



## Chapter 10

### Bench and Court Administration

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## BLUEPRINT FRAMEWORK

Intimate partner violence is a complex crime. The offender's control over the victim can make effective intervention difficult and time-consuming.

The good news -the national strategy of using the legal system to stop the violence has made a difference, particularly in homicide rates. Spousal homicides have dropped 46% between 1976 and 2004. The number of black males killed by their partners dropped 82%, black females by 56%, and white males by 55%. Severe violence also dropped by 48% between 1976 and 1992.<sup>1</sup>

Battered women and their children face a different reality today than did our grandmothers and mothers. Yet few are comforted by these statistics when law enforcement calls and courtroom calendars still overflow with domestic violence-related cases. The Blueprint for Safety proposes the next level of change. It relies on years of experience in interagency coordination; research on arrests, sentencing, and treatment of batterers; and statistical trends. And, it relies on the experience of numerous communities implementing interconnected policies and procedures that focus on case outcome, rather than on an individual agency correctly doing its particular task.

The Blueprint is anchored in six foundational principles that we have identified as essential characteristics of intervention. These principles maximize safety for victims of domestic violence and hold offenders accountable while offering them opportunities to change.

1. Adhere to an **interagency approach** and **collective intervention goals**.
2. Build attention to the **context and severity** of abuse into each intervention.
3. Recognize that most domestic violence is a **patterned crime requiring continuing engagement with victims and offenders**.
4. Ensure **sure and swift consequences** for continued abuse.
5. Use the power of the criminal justice system to **send messages of help and accountability**.
6. Act in ways **reducing unintended consequences and disparity of impact** on victims and offenders.

The Blueprint's model is to work with agencies, from 911 through probation, on centralizing attention to victim safety and offender accountability at every stage of case processing. The Blueprint focuses on organizing each intervener's role through a set of carefully crafted agency policies and protocols. These policies and protocols are buttressed by multi-agency training and supervisory oversight within and between agencies. **Agencies adopting Blueprint practices rely on the bench to support the Blueprint's basic tenets: (1) over-reliance on victims (those most vulnerable to the violence) for offender accountability will not be successful in reducing**

*violence; (2) sure and swift responses to patterns of aggression, violence, coercion, and intimidation can reduce recidivism, escalation, and severity of offender violence<sup>2</sup>; and (3) a just system requires that interveners have capacity to (a) make visible the specifics of the violence and their impact on the community and the victim, and (b) craft resolutions linking the response to the context and severity of the offense<sup>3</sup>.*

If the bench operates in harmony with the Blueprint's coordinated approach, the community's ability to reduce recidivism, protect victims from additional harm, and hold offenders accountable is significantly increased. The Blueprint integrates in practitioners' daily work routines the centralization of safety and accountability.<sup>4</sup>

The Blueprint provides a policy and procedural manual for key points of intervention in domestic violence cases, from 911 through probation. Because of the bench's unique role and responsibility, it is inappropriate to adopt policies dictating the resolution of a particular case that may come before the Court. However, the Court can set policy or best practices grounded in the six foundational principles regarding procedures to be utilized in domestic violence-related cases. Therefore, this chapter combines both policy and suggested practices. Policies and practices in this chapter have been found to reduce recidivism and enhance victim safety. The goal is to describe appropriate courses of action in domestic violence-related cases unless special circumstances indicate otherwise.

## **POLICY CHANGES UNDER THE BLUEPRINT FOR SAFETY: LAW ENFORCEMENT, PRETRIAL SERVICES, PROSECUTION, AND PROBATION/PAROLE**

During the Blueprint's implementation, law enforcement, sheriff's offices (courthouse security, and warrant processing), jail, pretrial services, county and commonwealth attorneys' offices, probation/parole, and the courts review and update their policies and guidelines according to the Blueprint's six foundations of effective intervention and common goals. Most agency procedures remain the same, but with several key changes in its response to domestic violence cases. Some are likely to affect cases before the bench, either in presentation of the case or relief requested.

NOTE: Below is a general description of Blueprint changes the bench can anticipate with practitioners. More detailed changes can be found in the practitioners' individual Blueprint chapters.

### **RISK INFORMATION**

All practitioners will be trained to identify and document presence of risk and danger factors—some of which relate to specific actions of an offender and some to high-risk circumstances. This risk alert system results in everyone, particularly the bench, having more detail about the scope of abuse in a case. This information should be available at many points of intervention, from charging and bail setting to sentencing and revocation hearings. The Blueprint's documentation system helps each intervening practitioner, including the judge, understand the

context of a domestic abuse-related incident. Responding patrol officers will now ask the victim at the scene three risk questions and record the information in the incident report: (1) Do you think she or he will seriously injure you or your children? (2) What was the incident when you were most harmed or afraid? (3) What is the frequency of the violence and is it changing? In felony cases, investigators will follow up with a more extensive interview focused on risk. A victim's perception that she or he is at risk is among the most accurate predictors of severe danger. Unfortunately, a victim's perception of low danger may not be similarly accurate and an engaged discussion with a victim can alert intervening practitioners to the more likely level of risk<sup>5</sup>.

Asking risk questions at the scene results in information available to prosecutors, pretrial services, defense attorneys, probation/parole, and the court even when the victim cannot be reached before the first appearance. This information may be used in charging, bail, and no-contact order requests. Pretrial services can use information documented by law enforcement officers as one of the elements in preparing a pretrial release evaluation for the court. Prosecutors may also present information to the court concerning context and severity of the violence based on this incident and previous contacts with the offender. This additional information allows prosecutors to identify higher risk cases and request higher bail as well as conditions of release. It may also increase requests to surrender firearms. At the same time, the bench can expect that in some cases the identified risk will be lower, and pretrial services and prosecutors will evaluate pretrial release and present or comment on bail and conditions of release accordingly.

## **MORE DIFFERENTIATION OF CASES**

Domestic violence covers a variety of offenses including: the one-time single push, the batterer who repeatedly and relentlessly beats the victim, the victim who fights back illegally in response to ongoing battering, and the defendant whose violence springs from mental illness. The Blueprint provides mechanisms to adjust intervention levels to the level of violence and the context in which it is committed, both of which are indicators of danger. The policies for a batterer—someone who engages in a patterned use of violence, intimidation, coercion, and entrapment—are different from interventions with someone who assaults his or her partner but is not engaging in a patterned set of abusive behaviors. Under the Blueprint, charges and requests made to the court should be tailored to violence levels and dangerousness in the case. In high risk cases, prosecutors may request higher bail or insist on plea agreements with higher caps on time to serve. In some circumstances, such as when the defendant is a victim of ongoing violence, prosecutors may agree to recommend a deferred sentence. Probation officers may elect to use negotiated, non-incarceration responses to some probation violations in low risk cases. Probation is likely to pursue an immediate judicial response where the probation violation involves renewed violence or increased risk to the victim.

Increased attention to context of the violence will also be apparent to the bench at sentencing. Probation officers responsible for investigations and sentencing recommendations will have access to information about the extent of violence occurring in the case. Blueprint protocols call

for a uniform treatment of information on domestic violence risk factors. The protocols prioritize contact with victims in order to bring increased understanding of the context of violence to the court. When preparing the PSI, probation will include information regarding past violence. This information will assist the judge in evaluating: whether the defendant is an offender who at high risk to continue, escalate, or turn lethal in his or her use of violence; whether this is a defendant with minimal or no history of violence; or whether the defendant is a victim of ongoing abuse who appears to be responding with violence. Public information from this section of the PSI will be abstracted as a summary and made available to rehabilitation programs, supervising probation officers dealing with the current offense, law enforcement, charging attorneys, pretrial services, probation/parole, and judges in any subsequent cases involving the same offender.

All practitioners are being asked to pay attention to cases where victims of ongoing abuse are now the suspects or defendants in a domestic violence case. (See *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*).

## **A FRAMEWORK FOR SENTENCING AND STANDARDIZED LANGUAGE FOR PROBATION CONDITIONS**

Prosecutors and probation/parole have agreed to follow a Framework in making sentencing recommendations and plea agreements. Although Prosecutors and probation/parole may disagree on a recommendation in a given case, the Framework ensures they are using the same factors to evaluate the response to a particular incident. Differences arise in a number of ways. In addition to considering the event and history of violence, the prosecutor must also consider the strength of the case when negotiating a plea agreement. This may lead to a plea agreement different from what would result from consideration of the Framework factors alone. Probation/parole officers will have more information regarding the case when they make recommendations and are not constrained by the practicalities of obtaining a conviction. When the additional information reveals aggravating or mitigating circumstances the probation officer may recommend a response correspondingly more or less severe than called for by the plea agreement. And, there will be differences in opinion regarding the meaning and validity of information, which may lead to different recommendations to the court. Even though differences will remain, the Framework ensures considerations of context and severity will be the touchstone for both offices' evaluation of cases.

To be effective and enforceable, probation conditions must be clearly communicated to the defendant, as well as to practitioners working with the defendant<sup>6</sup>. Frequently, miscommunication arises from failure to clearly announce what is required. Sometimes failure arises from imprecision in the language of the condition. Other times it arises from referring to conditions without fully stating them. For example, a probationer is directed to “abide by the standard conditions of probation” without further explanation. In an effort to (1) be consistent in what prosecutors or probation/parole recommend and (2) ensure clarity in the probation officer's and probationer's understanding of the meaning of a condition, the Blueprint includes standardized and more precise language when recommending conditions. The list of possible probation conditions in these cases is extensive, not with an eye to increase the number of

conditions the bench orders, but to cover all possible conditions that a specific case might warrant. More precise language during sentencing promotes common understanding of what is required of the defendant. Standard conditions developed by probation are available in **Chapter 9: Probation and Parole** for judges who elect to utilize them, either “as is” or as a starting point in developing their own standard conditions for use during sentencing. This list identifies standard conditions for all cases as well as for domestic violence-related cases. It also includes more specialized, less frequently needed conditions.

## **MAKING THE VIOLENCE VISIBLE**

At each point of intervention, beginning with 911, there is an expectation that practitioners look for, identify, document, and account for the context of individual acts of violence. Each practitioner has instructions on what to ask, what to document, where to disseminate that information, and how to adjust the response based on knowledge of the violence. The purpose of this process is not solely to identify risk. It also allows practitioners dealing with offenders or victims in their offices and courtrooms to speak openly about the violence. Under the Blueprint, it is no longer possible to process an entire case and find that no one gave voice to harm, violence, and indignities perpetrated by one person against another. This approach has a number of implications for the bench. At bail and pre-trial hearings, prosecutors will make a conscious effort to ensure that the reason for the criminal proceeding does not disappear. They will more frequently articulate the acts of violence being alleged and the severity of those acts. This will make clear to the victim and defendant what is being condemned. And, making the violence more visible can help the court determine the proper response in a particular case by focusing on the specific behavior rather than the broad range of behaviors covered by the criminal charge or the term “domestic violence.” The Blueprint anticipates the bench will take various opportunities to let victims and offenders know that the court understands the nature of the violence and does not dismiss or deem it irrelevant to what happens in the courtroom. Such a response counters what one victim noted in a focus group conducted during the writing of the Blueprint:

*Anyone would have thought we were there on a dispute between neighbors about a dog. There was no mention of what he did, what my children saw and suffered through, or what scars we will live with for years to come. He walked out with a grin. That can't be right.*

## **MESSAGES**

Most domestic violence-related cases coming into the criminal justice system involve battering. They are rarely isolated incidents or someone who has assaulted another person with no pattern of abuse. Battering is not meant here as a legal term but as a sociological term describing a pattern of ongoing violence used to control the behavior of an intimate partner. It is not a single event, nor can it be understood simply by counting the number of events in an offender’s case file. Many times, the behavior has been reinforced over months or years. It often intensifies and is most lethal when a victim seeks to make a permanent break in the relationship. It always involves a coercive pattern of behaviors that are harmful and often

debilitating to the victim. As with any patterned behavior, change generally requires continuing intervention over a period of time.

Under the Blueprint, criminal justice interveners— including 911 operators, law enforcement, prosecutors, and probation officers—coordinate efforts to ensure batterers and victims receive consistent messages of accountability and victim safety. *You are here because it is alleged that you did \_\_\_\_ ... If you want to stop the violence there is help... If you are doing what is alleged and you don't stop the violence there will be consequences... The violence is not the victim's fault...* Consistent messages from multiple practitioners in multiple settings promote change by challenging beliefs used to justify battering. A judge's attention to the alleged violence is not inconsistent with his or her obligation to avoid prejudging a particular case. Prior to a determination of guilt, statements can be focused on the alleged violence without comment on the defendant's responsibility. As the person embodying society's response to breaches of its core values, the judge is in a unique position to challenge a batterer's rationalizations<sup>7</sup> at sentencing and during probation. The judge can achieve this by articulating societal values underlying the criminal code and the basis for the sentence or enforcement action. As one mother of a victim stated:

*I watched him as the judge sentenced him and I thought, finally, he is listening to someone. He knows all the lying is not going to help him right now. It didn't matter to me that he only got six months of jail time; I could see he was shook to the core. Something had gotten through to him. The judge just said it, 'I can't with any good conscience look at the pictures of your wife and think of her testimony in this trial and then do as you ask and simply let you move on. I want you to stop; stop for a good while and think about what you have done and what it is likely you will continue to do until you finally stop looking for someone else or something else to blame for what you've become.' He just said it all right there.*

Such statements reinforce expectation of behavioral change and place responsibility for the behavior on the defendant. They enlist the authority of the judiciary to reinforce other practitioners' efforts to support change in those who wish to stop their violence, and to hold accountable those who do not.

Likewise, the way business is conducted in court constitutes a message emphasizing that domestic violence is a crime and that the court will ensure victim safety and offender accountability.

# The Blueprint and the Bench

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## **BENCH FRAMEWORK**

The bench holds one of the keys unlocking the door to successful interventions. While the Blueprint focuses on the criminal cases arising from domestic violence, the ability to impact recidivism extends to cases in civil, juvenile, and family court as well. These opportunities include: expediting domestic violence cases; recognizing the need for victims to have adequate family financial support; enforcing violations of protection orders and family support orders strictly and promptly; ensuring victim confidentiality; expecting high quality work from prosecutors and probation officers ; responding to every act of aggression, intimidation, and coercion by an abuser with sure and swift (though not always harsh) consequences; providing domestic violence training for court personnel; providing clear information to unrepresented parties about court procedures; protecting unrepresented parties and victims from abusive litigation tactics; understanding and accounting for differences in domestic violence offenders; and working with community and criminal justice agencies for coordinated policy concerning domestic violence.

The judge or court's designee should regularly ensure cases get the priority for trial required by the seriousness of the behavior and the risk posed to the victim.

The following section includes policies and practices complementing policies and protocols of intervening agencies. They highlight areas of case processing where domestic violence cases should be treated in specific ways to achieve the best chance of reducing recidivism, increasing victim safety and promoting offender accountability. There are references to public and/or victim safety. Victim safety is used in this section to emphasize special circumstances of domestic violence victims. This is not an expansion of the goals of criminal justice intervention. Rather, it is a recognition that in domestic violence the threat to public safety is focused on particular members of the public.

The bench also has a responsibility to work with court administration to ensure proper handling of domestic violence-related cases that come before the criminal court. In domestic-violence cases court administration has several key roles, including: managing a timely response by scheduling hearings and appearances as expeditiously as possible, notifying involved parties and intervening agencies, entering and distributing court orders and protecting confidential information.

Included in the following section are court administration policies and protocols for domestic violence-related cases that are generally applicable across most jurisdictions. It is anticipated that every local jurisdiction will have to adopt supplemental court administration policies and protocols to reflect local resources and general practices.

## **EFFECTIVE JUDICIAL RESPONSE TO DOMESTIC VIOLENCE**

See *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* and *Appendix 1B: Training Memo—Risk and Dangerousness*. See the Madison County Blueprint for Safety Appendix for appendices referenced herein.

### **A. Court Administration Policy**

1. Court Administration will:
  - a. Ensure domestic violence–related cases are handled with the timeliness required by statute and local policy.
  - b. Ensure that all defendants appearing on domestic violence–related matters have been booked.
  - c. Correctly enter and distribute court orders to all required and specified parties. Such orders include:
    - Conditional release orders
    - Pretrial no-contact orders
    - Modifications and cancellations of pretrial no-contact orders
    - Probation no-contact orders
  - d. As necessary, notify the agency supervising pre-trial release of all cases in which the defendant is conditionally released.
  - e. Notify necessary parties of any hearing regarding modification of a no-contact order.
  - f. On all warrants of commitment, correctly identify those cases in which a no-contact order remains in effect.
  - g. At all times ensure confidential information is not disclosed to unauthorized parties.

### **B. Release Prior to First Appearance**

1. In making a decision concerning pretrial release of a person arrested for a domestic violence related crime or a violation of a protective order issued pursuant to KRS 403.740 or 403.750, the court or agency authorized to make a decision concerning pretrial release shall review the facts of the arrest and detention of the person and determine whether the person (KRS 431.064):
  - a. Is a threat to the alleged victim or other family or household member; and
  - b. Is reasonably likely to appear in court.

### C. First Appearance

#### 1. Booking

- a. If advised by the clerk that booking has not occurred, the court will issue a booking order.

#### 2. Pre-Trial Release

- a. In making the pre-trial release determination for a person arrested for domestic violence related offenses, the judge shall review the facts and determine:
  - Whether release poses a threat to the alleged victim, another family or household member, or to public safety; and
  - Whether release involves a substantial likelihood that the arrested person will fail to appear at subsequent proceedings.
- b. If not already presented, the judge will ask for the information contained in the pretrial release evaluation.
- c. When requested to do so by the victim or victim's advocate, the judge will allow the victim, or victim's advocate, to address the Court regarding pre-trial release, but will not ask the victim in open court whether she wishes to be heard regarding pre-trial release or is afraid of the defendant.
- d. In determining release requirements, the judge may be guided by the following principles:
  - Condition of release should be tailored to enhance the safety of the domestic violence victim, as well as the public in general, and ensure the appearance of the defendant.
  - The safety of the domestic violence victim is equally, if not more, important to the goal of public safety as the appearance of the defendant.
  - Both conditions of release and bail are appropriate where the risk to the victim is significant. In these cases, it is generally appropriate to use substantial conditions of release as well as high, though not maximum, bail in order to reduce the risk to the victim.
  - The circumstances of the defendant's absence from the scene of the crime can be a risk factor justifying bail or conditions of release for defendants who are out of custody when they make their first appearance. If the defendant knowingly avoided law enforcement's attempts to investigate the crime or locate him or her, there is a substantially elevated risk of re-offense during pre-trial release. In those cases, it is appropriate to consider whether bail or conditions of release should be required for out-of-custody defendants.
- e. The judge may consider whether any of the following conditions of pre-trial release should be ordered:

- Enjoining the defendant from further domestic abuse or harassment;
- Prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, directly or indirectly;
- Directing the defendant to stay away from the alleged victim’s home, work, family members or any other location the alleged victim is likely to be;
- Prohibiting the defendant from possessing a firearm or other weapon specified by the court;
- Prohibiting the defendant from possessing or consuming alcohol or controlled substances;
- Restraining the defendant from damaging, selling or encumbering any jointly-held property;
- Ordering the defendant to be accompanied by an officer when retrieving personal property from the victim’s residence;
- Ordering no contact with children, if any, except through a family court order; and
- Any other specific condition required to protect the safety of the alleged victim and to ensure the appearance of the defendant at subsequent proceedings.

### 3. Pre-Trial No-Contact Orders

- a. A no-contact order will generally be issued in domestic violence-related cases. However, pre-trial no-contact orders can have negative, unintended consequences for parties, particularly when defendants are themselves the victims of ongoing abuse or when the victim is dependent on the defendant for physical care, financial or child care support, or housing. Careful evaluation of the need for a no-contact order is necessary in any case in which the victim objects to the order. In many cases, victims are making a reasoned choice between the better of two extremely poor options.
- b. When the victim objects to issuing a no-contact order, the presiding judge may review patrol reports, risk indicators, and any other information relevant to danger assessment and victim safety. This review should include the basis for the victim’s objection and the likelihood that the defendant will make future appearances. The court will consider, among other appropriate factors, the risk to the victim if a no-contact order is not issued and the difficulty faced by the victim if it is ordered.
- c. The Court may also consider whether the victim’s objection appears to result from intimidation or coercion (*see Appendix 10A: Training Memo—Use of No-Contact Orders in Domestic Violence Criminal Cases*).

**D. Violation of Pre-trial Release Conditions**

1. Judge shall issue a warrant for violation of pre-trial release if the judge:
  - a. Receives an application alleging violation; and
  - b. Finds probable cause for the violation.
2. Revocation of release, forfeiture of bail, and the imposition of high bail with restrictive conditions of release may be appropriate under any of the following circumstances:  
(Note: forfeiture may not be appropriate if the defendant has no stake in the bail)
  - a. The release violation involved a new act of violence, destruction of property, using a child to coerce or intimidate, sexual aggression, or any form of physical intimidation against the victim;
  - b. The defendant was already at high risk for continued or escalating violence; or
  - c. The new offense involves stalking behavior, threats of harm to the victim, refusal to conform to monitoring requirements, or continued use of alcohol or drugs.

**E. Modification of Pre-trial No-Contact Orders**

1. When the victim requests that a no-contact order be cancelled or modified, court personnel will notify the prosecutor and the defendant of the request.
2. When the defense or prosecution requests modification or cancellation of the no-contact order, the prosecutor will notify the victim.
3. In determining whether to cancel or modify a no-contact order the court will consider, in addition to any other appropriate factors, the:
  - a. Preference of the (1) victim, (2) defendant, and (3) prosecutor
  - b. Reason for each party's preference
  - c. Facts of the case
  - d. Defendant's history
  - e. Victim safety
  - f. Review of danger and lethality considerations (per *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*).
4. When a pre-trial no-contact order is modified— but not cancelled—the court will issue a new written pre-trial no contact order.
  - a. The new order will be forwarded to the appropriate law enforcement agency.
  - b. Copies of the modified no-contact order will be forwarded to the victim.
5. When a no contact order is cancelled or, after sentencing, replaced by a permanent probation no contact order, notice of cancellation will be forwarded to all previously noticed parties.

## F. Trial

1. When ordering cases for trial, domestic assault cases should be assigned priority in the following order when possible:
  - a. Felony with defendant in custody
  - b. Misdemeanor with defendant in custody
  - c. Child abuse cases with defendant on bail
  - d. Domestic abuse cases with defendant on bail
  - e. Other felonies with defendant on bail
  - f. Other misdemeanors with defendant on bail
2. Issuing a warrant to force a victim's testimony is inconsistent with Blueprint victim engagement guidelines and will almost always be counterproductive. Warrants should be issued to compel victim testimony only in very rare cases when the community or children are at high risk of serious or lethal harm. In deciding whether to issue a warrant the Court will keep in mind that there is a reasonable likelihood that the perpetrator may use severe violence against the victim in retaliation for testifying<sup>viii</sup>. See *Appendix 4D: Sample Policy Language—When to Compel a Victim to Testify*.

## G. Pleas

1. At the time of the plea, a clear advisory to the defendant of the court's position regarding sentencing will increase the likelihood that sentencing will occur in an orderly and timely manner. The following advisories will generally be given at the plea hearing:
  - a. If the defendant violates conditions of release, the court will not be bound by the plea agreement (including any cap on time to serve) and the defendant will not be allowed to withdraw his or her plea.
  - b. Inform the defendant of the court's practice regarding whether the defendant will be allowed to withdraw the plea if:
    - The court decides not to follow the plea agreement; or
    - The court decides not to follow the plea agreement because the PSI contains new information bearing on sentencing of which the court or attorneys were not aware at the time of the plea; or
    - The court decides not to follow the plea agreement because the PSI contains new negative information regarding the defendant of which the defendant was aware, but the court or attorneys were not.
  - c. The defendant will not be allowed to withdraw an otherwise valid plea simply because the defendant does not like the court's subsequent sentencing decision.
2. The victim has the right to be present at the plea hearing and to be heard on any objection to the plea agreement (KRS 421.500). If the victim is not present, the court will

inquire from the prosecutor if the victim had been consulted regarding the plea or sentence.

3. The judge generally will accept the plea on the record at the time it is entered.
  - a. A plea of guilty accepted and recorded by the court constitutes a conviction.
  - b. Pleas not accepted at the time of the plea cannot be used for enhancement of an offense that occurs between plea and sentencing.
  - c. Because acceptance of responsibility is a first step toward rehabilitation, pleas without admission of guilt (Alford) will not generally be accepted in domestic violence related offenses.
4. In cases where the defendant is a victim of ongoing abuse (battering), the court should consider a disposition that prevents entering a permanent record for the victim/defendant and reduces the opportunity of a batterer to use the State intervention to further harm the victim/ defendant. (See *Appendix 1C: Training Memo-Intervention with Victims of Battering as Suspects or Defendants.*)

#### **H. Presentence Investigation**

1. A presentence investigation is required whenever a defendant is convicted of a felony in any domestic abuse offense (per statutory definition).
2. No PSI is required if the defendant has either already served expiration of the maximum sentence; or agrees at the time of the plea to serve the maximum sentence.
3. Regardless of whether a PSI is ordered, the victim will be contacted regarding a victim impact statement and restitution.

#### **I. Sentencing**

1. Judges will expect prosecutors and probation officers to utilize *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* when recommending whether to grant probation, the amount of time to be served and probation conditions.
2. *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* may be considered in determining the appropriate sentence, including whether to grant probation, the amount of time to be served and probation conditions.
3. In some states, firearms forfeiture is statutorily mandated in certain cases. State law may impose a ban on the possession of firearms in domestic violence cases.
4. In jurisdictions with a number of judges, the bench is encouraged to adopt guidelines regarding sentences to increase uniformity of sentences in domestic violence-related cases. (See *Appendix 4G: Framework for Recommending Time to Serve and Length of Probation, and Appendix 4H: Sentencing Guidelines Departure in Domestic Violence Cases.*)

5. In all cases involving battering by the defendant, domestic abuse counseling or educational programs will be ordered if the defendant is being placed on probation. (See *Appendix 9A: Rehabilitation Program Considerations in Domestic Violence Cases*)
  - a. Anger management classes do not meet this requirement.
  - b. It is not appropriate to require marriage or couples counseling in cases where there has been battering.
  - c. Judges should not order victims who are not defendants to participate in programming.
  - d. Programs using a cognitive-behavioral approach are generally -preferred.
  - e. The defendant will not generally be ordered to participate in programming that mixes men and women in the same groups.
6. Probation Conditions
  - a. Probation officers will use standardized language when recommending conditions of probation in order to reinforce the defendant’s clear understanding of the conditions of probation and to help to ensure that the conditions are accurately conveyed to others, including the supervising probation officer and the victim.
  - b. In order to clearly convey what is being required, the judge should use the standard language from *Appendix 9B: Training Memo—Conditions of Probation*, for each condition unless it is the judge’s intent to impose a nonstandard condition. When imposing a nonstandard condition, a description of the difference intended by the Court will help to ensure that the defendant, probation officer, victim, and attorneys understand what is being required.
  - c. Judges will review the conditions of probation on the record during sentencing to ensure that the defendant has the notice necessary to allow enforcement of probation conditions.
  - d. A written copy of the conditions of probation will be provided to the following people at sentencing: defendant, defense attorney, prosecutor, probation officer, victim, and if present, victim’s advocate.
  - e. When the defendant is not fluent in English, the court must ensure that the probation conditions have been translated to the defendant. The defendant should, on the record, inform the court that she or he understands them.
7. Probation No-Contact Orders. Probation no-contact orders should not be ordered over the objection of the victim, except in rare circumstances.
  - a. When the victim objects to the issuance of a no contact order, the presiding judge will review patrol reports, risk indicators, and any other information relevant to danger assessment and victim safety. This review should include the basis for the victim’s objection.

- b. The court will consider, among other appropriate factors, the risk to the victim if a no-contact order is not issued and the difficulty faced by the victim if it is ordered.
  - c. Because of the length of time the no-contact order will be in effect, probation no-contact orders are not appropriate over the victim's objection solely because a pre-trial no-contact order was issued over the victim's objection.
  - d. When the victim objects to a no-contact order the Court will consider whether a less restrictive order is appropriate. Examples of a less restrictive order include an order allowing contact through third parties or an order allowing contact but prohibiting the defendant from being at the victim's residence.
8. Restitution
- a. Victims are entitled to restitution. According to the Kentucky Crime Victim Bill of Rights, this may include the following:
    - A possible emergency award not to exceed \$500, and deducted from any final award
    - Up to \$150 a week in lost earnings or support
    - Medical expenses or other services, including mental health counseling, necessary as a result of the injury upon which the claim is based.
    - Property damage (also includes replacement of glasses or corrective lenses, provided they were damaged or broken during the crime)
    - Funeral and burial expenses up to \$5,000
  - b. Whenever possible, at sentencing judges should set the amount of restitution owed.
  - c. Restitution requests should be submitted in affidavit form.
  - d. When necessary, the restitution order should address the following in addition to specifying the amount to be paid:
    - Whether restitution is to be collected from prison wages when a felony defendant is committed to the Commissioner of Corrections.
    - Specify that restitution shall be made to the victim or, if the victim is reimbursed by a crime victim compensation agency, to that agency.
  - e. The Court should be aware of the state victim compensation agency, even though referrals would most often be made by the prosecutor.
9. Unless the court finds that the defendant will not use the delay as an opportunity to harm or in any way retaliate against the victim, in domestic violence cases the court should order the defendant to begin serving any executed sentence immediately.
10. Victim's Rights at Sentencing. In many states the victim has the right to:

- a. Be present at sentencing.
  - b. Express orally or in writing any objection to the proposed disposition.
  - c. Submit a victim impact statement and choose whether to submit the statement orally, in writing, or by having the prosecutor read it.
11. To maximize the defendant's opportunity to understand the harm caused by the crime, and to assist the victim during this difficult process, the court should insist that no business be conducted when a victim is reading a victim impact statement.

#### **J. Probation Violations**

1. In jurisdictions where probation violations may be heard by a judge other than the sentencing judge, the signing judge shall specify on the pick-up order whether the defendant must appear before the sentencing judge for resolution of the probation violation. Due to the sentencing judge's familiarity with the case, the probation violation should generally be heard by the sentencing judge.
2. The bench should hear probation violations based upon new criminal behavior without waiting for resolution of the new charge when:
  - a. The violation is based upon a new act of violence or threatening behavior against any person; or,
  - b. When the violation is based upon any of the following targeted against the victim of the probation offense: destruction of property, using a child to coerce or intimidate, sexual aggression or any form of physical intimidation or actions which place the victim in fear of harm.
3. When a violation is found:
  - a. In cases involving a new act of violence or threatening behavior against any person or any of the following targeted against the victim: destruction of property, using a child to coerce or intimidate, sexual aggression, or any form of physical intimidation, considerations of public and victim safety will generally dictate revocation of probation.
  - b. In cases involving defendants at high risk of reoffending, or defendants with multiple charges and convictions, public and victim safety will generally dictate revocation of probation even if the new offense does not meet the criteria above.
  - c. In all other cases, the court should consider continuing probation with heightened monitoring or increased restrictions on the defendant.

## Chapter 10 Endnotes

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- <sup>1</sup>. Stark 2007, p. 55. Referencing Durose, et al. (2005) and Fox and Zawitz (2004).
- <sup>2</sup>. See Chapter 1, Principle #4, for a discussion of sure and swift consequences in domestic violence cases.
- <sup>3</sup>. Level of punishment should be commensurate with severity of the criminal behavior (F. S. Taxman, D. Soule, and A. Gelb, 1999 citing von Hirsch, 1993).
- <sup>4</sup>. See Chapter 1, Foundation, for a discussion of the Blueprint's foundational principles, basic assumptions underlying its recommended policies, and *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*.
- <sup>5</sup>. Gondolf (2012, p.193) suggests risk assessment is understood as a process that the perception of the victim is incorporated, and it is "tailored to woman's experience" and used to tailor interventions and services with her.
- <sup>6</sup>. "Offenders should receive swift, clear, meaningful, predictable, and certain consequences for violating probation." (Henderson 2014).
- <sup>7</sup>. See Chapter 1, Messages of Help and Accountability, Endnote # 15 on Ptacek's 1999 study of how courtroom interactions in domestic violence cases can affect the battering dynamic.
- <sup>9</sup>. Other victims face retaliation and rage from offenders for the system's intervention and expectations of accountability (Ptacek, 1999).