

Achieving Accountability in Domestic Violence Cases:

A Practical Guide for Reducing Domestic Violence



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REDUCING DOMESTIC VIOLENCE THROUGH ENHANCED PERPETRATOR ACCOUNTABILITY

An Overview of the Barriers: Why has perpetrator accountability been so hard to achieve?

In the past decade, increased attention to domestic violence has resulted in a number of reforms in nearly every aspect of the criminal justice system. New state laws have enhanced remedies to protect victims and children from perpetrators, and criminal justice agencies have transformed their policies to increase victims' safety as well. Some communities who have implemented state of the art interventions in the arrest and prosecution of domestic violence offenders have reported dramatic success from these efforts, as measured by 60% or greater reductions in domestic homicides in a two or three year period. In many communities, however, change has been slow or non-existent. In others, despite the changes in laws and policies "on the books", everyday practice of handling domestic violence cases has stayed the same.

There is widespread agreement from all points of the criminal justice system that the system can and needs to be more effective. The number of domestic violence cases resulting in convictions is low, as are the number of perpetrators who are effectively held accountable in any meaningful way for their crime. There are numerous criminal case dismissals, and domestic battery cases are still all too often pled down to simple batteries, removing essential victim protections and other important provisions enacted by the Illinois legislature in the criminal code to benefit abuse victims. Continuances are frequent and lengthy, and delays between arrest and case disposition are long and potentially dangerous for victims.

It is not uncommon for a perpetrator to be charged with numerous acts of domestic violence over a period of months or years without ever being convicted of a crime. Even after a finding of guilt, perpetrators rarely receive jail time, remaining free to commit subsequent acts of violence with impunity. The worst perpetrators are rarely treated differently than are perpetrators of lesser domestic violence crimes. Perpetrators who violate court orders are rarely brought back to answer for them and when they are, the delays are lengthy and the penalties are often insignificant. Orders of Protection, arguably one of the most important of the orders issued by a court to protect victims, are not enforced consistently or in a way that is commensurate to the crime and the level of danger the victim faces. Too many perpetrators are skilled at manipulating the system effectively to further their aims and punish their victims.

It is our view that the primary question facing the Illinois criminal justice system today is how to use its power to enforce the law fully and consistently enough to hold perpetrators accountable for the domestic violence crimes that they commit.

As key players in the criminal justice system have developed greater awareness of the impact of violence on victims, they increasingly recognize that lenient or casual

responses to perpetrators lead to repeated violence and are dangerous to victims and their communities. As they search for alternatives, criminal justice personnel bump up against the basic reactivity inherent in the criminal justice system. The criminal justice process was designed to be reactive, to respond to cases that are brought to its attention, discarding cases when complainants fail to perform the roles expected of them. In this traditional criminal justice response, victims of domestic violence are often labeled as “uncooperative” when they fail to follow through with the criminal process and/or reunite with their abusers. It is predictable then, that frustrated criminal justice personnel blame the victim for not “making the case” and become pessimistic about pursuing interventions in domestic violence. Inaction then becomes routine and domestic violence perpetrators learn, through experience or through the grapevine, that assaults against their partners are unlikely to capture the full attention of the criminal justice system. Rather than holding perpetrators accountable for their violence, the criminal justice system finds itself in the unintentional position of empowering perpetrators to abuse with impunity.

The task of reducing violence is impeded by numerous factors. Among these are (1) limited resources to devote sufficient attention to domestic violence cases; (2) absence of evidence needed for the case to be successfully prosecuted; (3) judicial, prosecutorial, and law enforcement misconceptions about domestic violence dynamics; (4) victim fear of and attachment to the perpetrator; (5) victims' economic considerations; (6) lack of community knowledge and cultural acceptance of domestic violence as a personal family matter.

Despite the many systemic barriers to violence reduction, the reason most often cited by criminal justice system personnel for the continuation of violence and lack of perpetrator accountability is victim recantation and lack of cooperation. As noted earlier, it is not surprising that victims become the focus. Prosecutors receive cases that are highly dependent upon the victim’s testimony, and victims may be unwilling or unable to provide it. Judges are asked to decide cases on the basis of victim testimony which may be incomplete, contradictory or altogether absent. Most criminal justice system personnel want to increase perpetrator convictions and are understandably frustrated that few perpetrators are held accountable. It is common to view a victim’s reluctance to testify as evidence of her pathology. However, the problem is much more complex than such a view implies.

The reasons for victim reluctance are significant and varied. Victims, like everyone, assess possible outcomes and weigh them against possible risks when deciding on a course of action. What looks to outsiders as illogical behavior may in fact be sensible and life preserving. If the risks are high and the benefits low, as is too often the case with domestic violence prosecutions, many victims will choose not to subject themselves to the risk. Since few domestic violence cases result in conviction and even fewer result in jail time, the practical result for a victim who testifies against a perpetrator may actually be increased violence. Therefore, a victim’s willingness to follow through with a prosecution depends upon the degree to which she perceives the courts to be helpful and believes that she will be safer or better off as a result.

Misperceptions continue to exist about the number of victims who return to abusive partners. The prevalence and wide acceptance of these myths may deter criminal justice system personnel from strongly pursuing a case out of an expectation that the victim will return to the abuser anyway. In fact, although some women do return to abusive partners, many do not. Fully half of the women who use shelters ultimately terminate the relationship (Sullivan et al., 1994) and most battered women who drop orders of protection do not return to the abusive relationship (85%) (Fischer, 1992). There are often substantial economic and social barriers that make it difficult for victims to leave abusive relationships. (Sullivan et al, 1992). When victims return to abusive relationships, it is often not because they want to, but because they are frightened or coerced into it by threats of harm to themselves and their families, or because of inadequate resources.

So long as the perception exists that victim reluctance is the problem, efforts will be focused around what the victim should and should not do. The question frequently asked is “How can we get victims to cooperate better?” But that is the wrong question to ask since it is not likely to lead to greater perpetrator accountability or victim safety. The questions most likely to lead to effective, long term solutions are: “What can be done to hold perpetrators accountable? And who is in the best position to do it?”

Accountability is the goal.

A fundamental assumption of this paper is that perpetrator accountability is central to reducing violence. Providing meaningful consequences is a critical piece of promoting accountability in any arena. When perpetrators are allowed to manipulate the system to avoid consequences, accountability is diminished. When perpetrators come to see that insignificant or no consequences are likely, their criminal behavior is likely to continue. While this may seem an obvious point, the barriers within the system, combined with the cunning of perpetrators, often prevent the criminal justice system from reaching the goal of maximum accountability and reduced violent crime.

Only the court can impose accountability and consequences effectively.

Throughout this paper we will express the following conviction: holding perpetrators accountable within the criminal justice system falls not to the victim but to the court. This point cannot be overstated.

The court is the only entity with the credibility, legitimacy and capacity for imposing meaningful consequences and ensuring perpetrator accountability. Although it is not uncommon to place the responsibility for holding perpetrators accountable onto victims, it is axiomatic that perpetrators cannot be accountable to the very people they victimize. Victims do not control but are controlled by their perpetrators and are, by logical extension, powerless to demand an accounting. **Only the weight of the criminal**

justice system, on behalf of the victim and the community, can compel the perpetrator to answer for his behavior.

How to use this paper

The essential task for a criminal justice system that seeks to hold domestic violence perpetrators accountable for their assaults is to determine how to *effectively intervene* in domestic violence cases. In this paper, we ask justice system personnel in Illinois to examine how and when they intervene, and to implement new policies and practices that will increase perpetrator accountability. The purpose of this paper is to assist in that process.

Because not all judicial circuits face identical circumstances, no single policy, universally implemented, is likely to be effective or practical. To accommodate such differences, we propose a set of general principles to guide policy decisions aimed at increasing perpetrator accountability and deterring further criminal activity.

The three principles outlined here are intentionally general and overarching to allow for maximum flexibility in developing policies and initiating practices which are suited to the individual needs of a community. The principles can be used as a measure of any proposed or existing policy. Whenever a policy or practice is under consideration, it can be measured against the principles. The guidelines within each principle provide multiple examples of practices that can be implemented to enhance perpetrator accountability. Almost all can be implemented without an increase in resources. Each principle also provides questions that can help practitioners examine their current practices and evaluate their potential to hold perpetrators accountable. Taken together, it is our hope that these core principles can assist in making the response to domestic violence one that reduces crime in our communities.

Note: It is our view that the most effective way to implement an evaluation of a local system is by bringing together the key players in the justice system and domestic violence advocates to work in a coordinated and collaborative fashion through a new or existing committee. In this way a multi-disciplinary team can determine how to best use or adapt the tools provided here.

*In this paper, we refer to domestic violence victims as “she” and perpetrators of domestic violence as “he”. This reflects the reality that the majority of domestic violence victims are women: in the most recently available National Crime Victimization Survey (NCVS), conducted by the U.S. Department of Justice, the number of female victims of any domestic violence assault was approximately 6 times greater than the number of male victims of domestic violence (Rennison, 2003). For perspective: approximately 692,000 women were victims of domestic violence in 2001, while 103,000 men were victims, and this means that approximately 85% of domestic violence victims would be expected to be female. The NCVS does not include information about injuries from those assaults, yet prior research has consistently reported that women are much more likely to be injured from the assaults committed against them than men are (Straus & Gelles, 1990). Neither does NCVS collect information about the context of these domestic assaults: while research has long documented the powerful role that control over the female victim by the male perpetrator plays in the dynamics of domestic violence (see, e.g., Fischer et al, 1993), women perpetrators of domestic violence seem not to establish the same level of fear in their victims and

create the same barriers to leaving them that male perpetrators do. Our choice to use gendered pronouns in this report is not to deny the existence of male victims of domestic violence, but to emphasize that domestic violence is primarily a problem of violence against women, both in numbers and in physical and social impact.

CORE PRINCIPLES OF AN ACCOUNTABLE SYSTEM

Principle #1: Approach Domestic Violence Cases as Homicide Prevention: Collect Information on Risk Factors, Intervene Quickly and Appropriately, and Put Victim Safety First.

Domestic homicides may be the only homicides that law enforcement can prevent: drive by shootings and gang violence are difficult to predict in terms of time and place, as are other motivations for homicide. Domestic violence includes a continuum of behavior that may start with demeaning language or name-calling and end in homicide. Domestic homicides do not typically occur “out of the blue”. Rather, they are the end product of an escalation from “minor” assaults to murder: domestic homicides are 14.6 times more likely to occur in a household if there has been a history of domestic violence (Bailey et al, 1997). Recent research also suggests that the escalation of minor assaults to murder can be interrupted by prompt and effective law enforcement response.

Communities that have made efforts to arrest and prosecute greater numbers of domestic violence offenders have consistently reported a dramatic reduction in their domestic homicides: San Diego, who pioneered efforts in prosecution and coordinated community response, found that domestic homicides declined by 60% over a three year period (McCormick, 1999). Nashville (Tennessee) found a 58% reduction in their domestic homicides in the two years after the substantial and positive changes made in police and coordinated community response (Buel, 2003). Although these dramatic reductions in domestic homicides have followed the general pattern of domestic homicide statistics (48% reduction in the past decade) (Rennison, 2003), the speed with which the domestic homicide reductions occur after law enforcement change is encouraging.

Although the number of domestic violence assaults that will turn to murder in any given year is small (in 2000, there were 588,490 assaults against women and 1247 homicides; see Rennison, 2003), every domestic violence case that crosses into the legal system has the potential to become lethal. The response by law enforcement may be any individual victim’s most effective risk reduction. A consistent and appropriate response from the legal system is the community’s best chance for reduced domestic homicide rates. Consequently, processing domestic violence cases is not simply holding batterers accountable for misdemeanor assaults against their partners; it is homicide prevention.

Guidelines for Policies & Practices for Principle #1:

Collect & Use Information

➤ Maintain adequate records

Without complete criminal justice records that are quickly accessible to personnel within the system, there is no way to acquire the information necessary to assess victim risk. The task of holding perpetrators accountable can only be achieved with accurate and current information about the defendant. Past behavior remains the best predictor of future behavior. Therefore, information about the perpetrator's prior arrests, charges and convictions is critical to an assessment of his dangerousness and propensity for committing future crimes.

➤ Make a thorough risk assessment

A thorough assessment of the risk that the perpetrator poses to the victim and others should be a part of every domestic violence case that comes before the court or into the criminal justice system. Risk assessment should include a careful review of the perpetrator's prior arrest and convictions, the perpetrator's complete domestic violence history, as well as statements by the perpetrator, the victim and relevant others.

➤ Seek multiple sources of information

The collection of relevant information about a domestic violence case not only involves official sources and history information from victims, but also can include witnesses to the present or past incidents of abuse (e.g. children, neighbors, family members). A substantial number of 911 calls in domestic violence cases, for example, are not made by victims, but by children and neighbors or even passers-by. All potential sources of information about the perpetrator's abuse should be actively explored.

- Ask questions to assist in identifying best practices for your community:

| Type of Practitioner | Examples of Questions to Ask About Information Collection |
|--------------------------|--|
| For Everyone | Is information about the defendant readily accessible? If no, how can it be? |
| 911 Dispatchers | Do dispatchers have access to a database that contains prior police calls, arrests, and orders of protection? Do dispatchers request this information from callers during domestic violence calls (after safety has already been established and officers dispatched)? |
| Police Officers on Scene | Do police reports include supplemental information specific to domestic violence, such as history of abuse information and lethality risk questions? Do police know if an Order of Protection is in effect? |
| Police Investigators | Does an investigator or an officer follow up on a police report to collect information from the victim or witnesses? Is the 911 tape routinely requested from dispatch and listened to and/or transcribed? What other sources of information can be developed to build a case for prosecution? |
| Prosecutors | Is abuse history information regularly used in bond requests, charging, and sentencing? If no, what will it take for the system to make better use of that information? Are motions filed for the court to approve use of past bad acts or Modus Operandi? |
| Victim Advocates | Is information about victims' abuse histories routinely collected and copied to police investigators or prosecutors (with victim consent)? Is abuse history information included in victims' petitions for orders of protection? |
| Circuit Clerk's Offices | Is information on current orders of protection available for cross-referencing with criminal history? |
| Judges | Is abuse history information used in guiding decisions about bail, bond conditions, and sentencing? |
| Probation Officers | Is abuse history information used in determining probation monitoring practices? |

Listen to Victims

- A victim's statement that the perpetrator is capable of homicide should always be treated as highly credible

Research is clear that victims, better than anyone, understand the level of danger the perpetrator poses. If a victim states that the perpetrator will kill her if she appears in court, that information should be viewed as extremely reliable.

➤ A victim's safety must be strongly considered at every step

Because there are no guaranteed protections and the resources do not exist to provide entirely sufficient protection, court personnel should not assume that victim safety from a determined perpetrator, particularly one where there are children in common, is an easy task. Victims who participate in prosecutions often do so at great risk to themselves and/or their children.

Every effort to hear and address the victim's concerns should be made. In fact, many victims are more receptive to a prosecution when they meet with the prosecutor at least one time prior to the trial early in the proceeding so that their fears and concerns can be adequately addressed. For many, courts are intimidating, imposing places. Without information and support, few victims feel safe or comfortable in navigating the system's complexities.

➤ Victim Input v. Victim Control Over the Course of Criminal Justice Action

In some jurisdictions, victim input is important in determining how to deal with a domestic battery case; in others it is discouraged. For example, a number of jurisdictions have "no drop" policies, intended to remove responsibility and therefore risk from victims when the State proceeds with a case. In other words, even if a victim requests that charges be dropped, the State will refuse to do so on the grounds that the victim is probably being threatened or manipulated, and because the State has a compelling interest in prosecuting criminals. If the perpetrator believes that the victim tried to get the case dropped, his anger may focus on a target other than the victim. However, some advocates argue that the practice takes away what little autonomy most victims have, and could compromise her safety.

We would make a distinction between victim input and victim control over criminal justice action. Whatever practices a jurisdiction chooses in terms of "no drop" policies or its counterparts in other points of the system, there should always be communication with the victim that provides her with an opportunity to be heard, whether or not the prosecutor adheres to the victim's wishes. Furthermore, there should be flexibility within the policy. Victim input is always critical, as it can provide critical information to the criminal justice personnel as well as encouragement for the victim to participate in the criminal justice process.

- Victims should never be used to serve the larger ends of justice when that action is clearly and obviously detrimental to her safety and well-being unless stringent attention has been given to her protection

The victim's needs should not be dismissed or subverted in an effort to pursue a winning case. Bringing a victim into a courtroom in handcuffs against her will, or threatening her with contempt of court and/or jail in order to secure a victory or set an example will likely contribute to the perpetrator's perception that the court is on his side, that he can get away with violence, and that the victim is in no position to stop him.

- Consult with advocates who know how to provide protection to victims and to assess lethality

Because victims' advocates at the local domestic violence agency have extensive experience in working with victims in particularly difficult cases, they can provide the highest possible level of safety options for a victim and provide her with vital information referrals. Since court personnel cannot ordinarily be expected to have the expertise in domestic violence that is important in determining how certain cases should be treated, advocates should not be overlooked as a valuable resource. Advocates who work closely and in partnership with criminal justice system practitioners can often yield better results. The contribution of advocates can add to the court's ability to make reasoned decisions and protect victims.

Interventions

- Intervene at the earliest opportunity with appropriate messages and consequences which escalate as the criminal behavior continues

After a homicide occurs, intervention is too late. In virtually every homicide, there are instances of abuse or violence which were not adequately addressed either because the victim did not go to authorities or because the criminal justice system's response was inadequate. Violence escalates, particularly when the perpetrator believes that he can get away with the crime. Early intervention reduces the chance that future domestic battery will result in a death.

- Judicial, prosecutorial, and police demeanor should encourage victims to seek assistance as a means to ending abuse and violence

The use of disparaging comments toward victims serves as a deterrent to victims and encouragement for perpetrators, and undermines homicide prevention efforts.

➤ Build a Case Without the Victim

The longstanding practice of securing homicide convictions without victim testimony provides both evidence that it can be done and a model for pursuing cases without a victim. Even if the case is dropped at some point in the process, the evidence developed will be useful in holding the perpetrator accountable the next time he appears in the system.

An exclusive dependence on victim testimony to prove a case or obtain a domestic battery guilty plea is problematic. Because victims are reluctant for all of the reasons discussed earlier, a successful case will ordinarily include a number of evidentiary elements beyond the victim's testimony. Therefore, it is recommended that prosecutors prepare for cases as if there were no victim. Following are examples of alternative types of evidence:

- ✓ Evidence collected from the crime scene
- ✓ Crime scene photos and description, witness statements
- ✓ Victim photos (even several days after incident)
- ✓ 911 tapes
- ✓ Prior Orders of Protection
- ✓ Victim and Perpetrator statements
- ✓ Have available the perpetrator's criminal history and other relevant documentation including Orders of Protection and any prior police calls
- ✓ The type of injury is also revealing and in some cases may be predictive. Certain injuries, such as strangulation, are correlated with eventual homicide and should be treated with the utmost seriousness.

➤ Use State-approved Partner Abuse Intervention Programs to enhance monitoring.

Partner Abuse Intervention Programs (PAIP) are not a cure-all, but can have a positive impact on a perpetrator's inclination to use violence so long as the program adopts strict methods to ensure accountability and so *long as the court is responsive to the Partner Abuse Intervention Programs when a perpetrator fails to comply with program requirements.* PAIPs should be supported through the authority and vigilance of the court. The court should use only PAIPs that are compliant with the Illinois Department of Human Services standards.

➤ Ask questions to assist in identifying best practices for your community:

| Type of Practitioner | Examples: Questions to Ask to Evaluate Effective Interventions |
|--------------------------|--|
| For Everyone | How can we respond fully at the first report of domestic violence? |
| 911 Dispatchers | Are 911 calls routinely recorded and forwarded to police? Are officers dispatched immediately to the scene, or is there a delay in requesting officer assistance? |
| Police Officers on Scene | Do officers routinely and adequately complete all information in police reports and supplementary reports, and collect all available physical evidence and statements from crime scene? |
| Police Investigators | Do officers follow up with victims who have been injured, to document the progress of those injuries (e.g. bruises that become visible only after several days)? Are other sources of information developed to build a case for prosecution? |
| Prosecutors | Do prosecutors have the training and tools necessary to build cases that will hold up when victims do not testify for the prosecution? Do prosecutors challenge judicial rulings that make it difficult to proceed with these cases? Are motions filed for the court to approve use of past bad acts or Modus Operandi? |
| Victim Advocates | Do advocates assist victims in understanding and evaluating their safety, and help victims communicate this information to practitioners? |
| Circuit Clerk's Offices | Does the clerk's office have a system for requesting information from Partner Abuse Intervention Programs for information about perpetrator compliance with court orders? Is there a reliable and swift process for transmitting this information to prosecutors and judges? |
| Judges | Are judges setting the tone for appropriate demeanor in domestic violence cases? |
| Probation Officers | Does the probation office have a routine system for receiving information from Partner Abuse Intervention Programs regarding perpetrator compliance with court orders? Is there a reliable and swift process for transmitting this information to prosecutors and judges? Is enhanced monitoring used for domestic battery perpetrators? |

Principle #2: Impose Swift, Clear, Consistent, Predictable and Meaningful Consequences to Perpetrators.

Guidelines for Policies & Practices for Principle #2:

➤ Do Not Allow Cases to Fall Through the Cracks

Consistency and predictability are necessary components of any plan to promote accountability. When perpetrators are allowed to manipulate the system or cannot count on any meaningful level of consequence, it is more likely that the behavior will continue. Perpetrators are more easily allowed to manipulate a system when the flow of information from one part of the system to another is stalled or problematic. *It is equally important to both collect substantive information about abusive incidents and histories and to develop a process that can transfer that information reliably to another part of the criminal justice system.* Substantive information will be worthless if the transfer process doesn't work.

➤ Monitor the Enforcement of Court Orders, Especially Orders of Protection

It is generally expected that defendants will obey orders of the court and that there will be some level of monitoring for violations. Unfortunately, this is often not the case. Mechanisms should be in place to ensure that perpetrators who violate court orders are brought back to answer for those failures. In fact, failure to abide by a court order is a reliable indicator of future violence. Perpetrators who do not care about court orders are sending a message to the court and to the victim about their willingness and ability to constrain violent behavior.

Perpetrators use the court's negligence in its enforcement of orders to demonstrate to the victim that the courts do not take the violence seriously. Follow-up on violations is one of the most important actions that a court can take to increase perpetrator accountability and reduce further violence. Victims who see perpetrators violate Orders of Protection without consequences will have no reason to believe they can count on the courts to help ensure their safety. Perpetrators who violate orders are both demonstrating their dangerousness and their belief that their behavior is not subject to the authority of the court.

➤ Ask questions to assist in identifying best practices for your community:

| Type of Practitioner | Examples: Questions to Ask to Evaluate Information Sharing |
|--------------------------|---|
| For Everyone | What information is routinely transferred from one office to another? How is that information transferred? How could these transfer mechanisms be improved? |
| 911 Dispatchers | What additional information could be asked of callers in domestic violence cases that might assist with developing a more complete picture of the incident (after safety has already been established and officers dispatched)? |
| Police Officers on Scene | Is there immediate access to information about orders of protection, violations, previous domestic violence calls? What other information would be useful to have? |
| Police Investigators | How could the routine process for gathering and transmitting information from others, such as victims, prosecutors, on-call police, hospitals, advocates be improved? |
| Prosecutors | Does the prosecutor's office have a routine, reliable, and swift process for receiving information from others, including Partner Abuse Intervention Programs, about perpetrator violations of court orders? Are Petitions to Revoke filed swiftly? What can be done to ensure swift action? |
| Victim Advocates | What role can advocates play in enhancing the transfer of information from office to office? Without violating client confidentiality, how can advocates be more proactive in providing additional information? |
| Circuit Clerk's Offices | Does the clerk's office have a routine, reliable and swift process for receiving information from others, including Partner Abuse Intervention Programs, about perpetrator compliance with court orders? Is there a reliable process for transmitting this information to prosecutors and judges? |
| Judges | Do judges routinely implement status hearings to ensure that perpetrators are complying with court orders? |
| Probation Officers | Does the probation office have a routine, reliable and swift process for receiving information from others, including Partner Abuse Intervention Programs, for information about perpetrator compliance with court orders? Is there a reliable process for transmitting this information to prosecutors and judges? |

Interventions

➤ Seek domestic battery convictions

Too often, simple battery charges are filed in domestic violence cases instead of domestic battery charges or other domestic violence crimes. Often, this reduction in the charges arises out of a plea or other agreement between the State's Attorney and the defendant. The rationale for the reduction is that it provides the State with some leverage in order to get a guilty finding since perpetrators are more likely to plead guilty to a battery than to a domestic battery. A simple battery charge also allows for court supervision, a disposition prohibited by Illinois law for a domestic battery charge. Therefore, some Judges and State's Attorney's offices who feel they need supervision as an option in order to get a defendant to agree to sign a guilty plea will charge the defendant with the lesser offense. However well intentioned the practice, it nonetheless circumvents some of the most important provisions and protections for victims that the Illinois legislature enacted in the criminal statute in recent years.

Illinois criminal law provides specific remedies and consequences for the crime of domestic battery, such as: the ability to get an Order of Protection in criminal court, economic relief for victims, the removal of firearms and keeping domestic battery convictions as part of a permanent record. The criminal statute also allows the State to charge domestic battery as a felony on a second offense if there are already convictions of other domestic violence crimes like violations of orders of protection, domestic battery, etc. These charges provide crucial information about the patterned nature of domestic violence, which is necessary in determining the perpetrator's level of dangerousness and proclivity for future violence. A finding of guilt for simple battery does not allow for a defendant to automatically be charged with a felony domestic abuse offense because it is not a "conviction" if supervision was court ordered.

Most offenders prefer NOT to be charged with a domestic battery for the above reasons and may be more likely to refuse to sign a guilty plea to a domestic battery charge. However, providing that level of assistance to the perpetrator as he minimizes the consequences of his behavior is antithetical to accountability. It provides a "way out" for the perpetrator, in which the court certainly should not want to participate. Moreover, prosecutors have reported success with other plea bargaining strategies to obtain domestic battery pleas. For example, prosecutors have cited success using a "no-drop" policy coupled with an offer of some jail time being served immediately and the possibility of the remainder of jail time being remitted if the perpetrator meets court ordered conditions.

The practice of routinely diverting domestic violence perpetrators out of the criminal justice system or offering a simple battery plea with court supervision is potentially unsafe for victims and ineffective. Such practice deprive the perpetrator of an opportunity to hear directly from the court that his behavior is a crime that is taken seriously. They also permit the perpetrator to accumulate battery charges without ever facing consequences as intended under the criminal statutes for domestic abuse. Any practice which does not include close and regular monitoring of the perpetrator, as well as swift and meaningful consequences for violations of the law and court orders, endangers victims and emboldens offenders.

Laws against domestic battery were written with specific intents. Those intents are undermined whenever the law is circumvented.

➤ Pursue Harsher Criminal Sanctions

Harsher criminal sanctions work more effectively than lenient ones to hold perpetrators accountable. When courts impose meaningless or benign consequences, perpetrators are emboldened. Small fines, unmonitored conditional discharges, orders to attend a Partner Abuse Intervention Program with no other conditions and no monitoring have little potential to persuade the perpetrator that his behavior is criminal. In one study, domestic violence offenders who received probation and/or jail sentences were less likely to reoffend than those who received only fines or dismissal (Thistlethwaite et al, 1998). Additionally, perpetrators with multiple arrests and convictions for domestic violence or other crimes should receive harsher consequences than those offenders who have no apparent record.

➤ Prosecute repeat offenders to the fullest extent

Approximately 20% of perpetrators commit most of the repeat violence and account for the most serious injuries to victims. Too often, perpetrators with a history of chronic violence with multiple victims are treated as if they were first time perpetrators. They may receive court supervision, be ordered to a Partner Abuse Intervention Program, or be given a fine. These perpetrators are rarely given increasingly harsh sentences because each act is treated separately, entirely in isolation from the others. This practice increases danger and prolongs what should occur right away when accountability is sought. *Additionally, perpetrators who commit acts of violence subsequent to a court order to attend counseling, or who otherwise fail to meet the terms and conditions of their counseling or court order, should not repeatedly be sent back to the Partner Abuse Intervention Program to finish.* A perpetrator who fails to complete a Partner Abuse Intervention Program either because of

attendance problems or because of disruptive or continued violent behavior is a risk for future violence, perhaps severe. These perpetrators require more severe consequences. Violating a court order is a predictor of increased violence and should be met with increasingly harsh consequences.

➤ Prioritize Domestic Violence Cases; Reduce Routine Delays

Research indicates that cases which are resolved in less than 90 days result in decreased levels of violence. When cases drag on, perpetrators have time to influence victim testimony, commit further acts of violence, blame victims for their predicaments and become increasingly resentful and angry. The prospect of consequences that seem very far in the future does not deter domestic violence perpetrators who count on the inaction of the criminal justice process. Consequences which are significantly delayed are, therefore, much less effective than those administered quickly. In fact, lengthy delays in accountability are the near equivalent of non-accountability.

One potential way for jurisdictions to reduce the overall processing time for domestic violence cases is to give these cases priority in the judicial calendar. Rather than setting a date for a first court appearance several weeks or months from arrest, the court sets the date for one week. The amount of judicial time expended if domestic violence cases are set sooner rather than later on the calendar is the same. Eventually, one would expect this practice to result in less judicial time overall, because deterrence will decrease the overall number of cases coming before the court. Similarly, the routine delays between first court appearances and subsequent hearings can be reduced as well.

➤ Ask questions to assist in identifying best practices for your community:

| Type of Practitioner | Examples of Questions to Ask to Evaluate Meaningful Consequences |
|--------------------------|---|
| For Everyone | What is the average length of time a case assumes from arrest to final disposition? What can be done to shorten the time period? |
| 911 Dispatchers | Are repeat perpetrators presumed to have more potential for dangerousness? |
| Police Officers on Scene | Do officers routinely seek arrest orders for perpetrators who have fled the scene? Are arrest orders followed up to ensure that perpetrators are arrested in a timely fashion? How quickly are police reports and supplemental investigative information turned over to the prosecutor's office? After arrest, are perpetrators simply given notices to appear in |

| | |
|-------------------------|--|
| | court or are they transported to court and arraigned? How often are perpetrators arrested for violations of orders of protection? |
| Police Investigators | What is the average length of time between a police call and a follow up investigation? Have investigators noticed any patterns in terms of how easy it is to contact the victim based on how long it has been since arrest? |
| Prosecutors | Is the patterned and repetitive nature of domestic violence taken into account in bond requests, charging, and sentencing? Are repeat perpetrators presumed to have more potential for dangerousness? How frequent is the practice of reducing charges to something other than domestic battery or other domestic abuse crime? What can be done to maximize use and effectiveness of existing domestic violence laws in domestic violence cases? How often are perpetrators prosecuted for violations of orders of protection? |
| Victim Advocates | Do victim advocates keep independent records of the court process for their clients? Is there an active courtwatch program in the community? In what other ways can advocates assist in helping the criminal justice system evaluate its current ability to hold perpetrators accountable? |
| Circuit Clerk's Offices | Are mechanisms in place to identify violations of court orders swiftly? |
| Judges | Are escalating consequences imposed for violations of an order? Do perpetrators who do not complete programs or who violate other court orders receive escalating consequences commensurate to the level of the violation? Do perpetrators with criminal histories of domestic battery receive harsher sentences? Is the court imposing consequences that are meaningful to the defendant and of sufficient strength to deter future crime? What court monitoring system is in place to review compliance with orders? |
| Probation Officers | Are mechanisms in place to identify violations of court orders swiftly? |

Note: When deciding what consequences to impose on a perpetrator, the same active listening strategies with victims should be employed as those discussed earlier. Victims often have strong feelings about the nature of the consequences imposed on their perpetrators, because some consequences can indirectly affect them and their family. If the victim and perpetrator have children together, the victim may be concerned, for example, that a jail sentence that threatens loss of work will be a hardship if she relies on his income to support the family. As a consequence of these kinds of victim concerns, some courts have developed creative sentencing that promotes accountability and minimizes the impact of perpetrator sentences on their families through sentences like weekend jail only or work camp placements.

Principle #3: Provide a consistent message that domestic violence is a serious and unacceptable crime.

Guidelines for Policies & Practices for Principle #3:

- Provide an informed, credible, meaningful, and predictable message to victims, perpetrators and the community that domestic violence is a serious crime with serious consequences

The criminal justice system is in a unique position to provide perpetrators, victims and the community with messages about the criminality of domestic violence. Both through action and implication, the court can strengthen the perpetrator's perception of his behavior as criminal and provide adequate accountability. Alternatively, it can send a message that domestic violence cases are routine, not especially serious and will result in few consequences of a severity sufficient to deter the perpetrator from future crimes.

Because every action or inaction sends a message, this principle is overarching. How victims and perpetrators are treated and what judges, prosecutors, probation officers or other officers of the court or law enforcement say to them has a demonstrable effect on the outcome of a given case. Victims who leave a courtroom feeling hopeless, put down, and frightened are not likely to come before the court again. They are furthermore not likely to take steps necessary to protect themselves and may be resigned to ongoing abuse. When perpetrators hear the judge criticize the victim or appear to be in agreement with the perpetrator about the problems with his partner, the perpetrator feels vindicated and emboldened to commit further crimes.

The following are examples of messages that increase perpetrator accountability as well as safety for victims. The information can be collected and analyzed by a jurisdiction to get an overall picture of the messages being conveyed by the courts by looking at specific instances in which these messages are either present or absent.

- ❖ Effective messages to perpetrators:
 - ✓ Domestic violence is serious
 - ✓ The community considers domestic violence to be a crime, as does the judge
 - ✓ Perpetrators are not entitled to abuse or commit violence at home
 - ✓ There will be consequences for crimes of domestic violence
 - ✓ Consequences will escalate for multiple or repeated offenses
 - ✓ Court orders must be followed and if they are not, there will be meaningful sanctions

- ✓ Excuses are ineffective
 - ✓ The perpetrator is solely responsible for his behavior, regardless of perceived provocation
 - ✓ The courts and the community strive to protect victims
- ❖ Effective messages to victims:
- ✓ Recognition of difficulty in speaking about the issue in court
 - ✓ Recognition of fear
 - ✓ Reinforcement of community and courts' concern for safety
 - ✓ Abusive and violent behavior committed against her is not her fault
 - ✓ Perpetrator will be expected to comply with court orders and the court will back those orders up with sanctions

A mixed message is one which the perpetrator receives from the court that domestic violence is a serious crime, combined with the message that it is not. Mixed messages are problematic for any system striving for perpetrator accountability. Too often, a conviction is issued, only to be undermined by subsequent actions of the court which suggest to the perpetrator that he need not be very concerned. For example, it is not uncommon for a conviction of domestic battery to be followed by an order granting the perpetrator custody and/or visitation of his children. A perpetrator, the victim and the community cannot be expected to understand the court's message that domestic violence is serious when the courts contradict such messages by issuing orders that send children into the care of people adjudicated to be violent.

➤ Ask questions to assist in identifying best practices for your community

| Type of Practitioner | Question(s) to Ask to Evaluate Effective Messages |
|--------------------------|---|
| For Everyone | What is the nature of the messages provided to perpetrators and victims? Are they supportive of the perpetrator? Excusing? Or are they clear in their condemnation of the behavior? To what degree does the jurisdiction provide mixed messages to offenders and victims about domestic violence? What are examples of those mixed messages? How can messages be more uniform and consistent? Add Questions for Specific Practitioners: |
| 911 Dispatchers | Through their words and tone of voice, do dispatchers convey reassurance that help is on the way? |
| Police Officers on Scene | (Assumes the victim and perpetrator are interviewed separately). Are officers attentive when interviewing the victim? Do they convey to the victim that they have concern for her safety, she is not responsible for the crime, there are laws to protect her, and they will help? Do the officers' |

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| | demeanor and words convey to the perpetrator that they take the offense seriously and they will enforce the law? What can the Department do to ensure that these verbal and non-verbal messages are conveyed? |
| Police Investigators | See questions for Officers on Scene |
| Prosecutors | Are prosecutors and victim witness coordinators are respectful and attentive when they interview the victim? Do they convey to the victim and the perpetrator their commitment to using the law to protect the victim? Do they take the time to answer the victim's questions and explain the court process? Do they stay in contact with the victim? What can the SAO do to ensure that these messages are conveyed? |
| Victim Advocates | What do victim advocates need to do to ensure that they convey support to the victim and are there to support her throughout the criminal justice process? What can victim advocates do to work more effectively with criminal justice personnel so that consistent messages of support are delivered to victims? |
| Circuit Clerk's Offices | Are the clerks responsive and helpful when victims seek information and assistance, thereby conveying support for the victim? What can the Clerk's Office do to ensure that this occurs? |
| Judges | Do judges understand the impact of their demeanor on victims and perpetrators? Are they respectful and attentive when victims testify? Do judges routinely convey that domestic violence is a serious crime? Do they emphasize their willingness to enforce significant penalties if the perpetrator does not follow court orders? Do they convey that excuses will not be tolerated and that the perpetrator is responsible for his behavior? How can judicial demeanor be monitored and made more effective? |
| Probation Officers | Do probation officers convey that they are firm and will act upon reports of violence and violations? |

➤ Education and Training

Accountable systems strive to remain cognizant of their strengths and limitations. A lack of understanding of domestic violence certainly represents a limitation. Unknowledgeable persons communicate an indifference and lack of seriousness about the crime and are more likely to make errors in judgment. People who do not understand the issue are unable to send an appropriate message. It is, therefore, incumbent on anyone acting decisively in these cases to have an understanding of domestic violence.

Occasionally, arguments against judicial training are offered on the grounds that training is potentially prejudicial, particularly when offered by special interest groups believed to be biased. However, ignorance is not equivalent to impartiality. In fact, processing domestic violence cases with limited or erroneous information leads to greater, not lesser, bias.

Training and education must mean more than years of experience. Therefore, adequate training will be described as consistent with the most advanced knowledge in the domestic violence field and which is substantiated by research or consensus within the field.

It is critical that training be followed by mechanisms to incorporate the information that was presented into day-to-day practices back on the job. Monitoring that supports and gives direction will reinforce the training and is essential if training is to make a difference.

➤ Develop A Community Coordinated Response to Domestic Violence

Messages concerning the seriousness of violence are enhanced when groups with similar objectives work together to ensure a united approach. A coordinated community response, which brings those invested in the protection of victims and children and the accountability of perpetrators together in routine meetings and events, is an excellent mechanism for a community to facilitate information sharing and effective intervention.

Domestic violence advocates are a critical piece of that system because they have a high level of expertise about the nature and dynamics of domestic violence and are usually trusted the most by victims. Consulting advocates is a way to further cases, promote accountability and provide safety and support to victims during a prosecution. Not uncommonly, prosecutors find that victims can more reliably and effectively participate in a prosecution when an advocate is involved. Advocates can help make the complexities of the courts more understandable and less intimidating for victims and can act as a bridge as they cross into a system about which they know little.

- Ask questions to assist in identifying best practices for your community:

| Type of Practitioner | Examples of Questions to Ask to Evaluate Training & Coordinated Community Response |
|--------------------------|--|
| For Everyone | <p>Do we have an adequate standard for the type and amount of initial and ongoing annual training in domestic violence that criminal justice professionals should have? How will we evaluate whether training has improved our practices?</p> <p>Is there a coordinated community response in place? How do we evaluate the effectiveness of our Coordinating Council? Do we use available resources such as the guidebook from the National Resource Center on Domestic Violence to evaluate the effectiveness of our Coordinating Council?</p> <p>Add Questions for Specific Practitioners:</p> |
| 911 Dispatchers | Do our dispatchers have an adequate level of training in domestic violence and risk to handle appropriately crisis calls from victims and their children? |
| Police Officers on Scene | What type and how much training on domestic violence have our officers received? How recent was that training? How do we evaluate the effectiveness of the training? How can the training information be incorporated into routine day-to-day practices? Do we provide training to other professionals in the system? Do police participate in the Coordinating Council or some other multidisciplinary domestic violence team? |
| Police Investigators | See above. |
| Prosecutors | Are new ASAs trained in domestic violence when they start the job? What type and how much training on domestic violence have our prosecutors and victim witness coordinators received? How recent was that training? How do we evaluate the effectiveness of the training? How can the training information be incorporated into routine day-to-day practices? Do we provide training to other professionals in the system? Do prosecutors participate in the Coordinating Council or some other multidisciplinary domestic violence team? |
| Victim Advocates | Do criminal justice practitioners use domestic violence victim advocates as trainers and consultants when appropriate? |
| Circuit Clerk's Offices | Do clerks have an adequate level of training in domestic violence to respond appropriately to domestic violence |

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| | victims? Do clerks participate in the Coordinating Council or some other multidisciplinary domestic violence team? |
| Judges | Do judges recognize a need for education about domestic violence? What type and how much education have the judges received? What types of things can the judiciary do to acquire more domestic violence education? Do judges participate in the Coordinating Council or some other multidisciplinary domestic violence team? |
| Probation Officers | Do probation officers recognize a need for DV training? Do they have an adequate level of training in domestic violence and the characteristics of batterers to promote and enforce offender accountability? Do probation officers participate in the Coordinating Council or some other multidisciplinary domestic violence team? |

SUMMARY AND CONCLUSION

Adherence to three core principles can help the criminal justice system reduce violent domestic crime.

- Approach domestic violence cases as homicide prevention
- Impose swift, clear, consistent, predictable, and meaningful consequences to perpetrators
- Provide a consistent message that domestic violence is a serious and unacceptable crime.

Action by the court will provide hope to domestic violence victims and their communities that the justice system provides a strong foundation upon which their safety and that of their children might be constructed and maintained. In its absence, victims are deterred from participating in the prosecutions of their perpetrators. Likewise, perpetrators are emboldened to commit future crimes of domestic violence without fear of increased consequences from the law.

Courts, not victims, must play the central role in instructing offenders and victims about the illegality of the behavior and the likely consequences. They must make reasoned discriminations between types of perpetrators, hear what victims have to say, and exercise appropriate caution and due diligence in the treatment of domestic violence cases. Reducing violent crime and protecting victims depend upon it.

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Many thanks to Pam Wiseman, Karla Fischer, and Joan Rappaport for writing this paper. They translated the many hours of Committee discussion into practical tools and guidelines for professionals who seek to reduce domestic violence in their communities. ICADV hopes this paper will help practitioners in local court jurisdictions as they strive for the highest standards of accountability when handling domestic violence cases.