & Tobin, T. (2008). Longitudinal Study of Arrested Batterers, 1995-2005: Career Criminals. Violence Against Women, 14 (2).

²²⁷ 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.

²²⁸ 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.

²²⁹ 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.

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.²³⁰ Similarly, a study of four specialized prosecution programs in four different states found that although 45% did not want their cases prosecuted, once they were prosecuted, only 14% tried to stop the prosecutors and only 4% said they wanted the court to let the defendant go. About three-quarters (72.1%) reported they wanted the defendant jailed and/or ordered into treatment (79%). Sixty-four percent (64%) expressed satisfaction with the prosecution, another 9% were neutral, and only 27% dissatisfied. Most, 85%, reported they felt prosecution helpful.²³¹

Implications: Prosecutors should not allow victim opposition to automatically stop them from prosecuting cases. If prosecutors find the overwhelming percent of victims consistently oppose prosecution, they must examine both their and law enforcement’s interaction with victims to increase victim support consistent with that found across the rest of the country.

Research Basis: *Numerous studies from disparate jurisdictions.*

Why do a minority of victims oppose prosecution?

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.²³² 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. A quarter of victims opposing prosecution reported being specifically threatened by their abusers against prosecution. Others expressed fear that their abusers would become more violent. In addition to fear, 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.²³³

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

²³⁰ 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

²³¹ 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.

²³² 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.

²³³ 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.

prosecutors would not prepare them adequately to testify. They were also concerned that the defendant might be found not guilty.²³⁴

Implications: To increase victim cooperation and participation in prosecution, prosecutors must address victim fears of reabuse as well as testifying in court.
Research Basis: *Several victim studies in different jurisdictions.*

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.²³⁵ 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.²³⁶ An Indianapolis prosecution study found that almost a quarter of the defendants reabused their victims pending trial.²³⁷

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.²³⁸

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

Implication: Prosecutors must gauge defendant risk pending trial, and take appropriate measures to address it, both to protect victims as well as their ability to successfully prosecute the case. Defendant actions to harass, threaten or intimate

²³⁴ 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.

²³⁵ 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.

²³⁶ 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.

²³⁷ Ford, D. & Regoli, J. (1993). The Indianapolis Domestic Violence Prosecution Experiment, Final Report. Washington D.C.: U.S. Department of Justice, National Institute of Justice.

²³⁸ 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.

victims while cases are pending should be documented both for additional charges being filed and to be used to justify subsequent absences of victims who are too fearful to testify in court, allowing for substitute hearsay testimony. 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. Research on the impact of specific prosecution practices is rare.*

Can prosecutors increase victim cooperation?

While victims most commonly reported fear of retaliation as a barrier to their participation in prosecution, a three state study found that the fear was reduced in sites with specialized prosecution programs, increased victim advocacy and specialized domestic violence courts.²³⁹ These specialized response programs generally include fast track scheduling, reducing victim vulnerability pending trial, increased victim contact pending trial, and victim-friendly proceedings that remove, as much as possible, victim involvement to proceed with prosecution. These measures taken contrast with jurisdictions where studies indicate some prosecutors treat victims like civil claimants. In a large 45 country study of upstate New York domestic violence prosecution, for example, researchers found half of the prosecutors required victims to sign complaints in order to file charges. (On the other hand, two-thirds required victims to sign affidavits to confirm their interest in having charges withdrawn.)²⁴⁰

There is more research on what not to do than what works. Specific studies suggest that the more prosecution-related burdens placed on victims, the less likely they are to cooperate. In Milwaukee, for example, a study found the majority of cases were dismissed where victims were required to attend a charging conference within days of the arrest of their abusers. However, absolved of this responsibility, Milwaukee prosecution rates increased from 20% to 60%.²⁴¹ In a similar vein, a comparison of protective order violation prosecutions across Massachusetts found a 66% dismissal rate where prosecutors routinely provided and encouraged victims to sign waivers of prosecution forms (often in front of defendants) compared to a 33% dismissal rate in an abutting county where victims were not provided this alternative.²⁴²

Some prosecutors are better at maintaining contact with victims than others. The Ohio court study found that the majority of victims never received rudimentary information from prosecutors before trial, including court dates. In almost 90% of the court cases, prosecutors never spoke with the victim on the phone and in more than half,

²³⁹ 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.

²⁴⁰ 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.

²⁴¹ Davis, R. & Smith, B. (1995).

²⁴² Bass, A., Nealon, P., & Armstrong, C. (September 25, 1994). *The War on Domestic Abuse*. Boston Globe, quote in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

52%, never met with them before the trial date. When they did meet, it typically was for no more than a few minutes.²⁴³ The importance of prosecutor victim contact is underscored by a Toronto study that found if the victim met with a victim/witness representative, victim cooperation increased by a factor of 3.3.²⁴⁴ In the Ohio court study, the strongest predictor of a guilty verdict in domestic violence misdemeanor cases was how many times the prosecutors met with the victim before trial.²⁴⁵

A limited number of studies that looked at the role of court-based victim advocates suggest they may help. The studies found that victims appreciated contact with victim advocates/liaisons, reporting a high degree of satisfaction. In the Quincy study, for example, 81% of victims reported satisfaction with the time they spent with victim advocates; and three quarters (77.1%) said they would talk to the advocate again if a similar incident re-occurred.²⁴⁶ Chicago domestic violence victims who had contact with victim advocates reported more satisfaction with the proceedings than those who had no contact. However, the same study reported that victims contact by advocates did not make them more likely to come to court.²⁴⁷

The seeds for victim contact may be planted before the case even reaches prosecutors. A Portland police study found the following police activities significantly correlated with increased prosecution: 1) police contacted victim; 2) victim accepted services; 3) police provided victims with prosecution information; 4) police helped set up victim appointment with prosecutor; 5) police helped victim obtain and served restraining order.²⁴⁸

Implications: Victim cooperation can be enhanced if prosecutors can address victim fear of their abusers as well as their fear over being involved in subsequent legal proceedings. Pretrial conditions or detention and/or speedy trials dates may address victim fear and minimize actions required of victims, and a sensitivity to victim needs may address fear of court proceedings. The quality of police contact with victims may also be important for subsequent successful prosecution.
Research Basis: Multiple studies and victim interviews in multiple studies.

²⁴³ 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.

²⁴⁴ Dawson, M. & Dinovtizer, R. (2001), *Victim cooperation and the prosecution of domestic violence in a specialized court*, Justice Quarterly, 18, (3) 593 – 622.

²⁴⁵ 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.

²⁴⁶ 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.

²⁴⁷ 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.

²⁴⁸ 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.

Performance Measure: Over 80% of victims contacted by prosecutor advocate in Quincy court arrest and prosecution study; 42% spent 45 minutes or more with advocates, with the remainder spending less time.²⁴⁹

Should prosecutors follow victim preferences in terms of prosecution and sentencing?

While victim perceptions of the dangerousness of suspects have been found to be a good predictor of subsequent re-victimization,²⁵⁰ victim preferences of how the case should be prosecuted 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.²⁵¹ Similarly, studies in New York found that victim cooperation with prosecutors did not predict recidivism. In other words, if prosecutors proceeded with uncooperative victims, these victims were no more or less likely to be revictimized than victims that cooperated with prosecutors.²⁵²

Implications: Although prosecutors should listen to victims, they should explain to victims (and, as important, to defendants) that the decision to prosecute cannot be based solely on victim preferences.

XI. What evidence is typically available to prosecute domestic violence cases?

One of the challenges domestic violence prosecutors face is the lack of evidence accompanying their cases. A study of domestic violence across the state of Rhode Island in 2002 based on 6,200 police incident reports involving adult victims under 50 years of age found the following evidence reported in cases: victim photos (17%), crime scene photos (16%), suspect photos (3%), physical evidence collected (8%) and weapons (11%), medical reports in (9.4%), witnesses reported (37%) (interviewed- 24%, children interviewed-12%), suspect statements (18%), and signed victim statements (53%).²⁵³ The Rhode Island data are not unique.

²⁴⁹ 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

²⁵⁰ 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.

²⁵¹ 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

²⁵² 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). (<http://www.courtinnovation.org/publicationsall.html>).

²⁵³ Klein, A. & Tobin, T. (2008). *Longitudinal Study of Arrested Batterers, 1995-2005: Career Criminals*. Violence Against Women, 14 (2).

In the Mecklenburg County, North Carolina study, for example, researchers found physical evidence provided the special domestic violence prosecution unit was “rare.” Photos were available in only 15% of cases submitted by patrol officers and only 30.5% of cases submitted by the police department’s specialized domestic violence unit. Medical evidence was available in less than 10% of the patrol cases and 34% of the special unit cases which selected out the more serious cases such as those involving injuries. Given the fact that most domestic violence incidents occur in private, not surprisingly witnesses were available in only 16% of patrol cases and 19% of special unit cases.²⁵⁴ Similarly, the Ohio court study found photos of injuries and damages available in only 14.3% of the cases, 911 tapes in only 2.2%, medical records in 1.7%, eyewitness testimony in only 1.6% and police officer testimony in only 6.7% of the cases.²⁵⁵

One reason medical evidence may be limited is due to physician’s poor handwriting. A study found among medical visits that contained indication of abuse or injury, one-third of the notes from doctors or nurses contained vital information that was illegible.²⁵⁶

Implications: Especially in light of *Crawford v. Washington*, 541 U.S. 36 (2004), prosecutors must work with law enforcement to gather as much evidence as possible and accurately identify all potential witnesses and ways to contact them or third parties that will remain in touch with them. Vital witnesses may include third parties victims spoke to at the time of the incident. Statements victims made to them are generally non-testimonial and therefore admissible at trial. Children may also prove to be potential witnesses. Further, the presence of children may allow prosecutors to file additional charges against abusers for endangering the welfare of a child or a similar charge that may go forward even if the charges against the primary victim cannot.

Research Basis: Few studies review domestic violence evidence and those that do suggest evidence collection can be dramatically improved.

Consequently, prosecutors must rely on victims. In the Ohio court study, for example, victim testimony was the most frequent evidence relied upon by prosecutors, available in 48.1% of the 2,952 domestic violence cases studied.²⁵⁷ In Rhode Island, victims provided signed statements in 53% of the incident reports.²⁵⁸ A Canadian study

²⁵⁴ 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.

²⁵⁵ 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.

²⁵⁶ Isaac, N. & Enos, P. (2000). Medical Records and Legal Evidence of Domestic Violence. Washington D.C.: U.S. Department of Justice, 97-WT-VX-0008, National Institute of Justice, NCJ 184528.

²⁵⁷ 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.

²⁵⁸ Klein, A., Tobin, T. & Salomon, A. (forthcoming). Older and Elder Abuse of Women Across a State and the Criminal Justice Response. Washington D.C.: U.S. Department of Justice, National Institute of Justice.

of a Toronto Domestic Violence Court found that while having witnesses or corroborating evidence does not increase the likelihood of prosecution, if the victim cooperates, the odds of prosecution increase by a factor of eight compared to cases in which the victim does not cooperate.²⁵⁹ In Chicago, prosecutors achieved a 73% conviction rate for domestic violence cases where the victim showed up in court and significantly less, only 23% when they did not.²⁶⁰

Generally, lack of cooperative or available victims are cited as the prime reasons prosecutors drop or dismiss domestic violence cases. In the Quincy arrest study, for example, a quarter of the arrested abusers were not prosecuted by the district attorney's office. Where indicated in the court file, the most common reason given was "victim denies abuse (18.8%)," and/or married victims invoked their marital privilege not to testify against their husband suspects (12.9%); or the victim could not be located (10.6%).²⁶¹ In the large Ohio study, 70.5% of cases were dismissed because of victim "unavailability/failure to attend."²⁶² Another Ohio study in Toledo, analyzing a sample derived from 1,982 misdemeanor domestic violence cases before the Municipal Court, found that 70% of dismissed cases were dismissed because "victim failed to appear."²⁶³ In North Carolina, victim opposition was reported as the key factor in reducing the likelihood of prosecution.²⁶⁴

Implication: Prosecutors must work with local law enforcement to identify and obtain critical evidence whenever it is available, including critical contact information to locate and contact victims and other potential witnesses.

Research Basis: *Several large court and statewide studies in disparate jurisdictions indicating law enforcement failure to provide available evidence.*

Can cases be successfully prosecuted without the victim?

Notwithstanding the fact that most prosecutors attribute lack of victim cooperation as the reason why domestic violence prosecutions cannot proceed, both individual jurisdictional and comparative studies clearly suggest that either lack of victim cooperation is exaggerated or that victims are not the key variable in successful prosecution programs.

²⁵⁹ Dawson, M. & Dinovtizer, R. (2001), *Victim cooperation and the prosecution of domestic violence in a specialized court*, *Justice Quarterly*, 18, (3) 593 – 622.

²⁶⁰ 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.

²⁶¹ 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

²⁶² 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.

²⁶³ Ventura, L. & Davis, G. (October 2004). *Domestic Violence: Court Case Conviction and Recidivism in Toledo*. Toledo, OH: University of Toledo Urban Affairs Center.

²⁶⁴ Hirschel, J. & Hutchison, I. (2001). *The Relative Effects of Offense, Offender, and Victim Variables on the Decision to Prosecute Domestic Violence Cases*, *Violence Against Women*, 7(1), 46-59.

A study of almost 100 domestic violence trials in San Diego, for example, found that uniformly high conviction rates were obtained independent of victim or defendant statements, witness testimony, and corroborating evidence. In fact, outcomes were also independent whether or not the victim testified for the prosecution or the defense.²⁶⁵

Other comparative studies consistently find that the determination of prosecutors rather than the availability of victims or other evidence account for varying rates of prosecution. For example, in the three statewide examinations of tens of thousands of domestic violence prosecutions, researchers documented widely varying rates of prosecution across equivalent counties. In Massachusetts, prosecution rates ranged county by county from a high of 82% to a low of 25%.²⁶⁶ In South Carolina, prosecution rates varied from 69% to a low of 22% from one prosecution district to another.²⁶⁷ Similarly, in North Carolina prosecution rates ranged from 57% to a low of 21% in specific prosecution districts.²⁶⁸ Although some of the counties or prosecutorial districts differed in terms of demographics and population density, even among those that did not, prosecution rates varied greatly. In fact, in South Carolina, after the study was published in the newspaper and the state's Attorney General ordered prosecutors to prosecute all cases, the statewide dismissal rate dropped by 29% the next month.²⁶⁹

Studies confirm that jurisdictions with specialized domestic violence prosecution programs generally support the highest rates of successful prosecution.²⁷⁰ These specialized programs apparently create their own momentum. For example they either help create or are associated with courts that create expedited domestic violence dockets. As a result of the specialized prosecution in San Diego, for example, processing time for domestic violence cases decreased to 32 days with almost half of the defendants (46%) pleading at the arraignment. Similarly, in Everett, Washington time to trial was 80 days, in Omaha it was 43 days. Shortened trial times both reduce victim vulnerability to threats and chances of reconciling with the abuser pending trial. In both San Diego and Everett, bails were regularly set at \$10,000 per domestic violence charge (with no cash alternative in the latter). As a result, for defendants unable to raise bail, the incentive is to plead guilty to get *out* of jail.

²⁶⁵ 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.

²⁶⁶ Bass, A., Nealon, P., & Armstrong, C. (September 25, 1994). *The War on Domestic Abuse*. Boston Globe, quote in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²⁶⁷ Brundrett, R., Roberts, R. & Leblanc, C. (May 20, 2001). *S.C. Dismisses 54% of Worst Domestic Violence Cases*, The State, quoted in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²⁶⁸ Bible, A. & Weigl, A. (May 18-20, 2003). *Cries of Abuse Unheeded, Assaults Rise to Murders*. News and Observer, quoted in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²⁶⁹ Brundrett, R. & Roberts, C. (July 12, 2001). *Domestic Abuse Cases Go to State*. The State, cited in Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth.

²⁷⁰ 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.

In these jurisdictions, researchers found that evidence (eyewitnesses, photos, admissions, excited utterances, medical evidence, and physical evidence) was **not** uniformly the most powerful predictor of prosecutor's decision to proceed without victims and was not significantly associated with the decision to prosecute at all in Klamath Falls.²⁷¹

Supporting the contention that prosecutorial determination is a powerful predictor of prosecutorial success, the Ohio court study found increased time prosecutor spent with victims preparing the case was positively associated with successful prosecution and high prosecution caseloads were negatively associated with successful outcomes. The availability of evidence, including 911 tapes, photographs, medical records and police testimony were **not** associated with the likelihood of a conviction. Researchers did not suggest only victims with strong cases self-selected to approach prosecutors.²⁷²

Implications: Lack of evidence may more likely deter prosecutors from going forward than juries from convicting defendants or defendants from pleading guilty. Research Basis: Multiple studies find prosecutors able to consistently achieve high conviction rates, notwithstanding consistently limited evidence. The analysis of San Diego trials specifically suggests that convictions may be obtained with varying types of evidence, notwithstanding absence of types of other evidence, including victims.

Implications: There should be parity between prosecutors and defenders not to mention prosecutors and crimes to be prosecuted. In the Ohio study where high prosecution caseloads were associated with unsuccessful domestic violence prosecution, the court had 31 public defenders but only 18 prosecutors. Research basis: Only one study.

Can successful prosecutions be increased?

There have been multiple studies of specific prosecution efforts to significantly increase prosecution by adopting “no drop” policies. While the concept of “no drop” has proven elastic, the success of these programs to significantly increase prosecution has been demonstrated in multiple jurisdictions. In the Queens Borough of New York City, for example, prosecutors increased convictions from 24% to 60%, with research suggesting that much of the increase was the result of increased follow-up with victims and prosecutor's improved linkage with police, for example, monitoring the same case log that asked whether each of eight evidentiary items were covered in police incident reports, including photos, and witness, victim and suspect statements.²⁷³ A study of

²⁷¹ 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.

²⁷² 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.

²⁷³ Miller, N. (2003). Queens County, New York, Arrest Policies Project: A Process Evaluation. Washington D.C.: U.S. Department of Justice, 98-WE-Vx-0012, National Institute of Justice, NCJ 201886.

domestic violence prosecutions in two other states similarly found greatly increased conviction rates as a result of adoption of no-drop policies accompanied by increased coordination with police.²⁷⁴

A study of specialized prosecution programs in Oregon and Washington that instituted no drop policies found that increased use of evidence-based prosecution dramatically increased conviction rates, reduced processing time, and initially increased trials. Dismissal rates more than halved in Everett, Washington from 79% to 29%, guilty findings increased from 10% to 53%, although diversion increased from 2% to 22%, while processing time declined from 109 days to 80 days. Trials increased from 1% to 10%. Conviction rates at trial were 80%. In Klamath Falls, Oregon, only 10 to 20% of cases were screened out by prosecutors. Dismissals dropped from 47% to 14% and convictions rose from 47% to 86% after introduction of evidence-based prosecution. Unlike Everett, diverted cases dropped from 6% to none. Trials rose from 1% to 13% with prosecutors winning 63% of them.²⁷⁵

What does adoption of “no drop” policies actually mean?

The most comprehensive study of model “no drop” prosecution programs, including several that received large Justice Department grants, found “no-drop” actually meant screening out approximately 30% of cases brought by police, but proceeding with most of the remaining cases. Even if victims were not present at the time of trial, prosecutors typically were still able to proceed with 60 to 70% of the cases.²⁷⁶

Implication: Although *Crawford v. Washington*, 541 U.S. 36 (2004) further inhibits domestic violence prosecutors, the dramatic increases in successful prosecutions with implementation of specialized domestic violence prosecution programs suggest most prosecutors should be able to significantly increase successful prosecutions, but perhaps as not as much as documented in these pre-*Crawford* studies.

Research Basis: Multiple studies in disparate jurisdictions before the United States Supreme Court decided *Crawford*.

XII. What kind of dispositions do most suspects receive?

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. Disparate studies from various jurisdictions illustrate some of the variety of sentences imposed.

In Quincy, where three quarters of the suspects (74.1%) were charged with some form of assault and/or battery, a quarter of the defendants were diverted after a plea to sufficient facts, a quarter were probated and 13.5% were imprisoned. The remainder

²⁷⁴ Smith, B. & Davis, R. (2004). An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict. Washington D.C.: 98-WT-VX-0029, National Institute of Justice, NCJ 187772.

²⁷⁵ 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.

²⁷⁶ 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.

defaulted or had their cases filed.²⁷⁷ 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. A little over 60% of those found guilty were placed under probation supervision with the largest number, 30.8%, for between 360 and 499 days.²⁷⁸ 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% was fined.²⁷⁹ In Milwaukee, in the mid-1990's, out of 669 sample cases prosecutors accepted for prosecution, 30% were convicted with a jail sentence and a little less than a quarter were probated.²⁸⁰ 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).²⁸¹ A study of over a thousand domestic violence arrests across three states, Connecticut, Idaho and Virginia, found of those convicted, three-quarters were incarcerated, probated, and or fined. A little less than half (46.7%) were ordered into either anger management or batterer programs.²⁸²

A study of three domestic violence courts with specialized prosecutors in three different states found augmented probation conditions over comparison jurisdictions without domestic violence specialization. These included drug and alcohol abstinence and testing, batterer intervention programs that lasted longer and were more expensive, more no contact orders, attendance at fatherhood programs or women's groups for female offenders, more mental health evaluations, mandatory employment, and restrictions on weapons.²⁸³

Studies of four jurisdictions with specialized prosecution programs in as many states document that incarceration rates ranged from 20% to 76%. Most also were placed on probation and a condition of no victim contact and batterer treatment.²⁸⁴

²⁷⁷ 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

²⁷⁸ 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.

²⁷⁹ 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>).

²⁸⁰ Davis, R., Smith, B. & Nickles, L. (1998). *The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors*. Crime & Delinquency, 44 (3), 434-443.

²⁸¹ 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.

²⁸² 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.

²⁸³ 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.

²⁸⁴ 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.

In at least one state, imprisonment of domestic violence felons has mushroomed over the last decade and a half. The number of domestic violence offenders sent to Ohio prisons increased nine-fold between 1991 and 2005.²⁸⁵

Performance Measure: 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.

Why sentencing of domestic violence defendants may not prevent reabuse.

Some of the dispositional studies suggest that domestic violence dispositions may generally differ from standard sentencing patterns. Surprisingly, they often do not reflect defendants' prior criminal history, suggesting that prosecutors and/or judges may disregard prior records that are not domestic violence-related. In the Ohio study, for example, researchers found no correlation between offender's prior criminal histories and sentence severity.²⁸⁶ Similarly and surprisingly, the Toledo, Ohio study found defendants with prior **felony** convictions were the least likely to be prosecuted and sentenced.²⁸⁷ In contrast, in both Quincy, Massachusetts and Rhode Island, prior criminal history was significantly associated with severity of sentences.²⁸⁸

Implications: Domestic violence sentencing should reflect defendants' prior criminal histories as well as abuse histories as both indicate risk of reabuse as well as general criminality.

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

XIII. Do Specialized Prosecution Units Work?

²⁸⁵ 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 (www.sciencedirect.com).

²⁸⁶ 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.

²⁸⁷ Ventura, L. & Davis, G. (October 2004). *Domestic Violence: Court Case Conviction and Recidivism in Toledo*. Toledo, OH: University of Toledo Urban Affairs Center.

²⁸⁸ 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 to NIJ on Grant 2002-WG-BX-0011.

There are a limited number of studies specifically of specialized domestic violence prosecution programs. As the specific programs vary, including the resources expended, it is difficult to be able to pinpoint what specifically works and what does not. Also, in many instances, these programs co-exist with specialized domestic violence courts and other programs that may affect outcomes independent of the prosecution programs. However, in general, the research suggests those programs studied appear to work well on a number of levels.

First, research has found that victims generally report satisfaction with domestic violence prosecutions conducted by specialized prosecution teams. Increased satisfaction may translate into increased victim cooperation. For example, in Alexandria, Virginia, a study found 90.2% of victims found prosecutors either very or somewhat helpful, a higher rating than given to police or a victim support service agency. The 90.2% satisfaction reported by Alexandria victims compares to only 67.3% for victims in Virginia Beach, a comparison jurisdiction that did not have a specialized domestic violence response program by police, prosecutors and victim advocates.²⁸⁹

Similarly, in Cook County (Chicago), victims reported higher satisfaction with the specialized domestic violence prosecution unit than the prosecutors who handled domestic violence outside the Unit. The Unit featured specially trained prosecutors and vertical prosecution. It also had its own victim advocates. Unit victims were also more likely to appear in court, 75% compared to just 25% in non-Unit domestic violence cases.²⁹⁰

The latter finding was not unique. While victims most commonly reported fear of retaliation as a barrier to their participation in prosecution, a three state study found that the fear was reduced in sites with specialized domestic violence courts that also contained specialized prosecution programs and increased victim advocacy.²⁹¹ At the same time, however, the same study found equal satisfaction with prosecutors in both demonstration sites and comparison sites without specialized court domestic violence programs.²⁹²

Second, specialized prosecution programs have significantly increased prosecution and conviction rates. The specialized prosecution unit in Cook County, for example, obtained a conviction rate of 71% compared to 50% obtained by the rest of the office for domestic violence cases.²⁹³ In Milwaukee, the specialized domestic violence prosecution unit increased felony convictions five times over what occurred before the

²⁸⁹ 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.

²⁹⁰ 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.

²⁹¹ 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.

²⁹² 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.

²⁹³ 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.

unit was established.²⁹⁴ Implementation of a specialized domestic violence prosecution unit in Champagne County, Illinois increased prosecutions by 18% and overall domestic violence case dismissals decreased by 54%. Convictions increased by 22%.²⁹⁵

However, other studies suggest that specialized prosecution units must be adequately staffed to make a difference. The specialized prosecution unit in Mecklenburg County, (Charlotte) North Carolina, for example, obtained much lower conviction rates, with a conviction rate of only 38%, akin to that obtained without specialized units. However, researchers noted that the unit was significantly understaffed with only two prosecutors faced with hundreds of cases annually.²⁹⁶ Brooklyn's specialized felony prosecution program within the Borough's special felony domestic violence court increased convictions from 87% to 94% for felonies other than protection order violations and 93% for violations. Although the rate was higher than before, the difference was not statistically different.²⁹⁷

Third, specialized prosecution programs appear to be associated with more robust dispositions that also appear to be better monitored and enforced. A study of three domestic violence courts with specialized prosecutors in three different states found augmented probation conditions over comparison jurisdictions without domestic violence specialization. These included drug and alcohol abstinence and testing, batterer intervention programs that lasted longer and were more expensive, more no contact orders, attendance at fatherhood programs or women's groups for female offenders, more mental health evaluations, mandatory employment, and restrictions on weapons.²⁹⁸

Implications: If adequately funded, specialized domestic violence prosecution units, especially if associated with specialized domestic violence law enforcement units and courts, should increase domestic violence prosecutions and convictions, victim cooperation, satisfaction, and if dispositions are geared to defendant risk, safety.
Research Implications: Multiple studies in disparate jurisdictions.

What characterizes specialized prosecution units?

An analysis of dozens of prosecutor office's response to domestic violence found the following dimensions that characterized their responses: 1) responsiveness to victims (from treating them as if they were civil plaintiffs to treating them dispassionately as witnesses to a crime; 2) treatment of suspects; 3) expectations for victim participation in

²⁹⁴ 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>.)

²⁹⁵ 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.

²⁹⁶ 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.

²⁹⁷ 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.

²⁹⁸ 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.

prosecution; 4) specialization, and 5) information utilization.²⁹⁹ The specialized units in upstate New York, unlike other prosecutors' offices, for example, were more likely to track cases for specialized prosecution, track data to inform charging for recidivists, track data to inform sentencing recommendations, routinely receive police incident reports as well as police arrest reports. Also they were more likely to participate in task forces or coalitions involving other criminal justice and/or community agencies involved in responding to domestic violence.³⁰⁰

Performance Measure: Most large prosecutor offices have special domestic violence units, allowing for innovations such as vertical prosecution for misdemeanors, improved case preparation, greater contact with victims, reduced caseloads and more malleable court scheduling.³⁰¹ A third of prosecutors in small and medium sized cities across upstate New York also had specialized domestic violence prosecution programs, with half making victim advocates available.³⁰²
Research Basis: 2000 mail survey of 200 largest jurisdictions, study of 45 counties in upstate New York.

XIV. What should be considered in recommending sentences for convicted batterers?

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

A Chicago study found that no show defendants prosecuted by a specialized prosecution team had significantly greater number of post-arrests than those that showed, .778 compared to .456.³⁰³ 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.³⁰⁴ The Quincy

²⁹⁹ 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.

³⁰⁰ 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.

³⁰¹ Miller, N. (2001). Stalking Laws and Implementation Practices: A National Review for Policymakers and Practitioners, Washington D.C.:U.S. Department of Justice, 97-WT-VX-0007, National Institute of Justice, NCJ 197066.

³⁰² 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.

³⁰³ 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.

³⁰⁴ 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

arrest study also found that suspects who flee the scene before police arrive are significantly more likely to reabuse than those arrested at the scene.³⁰⁵

Implications: If defendants default in court prior to sentencing, prosecutors should consider them higher risk for reabuse.

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

Should “first” offenders be diverted/discharged?

In many jurisdictions, a substantial proportion of domestic violence defendants are diverted or given dispositions without guilty findings imposed. Often these dispositions are given to “first” offenders. Notwithstanding this, a trio of studies has found that a minimum of a quarter of defendants so sentenced reabuse or violate the terms of their conditional release.

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. These dispositions were reserved for defendants with less serious prior criminal and domestic abuse histories. These defendants were half as likely to have had prior records for domestic violence or crimes against persons, or been sentenced to probation previously as the majority sentenced to probation and/or jailed. Unlike those probated or jailed who began their criminal careers as teenagers, these defendants began theirs at an average age of 25. Nonetheless, a quarter of those continued without a finding 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.³⁰⁶

Similarly, a little over a quarter of the abusers (27.5%) given a conditional discharge in Cook County violated the conditional discharge.³⁰⁷

In Rhode Island, probationary sentences for domestic violence cases without underlying suspended sentences constitute an in-court diversion much like continued without a finding cases in Massachusetts. (A probationary sentence in Rhode Island does not constitute a conviction under state law and therefore, for example, does not count for sentence enhancement as a former or subsequent conviction. In the study, those sentenced to probationary sentences were most likely to be “first” domestic violence offenders.) While the average defendant given a suspended or split sentence had between 1.14 and 1.93 prior domestic violence arrests, those sentenced to probation had 0.5. Nevertheless,

³⁰⁵ 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.

³⁰⁶ Klein, A. & Tobin, T. (2008). *Longitudinal Study of Arrested Batterers, 1995-2005: Career Criminals. Violence Against Women*, 14 (2).

³⁰⁷ 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.

the rearrest rate for domestic violence for probated defendants was 34.8%, compared to 43.6% for those given suspended sentences and 48.1% given split sentences.³⁰⁸

Implications: Prosecutors must exercise caution in recommending case diversion or conditional discharges, even if abusers have minimal prior criminal histories.

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

XV. Do Batterer Intervention Programs Prevent Reabuse?

Commonly, whether diverted, probated, even jailed, many domestic violence offenders are required to attend batterer treatment programs. Batterer programs have increased dramatically over the past several decades.³⁰⁹

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.³¹⁰ In one of the meta-analyses, the treatment effect translated to a five percent improvement rate in cessation of reassaults due to the treatment.³¹¹ In the other, it ranged from none to .26, roughly representing a reduction in recidivism from 13 to 20%.³¹²

On the other hand, only a few studies have found batterer programs make abusers more likely to reabuse,³¹³ while most that have not found positive effects have found none at all.³¹⁴

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

³⁰⁸ 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 to NIJ on Grant 2002-WG-BX-0011.

³⁰⁹ Healey, K., Smith, C. & O’Sullivan, C. (1998). Batterer intervention: Program approaches and criminal justice strategies. Washington D.C.: U.S. Department of Justice, #OJP-94-C-007, National Institute of Justice, NCJ 168638.

³¹⁰ 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.

³¹¹ 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.

³¹² 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.

³¹³ 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.

³¹⁴ 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 for Research and Practice*. Violence and Victims, 15, 137-160.

initial or new partners sometime during the 30-month follow-up based on [victim and/or abusers interviews and/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.³¹⁵

Implications: Batterer Programs, in and of themselves, are not likely to protect most victims or new intimate partners of referred abusers from further harm from higher risk abusers. Consequently, if mandated, batterer programs should be supplemented by 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.³¹⁶ 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.³¹⁷

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.³¹⁸ On the other hand, a multi-state study of four programs in lengths from 3 to 9 months found no difference in subsequent reabuse.³¹⁹

³¹⁵ 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..

³¹⁶ 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.

³¹⁷ 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).

³¹⁸ 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).

³¹⁹ 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.

Performance Measure: By statute, batterer programs that are mandated for convicted abusers in California (Penal Code §1203.097(A)(6)) must be a minimum of 52 consecutive weeks for two hours each week.

Do couples counseling or anger management treatment programs prevent reabuse?

There has little recent research on the application of couples counseling involving batterers and their victims³²⁰ as most batterer treatment standards prohibit couples counseling.³²¹ While an early study in 1985 found it ineffective with half of the couples reporting new violence within six weeks of couples counseling,³²² other studies found lower reabuse rates.³²³ 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.³²⁴

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.³²⁵

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

³²⁰ Stith, S., Rosen, K., & McCollum, E. (2003). *Effectiveness of Couples Treatment for Spouse Abuse*, *Journal of Marital and Family Therapy*, 29 (3), 407-426.

³²¹ [A Review of Standards for Batterer Intervention Programs](http://www.vaw.umn.edu/Vawnet.standard.htm) (www.vaw.umn.edu/Vawnet.standard.htm.).

³²² 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.

³²³ Deschner, J.P., McNeil, J.S., & Moore, M.G. (1986). *A treatment model for batterers*. *Social Casework*, 67, 55-60.

³²⁴ Johannson, M. & Tutty, L. (1998). *An Evaluation of After-Treatment Couples' Groups for Wife Abuse*, *Family Relations*, 47 (1), 27-35.

³²⁵ [A Review of Standards for Batterer Intervention Programs](http://www.vaw.umn.edu/Vawnet.standard.htm) (www.vaw.umn.edu/Vawnet.standard.htm.).

more criminal history, including more past order violations, more long standing substance abuse histories, and less education than those referred to anger management.³²⁶

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.³²⁷

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 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.³²⁸ It is therefore not surprising that studies find substance abuse treatment can be effective in reducing domestic violence.³²⁹ 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.³³⁰ 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

³²⁶ 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.

³²⁷ 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.

³²⁸ See **IV D. Are they likely to be drug and/or alcohol abusers?**

³²⁹ Stuart, G. (2005). *Improving Violence Intervention Outcomes Integrating Alcohol Treatment*. Journal of Interpersonal Violence 20 (4), 388-393.

³³⁰ 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.

orders). Further, there was no significant difference in re-arrest rates between the substance abuse treatment completers and non-completers.³³¹

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 batterer programs, for example, found that among program completers, those that became intoxicated within a three month period were three times more likely to re-assault their partners than those that did not.³³²

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%.³³³ 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.³³⁴

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%.³³⁵

High technical violation rates are common in general for probationers sentenced for domestic violence for all common conditions, including no contact orders, drug

³³¹ 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.

³³² 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.

³³³ 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 for 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).

³³⁴ 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).

³³⁵ Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York: Center for Court Innovation.

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,³³⁶ 41% in Colorado,³³⁷ 61% in Champaign County, Illinois,³³⁸ and 25 to 44% in Rhode Island (regular compared to specialized domestic violence supervision).³³⁹

Implication: Prosecutors should be reluctant to recommend court ordered conditions including batterer intervention programs unless they are closely monitored and enforced, if prosecutors are involved in the enforcement process, bringing violators back to court, they must commit the time and resources required to enforce compliance and hold violators accountable.

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.³⁴⁰ 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%.³⁴¹ 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.³⁴²

The multi-state study of four programs found program completion reduced risk of reassault from 46 to 66%.³⁴³ 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

³³⁶ 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.

³³⁷ Huntley, S. & Kilzer, L. (February 9, 2005). *Battered Justice Series*. Rocky Mountain News.

³³⁸ 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.

³³⁹ 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 to the National Institute of Justice on Grant 2002-WG-BX-0011.

³⁴⁰ 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., Myers 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).

³⁴¹ 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.

³⁴² Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York: Center for Court Innovation.

³⁴³ Gondolf, E. (2002). Batterer Intervention Systems. Thousand Oaks, CA: Sage.

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.³⁴⁴

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 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.³⁴⁵ 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.³⁴⁶ 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.³⁴⁷

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%³⁴⁸ and Brooklyn where it was 16% v. 26%.³⁴⁹

Implications: Compliance with mandated batterer programs provide prosecutors and courts with a dynamic risk instrument based on defendant's on-going current behavior. Reabuse can be prevented if prosecutors and courts respond appropriately and timely 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

³⁴⁴ 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.

³⁴⁵ 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.

³⁴⁶ 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).

³⁴⁷ 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.

³⁴⁸ 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

³⁴⁹ 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.

following imposition of batterer program mandate.³⁵⁰ Similarly, implementation of a specialized domestic violence court in San Diego significantly increased attendance. Among other changes, the court instituted post-dispositional compliance hearings.³⁵¹ 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 26-week program had only a slightly higher completion rate than the 12-week program.³⁵²

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%.³⁵³ 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.³⁵⁴ 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.³⁵⁵

Implications: To increase program participation, prosecutors should recommend post-dispositional compliance hearings as well as the placement of abusers on supervised probation.

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.³⁵⁶

³⁵⁰ 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.

³⁵¹ San Diego Superior Court (2000). Evaluation report for the San Diego County Domestic Violence Courts, Report submitted to State Justice Institute.

³⁵² 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>).

³⁵³ 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.

³⁵⁴ 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 to the National Institute of Justice on Grant 2002-WG-BX-0011.

³⁵⁵ 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.

³⁵⁶ 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.

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

Researchers generally agree that there are a number of variables associated with failure to complete programs. 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.³⁵⁷ A number of studies emphasize the positive correlation between program completion and “stakes in conformity,” including specifically age, marital status, and employment.³⁵⁸

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.³⁵⁹ Other studies, including the study of two Brooklyn batterer programs, also found employment positively correlated with both completion and negatively with rearrest.³⁶⁰

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.³⁶¹ 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.³⁶²

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.

³⁵⁷ 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.

³⁵⁸ 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.

³⁵⁹ 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.

³⁶⁰ 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>).

³⁶¹ 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>).

³⁶² Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court, New York: Center for Court Innovation.

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 enrolled by the first hearing.³⁶³ 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.³⁶⁴

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.³⁶⁵

Implications: *To safeguard victims and/or new partners, prosecutors and 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 prosecutor's response be if court referred abusers are noncompliant with programs?

The Rhode Island probation study that compared probationers supervised in specialized probation supervision caseloads and those in less stringent general caseloads found that the former had significantly less reabuse over one year. The difference, however, only applied to what researchers called "lower risk" probationers, basically those without prior arrest histories. Although there were several differences in how the two caseloads were supervised, enforcement of batterer program attendance was one of the major differences. The program was more rigidly enforced in the specialized group as measured by significantly more violations brought for non-attendance. 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.³⁶⁶

³⁶³ 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>).

³⁶⁴ Puffett, N. & Gavin, C. (2004). Predictors of Program Outcome & Recidivism at the Bronx Misdemeanor Domestic Violence Court. New York: Center for Court Innovation

³⁶⁵ See, **VI. C. When will abusers reabuse?**

³⁶⁶ 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 to NIJ on Grant 2002-WG-BX-0011.

An evaluation of 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 the 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 than those in the comparison court defendants, 8.3 compared to 3.7. Researchers posited that lower domestic violence arrests were obtained primarily through early detection and incarceration of probationers who either continued to reabuse or failed to comply with conditions.³⁶⁷

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.³⁶⁸

Implications: Prosecutors should recommend increased sanctions for non-compliant abusers. Incarceration will assure immediate victim protection at least for the length of the incarceration. Short of this, increased surveillance may be effective for reducing risk of reabuse for lower risk abusers.

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 prosecutor'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.³⁶⁹ For example, the multi-state batterer program study found that the majority of court referred batterers who reassaulted, did so more than once.³⁷⁰ 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 probated abuser, averaging over 50%.³⁷¹

³⁶⁷ 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.

³⁶⁸ 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.

³⁶⁹ See, **VI. How many abusers are going to do it again?**

³⁷⁰ 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.shtm>)

³⁷¹ 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 to NIJ on Grant 2002-WG-BX-0011.

Implications: To protect victims, prosecutors should recommend that abusers who reabuse while enrolled in batterer programs or after they have completed the program should be incapacitated.

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 outcome if the abuser was sentenced to attend a program compared to only 55% where they were not referred to a program.³⁷² 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.³⁷³

Implications: Either batterer programs or prosecutors 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.

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