The Probation Response to Supervision of Women Who Are Abused

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Introduction

In recent years, the criminal justice system has been implementing numerous positive changes in policies and practices, to proactively respond to the seriousness of domestic violence cases. The development of mandatory arrest policies, increased training for criminal justice professionals, and the dedication of government and private funding for domestic violence programs and services has greatly impacted beliefs and attitudes about domestic violence. According to the National Battered Women's Law Project (NBWLP, 1994), "One of the biggest benefits of mandatory arrest was that it helped change the way domestic violence was conceptualized" (p. 15).
Such major changes in policies and practices have also resulted in unintended consequences for women who are abused. As an outcome of mandatory arrest policies, an increasing number of women who are victims of domestic violence are arrested and subsequently placed on probation. Some women who are abused are being arrested after acting in self-defense, when their abusers level false charges against them, or when the alleged criminal conduct is not adequately investigated and the primary or predominant aggressor is not identified. Abusers' manipulation of the criminal justice system can also result in the dual arrests of both abusers and abused, and/or the conviction of women who are abused for crimes that are a result of being abused (Women's Justice Center, 2004). This manipulation includes women charged with crimes such as parental kidnapping while attempting to protect their children from abuse, assaulting or killing their abusers in self-defense, and being coerced by their abusers into committing crimes such as welfare fraud or identity theft among others. Thus, in many jurisdictions lacking the necessary protocol development and training, the arrests of women who are abused are becoming increasingly common (Violence Against Women Office [VAWO], 2001).

While the criminal justice system must take criminal conduct seriously and respond with appropriate sanctions, it is also important to develop policies and practices that recognize the pathways that bring women who are abused into the criminal justice system. The dynamics of domestic violence may be a critical, causal factor to the criminal behavior of women probationers who are also victims of domestic violence. Probation is in a unique position to reduce the impact of these unintended consequences through a variety of supervision strategies that hold offenders accountable and support the safety of women who are abused.

The most important goal in the probation response to domestic violence is supporting the safety of women who are abused, including those on probation. Understanding women's experiences of domestic violence provides the foundation for probation supervision of women who are convicted of crimes. While women who are abused and are convicted of committing crimes must experience some consequence from a criminal justice perspective, sentencing and supervision options must not negatively impact their safety (Crager, Cousin, & Hardy, 2003).

The Role of the Probation Response to Domestic Violence Cases

In many states, probation performs several critical functions throughout the criminal justice and family court systems. Probation offers pre-trial and intake services, conducts pre-plea, pre-sentence, and pre-disposition investigation reports and provides supervision of adjudicated and convicted...
offenders for the court. Given the unique position of probation at several key points within these systems, probation is pivotal in a coordinated community response to domestic violence that supports both the safety of women who are abused as well as offender accountability.

Probation departments are challenged with supporting the safety of women who are abused while also staying vigilant against the potential for collusion with abusers who may or may not be simultaneously on probation. Probation officers are recognizing that a woman who is on probation following an arrest for domestic violence may continue to be in danger, or may be in greater danger if she fought back in self-defense or tried to stop the violence from escalating (Miller, 2001).

**The Nature and Dynamics of Domestic Violence.**

An abuser establishes and maintains power over an intimate partner through the use of a variety of coercive tactics (including physical, sexual, economic, and emotional abuse), resulting in a fixed imbalance of power. Not all forms of domestic violence are necessarily violations of law, but are coercive and often precursors to physical violence (New York State Coalition Against Domestic Violence [NYSCADV], 2004b).

Probation officers need to be alert for a whole range of tactics of abuse. For example, an abuser may use emotional abuse, attempt to isolate his partner from friends and family, exert control over financial resources, mistreat or kill family pets as a threat of potential physical assault, and/or mimic holding a loaded gun to his partner’s head. These forms of abuse can be very difficult to recognize as domestic violence, not only by friends, family members, and professionals, but also sometimes by women who have been abused (NYSCADV, 2004b; State of New York, 1998).

Every choice that a woman who is abused considers regarding seeking help or ending the relationship involves a variety of risks. A common question asked about women who are abused is, "why doesn’t she just leave?" Often women, at great and potentially fatal risk, do leave their abusers. However, a multitude of barriers, including escalating abuse and the potential for re-victimization by systems that are not responding appropriately, force many women to return to their abusers (NYSCADV, 2004b).

Separation tends to lead to an escalation of violence and a greater danger for the safety of women and their children. Approximately 75% of women who are killed by their intimate partners are killed when they are in the act of leaving or when they have left the relationship (State of New York, 1997). Despite this reality, courts often do not recognize that domestic violence continues after separation. Thus, it is crucial for probation officers to view every case of domestic violence as a potential homicide.

Probation officers cannot predict the behavior of an abuser once he steps out of the probation office. Because "the available literature concerning the prediction of dangerousness and the propensity for violence shows that there is not a simple, reliable formula capable of making these predictions with acceptable accuracy" (State of New York, 1997, p. 19), all domestic violence cases should be considered to be "high risk."
Abusers are the only individuals who know for sure whether they will escalate their abuse. Additionally, women who are abused are an important source of information regarding the potential for and extent of future abuse. Thus, lethality indices, particularly in the form of checklists or forms to be filled out, should not be relied upon to predict whether or not a particular abuser is likely to become more violent or commit murder.

However, it is also important to recognize that, while both women who are abused and abusers will typically underreport and minimize abuse for various reasons, the absence of indicators of heightened risk should not be interpreted to mean that there is no risk. For example, research conducted as part of fatality review processes has indicated that in 30% of domestic violence homicide cases there was no known violent behavior prior to the homicides (State of New York, 1997). Thus, probation officers should always assume that there is more danger than is being reported to them.

Because domestic violence involves a course of conduct and a pattern of behavior that occurs over time, more so than other crimes, probation officers can be fairly certain that domestic violence offenders will continue to abuse or re-offend. Thus, all domestic violence offenders should be considered for the highest level of supervision possible, as the potential for homicide is very real.

**Diversity Among Victims of Domestic Violence.**

Socio-economic status, race, ethnicity, sexual orientation, age, religious affiliation, physical and mental disabilities, immigrant status, education, employment status, urban vs. rural residency, and marital status are all factors that affect how women and other individuals from marginalized communities experience domestic violence and the criminal justice system. The considerable diversity among victims of domestic violence requires systems and professionals to develop responses that consider their distinctive needs (Family Violence Prevention Fund, 1999; New York State Probation Domestic Violence Intervention Project [NYS PDVIP], 2005).

These responses should also acknowledge the fear of using the criminal justice system that is felt by people who have been historically discriminated against by that system (people of color, people with disabilities, lesbian, gay, bisexual, and transgender individuals, and people with lower socio-economic status, among others). While it is not feasible for systems and professionals to have a comprehensive understanding of the social, cultural, ethnic, or religious affiliation of everyone who is abused with whom they have contact, it is essential to be prepared to acknowledge, legitimate, and accept the ways in which these factors may influence an individual's responses and define the context of the threat the individual faces (State of New York, 1998).

**Women Convicted of Crimes and Their Experiences as Victims of Domestic Violence.**

Many women who have been convicted of crimes are victims of domestic violence, and their convictions are direct or indirect results of the abuse they experienced (VAWO, 2001). This includes women who kill or assault their abusers in self-defense, women coerced into criminal activity by their abusers, women charged with "failure to protect" their children from an abuser's violence, and women charged with parental kidnapping in their attempts to protect their children from abuse. For
these women, information about their histories and experiences of abuse may be directly relevant to their defense. Other women might be charged with or convicted of a crime not directly related to abuse, but the path that led them into the criminal justice system began with abuse (Multnomah County Family Violence Coordinating Council, 2002).

Many women who are abused report being coerced by their partners to commit illegal acts such as welfare fraud, identity theft, writing fraudulent checks, using or selling drugs, and/or "taking the rap" for crimes the abuser committed. Some women are arrested for assaults, which, in reality may have been acts of self-defense (Miller, 2001; New York State Probation Domestic Violence Intervention Project [NYS PDVIP], 2005; Worcester, 2001).

The Bureau of Justice Statistics [1999] found that 57% of female prisoners in state prisons and 40% of female prisoners in federal prisons reported that they had been physically or sexually abused before serving their sentence. Most of the women who were abused (61% in state prison and 66% in federal prison) reported that their abusers were their current or prior husbands or boyfriends (as cited by Crager et al., 2003). Additional studies of women incarcerated in other states indicate that these experiences of abuse are demonstrating a national trend (Women in Prison Project, 2002).

Similarly to women who have been incarcerated, a 2000 study of women on probation and parole in Lane County, Oregon, indicated that the vast majority are or have been victims of domestic violence at some point in their lives: 85% have experienced physical violence including pushing, slapping, shoving, or grabbing; 79% have experienced physical violence in the form of punching, kicking, strangling, or hitting; and 46% have been raped or forced to have unwanted sex (Oregon Council on Crime and Delinquency [OCCD], 2002).

The OCCD (2002) study also indicated a strong connection between women's criminal histories and relationships with their abusive partners:

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Reason for Committing a Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>56%</td>
<td>Committed at least one crime to please a partner</td>
</tr>
<tr>
<td>45%</td>
<td>Committed a crime to get drugs for a partner</td>
</tr>
<tr>
<td>40%</td>
<td>Admitted to a crime actually committed by the partner</td>
</tr>
<tr>
<td>29%</td>
<td>Committed a crime because they were threatened by a partner</td>
</tr>
<tr>
<td>51%</td>
<td>Lied to authorities to hide partner's crime</td>
</tr>
<tr>
<td>21%</td>
<td>Chose to go to jail to avoid violence by partner</td>
</tr>
</tbody>
</table>

Nationwide, a large percentage of women on probation have not been convicted of violent crimes: 44% have been convicted of property crimes, 27% have been convicted of public-order offenses, and 19% have been convicted of drug offenses. Only 9% have been convicted of violent crimes (Bloom, Owen, & Covington, 2003).

The preponderance of women who are identified as offenders in domestic violence cases, do not use violence to gain "power and control" in their relationship, and are not likely to be the predominant aggressor. Rather, the vast and overwhelming majority of women who are identified by the criminal justice system as domestic violence offenders used violence to protect themselves and
their children (Dasgupta, 2001; Worcester, 2001). Unless predominant aggressor determinations are made, women who are abused will continue to be convicted of domestic violence. Key to these determinations is an analysis of the comparative extent of injuries, threat of future harm, prior history of domestic violence, and whether any person acted defensively to protect themselves or others from injury. Often, many of these cases are classified as "domestic violence" on the sole basis of injury sustained and the victim-offender relationship. This classification process fails to consider a critical component of the domestic violence definition, which is a history or pattern of coercive/controlling behavior (NYS PDVIP, 2003b).

In a recent study, 69% of women who were arrested for domestic violence and who were abused, pled guilty to the charges against them. Their reasons included being told that it was the only way to get out of jail, not being able to afford the court costs, not wanting their children to have to testify against them, being told by the prosecutor that otherwise the charges would be for a more significant crime including jail time, being new to this country and not understanding how the criminal justice system works, and being eager to get the case over with and return home (Crager et al., 2003; Miller, 2001).

Probably the most significant reason women are advised to plead guilty is when public defenders and prosecutors want to dispose of cases quickly. Given a choice between jail and caring for their children, women will often plead guilty so they can stay with their family (Miller, 2001). As a result, women who are abused make important case decisions, such as accepting a plea bargain versus pleading not guilty, that have little to do with guilt or innocence, but have much more to do with preserving custody of their children by avoiding imprisonment.

**Probation Supervision of Women Who Are Abused**

Anytime a probation officer has a woman on his or her caseload, there is a high probability that she is a victim of domestic violence (Bloom et al., 2003; NYS PDVIP, 2005). For women who have already been identified as victims of domestic violence, probation officers have a wide range of supervision strategies available to help support safety and minimize unintended consequences of conditions designed to develop probationer competencies. Simultaneously, these strategies will work to hold the women who are abused accountable for the crimes they have committed. If a woman has not yet been identified as a victim of domestic violence, there are specific strategies that a probation officer can employ to identify the occurrence of domestic violence, and provide her with support and resources if she is being abused.

A critical function of probation officers is to screen all women probationers for domestic violence (Bloom et al., 2003)(See Appendix A for a list of suggested screening questions). Before conducting a screening with a potential victim of domestic violence, probation officers should inform her of the extent and limits of confidentiality. In particular, she should be informed of departmental requirements to act in cases in which she expresses an intent to do harm to herself or others and, if the probation officer is a mandated reporter of child abuse, in cases in which reportable information of child abuse and/or neglect is shared (in cases involving child abuse, only the person who has perpetrated the abuse should be reported) (State of New York, 1998). Many women who are victims
of domestic violence will not volunteer any information about their experiences of abuse, but will discuss it if asked direct questions in a nonjudgmental way.

Screening for domestic violence should be conducted in separate interviews out of the line of sight and hearing of others. Where women are not fluent in English, or are Deaf or hard of hearing, according to federal law, probation officers must arrange for translators or interpreters who are neither friends, nor relatives (including children) of the women (NYS PDVIP, 2005).

Best practice dictates that probation departments create a uniform response to support the safety of women who are abused, during probation supervision and at every other stage of probation involvement. Strategies to accomplish this include making the safety of women who are abused the highest priority, and approaching every case from a homicide prevention perspective. Also, requesting the input and guidance of domestic violence advocates is crucial in the design, implementation, and review of any domestic violence initiatives, policies, protocols, tools, and training. In addition, departments can ensure that all personnel receive on-going training by domestic violence advocates on victim safety, so that officers are prepared to request modifications of any Order and Conditions of Probation that may negatively impact a woman's safety (NYS PDVIP, 2004; NYS PDVIP, 2005).

**Strategies that Support the Safety of Women Who Are Abused.**

It is crucial that probation officers develop a familiarity with the needs and safety concerns of women who are abused, and become aware of the risks women face while on probation supervision. For example, an abuser may use the probation condition as another way to abuse her by threatening to falsely allege a probation violation to her probation officer, or by forcing her to commit an illegal act and then reporting it (Crager et al., 2003).

When a probation officer learns that a woman probationer is abused, the officer should apply the same principles for working with women who are not probationers (NYS PDVIP, 2005). If a woman who is abused has not had contact with domestic violence programs, probation officers can play a key role in providing information and referrals to domestic violence services. A probation officer may be the first person that has ever said to her: "You don't deserve to be abused. It's not your fault, and there's nothing you have done to cause the abuse." Probation officers have a responsibility to reassure women that they are not alone with their experiences: "I'm concerned about you, and when you are ready, help is available."

When probation officers provide referrals, it is crucial to understand that her potential reluctance or unwillingness to take hotline/advocate contact information may be related to a concern for her own safety. Her abuser may be waiting for her in the parking lot, go through her purse or pockets, and use that domestic violence program contact number as a reason to continue and/or escalate his abuse (NYSCADV, 2004b). It is also important for probation officers to take their cues from women who are abused as to what their abusers' actions mean. For example, an abuser may have made statements to indicate that a woman's risk is high (i.e. "The next flowers you'll get will be when you are in the ground").

Probation officers can also assist women in identifying and understanding dangerous and potentially illegal stalking behaviors including unwanted phone calls, letters, gifts, flowers, email, instant
messages, or faxes. A stalker may also follow her or show up at places she frequents (home, work, school, etc.), make verbal, written, or implied threats directed at her, her friends or family, or vandalize her property. More extreme acts of stalking may also include assaults or other acts of violence, including sexual assault, directed at her, an immediate family member, or someone she knows (NYSCADV, 2004b).

Probation officers support the safety of women by providing referrals to domestic violence programs to assist with completing a safety plan. If a woman chooses not to contact a domestic violence advocate, probation officers can help her review her risks and create a preliminary safety plan (See Appendix B for considerations for developing a preliminary safety plan), including asking about weapons available to the offender, as well as his access to the children (NYSCADV, 2004b).

Regardless of the level of offense or conviction, probation officers should refrain from minimizing the abuser's potential to inflict serious physical injury. All domestic violence cases should be considered as potential homicides, particularly during separation or after a woman who is abused terminates the relationship (NYS PDVIP, 2005).

Probation officers are also becoming aware of the potential for collusion with abusers who are not under supervision. These abusers may attempt to become an ally of probation officers in order to maintain power and control over the woman who is abused. To counter these attempts at coercion, probation is increasingly conducting Pre-Sentence Investigations (PSIs) in all domestic violence cases. If there are insufficient resources to do this in all cases, PSIs should be conducted on any case where the defendant may have a history of victimization by the alleged victim in the presenting case. The PSI should include specific questions about the history of victimization and power and control dynamics in the relationship (NYS PDVIP, 2005) (See Appendix C for a list of general guidelines for probation officers who supervise women who are abused).

Additional strategies for supervising women who are abused include the following:

1. Know and follow the departmental confidentiality policy regarding use of information about the woman who is abused, including her contact information. Inform the woman who is abused of the policy at first contact, and again as necessary throughout the supervision process. It is important for her to understand what will happen with any and all information she may provide to her probation officer (e.g., Will it be written in her case file? Will a supervisor see it? Will it be submitted to the judge in a report? Will her abuser or his attorney have access to it?)

2. Create a safe environment for women who are abused to disclose their experiences of abuse if they choose. Consider displaying domestic violence posters in the probation department and have local domestic violence program brochures and pamphlets available as a visible way to show that the officer and the department take domestic violence seriously.

3. Explain the terms of the Orders and Conditions of Probation, the role of a probation officer, and any additional relevant agency policies. Fully explain the consequences of violations of the Orders and Conditions of Probation, and other probationer obligations.
4. Assure the woman who is abused that she is not responsible for her abuser's behavior. The choice to abuse rests only with the abuser.

5. Do not use her abuser as a collateral contact. This may unintentionally reinforce and validate his power and control over her and introduce unreliable information to her case.

6. It is essential to understand that the decisions women make may be based on critical survival strategies. Women who are abused are constantly evaluating their risks, and from day to day their needs and safety concerns may vary.

7. Ask the woman who is abused to identify how to contact her in a way that supports her safety. Do not initiate contact with the woman who is abused while her abuser is present.

8. Ensure that the woman who is abused has contact information for the local domestic violence program. Assist her in identifying her safety concerns.

9. Discuss safety issues for the probation officer and the woman who is abused that may impact home contacts, fieldwork, or collateral contacts (e.g., if the abuser lives with the woman who is abused, schedule a home contact with her when the abuser is not at home).

10. Address other needs of women who are abused including employment, childcare, housing issues, substance abuse treatment, etc.

11. Do not promise the woman who is abused anything you may not be able to deliver. Do not assure her of her safety (NYSCADV, 2003; NYS PDVIP, 2004) (See Appendix D for a checklist for probation contact with victims of domestic violence).

Collaboration with Domestic Violence Advocates and Referrals to Domestic Violence Programs.

Probation officers are building strong collaborations with domestic violence advocates. As a result, they have a greater comprehension of the dangers that women face, and a broader understanding of choices women make which are grounded in critical survival strategies.

The role of advocates, which are employed by traditional domestic violence programs (based in, or linked with, not-for-profit, non-governmental agencies), is defined by the needs and desires of women who are abused. The overarching goals of advocates are to support and bolster women's confidentiality and decisions, and provide them with information. The allegiance of advocates lies solely with women who are abused, which is distinct from victim-witness liaisons (also sometimes referred to as "advocates") that may be employed by district attorney's offices, law enforcement agencies, and other system-based programs. In fact, advocates may be called upon to represent the interests of women who are abused to other persons and/or agencies.

Advocates and domestic violence programs are a major resource for probation officers and departments and vice versa, and this interdependent relationship should be encouraged, strengthened, and formalized as a necessary part of a coordinated community response to domestic violence. Advocate-
probation collaborations can strengthen cases and significantly support safety of women in many ways. Advocates can assist with explaining the probation process, help women who are abused understand what probation officers and departments do, and review probation documents and paperwork with women who are abused. In addition, advocates can help prepare women who are abused for meetings with probation, and may be able to attend meetings to provide additional support (NYS PDVIP, 2004, NYS PDVIP, 2005)³.

Probation officers can minimize the potentially dangerous repercussions of unintended consequences of supervision practices, by developing and maintaining collaborations with advocates regarding safety issues. Thus, interventions implemented by probation officers can focus on helping women who are abused explore and evaluate available options, make informed decisions, design preliminary safety plans that reflect women’s needs and goals, and facilitate voluntary involvement in domestic violence services (State of New York, 1998).

At every opportunity, probation officers should make available hotline numbers, contact information, and descriptions of locally available domestic violence programs and services to women who are abused. However, seeking help from a domestic violence program, getting an order of protection, or deciding to leave an abuser only makes sense to a woman when, on balance, it reduces the overall risks that she and her children face. Victim safety should remain paramount when there may be competing interests or a perceived benefit of a program, policy, protocol, or procedure. Achieving this goal requires a supervision plan that incorporates the many obstacles and risks to achieving safety or to ending a relationship with an abusive partner that women who are abused encounter.

Domestic violence programs focus on empowerment, autonomy, and self-determination, and mandating participation in any program or service contradicts this philosophy (Crager et al., 2003). Mandating women who are abused to domestic violence services also places advocates in the incongruent role of monitoring compliance with probation conditions (Denton, 2001).

³One example of a model program that is emphasizing probation as a critical and multi-faceted response to domestic violence cases is the New York State Probation Domestic Violence Intervention Project (NYS PDVIP). Initiated in 1998 by the New York State Coalition Against Domestic Violence (NYSCADV), the New York State Office for the Prevention of Domestic Violence (OPDV), and the New York State Division of Probation and Correctional Alternatives (DPCA), the project is funded by the Grants to Encourage Arrest Policies and Enforcement of Protection Orders program of the U.S. Department of Justice, Office on Violence Against Women, and has been nationally recognized for innovative practices by the American Probation and Parole Association.

The NYS PDVIP relies upon a close working relationship and collaboration among current and former probation officers, department directors, and domestic violence advocates to develop domestic violence policies, procedures, and protocols. Specifically, local probation departments are being asked to provide a more consistent legal system response to women who are abused and domestic violence offenders, promote collaboration within communities and across agencies, and foster relationships with local domestic violence advocates. These relationships are vital to the overall success of the project, as the experiences of women who are abused best inform systemic improvements to enhance safety.
Considerations for Dual Probation Supervision of Women Who are Abused and Their Abusers

When women who are abused and their abusers are both under supervision by probation, a heightened level of confidentiality and a stringent safety protocol must be maintained within the department. Regardless of who is or is not identified by the criminal justice system as the abuser, probation officers should continue to implement practices that support the safety of women who are abused.

Probation officers are well trained to be wary of probationers and their many tactics at "getting-over." This skill is especially key when supervising domestic violence offenders, as abusers not only excel at this endeavor, but use it as a strategy directly related to their abuse and to their mindset. Although many convicted criminals may believe themselves to be victims, men who are abusers tend to be particularly insistent about their perceived victimization.

Historically, men who abused were protected by traditions of privacy and privilege surrounding marriage and the family. While social values and laws are changing pertaining to abuse in intimate relationships, many men who abuse express a sense of intrusion and injustice, and feel that they have had something taken away, or that their rights have been abridged. Probation officers need to exercise care not to say or do anything that could be interpreted as agreeing with the abuser - including even the most casual of comments or nodding of the head. Invariably, abusers will use that perceived support to minimize and justify their behaviors or to corroborate their negative assumptions about women (NYS PDVIP, 2004).

Similarly, probation officers need to keep the focus on accountability, not on abusers' personal or moral deficits, diseases, low self-esteem, early childhood experiences, anger management, diminished intellect, addiction, mental illness, other individuals, or external events as the means to "explaining" or "solving" domestic violence. Doing so gives abusers support for the excuses they offer to explain their abusive behavior (State of New York, 1998).

General Safety Strategies for Women Who Are Abused During Dual Probation Supervision.

General guidelines for probation officers who supervise women who are abused during dual probation situations include the following:

1. Recognize that women who are abused have differing safety needs and concerns than men who are being supervised. In some situations, there may be a need to request a modification of Orders and Conditions of Probation that may negatively impact her safety (e.g. curfew, electronic monitoring, travel permits, and residency reporting may impose additional danger for women who are abused).

2. Do not schedule office interviews with both the woman who is abused and her abuser on the same day. Develop a schedule of meeting times and dates in conjunction with the other supervising officer.
3. It is essential that different probation officers supervise the woman who is abused and her abuser. This minimizes opportunities for breeches in confidentiality and reduces the potential for collusion with the abuser.

4. If case reviews are routinely conducted with other probation officers and supervisors, exercise extreme caution in discussing case details which may put a woman who is abused at risk. While challenging, limit the access of other officers and supervisors as much as feasible to the case file of the woman who is abused. Discussing the details of her case with other probation officers may result in information getting to her abuser, with potentially significant repercussions for her safety.

5. Do not make negative statements about the abuser during supervision of a woman who is abused (NYSCADV, 2003; NYS PDVIP, 2005). For example, comments such as "he's such a lousy husband" or "he's a real jerk" interject value judgments into the supervision process that can significantly detract from perceptions of probation officers and their ability to maintain a professional demeanor. Rather, the context of the abuser's behaviors and actions should be focused on her safety.

Additional Safety Strategies for Women Who Are Abused During Supervision of Their Abusers.

General guidelines for the supervision of abusers include the following:

1. The safety of the woman who is abused is the chief concern.

2. The abuser is responsible for his behavior. There is no acceptable justification for his violence, no matter what he says or how much he blames her. Address every attempt of abusers to deny, minimize, justify, or blame abuse on anything other than their own personal choice.

3. Neutralize the abuser's attempts to manipulate officers or control probation proceedings. Avoid any situation that could lead to unintentionally colluding with the abuser.

4. Whenever possible, probation officers should use sources of information, other than the woman who is abused, to enforce accountability of abusers who are also on probation. If a probation officer does include input from a woman who is abused, it is crucial for the probation officer to explain to her, realistically, what may happen with the information that she provides regarding her abuser's case. Thus, the probation officer should specifically inquire about information that the woman who is abused can provide about her abuser without putting her at increased risk.

5. The probation officer should clearly describe to the woman who is abused how violations of probation are handled and what sanctions may be imposed on her abuser.

6. Safekeeping of the contact information for the woman who is abused is always a priority. Her contact information should always be kept out of sight when the abuser is in the office. If possible, putting the contact information for the woman who is abused in a different colored file or using
a piece of colored tape on the file can be an easy way to remind probation officers of the heightened need to keep the information confidential.

7. In addition, probation department policy should require that probation officers notify a woman who is abused at least one month before her abuser is discharged from supervision. This will provide an opportunity for her to identify any safety concerns and request appropriate referrals from her probation officer (NYSCADV, 2003; NYS PDVIP, 2005).

Considerations for Court Ordered Referrals That Are Dangerous

Increasingly, the criminal justice system and the courts are tapping into a wider range of program and referral options and sanctions as responses to domestic violence cases. While many commonly used interventions, referrals, and services are safe and appropriate for many individuals; probation officers need to recognize that several of these same practices are dangerous and inappropriate for women who are abused.

In addition to the increased danger these practices may create, they may also reinforce the notion that a woman who is abused shares responsibility for her partner's violent and/or controlling behavior. Such a message reinforces the mistaken belief of most abusers: women who are abused are to blame for the violence. Thus, it also encourages women who are abused to internalize responsibility for their partners' violence and has the potential to increase the likelihood that the abuser will physically or emotionally harm his partner (NYSCADV, 2004b).

Safety Considerations for Batterer Program Referrals.

The Violence Against Women Office's *Toolkit to End Violence Against Women* recommends that the justice system avoid ordering victims of domestic violence to participate in batterer programs (VAWO, 2001). There are many practical and philosophical problems associated with court-ordering a woman who is abused to participate in a batterer program. If she was acting in self-defense or to protect her children, or was using violence in retaliation for abuse, the court order is, in effect, punishment for being abused. Most women who are abused are not batterers, even when they have used violence proactively. While the content of a program for female offenders may be helpful to some women, the "batterer" label written into the court order is generally inaccurate (Crager et al., 2003).

Participation in a batterer program places a woman who is abused in greater danger. For example, when a program notifies the alleged "victim" (in actuality, the real batterer) of the woman's participation in the batterer program, he can learn where and when he can find her. Batterer program staffs have described instances in which women who are abused have been stalked by their abusers every time they attended their court-ordered batterer program. Mandatory participation in batterer programs by women who are abused also creates opportunities for batterers to sabotage the women's compliance with the court order by interfering with their attendance, or reporting false allegations of new acts of violence (Crager et al., 2003). Andy Klein, former chief probation officer for the
Quincy, MA court and nationally known author on probation, criminal justice, and domestic violence, also commented on the use of batterer programs for women:

If we really want to offer our services to female batterers, there are better ways to reach them than to rely on the coercive powers of a criminal justice system that too often gets it wrong in separating out batterers from victims. If the prosecutor or judge asks you to assist the court by offering batterer intervention programs for women...just say NO. Offer, instead, to help train officers, prosecutors, and judges on how to arrest, prosecute, and sanction wisely (Klein, 2001, p. 2).

—Andy Klein

Safety Considerations for Mediation and Couples Counseling Referrals.

Intervention strategies that require cooperative participation typically assume an equal relationship in which both parties are free to openly participate. Mediation, for example, is a process through which equal parties are engaged in negotiations to resolve a conflict. Because of the inherent imbalance of power between an abuser and a woman who is abused, mediation and couples counseling are inappropriate in domestic violence cases. A victim of domestic violence who, by definition, is being controlled by her partner is significantly compromised in her ability to negotiate freely and is not on an equal footing with her partner. Women who are abused may also be encouraged to alter their behavior so that they do not "provoke" their partners into abusing them, thus, holding the victims accountable for the abuse. Any focus on placating the abuser diverts resources or interventions away from safety and accountability. Also, many women report being threatened or assaulted after joint intake or counseling sessions for things they said or did during the session (Frank & Golden, 2002; National Institute of Corrections [NIC], 2001; NYS PDVIP, 2003a; State of New York, 1998).

Safety Considerations for Restorative Justice Practices.

Community and restorative justice practices, which can be effectively used in conjunction with property and juvenile crimes, may not always be "restorative" or appropriate for women who are abused. As an understanding of power and control and the dynamics of domestic violence are not reflected in many restorative justice practices, they are dangerous for domestic violence cases.

Conferencing (also known as Family Group Conferencing) routinely requires women who are abused to have face-to-face visits with their abusers. Also, communities may change agreement plans if they see abusers are having problems with implementing them, thus creating the potential for abusers to manipulate consequences and avoid accountability for the crimes they committed (NIC, 2001; NYS PDVIP, 2003a).

Circles (also known as Sentencing, Healing, Peacemaking, or Community Circles) primarily use negotiation, mediation, consensus building, and conflict resolution tactics that, because of power differences between the abuser and the woman who is abused, are dangerous and inappropriate. Also, responsibilities are often inappropriately assigned to women who are abused and their support
groups, and outcomes are often focused on an increased community capacity to "resolve disputes" (NIC, 2001; NYS PDVIP, 2003a).

**Safety Considerations for Routine Mental Health Assessments.**

Domestic violence is not the result of a mental health issue, nor does a woman who is abused, typically, have a mental illness. The rate of mental illness among women who are abused is no higher than that of the general population, and mental illness on the part of the woman who is abused is generally not the cause of the violence. When a woman who is abused has no related mental health issues, an assessment implies that the woman's status as a victim of domestic violence is in some way connected with a mental health problem. Thus, women who are abused should only be referred for mental health assessments for reasons that are not connected to the abuse.

Few mental health providers have specific training in assessing for domestic violence or in providing supportive services. Like an order to complete a batterer program, an order to complete a mental health assessment can be used against the woman who is abused in a number of ways; for example, it may contribute to losing custody of her children (Crager et al., 2003).

**Strategies to Respond to Court Ordered Referrals That Are Dangerous.**

Probation officers have numerous opportunities for "teachable moments" in which they can educate judges, prosecutors, defense attorneys, police officers, other criminal justice professionals, and community stakeholders about the nature and dynamics of domestic violence, women's use of violence, predominant aggressor identification, and the crucial need to revise criminal justice protocols that re-victimize women who are abused through unintended consequences. In some jurisdictions, probation departments are developing protocols, which prohibit probation officers from mandating or referring women to dangerous practices. When judges refer or mandate women to these practices, the probation departments respond to the judges with an explanation of how the practices are dangerous to women, why the department has restricted use of them, and provides them a copy of the departmental protocol.

A strong collaboration with local domestic violence advocates is the cornerstone to a probation response that supports the safety of women who are abused while minimizing the impact of potentially dangerous practices. Advocates are a tremendous source of information and support for probation officers on general domestic violence issues and concerns facing women who are abused, and can provide feedback on proposed policies, referrals, and practices.

**Conclusion**

The regrettable influx of women who are abused into the criminal justice system calls for the expert and principled participation of probation officers to promote their safety. Fortunately, probation officers are well positioned to assume this additional responsibility of justice on behalf of women who are abused.
At every opportunity, probation officers should make available hotline numbers, contact information, and descriptions of locally available domestic violence programs and services to women who are abused. Victim safety should remain paramount even when there may be competing interests or a perceived benefit of a program, policy, protocol, or procedure. Achieving this goal requires an expansion of traditional notions of probation's mandate of offender accountability and public safety. Domestic violence is a complex issue that demands probation officers implement supervision plans that contain strategies for the many obstacles and risks to achieving safety that women who are abused encounter.

Tremendous change has been occurring within the criminal justice system regarding transformations in attitudes and beliefs about domestic violence. Increasingly, domestic violence is seen as a serious crime that warrants swift and strong law enforcement, court-based, and correctional responses aimed at holding abusers accountable for their actions. Probation officers are taking on prominent roles in bringing about the social change necessary to challenge domestic violence.

Probation is in a unique position to support the safety of women who are abused and reduce the negative impacts of arrest and prosecution of women who are abused as part of a dual arrest for domestic violence, or other crimes. Anytime a probation officer encounters a woman who is abused or her abuser, regardless of who is the probationer, the officer has a crucial role in potentially preventing further domestic violence or even homicide.

References


Appendix A
Screening for Domestic Violence

A "yes" answer to any of the questions on the following Domestic Violence Checklist may indicate that a woman is being abused.

"Violence is common in many women's lives, and I ask about it routinely. Does your partner..."

• Constantly criticize you and your abilities as a spouse or partner, parent or employee?
• Behave in an over-protective manner or become extremely jealous?
• Threaten to hurt you, your children, pets, family members, friends, himself, or herself?
• Get suddenly angry or lose his or her temper?
• Destroy personal property or throw things around?
• Deny you access to family assets like bank accounts, credit cards, or the car, or control all finances and force you to account for what you spend?
• Withhold medication or deny you access to health care?

• Threaten to reveal your HIV status?

• Force you to work in jobs not of your choosing?

• Use intimidation or manipulation to control you or your children?

• Hit, punch, slap, kick, shove, choke or bite you?

• Deny you access to your immigration documents?

• Prevent you from going where you want to, when you want to, and with whomever you want to?

• Make you have sex when you don't want to or do things sexually that you don't want to do?

• Control your expression of gender identity or sexual orientation?

• Threaten to "out" you if you are lesbian, gay, bisexual, transgender, or transsexual?

• Humiliate or embarrass you in front of other people?

(NYSCADV, 2004a)

**Appendix B**

**Considerations For Developing PRELIMINARY Safety Plans**

Women who are abused should be referred to domestic violence advocates to complete comprehensive, long-term safety plans. Safety planning is a tool for developing safety strategies, not a solution to domestic violence. It is a strategy for women who are abused to contextualize their daily experiences and the safety-based decisions they make on an on-going basis.

If a woman who is abused chooses not to discuss safety planning with an advocate, a probation officer can assist with the process of developing a preliminary safety plan. This safety plan may include information regarding the abuser's use of technology to perpetrate abuse (e.g. using a GPS chip in her cell phone to track her movement, and accessing her email and phone conversations). Also, in the event of immediate danger, probation officers should discuss contacting the police, instead of the probation officer or department, for an immediate response.

A safety plan does not have to be written, but if a woman decides to develop a safety plan on paper, it should be kept in a place where the abuser will not find it. Be aware that even the most comprehensive safety plan is not a guarantee that a woman who is abused will be safe.

**Preliminary safety plan questions that a probation officer can ask a woman who is abused may include the following:**
• Where can you keep important phone numbers (police, hotline, friends, shelter) for yourself and your children?

• Is there anyone you can ask to call the police if they hear suspicious noises coming from your house or apartment?

• If you need to get out of your house or apartment in a hurry, what door, window, elevator or stairwell will you be able to use in order to get out safely?

• If you need a place to stay for a while, where can you go? Can you arrange to stay with family or friends in a crisis? Do you know how to contact the local domestic violence program in order to arrange for emergency shelter?

• Where can you keep your purse, an extra set of car keys or money for public transportation, and some change to make a phone call so that you can grab them quickly?

• Do your children know how to use the telephone to contact the police?

• Is there a code word you can use with friends, family, and/or your children to alert them to call for help?

• Can you keep some money, some changes of clothes, and important papers (e.g. birth records and social security cards for yourself and your children) hidden somewhere your partner doesn't know about, but that you can get to quickly? Can you keep the "escape bag" with a neighbor or in the trunk of your car?

• If you think your partner is about to become physically abusive, how can you get to a room where there are fewer things that can be used as weapons? How can you avoid getting trapped in the kitchen, bathroom, basement, or garage?

(NYSCADV, 2004b)

**Appendix C**  
*General Guidelines for Probation Officers Who Supervise Women Who Are Abused*

**General Guidelines:**

• Create a safe environment for women who are abused to disclose their experiences of abuse if they choose - consider displaying domestic violence posters in the probation department and have local domestic violence program brochures and pamphlets available.

• Request a modification of conditions of probation that may negatively impact her safety - recognize that women who are abused have differing safety needs and concerns than men who are being supervised (e.g. curfew, electronic monitoring, travel permits, and residency reporting).

• Do not mandate her to a batterer program.
• Do not mandate her to domestic violence programs.

• Do not use her abuser as a collateral contact as this may unintentionally reinforce and validate his power and control over her and introduce unreliable information to her case.

• Inform the woman who is abused of the department's confidentiality policies at first contact, and again as necessary.

• Women who are abused are constantly evaluating their risks, and from day to day their needs and safety concerns may vary so it is essential to be patient and understanding.

Contact and Concerns During Supervision:

• Safekeeping of the contact information for the woman who is abused is always a priority.

• Keep the case file out of sight when the abuser is in the office, or, if possible, keep the contact information for the woman who is abused in a separate file.

• Know and follow the departmental policy regarding use of information about the woman who is abused.

• Do not initiate contact with the woman who is abused while her abuser is present.

• Ensure that the woman who is abused has contact information for the local domestic violence program.

• Assist her in identifying her safety concerns and with preliminary safety planning.

• Ask the woman who is abused to identify how to contact her in a way that supports her safety.

• Explain the terms of the Orders and Conditions of Probation, the role of a probation officer, and any relevant agency policies.

Be Prepared to Discuss (when relevant):

• Safety issues for the probation officer and the woman who is abused that may impact home contacts, fieldwork, or collateral contacts.

• Information that the woman who is abused can provide about her abuser without putting her at increased risk.

• Orders and Conditions of Probation and violations thereof, and other probationer obligations.

(NYSCADV, 2003; NYS PDVIP, 2005)

Appendix D
Probation Contact Checklist: Victims of Domestic Violence
Prior to First Meeting

- Contact domestic violence program, as appropriate
- Inform about case status
- Offer to make contact on terms of the woman who is abused (safe and convenient)

Safety Concerns

- Always interview out of line of sight and range of hearing of the offender
- Describe all terms and limits of confidentiality policy
- Ask about and document safe procedures for future contact
- Offer to provide copies of order(s) of protection
- Discuss preliminary safety plan and refer to domestic violence program
- Provide police contact information

Accountability Issues

- Explain terms of Order and Conditions
- Explain restitution policy, as necessary
- Describe the role of probation officers
- Explain offender is in legal custody of the court
- Monitor and enforce Order and Conditions
- Monitor and enforce other court orders
- Inform about implications of peace officer status
- Explain "duty to act" and "mandated reporter"
- Describe the Violation of Probation process
- Describe batterer program limitations and protocols, if a condition of probation

Assistance and Referrals

- Review and provide Notice of Victims' Rights for family offenses
- Inform what probation can and cannot do
The Probation Response to Supervision of Women Who Are Abused

- Offer referral information
- Offer local domestic violence program information
- Provide shelter information, as necessary
- Assist with court access
- Facilitate access to medical care
- Provide 24-hour hotline number for the local domestic violence program
- Inform her how to contact the probation department and encourage her to do so

(NYS PDVIP, 2003b)