

**EVALUATING THE  
MURRAY CITY MUNICIPAL JUSTICE COURTS  
DOMESTIC VIOLENCE COURT**

Institute for Court Management  
Court Executive Development Program  
2009-2010 Phase III Project  
May 2010

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## **ABSTRACT**

### Evaluating the Murray City Justice Court's Domestic Violence Component

January 2010, marks the fourth anniversary of the creation, development, and operation of Murray City's domestic violence court. Murray's court is the third that has been operating as a dedicated court to address the tragedy of domestic violence and abuse in the Salt Lake Valley. The Court operates under the dictates of the state of Utah as found in Rule 4-409, Internal Court Operations (see Appendix I).

Preliminary research indicated that a court which would handle domestic violence cases in a manner separate and apart from other criminal cases may have better results in reducing family violence and rearrest of offenders than the current practice.

The Court researched what had been started elsewhere, both in state and out of state. Some jurisdictions have altered their internal administration processes to ensure that domestic violence cases are handled in a way that maximizes victim safety and batterer accountability. For example, many are scheduling and processing domestic violence matters separately from other matters. This ensures that cases are processed quickly, which can be critical. As time passes, the chance that a victim will abandon the case increases.

Burgeoning caseloads of first time and second time offenders drove the developing of the single issue court. Several other jurisdictions across the nation have created courts to handle domestic violence with varying degrees of success. It was apparent that traditional court practices were not getting the desired results, so the Murray

Justice Court embarked on a strategy to promote victim safety and offender accountability, and to be responsive to community worries and desires.

Following the “one judge, one court” philosophy, the Court chose personnel to be the domestic violence team. This team, consisting of one judge, one court clerk and case manager and one program administrator, would be sent to appropriate training and education in domestic violence. Court funds also paid for two prosecutors and two contracted legal defense attorneys to attend specific training for their part in the program. Treatment providers are licensed by the state of Utah and must maintain their licensing – as such, court funds were not used for provider training. Providers are not only licensed in the clinical aspects of intervention but also are licensed probation officers. The Murray City Police Department has victim advocates which are trained through police funds. Once all of the training/education was completed, all the players were at least in the same ballpark in regards to domestic violence.

The program development plans were presented to the mayor and then to the city council for discussion and approval. The Court received support from both offices.

All domestic violence cases would be calendared into one, single court. The decision was made to have all family and domestic-related cases assigned to this designated court to include, for example, child abuse cases not at the felony level. It was best determined that all aspects of a domestic violence case would be assigned to a certain day and time before one judge. All arraignments, pretrial conferences, trials, and review hearings (including warrant recalls) would be included on this day.

The Murray City Domestic Violence Court has chosen to use a psychoeducational and confrontational approach with batterers, a modified version of the Duluth Model that

has been tailored to meet its needs and goals. Victim safety and batterer accountability are the operational dynamics, with the desired end result of lower recidivism and cessation of violence. The court is more interested in holding the batterer accountable for solutions rather than responsible for problems.

All defendants convicted of domestic violence must attend a treatment program. The Court randomly selected 100 defendants to track for this study. These defendants were not in the same group or same time frame. Their attendance spanned the length of the study. The defendants' cases were adjudicated between June 2008 and January 2009.

This is the first evaluation study the Murray Court has completed since the implementation of the domestic violence court.

The judge and staff had a "feeling" that the court intervention program was proving successful as to the goals originally chosen. However, there was no baseline information pertaining to the Murray Court to compare this study to. The Murray Court's determination of success is based on two criteria:

1. Reduced recidivism in the Murray Court, and;
2. Success as defined by the information contained in the Court's review of the literature from domestic violence courts and treatment programs.

As to both criteria, the Court is pleased (and surprised) with the results found in this study. Although the history of domestic violence cases in the court is not lengthy, they are comprehensive and demonstrate a recidivism rate lower than those courts found in the literature review. The Murray Court also shows a better success rate in handling domestic violence cases when compared to the reviews and reports from other courts.



Even though the crime of domestic violence is the same nationwide, the way this offence is handled varies from court to court. Even the philosophies differ. Due to various practicalities inherent in the development of the Murray domestic violence court, certain observations were necessarily implanted into the Murray Court's treatment/intervention program.

The Murray Court has developed its own team approach concept and its own sentencing policies so long as these policies fit into the generalized state of Utah guidelines. While investigating the ways in which other courts, both in Utah and nationwide, addressed post-adjudication of domestic violence, the Murray Court was faced with its own limitations and alliances and therefore, created its own version of an ultimately successful program.

## INTRODUCTION

*The 2007 Utah Domestic Violence Annual Report says one in three Utah women report being a victim of domestic violence. But statistics in a 2007 state domestic violence report show the number of protective orders dropped in 2006. Safe Harbor shelter director Kay Card says the drop could be attributed to the criteria judges are now using to evaluate protective order requests.*

- KSL News, [www.ksl.com](http://www.ksl.com), 06/10/2007

*Domestic violence is one of the fastest growing crimes in Utah. Domestic violence is a growing problem some fear will get worse before it gets better. "When it's domestic violence, you have a lot of emotion tied to it. You've got kids that factor in, economic situations that make it difficult; there's lots of stressors, especially with the economy," says West Valley City Police Detective Steve O'Lamb.*

- KSL News, [www.ksl.com](http://www.ksl.com), 12/30/2008

*The year-end statistics are out on domestic violence related deaths in Utah. The report shows that 22 people were killed this year [2008] as a result of domestic violence. Unfortunately, this year's figures are up slightly from last year [2007]. In 2006, 29 people died. Experts think the numbers fluctuate so much depending on awareness of helpful resources...Homicide at the hands of their male partner is the leading cause of death for pregnant women in Utah. One of every three women in Utah will experience domestic violence in her lifetime.*

- KSL News, [www.ksl.com](http://www.ksl.com), 03/06/2009

*There is an ongoing tragedy of domestic violence in Utah neighborhoods. A victims' advocate says there's an increase in violence [2009]. "Our economy is having a dramatic impact on domestic violence and how people respond to what's going on," said Judy Bell, executive director of the Utah Domestic Violence Council. At least 10 Utahns so far this year were killed at the hands of their husbands, boyfriends or others whose love turned to rage. The victims lived in every kind of Utah community; they ranged in age from a teenager to 54 years old. "There seems to be an increase in violence. There is also, contributing to it, that people are not wanting to leave dangerous situations, because where are they going to go?" Bell said. Bell says a poor economy does not cause domestic violence, but it can stress already unhealthy relationships.*

- KSL News, [www.ksl.com](http://www.ksl.com), 08/17/2009

Make no mistake about it; domestic violence in all its tragedy exists in Utah. Many people are surprised that in the family-friendly state of Utah, spousal abuse and child abuse are major concerns. The extent of domestic violence and domestic abuse of all kinds has surprised and shocked many. Once known, the magnitude of harm done to

victims of domestic violence has led people to demand immediate action to deal with this problem. The Utah Department of Health's Violence and Injury Prevention Program (VIPP) estimates that 40,000 Utah women are physically abused by an intimate partner each year. Approximately 32% of all Child Protective Services investigations include incidents of domestic violence. Further, VIPP states that on average, eleven Utah women die each year [2005] from domestic violence.<sup>1</sup>

Actually though, the crime of battery has a long legal history, and assault between spouses today is not only against the law in Utah, but in all states and territories of the United States. Criminal statutes may vary from state to state but the recognition of domestic violence as a crime is now pretty much universal.

Domestic violence cases comprise about 20% of all cases entering criminal court. New York Chief Judge Judith S Kaye, retired, said of the case load:

“One possible judicial response to the current situation is to continue to process domestic violence cases as any other kind of case, and to continue to observe systemic failures. Another response, however – the problem-solving response – is to try to design court programs that explicitly take into account the special characteristics that domestic violence cases present. If domestic violence defendants present a particular risk of future violence, then why not enhance monitoring efforts to deter such actions? If victims remain in abusive situations due to fear for their own and their children's well being, then why not provide links to services and safety planning that may expand the choices available to them? If cases are slipping between the cracks of a fragmented criminal justice system, then why not work together to improve coordination and consistency.”<sup>2</sup>

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<sup>1</sup> Utah Department of Health, Violence & Injury Prevention Program Website. [www.health.utah.gov/vipp](http://www.health.utah.gov/vipp) 11/25/2005

<sup>2</sup> R Mazur and L Aldrich, *What Makes a Domestic Violence Court Work?: Lessons from New York*, Judge's Journal 3(42), Spring 2003, at 8

Although men can be victims of domestic violence, 90% of the victims are women and children.<sup>3</sup> Women who are abused by an intimate partner often have more severe physical and mental health problems than women who are assaulted by a stranger, as the sacred bond of trust is shattered. Domestic violence victims struggle with emotions not experienced by victims of stranger violence.<sup>4</sup>

Domestic violence is often overlooked, excused or denied – and ignored. It is a power-and-control issue, as when one person in a relationship tries to dominate and control the other person in the relationship.

Domestic violence is unique involving not only criminal behavior but complex social relationships that make every aspect of the case – from arrest to disposition – more difficult. Since the realities of the criminal justice system are modeled on crimes against strangers, basic fundamental premises need to be re-examined. Unlike victims of random attacks, battered wives have reasons – like fear, affection, and economic dependence – to not cooperate with the justice system. It is this type of bond that contributes to the risk of continuing violence as the batterer tries to maintain or regain control over the victim.

It must be remembered, too, that domestic violence is a behavioral choice of the abuser or perpetrator – a choice, not the loss of personal control or a temper tantrum. It is a pattern of on-going behavior, rarely ever a “one act play.” In fact, it is an action to take control of the victim. For example, even though the *Utah Spouse Abuse Act* defines abuse as “intentional physical harm, or attempting to cause physical harm, or intentionally placing another in fear of imminent harm,” the control aspect cannot be ignored.

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<sup>3</sup> S A Eisenstat and L Bancroft, *Domestic Violence*, Primary Care 341(12), 1999, at 886-892

<sup>4</sup> A Burgess and C DeJong, *A Feminist Critique of Domestic Violence Theories*, Annual Meeting of the American Society of Criminology, Chicago, 2002, at 4

Although laws against domestic violence are in place across the nation, and much attention has been directed at the issue through the media, both the news media and entertainment media, statistics still tell us that the abuse and violence is not going away. And, due to the personal dynamics of spousal abuse, the statistics of *reported* abuse are realistically much lower than what is really going on in the home. Keeping the “family secret” is still stridently maintained. According to the U S Bureau of Statistics for 2006, of those who did report the violence, 51% reported the incident to keep it from happening again, whereas only 24% reported it in an attempt to punish the offender. But, perhaps encouragingly, the reported incidents of domestic violence have been in a steady decline since 1993. The question is why?

Looking outside Utah, domestic violence is indeed, as described by the Centers for Disease Control (CDC), an epidemic. The CDC estimates that 4.8 million women and 2.9 million men are subjected to physical or sexual abuse by intimate partners each year. They counted more than 1500 domestic violence-related deaths in 2004, with 75% of the victims being women. The CDC also found that about 10% of students nationwide report being physically hurt by a boyfriend or girlfriend in the past year (2008). Yet intimate partner violence has been on a steady decline since the late 1970s.<sup>5</sup> The National Center for Victims of Crime (2005) reports that one in four women experience intimate partner violence in their lifetime and women, ages 20-24, have the highest level of physical violence from intimate partners. But in reality, the violence starts even younger.

If a person were to try to find all the available literature concerning the violence between intimate partners, he/she would have to redefine the term domestic violence and

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<sup>5</sup> The Crime Report, [www.crimereport.org/resource-guide/domesticviolence](http://www.crimereport.org/resource-guide/domesticviolence) 10.27.09

search all the interchangeable terms used by several agencies, jurisdictions, and researchers.

This is true of Utah, which is why the Murray City Municipal Justice Court decided to create its own version of a problem-solving court, also known as a domestic violence court, in 2005, in response to ever increasing domestic violence cases. Some research the court reviewed indicated that problem-solving domestic violence courts were associated with decreased reoffending and reabuse.<sup>6</sup> Specialized domestic violence courts were also associated with increased convictions and decreased dismissals.<sup>7</sup> For example, Cook County (Illinois) justice courts reported a significant increase in the likelihood of victims appearing in court when compared with their appearance in general courts by a factor of 73% to 40%. This correlated with increased conviction rates in domestic violence courts compared to general courts by a factor of 73% to 22.9%.<sup>8</sup>

This was not a spur of the moment decision. As with the Driving Under the Influence (DUI) court Murray developed, the Court saw an increase in domestic violence case filings and a decrease in court resources and time devoted to each case. For example, this author before coming to Murray worked for the Salt Lake City Justice Court. Under Judge John Baxter's leadership, that court began developing a domestic violence court. One of the key arguments for this type of court was the crushing caseload faced by the court and the "thousands of cases that clutter police stations, prosecutors' offices and the court each year," as reported in the *Salt Lake Tribune* (05.25.2002). The sheer volume of

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<sup>6</sup> A Gover, J MacDonald and G Alpert, *Combating Domestic Violence: Findings from an Evaluation of a Local Domestic Violence Court*, *Criminology and Public Policy* 3(1), 2003

<sup>7</sup> R Davis, B Smith and C Rabbitt, *Increasing Convictions in Domestic Violence Cases: A Field Test in Milwaukee*, *Justice System Journal* 22(1), 2001, at 61-72

<sup>8</sup> C Hartley and L Frohmann, *Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court*, National Institute of Justice, Department of Justice, 2003

the cases, combined with the problem of “no resources” was a daunting issue. As the *Tribune* reported, “Though domestic violence has become a volatile political issue resources...remain virtually nonexistent. And no new legislation requesting money is on the horizon.” Thus, a domestic violence court shares with the theory of technocratic justice in the rationale of high case volume and low financial resources. As a result, the important concerns that stakeholders and the public stressed were largely the hallmarks of technocratic justice: effectiveness, efficiency and speed.

The *Tribune* story reported that defendants were coming up multiple times on the same charges and ignoring judicial orders with impunity. The paper also noted that the “seemingly invincible offenders” felt that they ran the courts rather than being subject to them. They continued to harass their partners, post-prosecution, showing up in the middle of the night, hounding them at work, and eventually battering them again. The report went on to contrast these offenders with offenders “post-court-inception” who saw jail time and victims who, harassment-free, were able to begin new lives.

How else to intervene if not by the judicial system which, after all will have some sort of effect? This is particularly important given the mandatory arrest and prosecution policies of a domestic violence court. There is, however, no clear consensus on the effect of legal system intervention on domestic violence recidivism. Some research has shown that increasing the number of contacts and time of contacts with the legal system has resulted in lower recidivism rates.<sup>9</sup> Some of the studies demonstrated the need to expedite domestic violence cases, to use centralized dockets (court calendars), to quickly gather the broad spectrum of criminal information on the batterer, enhanced and

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<sup>9</sup> C M Murphy, P H Musser and K I Maton, *Coordinated Community Intervention for Domestic Abusers: Intervention System Involvement and Criminal Recidivism*, *Journal of Family Violence* 13, 1998, at 275

tightly controlled probation monitoring of the batterer, all of this to allow the victim to feel safe.<sup>10</sup> The conclusion the court reached: if it wanted to increase the effectiveness of the legal system in dealing with domestic violence offenders, then close judicial monitoring would likely result in deterring, if not stopping, domestic violence. By building on a posted Mission Statement and an enumerated Statement of Goals (see Appendix II), the Court staff was determined to embark on an important and meaningful journey to make a difference in the Community.

It was identified that domestic violence is really unlike other crimes. It is not stranger-on-stranger violence. It is not a bar fight or street brawl. It is violence between intimate partners who have committed to each other physically, emotionally, and psychologically. It is a crime in which oft times the victim is reliant upon the batterer for economic assistance. It is a crime in which children will be a factor in the violence. It is a crime of power and control, not a crime of gain. It is a crime that is difficult to prosecute (in a traditional sense). It is a crime that is especially difficult to prevent – there is no “McGruff the Crime Dog” equivalent in domestic violence. It is also a crime where the perpetrator has an inordinate amount of control over the victim, not just physical control, which is addressable, but emotional and psychological control as well.

In response to the already high incidences of domestic violence, the Court started looking for a solution to the high number of cases and their adjudication without putting people into an overcrowded county jail.

With the burst in population numbers in Utah, and especially Salt Lake County, of which the city of Murray is a part, the Salt Lake County Sheriff’s Office is limiting its

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<sup>10</sup> K Healey, C Smith, C O’Sullivan, *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, U S Department of Justice, Office of Justice Programs, Washington, D C, 1998



intake of prisoners. Even with the philosophy of jailing violent offenders, the jail needs assistance in keeping the jail population down.

The Court, having just embarked on another problem-solving court model directed at DUIs and drug offenses, also decided to implement the problem-solving model in creating a domestic violence court. Since jail was a decreasingly available option, other modes of punishment needed to be found. Now first-time and second-time offenders would receive a probationary period with court-ordered attendance to domestic violence intervention programs, geared toward the rehabilitation of batterers through treatment and re-education rather than sanctions only.

In developing a plan for the court, research indicated that men who completed an intervention/treatment program had a lower level of anger, depression, and aggression. They also demonstrated more adaptive patterns of coping than they had prior to treatment, over a matched sample of batterers who received little or no treatment.<sup>11</sup>

A 1994 report from the National Council of Juvenile and Family Court Judges gave a grandiose master plan that was latched onto –

“Courts, the criminal justice system and the entire legal community must respond to family violence as serious criminal conduct. However, the court system is not in this alone. Ultimately, the solution lies in shaping a society which chooses to be non-violent, just and free of oppression.”<sup>12</sup>

Many domestic violence advocates, in Utah and other states, argue that the criminalization of domestic violence was important in changing societal views towards violence in relationships. They fear that any “new” ideas or trends, such as the

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<sup>11</sup> A Rosenbaum and R D Maiuro, *Treating Men Who Batter: Theory, Practice and Programs*, Springer, 1989, at 165-195

<sup>12</sup> The National Council of Juvenile and Family Court Judges, “Family Violence Project”, 1994

increasingly popular “restorative justice” movement, will return domestic violence to the private sphere and continued victimization.<sup>13</sup>

So, what is the role of the Murray City Justice Court’s domestic violence component?

Originally, for jurisdictional matters, domestic violence was considered a “home-grown” problem that needs to be addressed by the community’s local court – us. Even though the court has cases of domestic violence where victim and perpetrator do not live in Murray City, domestic violence is not a case where people travel to Murray and get caught beating their partners. Whereas DUI is a “transient” crime, domestic violence is not. But what role does, and should, the court play? What is the intervention programs’ part in the grand scheme? What is the larger role in the overall effort to bring about major and lasting changes in the way society, as a whole, defines healthy intimate relationships?

The Murray City Justice Court is a single jurisdiction court, with jurisdiction limited to the corporate boundaries of Murray City. It is not here to change society – nor will it. The job of the Court is to provide safety for victims. Since the Court cannot change the world, what it can do is to create a ripple effect in its immediate area. At present there are only two other courts in the Salt Lake Valley that handle domestic violence cases. To think that the Murray Court will transform male-female relationships is far beyond its modest scope. The Court has enough work to do to try ending illegal and/or violent behavior within its jurisdiction. The Court also recognizes that a relationship’s unfair power/control balance will be maintained even after the cessation of physical violence and threats. One purpose of the problem-solving court model is to

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<sup>13</sup> Restorative Justice Online, *Applying Restorative Justice to Domestic Violence*, September 2003, 07/29/09

address the *underlying issues* that brought the offender into contact with the justice system rather than the *specific charge*.

The Court asked itself several questions about developing a domestic violence court. The biggest question that was asked was WHY? Just because the court *can* help, *should* it help? Should the court try to solve societal issues embedded in the cases that are filed, or is it the function of the court to simply adjudicate the cases before it? This author refers to the mission statement adopted for the Murray domestic violence court:

“Based on the one family, one judge concept, the Murray City Municipal Justice Domestic Violence Court exists to handle all related cases pertaining to a single family where the underlying issue is domestic violence. The Court seeks to promote justice and protect the rights of all who appear while providing a comprehensive approach to case resolution, increasing offender accountability, ensuring victim safety, integrating the delivery of social services, and eliminating inconsistent and conflicting judicial orders.”

Does taking on a societal problem such as domestic violence fit within the mission statement? If the court takes on problem-solving, will the role promulgated in the mission statement be compromised? Is it confusing for the Court to take this step?

Does the Murray Court mandate all batterers to attend the treatment programs in a forlorn hope to alter attitudes and behaviors? Particularly since most of the other courts sentence defendants to the statutory minimums, this would seem to be a very good question.

Where does the responsibility of a court’s treatment program end and a social movement that is directed at changing all men’s relationship behavior begin?

In determining this, the definition one chooses is important. In deciding if the program works, how does one define “works”? It is the definition that will guide the

perception of the definer as to what is effective. This court's definition of "works" is not the same as the definition applied by the Taylorsville Justice Court or the Salt Lake City Justice Court. Yet, all three courts' domestic violence programs appear to be working to each court's satisfaction. As an example, the domestic violence court system in New York regards itself as "successful." They have determined, though, that success to them is different than what success is to other courts. To many intervention programs, "success" is measured by the number of defendants completing the mandated treatment programs. In New York, the domestic violence courts are not aiming to rehabilitate defendants, but rather, to empower victims to achieve independence. Even the defendant intervention programs are used as a safety valve by monitoring the batterer with a view to enhancing victim safety rather than rehabilitation. Against this background can be seen that the most significant result concerning the courts is the effect upon the victims.

Even though the state of Utah has codified the punishment for violations of state law (see Appendix III), even to the point that the licensing board had determined what a program should consist of, there are only a few domestic violence courts in the State of Utah. It would seem, therefore, that the state has issued only a limited social mandate to alter men's use of violence and threatening behaviors in intimate relationships. There is really no large scale "putsch" by the state of Utah to form or create domestic violence courts to deal with other types of domestic abuse, other than physical, in all jurisdictions.

By separating domestic violence from other criminal case types, the judicial system is drawing attention to the fact that domestic violence is different from other crimes. The differences are significant insofar as the criminal justice system has traditionally focused on addressing crimes between strangers, not persons who may have

a relationship or who may have children in common. However, there can be a great deal of value for victims if the court understands this difference and acts accordingly. In order for a domestic violence court to be effective, support for the victim must be provided, the criminal justice system must make itself accessible, and “domestic violence must be treated as a crime and the abusers as criminals.”<sup>14</sup>

Yet, the court must be firm in its resolve to hold batterers accountable. If the perception of those in the court system is that the court will use counseling as a sop for the offender instead of holding the offender accountable, the community will eventually lose faith in the court’s ability to adequately address domestic violence. If the court’s focus moves away from offender accountability, then the court will not be useful, or it will not be seen as an improved method of dealing with domestic violence. A specialized domestic violence court is characterized by victim services, judicial monitoring, and coordinated community responses.<sup>15</sup> Remember, a domestic violence court exists to handle domestic violence cases differently. If differently means more attention is paid to obstacles to accessing the system, safety and accountability are more likely to be addressed; if differently means more lenient, then it is less likely that the court will be perceived as safe and will actually enforce accountability.

It is very tempting to argue that the domestic violence court is effective because cases are adjudicated, assessments are completed, sentences are meted out, programs are attended, and cases are closed. While these things are obvious, there are a number of questions concerning the effectiveness and the resultant “better outcomes.” But, how

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<sup>14</sup> G L Durham, *The Domestic Violence Dilemma: How Our Ineffective and Varied Responses Reflect Our Conflicted Views of the Problem*, Southern California Law Review 71, 1998, at 657

<sup>15</sup> R Mazur and L Aldrich, *What Makes a Domestic Violence Court Work?*, Judges Journal, American Bar Association 2(42), 2003

does the court measure “better”? Or “works”? Just by default it would appear that recidivism is an excellent measuring rod. Perhaps a measurement would be if the offender successfully completes a batterers’ intervention program. Perhaps if victims feel safe and are able to have more autonomy in their lives it can be said it is “better.” This latter, victim safety, is critically important in assessing the effectiveness of the Court’s intervening. But the fact remains that even after two decades of monitoring and researching court treatment programs for offenders, domestic violence courts still know little about which types of defendants are routinely sentenced to which types of programs and why, or how they are doing in those programs and what, if any, benefit they receive.

The court also looked at various studies and reports about creating a domestic violence court and the reasoning behind operating one. The Court first turned to a 1984 report of the U S Attorney General’s Task Force on Family Violence. The group was to examine the scope of the phenomena of family violence. The final report of the task force included a criminal justice response, a prevention response, an awareness response, and an education-training plan. By identifying domestic violence as a serious *community* issue, one that requires dedicated resources and court personnel, the domestic violence court can send a strong message about the importance of addressing domestic violence effectively and consistently. Most importantly, though, the group stressed the importance of data collection and accurate reporting.

Another important source used by the Court was the Judicial Oversight Demonstration Initiative. This is a study that investigated the “coordinated response on domestic violence vis-à-vis courts and other justice agencies. The primary goals were to

protect victim safety, hold offenders accountable, and reduce repeat offending.”<sup>16</sup>

Basically it is a review of the domestic violence policies and practices since the 1980s.

What piqued the Court’s interest was

“the development and implementation of...court efforts that leveraged the coercive power of the criminal justice system and [the] challenge to judges to play an active and expanded role in enhancing victim safety by providing in-tense probation supervision, mandating batterer intervention programs, and exercising the judge’s power to use graduated sanctions...”<sup>17</sup>

Domestic violence courts are established to provide more efficient and consistent administration of the varied issues that are a product of domestic violence. Since there are several issues, the Court needed to plan out a strategy. This strategy will include:

1. goals must be defined, clearly stated, and realistic;
2. collaboration among all the players;
3. program monitoring and accountability;
4. knowledge of what works for social problems; and
5. resource development.

So what did the Court do to set up the domestic violence court in Murray City?

Obviously with the increasing number of cases and public concern over domestic violence, the traditional judicial response was yielding very unsatisfying results. The battered wife gets a protective order, goes home and is beaten again. The drunk driver gets a slap on the wrist, goes to a bar to celebrate the “beating the system”, and drives home drunk again, unfortunately being given yet another chance to kill someone while driving drunk. Every legal right of the defendant is protected, all procedures are followed,

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<sup>16</sup> A Harrell, L Newmark, C Visher and J Castro, *Final Report on the Evaluation of the Judicial Oversight Demonstration*, Urban Institute, Justice Policy Center, Washington, D C, 2007

<sup>17</sup> USDOJ: Judicial Oversight Demonstration Initiative, [www.ovw.usdoj.gov/jodi.htm](http://www.ovw.usdoj.gov/jodi.htm), 01/05/2006

everyone does their job, yet not a dent is made in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts.

The Court needed to act.

The Court needed a purpose: to help people affected by abuse and the fact that since there is a case before the court, then there is a chance for intervention.

The Court needed a mission statement and goals (see Appendix II).

Domestic violence makes up about 15% of the total misdemeanor caseload for the Murray City Justice Court. While this number is consistent with other courts as described in the literature, it put a burden on the court since there were no procedures other than setting the case to any open calendar. By making the decision to have a day set aside just for domestic violence cases, both for adjudication and compliance reviews, looked to be a workable solution.

Since the court had not separated out domestic violence cases prior to launching its investigation in 2004, the number of cases in the Murray Justice Court cannot be confirmed. The data system did not allow for a differentiation of such cases from other non-DUI misdemeanor cases. Hand checking open case files and warrant case files on the court shelves did show a startling high number. A cursory look through archived cases also showed a high number. In the six months of developing the court it did show approximately 25 cases per month in filings (leading to an approximate case load of around 300).

With a lack of precise information in the Murray Court, the court looked at state totals and Salt Lake City Justice Court totals. This information was from the Utah Domestic Violence Council which supported 22 local coalitions or coordinating councils



on domestic violence, from every county in the state. Prevention and intervention services included 16 shelter programs and 40 domestic violence victim advocate programs and 59 licensed domestic violence treatment providers from across the state.

The 2005 Utah domestic violence report listed an increase over the previous year in reported incidents of domestic violence with injury. The domestic violence crime rate in Salt Lake County (61.09 per 1000) was an estimated 56,400.<sup>18</sup> The City of Murray is in the Salt Lake Valley. Just these numbers indicated a problem that Murray was not addressing in a problem-solving way.

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<sup>18</sup> Utah Governor's Violence Against Women and Families Cabinet Council, Domestic Violence 2005 Report, Commission on Criminal and Juvenile Justice, 2005 at 11

## LITERATURE REVIEW

Beginning in the 1980s, through the 1990s, and into the '00s, there have been reviews of over 35 papers on batterer intervention programs published (i.e., Eisikovitz and Edleson 1989; Tolman and Bennett 1990; Gondolf 1991; Rosenfeld 1992; Saunders 1996; Davis and Taylor 1999), and a number of books (i.e., Rosenbaum and O'Leary 1986; Saunders and Azar 1989; Tolman and Edleson 1995; Crowell and Burgess 1996). The findings in these studies have ranged from positive to sort of positive to negative to sort of negative to inconclusive. A newer study from 2005 (Feder and Wilson) added nothing new nor detracted anything old. The studies used a variety of scientific methods but still found nothing to quantify the efficacy of any one type of program.

In reviewing the early research, it appears that courts tried to develop programs based on an errant premise to begin with – addressing the anger of the perpetrator. It was not until the power-and-control wheel from the Duluth Experiment<sup>19</sup> was developed that anger was finally discredited from domestic violence considerations. This is not to say that anger is not present in domestic violence situations, just that anger is not a cause of the violence and has little to do with the dynamics of domestic violence. Research by Dutton suggested there are two types of violent men.<sup>20</sup> One group, identified as Type I, consisted of men who demonstrated suppressed physiological responding during conflicts with their wives, but tended to use violence in non-intimate/non-domestic relationships. The second group, Type II, tended to manifest violence in the domestic relationship only.

Considering the number of domestic violence arrests, and that batterer treatment programs have been in place for over 20 years, there is still relatively little research into

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<sup>19</sup> [www.domesticviolence.org/violence-wheel/](http://www.domesticviolence.org/violence-wheel/) 6/24/09

<sup>20</sup> D G Dutton, *My Back Pages: Reflections on Thirty Years of Domestic Violence Research*, *Trauma, Violence & Abuse* 9(3), July 2008, at 131

their efficacy. It is simply not known how well these programs work. However, the research studies do tell us, though, that longer treatment programs are more effective.<sup>21</sup>

### **Duluth Model**

The basis of the Duluth curriculum is cognitive-behavioral, with coordinated community response being a core element. Another core element is swift, consistent consequences for non-compliance with conditions of probation, civil court orders, or program violations (i.e., missing group sessions or further acts of violence.)<sup>22</sup>

In the truest sense of the word, the Duluth Model is not a treatment program (though it is referred to as one for simplicity's sake), but rather “a coordinated response by community institutions that holds the offenders accountable for their behavior while ensuring that victims are protected from ongoing violence.”<sup>23</sup>

There is a psychological theory and criminal justice research that supports the Duluth Model and its utility. The Duluth Model established some fundamentals for batterer intervention that have research as well as practice support. For one, the assumption of gender-based violence as a primary concern of intervention (i.e., men's violence against women) is *not* merely an ideological exaggeration; it is supported by government victimization research along with criticism of gender-neutral surveys. Two, there is criminological research to support the cognitive-behavioral approach underlying Duluth-type counseling, as well as so-called “accountability” from the criminal justice system. Three, the research being done on a variety of enhancements to batterer

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<sup>21</sup> Family Counseling Service, *Does Domestic Violence Treatment Work?* September 2009, [www.aurorafcs.org](http://www.aurorafcs.org)

<sup>22</sup> M Paymer and G Barnes, *Countering Confusion about the Duluth Model*, Battered Women's Justice Project, 2007 at 3-4

<sup>23</sup> See Note 22 *supra* at 14

intervention and the variation in batterer programming counter the supposed differences in ideology in treatment programs.<sup>24</sup>

The curriculum uses an educational approach with the philosophical core being the belief that men who batter use physical and sexual violence, and other abusive tactics, to control their partners.<sup>25</sup>

In a 2002 study by Babcock, researchers determined that cognitive-behavioral therapy yielded mixed results and therefore the criminal justice system should consider alternative treatments. But it was also reported that traditional treatment programs should just not be abandoned if there is a strong coordinated community response present. Coordinated community response is the centerpiece of the Duluth Model. In fact, it was shown that programs using the Duluth curriculum performed slightly better than the alternatives studied in the research.

“Based on partner reports, treated batterers have a 40% chance of being successfully nonviolent, and without treatment, men have a 35% chance of maintaining non-violence. Thus, the five percent increase in success rate is attributable to treatment. A five percent decrease in violence may appear insignificant: however, batterer treatment in all reported cases of domestic violence in the U.S. would equate to approximately 42,000 women per year no longer being battered.”<sup>26</sup>

Paymer, a Duluth Model proponent, maintains that there is a reason for it being the most widely used batterer intervention program in this country – it does what the courts want.

The success of the program relies on the effective advocacy for victims, the cohesiveness

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<sup>24</sup> E W Gondolf, *Theoretical and Research Support for the Duluth Model*, Aggression and Violent Behavior 12, 2007, at 644-657

<sup>25</sup> M Paymer and G Barnes, *Countering Confusion about the Duluth Model*, Battered Women’s Justice Project, 2007, at 15

<sup>26</sup> J Babcock, C Green and C Robie, *Does Batterer Treatment Work? A Meta-Analytical Review of Domestic Violence*, Clinical Psychological Review, 2002

of criminal justice agencies in monitoring the batterers' progress in court and in the treatment groups, and swift consequences for violating court orders or failing to comply with program rules. He also postulates that success is due to the model's clear path for batterers to change if they decide that they want to change.<sup>27</sup> Through the curriculum, batterers are immersed in critical thinking and self-reflection, hopefully understanding the impact that their violence has on their partners, their children, and themselves.<sup>28</sup> The curriculum is based on the theory that violence is used to control people's behavior. Male batterers operate from a position of socially sanctioned power, and that such battering is only preventable when men learn to participate in egalitarian relationships with their female partners.<sup>29</sup> "If a batterer does not have a personal commitment to give up his position of power, he will eventually return to the use of threats or violence to gain control."<sup>30</sup>

### **Anger and Domestic Violence**

In the literature, the term "anger control" is not favored because it implies that men who are already controlling (i.e., their partner), need to learn to be more controlling. However, the term also implies that anger is negative and should be stopped. It is true that anger is an emotion that often precedes violence causing some men who batter to have elevated levels of both anger and hostility. But it is also true that teaching a batterer

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<sup>27</sup> M Paymer and E Pence, *Creating a process of change for men who batter*, Minnesota Program Development, 2003

<sup>28</sup> M Paymer and G Barnes, *Countering Confusion about the Duluth Model*, Battered Women's Justice Project, 2007, at 15

<sup>29</sup> E Pence and M Paymer, *Education Groups for Men Who Batter: The Duluth Model*, Springer, 1993, at 2

<sup>30</sup> See Note 29 supra, at 7

to control his anger will not stop the violence if the intent of the batterer is to control or dominate a partner.<sup>31</sup>

The Duluth Model can be characterized as a gender-based cognitive-behavioral approach to counseling and/or educating men arrested for domestic violence and subsequently mandated by the courts to attend domestic violence programs. The curriculum first helps expose the behaviors associated with the scope of abuse and violence in what is referred to as the “Power and Control Wheel” (below). It challenges men’s denial and minimization of the violence against women. It teaches alternative skills to avoid abuse by promoting “cognitive restructuring” of the batterers’ attitudes and beliefs that reinforce the violent behavior.<sup>32</sup>

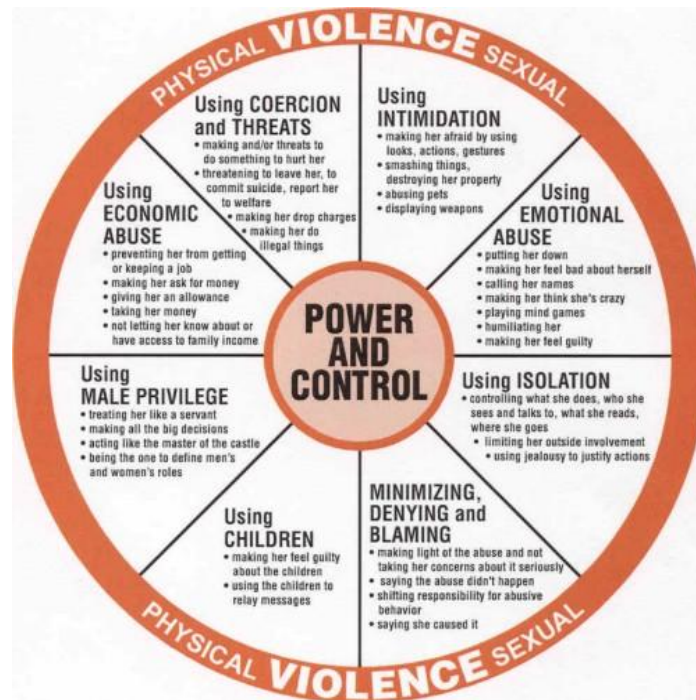


Figure 1. Power & Control Wheel

<sup>31</sup> R D Maiuro, T S Cahn, P Vitaliano, B C Wagner and J B Zegree, *Anger, hostility, and depression in domestically violent versus generally assaultive men and nonviolent control subjects*, Journal of Consulting and Clinical Psychology, 1988

<sup>32</sup> E W Gondolf, *Theoretical and Research Support for the Duluth Model*, Aggression and Violent Behavior 12, 2007, at 645

Anger would assume that the victim did something to provoke anger in the batterer. As research shows, many people assume that the wife must be an accomplice in the violence and if she would just do things differently [correctly] then the batterer would have no reason to resort to beatings.<sup>33</sup>

Domestic violence is a premeditated behavior which anger cannot account for. By pointing to anger, the batterer is able to defuse responsibility and prolong denial. Just as batterers will use alcoholism, stress, and drug abuse as an excuse, they will also use anger as an excuse. And like recovering alcoholics, they need long-term re-education and monitoring. That is, “getting better” for the batterer means a lifelong commitment to abstinence from abuse but still needing external supports. Program, community, and societal efforts to curb problems like alcohol abuse appear to have some positive effect, for example, as in Drug Courts. This same sort of idea needs to occur against wife abuse. Anger control can only divert us from such an undertaking.<sup>34</sup>

The use of anger control or anger management is, at best, problematic, being that anger management skills have only limited utility. When battering is framed as an anger problem then the issues of dominance and control over women by men are ignored, and the societal reinforcements for against battering are not addressed. This approach in treatment is weakest when the treators fail to integrate a political understanding of battering that identifies and confronts existing underpinnings.<sup>35</sup>

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<sup>33</sup> S Schechter, *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement*, South End Press, 1982

<sup>34</sup> A Rosenbaum and R D Maiuro, *Treating Men Who Batter: Theory, Practice and Programs*, Springer, 1989, at 165-195

<sup>35</sup> D Adams, *Counseling Men Who Batter: A pro-feminist analysis of five treatment models*, Feminist Perspectives on Wife Abuse, Sage, 1988, at 17

*The Guardian* reports the British Home Office is sending instructions to probation services that anger management courses are counterproductive and actually help violent offenders (including wife beaters and stalkers) who make premeditated attacks to manipulate the situation to their advantage. The courses for violent offenders who commit their crimes purposefully rather than impulsively are now “considered wholly inappropriate.” They now think the courses “have the potential to equip the offender with additional control mechanisms and increase his/her capacity to manipulate to their advantage and power.” The courses will be banned for those who get involved in “instrumental violence,” meaning those acts that are premeditated with potential victims earmarked before the attack is launched. The Home Office acknowledges that some offenders did not engage in violent behavior because of anger. “They use violence as a means to achieve a specific goal, for example to intimidate a victim during the course of a robbery, or the imposition of will on a partner in...domestic violence.”<sup>36</sup>

Often, domestic violence only comes to the attention of others outside the home is when the legal system gets involved. In fact, in Utah, domestic violence is often referred to as “the family secret,” which may be more of a cultural issue than a societal issue. The individuals who have come to the attention of the legal system and end up in treatment are those that looked to violence as the way to solve their problem. This is an easily identified population for intervention services.

The definition of recidivism varies widely across the research studies. Most studies rely on the legal definition (reassault), not to include non-physical abuse. Some researchers tend to consider only further domestic violence incidents omitting violations of protective orders that do not include physical violence. Recidivism rates across

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<sup>36</sup> [www.guardian.co.uk/uk/2006/apr/24/ukcrime.prisonandprobation1](http://www.guardian.co.uk/uk/2006/apr/24/ukcrime.prisonandprobation1)



treatment studies are markedly different dependent on this methodological collection (36% based on partner reporting and 7% based on criminal records).<sup>37</sup> For every post-treatment arrest of a perpetrator, there were 35 actual assaults based on partner reporting. Given the large disparity in rates of recidivism based upon the manner in which it is assessed, it is often difficult to compare results across studies.<sup>38</sup>

Given that the research suggests the indirect consequences of domestic violence can be more powerful than the direct legal consequences, the legal system needs to be creative in its means of deterring future violence, i.e., perhaps by releasing booking photos to the press. The literature has shown that many offenders recidivate, and even batterers who do not physically assault their partner again tend to continue to abuse psychologically, for domestic violence is not just physical violence. It “is not merely a series of impulsive, angry incidents, but often a premeditated system of debilitating control.”<sup>39</sup> A widely shared clinical observation is that men who physically abuse their partners also engage in a broad range of other abusive behaviors, including emotional abuse, psychological abuse, and sexual abuse. Men who batter will vary in their controlling behaviors as recent clinical observations and studies on batterer typologies have demonstrated – premeditated abuse is only one type.<sup>40</sup> These sub-behaviors may be blatant forms of premeditated abuse, all directed to create an imbalance of power in the man’s move to dominate his partner. Men who batter use violence to stop arguments, to

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<sup>37</sup> B D Rosenfeld, *Court-ordered Treatment of Spouse Abuse*, *Clinical Psychology Review* 12, 1992, at 205-226

<sup>38</sup> D G Dutton, M Bodnarchuk, R Kropp, S D Hart and J P Ogloff, *Wife Assault Treatment and Criminal Recidivism: An 11-year Follow-up*, *International Journal of Offender Therapy and Comparative Criminology* 41, 1997, at 9-23

<sup>39</sup> E W Gondolf and D Russell, *The Case Against Anger Control Treatment for Batterers*, *Response* 9(3), 1986, at 3

<sup>40</sup> D G Saunders, *Are There Different Types of Men Who Batter?*, Third National Family Violence Research Conference, New Hampshire, 1987

stop their partners from doing something, and to punish them for non-compliance. To avoid punishment, the partner concedes.<sup>41</sup>

### Addictions

Another boogeyman used by batterers to explain their inappropriate actions are alcohol abuse and/or drug use. Most people know that drug abuse is bad and the court thinks everyone should get treatment so they can live a healthy, productive life. But people with drug and alcohol addictions cause problems in many other people's lives as well as their own. Many domestic-related crimes have been committed while one or both parties were under the influence, but not committed due to the drugs or the alcohol.<sup>42</sup> Substance abuse and domestic abuse are closely associated in the public's mind, so much so that many people believe their use is a direct cause of domestic violence. Others view it as just a risk factor that, while not a direct cause, certainly increases the frequency and severity of the violence. Still others believe it to be just an easy answer and an easy out.<sup>43</sup> While not all drug addicts and alcoholics are violent towards their partners or kids, almost 80% of domestic violence crimes have a connection to drugs or alcohol. Therefore, a big part of the solution to domestic violence is the need to address the substance/alcohol abuse. Incorporating alcohol and/or drug treatment as a standard component of batterer intervention programs adds to the likelihood of reductions in reabuse among batterers, many of whom abuse alcohol and drugs. Effective treatment should include abstinence testing to ensure sobriety and no drug use. Extensive research in both clinical and court settings confirms the correlation between substance abuse and

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<sup>41</sup> R M Tolman, *The Initial Development and Validation of a Scale of Non-Physical Abuse*, Third National Family Violence Research Conference, New Hampshire, 1987

<sup>42</sup> [www.treatmentsolutionsnetwork.com/index.php/2009/11/20/d-v-subabuse](http://www.treatmentsolutionsnetwork.com/index.php/2009/11/20/d-v-subabuse), 12/02/09

<sup>43</sup> L W Bennett, *Substance Abuse and Woman Abuse by Male Partners*, Center on Violence Against Women National Resource Center on Domestic Violence, 1997, at 1

the increased likelihood of reabuse as well as the reduction in reabuse among offenders successfully treated for drug abuse.<sup>44</sup> A person who abuses drugs or alcohol loses control of their life causing cloudy judgment where rational thinking goes out the window, and what they know is wrong when they are sober does not seem so bad when they are high or drunk.<sup>45</sup>

Prior studies have consistently indicated that a significant number of domestic violence cases involve illegal drug use. Studies of batterers in jail indicate that 34% reported using drugs and/or alcohol at the time of the offense.<sup>46</sup>

Growing up as an observer of violence in the home increases the risk of substance abuse when a child becomes an adult. Compared to women who do not abuse substances, women who themselves abuse their partners or their children, have experienced a higher rate of violence as children and continue to experience significantly more verbal and physical abuse as adults. Women who abuse substances are more likely to live with substance abusing men and are more likely to use physical violence to retaliate for being battered, which in turn increases their risk of more serious injury.<sup>47</sup>

Simply put the chemical properties of a substance act on an element in the brain responsible for inhibiting violence. Since no such inhibition center has ever been located in the brain, the disinhibition model has been challenged by many experts. If disinhibition explained the relationship between substance abuse and domestic violence, we would expect batterers who were substance abusers to be non-violent when their drug of choice

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<sup>44</sup> National Institute of Justice, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, U S Department of Justice, 2009

<sup>45</sup> R C Davis, B G Taylor and C D Maxwell, *Preventing Repeat Incidents of Family Violence: Analysis of Data from Three Field Experiments*, Journal of Experimental Criminology 2(2), 2006, 183-210

<sup>46</sup> L Greenfield, *Violence By Intimates*, Bureau of Justice Statistics, Washington, D C, 1998

<sup>47</sup> B A Miller and WR Downs, *The Impact of Family Violence on the Use of Alcohol by Women*, Alcohol Health and Research World 17, 1993, at 137-143

was terminated. This, however, is not the case; abstinent and recovering substance abusers are well-represented in domestic violence courts.<sup>48</sup>

A study conducted by Kantor and Straus determined that three out of four battering episodes did not involve alcohol or intoxication. The study measured only whether the batterer or victim had been drinking at the time of the battering, not their drinking pattern or the cumulative effects of alcohol abuse.<sup>49</sup> The “drunken bum” perspective of a wife batterer is, therefore, erroneous.

The relationship between substance abuse and domestic violence is strongest for those men who already think wife abuse is appropriate in certain situations. Even though the *per capita* rate of wife abuse is higher in lower socioeconomic sectors of the community, it plagues all social sectors.<sup>50</sup> In fact, a Canadian study on alcohol-related violence found, the average amount of alcohol consumed prior to the violent incident was only “a few drinks.” This suggests that drinking may be more related to woman abuse than the effect of the alcohol. Also, drug use other than alcohol is more strongly correlated to woman abuse than is alcohol, and drug use other than alcohol is more strongly correlated to woman abuse than is alcohol alone.<sup>51</sup> The male partner’s illicit drug use was a better predictor of woman abuse than was using alcohol.<sup>52</sup> Drug use may also alter the nature and severity of the violence because the user may inflict more harm than batterers who use just alcohol, and that physical abuse was significantly higher for drug use than alcohol use.

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<sup>48</sup> D G Dutton, *My Back Pages: Reflections on Thirty Years of Domestic Violence Research*, Trauma, Violence & Abuse 9(3), July 2008

<sup>49</sup> G K Kantor and M A Straus, *The Drunken Bum Theory of Wife Beating*, Social Problems 34, at 213-230

<sup>50</sup> R J Gelles, *Through the Sociological Lens: Social Structure and Family Violence*, Current Controversies On Family Violence, Sage, 1993, at 31-46

<sup>51</sup> K Pernanen, *Alcohol In Human Violence*, Guilford, 1991

<sup>52</sup> G K Kantor and M A Straus, *Substance Abuse as a Precipitant of Wife Abuse Victimization*, The American Journal of Drug and Alcohol Abuse 15(2), 1989, at 173-189

Studies have established a link between substance abuse and domestic violence, but not a direct link. Substance abuse increases the risk that men will batter, although use or abuse is not a key factor. Studies suggest that other factors link substance abuse to violence such as growing up in a violent and substance abusing home, believing that violence against women is acceptable, and a belief that it is the drugs or alcohol that makes a person violent.<sup>53</sup> In fact:

“Research has confirmed that, in general, alcohol and substance abuse are correlated with domestic violence ...But it is important to note that researchers have not concluded that alcohol use *causes* men to be violent toward partners, and substance abuse is *not* generally seen as a mitigating factor in criminal cases.”<sup>54</sup>

When either substance abuse or domestic violence are encountered, the chance of encountering the other is substantial. This suggests that assessment for both problems is indicated if either problem is detected, regardless of the setting. Since substance abuse and domestic violence have important, yet indirect relationships, viewing one as symptomatic of the other is not useful and both should be regarded as primary problems.

### **Interventions**

Despite disagreement over the effectiveness which domestic violence treatment may or may not do, there is grudging acknowledgement that there are some positive changes in batterers who complete the treatment programs. Mainly, batterers who complete the treatment program are less likely to recidivate. However, given the lack of true control groups, it is difficult to determine if it is the program that is the cause of the lower recidivism or other factors. Gondolf concluded in a 2002 report, that “well-

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<sup>53</sup> A R Roberts, *Substance Abuse Among Men Who Batter Their Mates*, Journal of Substance Abuse Treatment 5, 1988, at 83-87

<sup>54</sup> A P Wordon, *Violence Against Women: Synthesis of Research for Judges*, U S Department of Justice, Document 199911, 2003, at 7

established batterer intervention programs, with sufficient reinforcement from the courts do contribute to a substantial decline in reassault.”<sup>55</sup>

The studies were unable to differentiate between batterers who received intervention and those who did not participate in an intervention program. A 2005 study by the Center for Court Innovation<sup>56</sup> stated that:

“while it may be useful to know that program completers have better outcomes than non-completers or than a comparison group, since courts are initially targeting *all* of the offenders they mandate for an intervention, the more relevant policy question is whether or not mandating all of those offenders in the first place worked on an average. Furthermore, program completers may be inherently more prone to compliance and hence less likely to reoffend than non-completers with or without having been ordered to a batterer program, so the isolation of results for completers is simply not a credible test of an intervention.”

The studies report mixed results on the effectiveness of treatment programs. In some cases, treatment appears to reduce the physical violence of some men. However, this could be due to the interaction with the court system.<sup>57</sup> It could have been the threat of divorce or other familial action, or even a simple justice system sanction that influenced batterer behaviors just as much as the treatment.<sup>58</sup>

Some studies (Harrell 1991, 1998) looked at how a batterer was assigned to an intervention program. Some courts mandated convicted batterers to a program while others did not. The researchers found that since assignment to a program was dependent

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<sup>55</sup> E W Gondolf, *Batterer Intervention Systems: Issues, Outcomes, and Recommendations*, Sage Publications, 2002, at 68

<sup>56</sup> M Labriola, M Rempel and R C Davis, *Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a Randomized Trial at the Bronx Misdemeanor Domestic Violence Court*, Center for Court Innovation, National Institute of Justice, Washington, D C, 2005, at 7

<sup>57</sup> A Harrell, *Evaluation of Court-Ordered Treatment for Domestic Violence Offenders*, Urban Institute, Washington, D C, 1991

<sup>58</sup> D C Carmody and K R Williams, *Wife Assault and Perceptions of Sanctions*, *Violence and Victims* 2, 1987, at 25-39

upon which judge did the sentencing (essentially a random event), it was unlikely that there would be systematic pre-treatment differences between the men mandated to a program and those who received other sentences.<sup>59</sup>

A 1999 study by Davis<sup>60</sup> suggested that batterers' programs were effective, but this was determined to be a premature analysis since the results came from randomized tests. However, randomized tests are what a researcher should strive for due to the characteristics of those in the test groups. Let's say that the characteristics are a constant to everyone in either group. And let's say that every person, no matter the group, is randomly assigned to a program. Then it can be postulated that if the test group is receiving a benefit from the intervention that the control group is not receiving, then it is the intervention itself that is bringing about the benefit.

Another group of studies (Palmer et al 1992; Dunford 2000; Davis et al 2000; Feder and Dugan 2002) tested if randomly assigning or not-assigning all batterers to intervention programs are thought to be effective. The recidivism noted in the Palmer study<sup>61</sup> seem to indicate that intervention programs are effective (at least the one used in the study), even if the methodology of the study is not acceptable.

The Dunford study<sup>62</sup> consisted of four different groups in treatment programs over varying periods of time. Dunford found no significant differences in recidivism rates across the four groups. A major problem with this study, though, is that the subjects we

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<sup>59</sup> A Harrell, *Evaluation of Court-Ordered Treatment for Domestic Violence Offenders*, Urban Institute, Washington, D C, 1991

<sup>60</sup> R C Davis and B G Taylor, *Does Batterer Treatment Reduce Violence: A Review of the Literature*, *Women and Criminal Justice* 10, 1999, at 69-93

<sup>61</sup> S Palmer, R Brown and M Barerra, *Group Treatment Program for Abusive Husbands*, *American Journal of Orthopsychiatry* 62(2), 1992, at 167

<sup>62</sup> F W Dunford, *The San Diego Navy Experiment: An Assessment of Interventions for Men Who Assault Their Wives*, *Journal of Consulting and Clinical Psychology* 68, 2000, at 468

relatively low-risk (being armed forces personnel and the accompanying regimentation) instead of the high-risk subjects found in civilian courts.

The Davis study<sup>63</sup> looked at batterers randomly assigned to either an intervention program (of two varying duration periods) or community service. Ultimately this study showed that if the participants attended the program (not dropping out), then some change was noted especially a slighter change in the longer (26-week) group. However, this experiment found no evidence of a cognitive change in the program assigned groups. This was baffling. Even though there are several different types of programs, “all [programs] assume that they produce cognitive or attitudinal changes that precede a reduction in the frequency of violent acts.”<sup>64</sup>

The Feder study<sup>65</sup> was of offenders randomly assigned to either a 26-week program or probation only. Both groups were intensely monitored by the court yet there were no differences found between the probationers and the program attendees in regards to woman-attitudes or even if they thought domestic violence should be considered a crime.

There is no universally accepted definition of what a domestic violence court is, what it does, or even what is to be expected of it. Domestic violence courts have no agreed upon set of principles or philosophy. There are proposed “best practices” proffered, but as yet, there are no nationwide provisions.<sup>66</sup>

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<sup>63</sup> R C Davis, B G Taylor and C M Maxwell, *Does Batterer Treatment Reduce Violence: A Randomized Experiment in Brooklyn*, Final Report to the National Institute of Justice by Victim Services, New York, 2000

<sup>64</sup> A Harrell, L Newmark, C Visher and J Castro, *Final Report on the Evaluation of the Judicial Oversight Demonstration*, Urban Institute, Justice Policy Center Washington, D C, 2007

<sup>65</sup> L R Feder and L Dugan, *A Test of the Efficacy of Court-Mandated Counseling for Domestic Violence Offenders: The Broward County Experiment*, Justice Quarterly, 1992, at 343

<sup>66</sup> S Moore, *Two Decades of Domestic Violence Courts: A Review of the Literature*, Center for Court Innovation, 2009



The National Center for State Courts\* published a study in 1999 on courts that had implemented some type of domestic violence problem-solving court. Of the 105 courts responding to the survey, more than half reported employing the following as part of their intervention program:

1. Domestic violence intake units
2. Case screening to coordinate case processing
3. Automated case tracking
4. Automated systems for related cases
5. Specialized calendars
6. Court-ordered batterer treatment

However, only one-quarter of the courts combined intake, screening, calendaring and judicial review, not in any coordinated way.

In a report published in 2009, the Center for Court Innovation listed some common goals shared by domestic violence courts:<sup>67</sup>

- Efficient case processing – timely, effective management of a domestic violence caseload, including quick review and screening, and the expeditious calendaring of cases.
- Coordinated response – the establishment of a network of courts, criminal justice agencies, local victim service organizations, and social service programs to create policies and procedures to increase safety of victims.

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\* National Center For State Courts/Institute for Court Management, Williamsburg, VA

<sup>67</sup> M Labriola, S Bradley, C S O’Sullivan, M Rempel and S Moore, *A National Portrait of Domestic Violence Courts*, Center for Court Innovation, 2009

- Informed decision making – a judiciary knowledgeable in the dynamics of domestic violence, with access to accurate and immediate case information.
- Offender accountability – policies that hold domestic violence perpetrators responsible for their actions through swift responses to non-compliance with court orders.
- Reduced recidivism – decrease in the amount of future domestic violence incidents and arrests among those processed through the court.

The precise incidence of domestic violence is difficult to determine for several reasons. First, it often goes unreported, even in crime surveys such as the National Victims of Crime Survey (NVCS). Secondly, there is no nationwide organization that gathers domestic misdemeanor information from local police for reporting in the Uniform Crime Report (UCR). And third, there is disagreement among the states and jurisdictions about what should be included in the definition of domestic violence. In checking various states' domestic violence laws, it is evident that there is no single best definition of "domestic violence."

Domestic violence is a difficult issue for victims because leaving an abusive relationship, which can mean leaving their home, friends, church, personal possessions, and sometimes even children, is mentally and emotionally challenging for victims at best and terrifying at worst. In some cases it can even be deadly.<sup>68</sup>

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<sup>68</sup> H Roberson, *UDVC – Not Just Another Abbreviation*, Utah Bar Journal 22(6), 2009, at 30

To understand domestic violence society must first understand that it is, indeed, *violence*. All forms of violence are connected. To develop any kind of a policy, or practice, or even a domestic violence court, requires that the court looks at how society sees violence.

Domestic violence is:<sup>69</sup>

- ✓ An individual, family, neighborhood, community, country, world, societal, cultural, and spiritual issue;
- ✓ A learned behavior with rewards and consequences, but which can be unlearned as the offenders learn to make nonviolent choices;
- ✓ Reinforced by many parts of society;
- ✓ Intergenerational;
- ✓ The harmful misuse of power and desire or choice to control a spouse, partner, child, or situation;
- ✓ Cannot be justified on the basis of provocation;
- ✓ A type of oppression; and
- ✓ A choice for which the perpetrator must be held accountable.

It is a multi-cultural, multi-political, multi-ethnic phenomenon. It is this myriad of differences that must be addressed when adjudicating domestic violence cases, when sentencing the perpetrator, and then when holding him accountable. As such, it is a given that methods dealing with domestic violence will necessarily be diverse. The courts must draw on a pragmatism that will focus on the immediate and urgent needs of the battered

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<sup>69</sup> <http://www.minicava.umn.edu/documents/pwwmwb2/pwwmwb2.html>, 10/28/2009

victims yet, without ignoring the need for batterer-intervention and education – long-term, deep-rooted structural and cultural changes in gender issues and relations.<sup>70</sup>

The notion that battered women must share the responsibility for the violence they become targets of due to their provocative actions or words is a dangerous form of collusion with men who are batterers. Yes, women do perpetrate domestic violence on their male partner, but the fact is the vast majority of women arrested for domestic violence are being battered by the person they assault. It would appear, though, that they may be retaliating against an abusive spouse or are using violence as self-defence. Most women after they are arrested are able to document to the court a history of abuse against them by the person they have assaulted (past 911 calls, protection orders, previous assaults, etc.). There is no doubt that there are a small number of women who use violence resulting in police action against their partners without themselves being abused. This is not a social problem requiring institutional organizing in the way men's violence against women is. Those women who use violence against their partners with no history of the partner abusing them should face the same consequences as male offenders but in a separate court-deferral program.<sup>71</sup> Women batterers should be assigned to an entirely different curriculum than men batterers.

The existing literature seems to indicate that domestic violence perpetrators are not a group you can easily identify or profile. Not everyone comes to violence in the same way. Each batterer has taken his own separate path to this type of violence. Some may have followed a generational path, having witnessed or experienced abuse as a

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<sup>70</sup> Z C Eisikovitz, G Enosh and J L Edleson, *Future Interventions with Battered Women and Their Families*, Sage Publications, 1996, at 216-220

<sup>71</sup> L Mills, *Insult to Injury: Rethinking our responses to intimate abuse*, Princeton University Press, 2003

child;<sup>72</sup> others may have taken the path to substance abuse and/or alcohol abuse;<sup>73</sup> and some may have traveled in the violent confines of their home launching violence against their loved ones, or perhaps in the violence found outside the home as well.<sup>74</sup> There is no domestic violence “type” person.

A good deal of the research literature attributes the problem of abuse in families to different power relations between family members. The extent to which this power is exercised to maintain control or to punish others suggests that challenges to authority, real or perceived, lead to incidents of abuse.

The five-year Judicial Oversight Demonstration Initiative, started in 1999, basically placed the court at the center of any coordinated system response plan. Based on the premise that judicial monitoring is one leg of a triad (specialized prosecution and community response comprising the other two), which can reduce recidivism, the Demonstration recognized that while there are a number of experts there are very few expert programs. They wanted to identify the most effective programs for holding batterers accountable while increasing victim safety.<sup>75</sup>

Based on recommendations from the 1984 U S Attorney General’s Task Force, the Demonstration listed five main ideas:

1. family violence should be recognized and responded to as a crime;
2. courts should develop a coordinated response to family violence;
3. courts should consider disposition alternatives in these type cases;

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<sup>72</sup> M A Straus, *Do Arrests and Restraining Orders Work?* Sage Publications, 1996, at 14-29

<sup>73</sup> K G Kaufman, *Alcohol and Interpersonal Violence: Fostering Multidisciplinary Perspectives*, National Institute of Health Research Monograph No. 24, 1993, at 291

<sup>74</sup> A Holtzworth-Munroe and G L Stuart, *Typologies of Male Batterers: Three Subtypes and the Differences Among Them*, *Psychological Bulletin* 116, 1994, at 479-481

<sup>75</sup> A Harrell, L Newmark, C Visser and J Castro, *Final Report on the Evaluation of the Judicial Oversight Demonstration*, Urban Institute, Justice Policy Center, Washington, D C, 2007

4. consider the consequences facing the victim before sentencing the offender;
5. limit any access to the victim by the batterer by court order.

The Demonstration aimed for two evaluation objectives:

1. to the impact of the recommendations on victim safety, offender accountability, and recidivism;
2. learn from the experiences of the test courts in their responses in developing a domestic violence-type court.

Ultimately, the Demonstration test-sites were to be guided by the following:<sup>76</sup>

1. uniform responses to domestic violence, to include:
  - a) pro-arrest policies;
  - b) arrest of the primary aggressor; and
  - c) coordinated response by law enforcement and advocates.
2. coordinated victim advocacy and services, to include:
  - a) immediate contact by victim advocates;
  - b) a safety plan for the victim; and
  - c) access to needed services, such as shelter.
3. strong offender accountability, to include:
  - a) intensive court-based supervision;
  - b) referral to a batterers' intervention program; and
  - c) sanctions for offender non-compliance.

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<sup>76</sup> A Harrell, L Newmark, C Visher and J Castro, *Final Report on the Evaluation of the Judicial Oversight Demonstration*, Urban Institute, Justice Policy Center, Washington, D C, 2007

The Task Force identified several important aspects in implementing a domestic violence court, such as:<sup>77</sup>

1. designated court personnel;
2. clear definition of responsibilities and roles;
3. strong judicial leadership;
4. cross-training of personnel;
5. vigorous prosecution; and
6. monitoring of personnel performances.

The collaboration aimed for in the Demonstration did show limited benefits such as increased reporting of violence by victims, more frequent arrests [of recidivists], more convictions, and the courts' mandating intervention programs for convicted batterers.<sup>78</sup> Other identified benefits include reduced recidivism rates and an overall reduction in violent events.<sup>79</sup> This suggests that batterers are less likely to recidivate if they experience the whole criminal justice system from arrest to prosecution to conviction to treatment.

The bottom-line though, is recognizing that a problem-solving court differs from a traditional court in its attempt to get at the root of the individuals' and society's problems that are motivating this criminal behavior. Devoted to particular crimes, such as domestic violence,, the court uses its judicial authority and increased collaboration with social service professionals and the community to seek practical outcomes: reduced recidivism, increased sobriety (DUI court), and a healthier community. A problem-solving court uses

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<sup>77</sup> A Harrell, L Newmark, C Visher and J Castro, *Final Report on the Evaluation of the Judicial Oversight Demonstration*, Urban Institute, Justice Policy Center, Washington, D C, 2007

<sup>78</sup> R C Davis, B G Taylor and C D Maxwell, *Preventing Repeat Incidents of Family Violence: Analysis of Data from Three Field Experiments*, *Journal of Experimental Criminology* 2(2), 2006, at 183-210

<sup>79</sup> M Shepard, D Falk and B A Elliott, *Enhancing Coordinated Community Responses to Reduce Recidivism in Cases of Domestic Violence*, *Journal of Interpersonal Violence* 17, 2005, at 551-569

therapeutic techniques to widen and intensify court control. In fact, domestic violence courts show an orientation not just too individual change, but also to social change and cultural transformation.<sup>80</sup>

This process of combining a therapeutic model with traditional jurisprudence is when the court chooses to use an intervention, such as treatment, to focus on the chronic behaviors of criminal offenders with the intention of addressing the underlying cause of the chronic and illegal behavior in an attempt to reduce recidivism. Acting in non-traditional ways, the focus is placed on the offender and by addressing the underlying issues that brought him into contact with the justice system rather than on the specific charge.<sup>81</sup>

Holding abusers accountable is an important part of any program. However, a man who holds himself accountable for the violence is not the same as an “accountable man.” Are accountable men to spread throughout the region to make society a better place? Should they be expected to? Should they not be accountable just to themselves and their significant other? Does anyone really think that ending the violence, the most outward indication of domestic abuse will have an effect on the abuser’s use of manipulation, or other non-violent behaviors, to control their partner? “Psychological mistreatment includes the category of using ‘male privilege’ in which a man excludes his partner from major family decisions and expects her to fill the traditional female/wife roles to support him.”<sup>82</sup> Should we expect male batterers to become partners in a truly

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<sup>80</sup> R Mircandani, *Beyond Therapy: Problem-Solving Courts and the Deliberative Democratic State*, Report to the American Sociological Association, New York, 2007

<sup>81</sup> Bureau of Justice Assistance, *Challenges and Solutions to Implementing Problem Solving Courts from the Traditional Court Management Perspective*, American University, Washington, D C, 2008

<sup>82</sup> [www.psychoabuse.info/Psychological\\_Abuse\\_FAQ.htm](http://www.psychoabuse.info/Psychological_Abuse_FAQ.htm), 6.29.2009



egalitarian way? If so, does this indicate a change in behavior of a single person from a program or a wish to fulfill a vision of broad social change?<sup>83</sup>

The Demonstration listed its recommendations on victim treatment and needs. Victims want the court to consider their individual needs in setting a no-contact order, its duration and its conditions. Victims have a need for emotional support during the processing of the case and want greater court security as the case winds its way the process. Victims support evidence-based prosecution so it is they who make the decision about testifying or not testifying. And the victims want greater input on sentencing decisions and more varied sentences other than incarceration.<sup>84</sup>

Research has found that a majority of victims seem support domestic violence prosecutions and sentencing, especially mandatory programs. In a Chicago court study, 67.6% of victims reported that they wanted their abusers to be prosecuted *and* jailed.<sup>85</sup> A U S Department of Justice study found that 76% of victims interviewed wanted their abusers arrested, 55% wanted them prosecuted, while 59% were satisfied with the court outcome and 67% were happy with the judge.<sup>86</sup> The same study also found that 25% of the victims who opposed prosecution were threatened by their abusers against prosecution. Others expressed fear that their abusers would become even more violent if action were taken. While fear is a potent deterrent, almost 50% of victims who wanted to drop any prosecutorial action against the batterer, wanted to do so because they thought prosecuting the defendant would not make any difference in their situation other than to

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<sup>83</sup> E Pence and M Paymar, *Education Groups for Men Who Batter: The Duluth Model*, Springer Press, 1993, at 75

<sup>84</sup> R M Tolman, *The Initial Development and Validation of a Scale of Non-Physical Abuse*, Third National Family Violence Research Conference, New Hampshire, 1987

<sup>85</sup> C Hartley and L Frohmann, *Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court*, National Institute of Justice, U S Department of Justice, 2003

<sup>86</sup> B Smith, R Davis, L Nickles and H Davies, *Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict*, National Institute of Justice, U S Department of Justice, 2001

make it worse. About one third opposed prosecution entirely because they depended on the batterer for housing.<sup>87</sup>

Citizens view the fairness of their court experiences in terms of their own participation rather than to any material outcome. Their sense of fairness is often a stronger consideration than their own self-interest. Education is something that they see as having value and the more they know of court programs the more their sense of fairness will be satisfied.

The imposition of legal penalties is justifiable in several situations: securing the immediate safety of the victim, reducing the likelihood of future violence by deterring the batterer through sanctions, mandating intervention program attendance to reduce the proclivity to commit violence, treating suspects with procedural fairness. In fact, in a sample of arrested batterers, those who believed that the police treated them fairly were somewhat less likely to recidivate than those who did not.<sup>88</sup>

The Demonstration made recommendations regarding offenders and their needs. The offenders want more opportunity to present a strong defense to explain their side of the incident. The offenders believed that not each offender is treated equally and in their case in sentencing, they did not agree with the sentences. They believe sentences should be tailored to the severity of the charge. Offenders thought the financial consequences of sentences were too severe, that the frequency of review hearings put a strain on their employment, and they had little opportunity to address the judge during that time.<sup>89</sup> Fair

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<sup>87</sup> C Hartley and L Frohmann, *Cook County Target Abuser Call (TAC): An Evaluation of a Specialized Domestic Violence Court*, National Institute of Justice, Department of Justice, 2003

<sup>88</sup> R Paternoster, R Brame, R Bachman and L W Sherman, *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, *Law and Society Review* 31(1), 1997, at 163-204

<sup>89</sup> R M Tolman, *The Initial Development and Validation of a Scale of Non-Physical Abuse*, Third National Family Violence Research Conference, New Hampshire, 1987

and understandable procedures are important in any court, but offenders were especially interested in a perceived fairness because of the neutrality of the judge, polite treatment by court personnel, and a basic respect for their rights.

Ultimately, the result was that the Demonstration believed its recommendations were actionable. That the initiatives suggested would result in greater batterer accountability by improved monitoring practices, consistent and quick sanctioning, consistent sentencing, and regular compliance reviews. The results of the Demonstration further suggest that referral to batterer intervention programs does not have a powerful effect on reducing intimate partner violence. The initiative also fell short on improving victim perceptions of safety.

Most definitely if we are going to “solve” domestic violence, the motive for the violence needs to be better understood. Researchers have found that when women employ violence it is almost always in self-defense in response to clues learned from prior attacks or abuse. “Proponents off the sexual symmetry of violence thesis have made much of the fact that...surveys indicate women initiate violence about as often as men, but a case in which a woman struck the first blow is unlikely to be the mirror image of one in which her husband initiated.”<sup>90</sup> This does not distinguish between a husband who attacks and injures his wife or when a wife strikes her husband in self-defense. This is an important distinction. This would lead one to see symmetry in violence – that women are as violent as men. Critics of symmetry suggest that comparing self reports of women as victims and women as offenders ignores the real differences in *how* the violence occurs. The evidence drawn from police reports, courts and shelters show that wives greatly

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<sup>90</sup> R P Dobash, T Dobash and M Wilson, *The Myth of Sexual Symmetry in Marital Violence*, Social Problems 39(1), 1992, at 80

outnumber husbands as victims.<sup>91</sup> Proponents of symmetry say that official reports do not reflect the actual incidence of domestic violence because men are unwilling to report abuse – a view reflected in men’s reports to interviewers.<sup>92</sup>

Do all men who batter want to dominate women? It is true that many men believe that women are to be submissive to men. There are men who have other sexist beliefs. There are men who batter but don’t believe their wives should be subservient because of the gender. However, they still batter. These men use violence to control their partners because they can – and they have found that violence works. Violence works in a lot of life activities. Violence ends arguments. Violence is punishment. Violence sends a powerful message of dissatisfaction. Gondolf thinks that men’s violence against women does not stem from individual pathology but rather from a socially reinforced sense of entitlement. If so, then the beliefs and attitudes held by batterers can be changed through an educational process.<sup>93</sup>

### **Healthcare**

Abuse by husbands or boyfriends is the single largest cause of physical injury to women in the United States, causing more injuries than burglaries, muggings, and all other physical crimes combined.<sup>94</sup>

The American Medical Association defines intimate partner abuse as “the physical, sexual, and/or psychological abuse to any individual perpetrated by a current or

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<sup>91</sup> J Stets, *Verbal and Physical Aggression in Marriage*, Journal of Marriage and the Family 52, 1992, at 501-514

<sup>92</sup> R C Davis, B G Taylor and C M Maxwell, *Does Batterer Treatment Reduce Violence: A Randomized Experiment in Brooklyn*, Final Report to the National Institute of Justice by Victim Services, NY, 2000

<sup>93</sup> E W Gondolf, *Evaluating Batterer Counseling Programs: A difficult task showing some effects and implications*, Aggression and Violent Behavior, 2004

<sup>94</sup> Commonwealth Fund, *First Comprehensive National Health Survey of American Women*, New York, 1993

former intimate partner.”<sup>95</sup> While the term is gender-neutral (wives do batter husbands after all), women are more likely to experience physical injuries and incur psychological consequences than men subjected to domestic violence.

Since violence against women is common, widespread, and primarily perpetrated by an intimate partner, educating the healthcare community about intimate partner abuse is an essential step in developing appropriate responses for the victims. An estimated 18% to 25% of female primary care and prenatal patients suffer from intimate partner violence, and 31% to 44% of women report some abuse during their lifetimes.<sup>96</sup> Screening for domestic violence, therefore, must be a routine aspect of health care. Health personnel must ask direct questions about violence and be able to detect subtle clues.

In a study published in the *Archives of Family Medicine* designed to measure physicians’ attitudes and practices toward victims, domestic violence was defined as:

“past or present physical and/or sexual violence between former or current intimate partners, adult household members, or adult children and a parent. Abused persons and perpetrators could be of either sex, and couples could be heterosexual or homosexual.”<sup>97</sup>

A 1999 Johns Hopkins study reported that abused women are at higher risk of miscarriages, stillbirths, and infant deaths – and more likely to give birth to low birth-weight babies. Approximately 8,000 (4.2%) of Utah women who delivered a live birth during 2000-2003 reported physical abuse by a husband or partner.<sup>98</sup> Children of abused

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<sup>95</sup> M Rodriguez, *Screening and Intervention for Intimate Partner Abuse: Practices and Attitudes of Primary Care Physicians*, *Journal of the American Medical Association*, 1999, at 468-474

<sup>96</sup> The Nurse Practitioner, *Evaluating and Managing Intimate Partner Violence*, 25(5) May 2005, 18-19

<sup>97</sup> N Snugg, *Domestic Violence and Primary Care: Attitudes, Practices, and Beliefs*, *Archives of Family Medicine*, 1999, at 301-306

<sup>98</sup> PRAMS Perspectives, *Domestic Violence in Utah*, Pregnancy Risk Assessment Monitoring System, February 2006, at 1

women were more likely to be malnourished and less likely to have been immunized against childhood diseases. Domestic violence can severely impair a parent's ability to nurture their child's development. Mothers were more depressed, preoccupied with violence, and emotionally withdrawn and emotionally unavailable. Fathers were less affectionate, less available, and less rational.<sup>99</sup>

The University of Utah (U of U), School of Medicine, now has classes for pre-med students in recognizing domestic abuse victims at first presentation in the emergency room. Current literature indicates that health care personnel are in a unique position to respond to domestic violence issues. Now, with domestic violence recognized as a public health issue, at near epidemic proportions, it is important for health care workers to be knowledgeable in identifying, evaluating, and treating domestic violence victims.<sup>100</sup>

Domestic violence is underreported and underrecognized across a range of health settings. Health professionals rarely enquire about domestic violence and women are reluctant to disclose such experiences in the absence of direct questioning.<sup>101</sup> In fact, many women who experience domestic violence report they feel as if they are living a surreal or unnatural experience.<sup>102</sup> In Utah, the PRAMS report indicated that of 8000 pregnant women who reported being abused, only 39.2% reported that during any prenatal visit a health care worker asked if someone was hurting them emotionally or

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<sup>99</sup> L Heise and M Ellsberg, *Ending Violence Against Women*, Population Reports, Series L No.11, Johns Hopkins University School of Public Health, December 1999

<sup>100</sup> W Bateman and K Whitehead, *Health Visitors' Domestic Violence Routine Questioning Tool: An exploration of women's experience, effectiveness and acceptability*, International Journal of Health Promotion and Education 42(1), 2004, at 14-22

<sup>101</sup> G Mezey, L Bacchus, S Bewley and S White, *Domestic Violence, Lifetime Trauma and Psychological Health of Childbearing Women*, International Journal of Obstetrics and Gynecology 112(2), 2005, at 197

<sup>102</sup> M Lutenbacher and A Cohen, *Do We Really Help? Perspective of Abused Women*, Public Health Nursing 20(1), 2003, at 56-64

physically; only 28.9% said that a health care worker discussed physical abuse with them by their husbands or partners.<sup>103</sup>

In an emergency room study, gender differences among a cohort of injured patients found that men initiated violence in far greater numbers than women. The study from several medical facilities showed that of the patients asked, 100% of female respondents, versus just 39% of male respondents, reported being injured in a domestic violence incident. Thirty-six percent of the women reported being intimidated by their partner's size, while zero percent of the men complained of the same type of intimidation. Seventy percent of the women reported they were very strongly afraid during the partner-initiated violence while only one man reported fear, meaning 85% of men reported not being afraid at all when their female partners initiated violence.<sup>104</sup>

Now there are several programs in the U of U's Department of Family & Preventive Medicine such as covering the dynamics of domestic violence, the impact of violence on a victim's health, effective screening and interventions strategies, and similar topics. The staff conducted a study which evaluated pre- and post-adjudication behavior of male defendants by using court records and police data. The goal was to identify possible predictors of continued criminal behavior that could pose a risk of future harm to victims. The study identified, as a significant predictor of recidivism, two or more non-compliance with court orders incidents, two or more warrants issued by the court for non-compliance, and two or more reports to the police of new criminal activity the defendant was involved in. The study found that it is police reports that are the strongest predictors

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<sup>103</sup> PRAMS Perspectives, *Domestic Violence in Utah, Pregnancy Risk Assessment Monitoring System*, February 2006, at 2

<sup>104</sup> M B Phelan, L K Hamberger, C E Guse, S Edwards, S Walczak and A Zosel, *Domestic Violence Among Male and Female Patients Seeking Emergency Medical Services*, Springer Publications, 2005

of recidivism. This shows the importance of judicial monitoring of the defendant and of immediate treatment provider reporting to the court of non-compliance incidents.<sup>105</sup> (Interestingly, in 2003, Dean Byrd of the University of Utah, Medical School contacted Judge John Baxter of the Salt Lake City Justice Court to arrange for this author and others to talk to pre-med students on the topic of domestic violence from the court's perspective.)

Some studies indicate that domestic violence increases during a woman's pregnancy while other research suggests the abuse escalates during the postpartum period.<sup>106</sup> Although studies disagree as to whether pregnancy itself increases a woman's vulnerability to abuse, researchers as well as victims identify the child-bearing years as the years of the highest risk for domestic violence occurring or intensifying. Consequently, the child-bearing years may be a critical time for intervention as well as extra vigilance from health care providers.<sup>107</sup>

### **Therapeutic Jurisprudence**

David Wexler defines "therapeutic jurisprudence" (TJ) as the study of the role of law as a therapeutic agent; it focuses on the law's impact on emotional life and on psychological well-being of the defendant. Basically it is a perspective that regards law as a social force that produces behaviors and consequences. The question is: can the law be made or applied in a therapeutic way so long as other values, such as justice and due process, can be fully respected? Therapeutic jurisprudence "proposes that we be sensitive

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<sup>105</sup> A Kindness, H Kim, S Alder, A Parekh and L Olsen, *Court Compliance as a Predictor of Postadjudication Recidivism for Domestic Violence Offenses*, *Journal of Interpersonal Violence* 24(7), 2009, at 1222-1238

<sup>106</sup> A Helton, J MacFarlane and E Anderson, *Battered and Pregnant*, *American Journal of Public Health* 77, 1987, at 1337-1339

<sup>107</sup> D Tilley, M Brackley, *Violent Lives of Women: Critical Points of Intervention, Perspectives of Psychiatric Care*, 40(4), 2000, at 170



to...consequences, and that we ask whether the law's anti-therapeutic consequences can be reduced and its therapeutic consequences enhanced without subordinating due process and other just values."<sup>108</sup>

Therapeutic justice is effective, in part, because it promotes the legal procedures and judge-to-litigant interactions that the public believes is fair and just. The perception of procedural fairness is far more important than the favorability of court outcomes to litigant satisfaction with those outcomes, willingness to comply with court orders, and having confidence in the judiciary.<sup>109</sup> A sense of this procedural fairness is more likely when litigants believe they are treated with respect, can trust the motives of the judge, are handed decisions that are made in a neutral manner, and have an opportunity to tell their side of the story.<sup>110</sup> In other words, TJ tells the defendants that since the court is concerned about their welfare, it must be trustworthy. When judges further explain to defendants the basis for his decision, trustworthiness is enhanced.

It doesn't necessarily require a problem-solving court to promote therapeutic jurisprudence. The most basic and informal aspect is when a judge interacts with those persons involved in a particular case which is further enhanced just being the new, specialized court – with its new procedures, disposition options, data systems, use of providers and other services. Ultimately, though, the fact is that there are problem-solving courts affecting the justice system by the passage of new laws, court policies, law enforcement practices, etc.<sup>111</sup>

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<sup>108</sup> D Rottman and P Casey, *Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts*, National Institute of Justice, Washington, D C, 1999, at 9

<sup>109</sup> T Tyler, *Why People Obey the Law*, Princeton University Press, 2006

<sup>110</sup> T Tyler and P Degoey, *Trust in Organizational Authorities: The Influence of Motive Attributiveness on Willingness to Accept Decisions in Trust in Organizations*, Frontiers of Theory and Research, 1996

<sup>111</sup> P Casey and D Rottman, *Therapeutic Jurisprudence in the Courts*, Behavioral Sciences & The Law, 2000

A spokesman for the Center for Court Innovation describes TJ as:

“Instead of adversarial sparring, prosecutors and defendants in some problem-solving courts work together to encourage defendants to succeed in drug [or other] treatment. Instead of embracing the tradition of judicial isolation, judges in problem-solving courts become actively involved [both by counseling and dialoguing with defendants and by participating outside the courthouse], meeting with residents and brokering relationships with local service providers. Perhaps most important, citizens are welcomed into the process, participating in advisory boards, organizing community service projects, and meeting face-to-face with offenders.”<sup>112</sup>

Recent research indicates that of those reporting being physically assaulted by an intimate partner, approximately 73% of women and 86% of men, did not report the violence to the police; that approximately 33% of women and 25% of men said “they did not want the police or the courts involved,” which would seem to indicate that “many victims of intimate partner violence...do not consider the justice system a viable or appropriate intervention at the time of their victimization.”<sup>113</sup>

There is a danger for the courts in relying too much on therapeutic jurisprudence. If domestic violence courts are perceived to overly emphasize a therapeutic approach to violence, they may be viewed as treating domestic violence as a “non-crime” or at least as a lesser offense that does not warrant the penalties placed on those found guilty of violence against strangers. While it is likely that there are therapeutic benefits to successful domestic violence courts, this in no way should imply that violence against an intimate partner should be taken less seriously.<sup>114</sup>

As the National Council of Juvenile and Family Court Judges has observed:

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<sup>112</sup> M Satin, *Domestic Violence: Violence in the Home*, Radical Middle Newsletter 53, 2004, at 2

<sup>113</sup> P Tjaden and N Thoennes, *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*, National Center for Justice, 2000, at 51

<sup>114</sup> J Weber, *Domestic Violence Courts: Components and Considerations*, Center for Families, Children & the Courts, 2000, at 33

“Inappropriate approaches might be those which orient themselves toward the couple before dealing with offender’s criminal behavior; focus on anger control without dealing with the underlying issues of self-esteem, power, and control; or approaches which out the needs of the court system for accountability and safety...Such approaches not only will be ineffective in dealing with the battering behavior, they put the victim at substantial risk of revictimization.”<sup>115</sup>

Unlike many other theories, therapeutic jurisprudence sets out readily definable and measurable constructs incorporated into the research that can ultimately prove or disprove its value in law reform. The emergent literature considers the individual-level as well as the system-level factors that include multiple perspectives. Therapeutic justice is not only a theory that guides practice but a theory that guides research. It urges integrating techniques from the field of social sciences such as, behavioral contracting, motivational intervention, and relapse prevention, into the legal process to attain a therapeutic outcome. Contrast this with the literature on deterrence, which even after 100 years of modern study and research, still continues to struggle with measurable outcomes and lacking sufficient field research to lend it evidence-based credibility.<sup>116</sup>

### **Restorative Justice Option**

As stated earlier, domestic violence advocates are worried, perhaps rightly so, that the courts may be susceptible to “new” movements and ideas. After all, problem-solving courts were a “new” idea which had gained in popularity. Even arresting a batterer for domestic violence was a “new” idea as recently as the 1980s. And it is true that some very recent research has proffered the possibility of putting restorative justice into

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<sup>115</sup> National Council of Juvenile & Family Court Judges, *Family Violence: Improving Court Practice*, Juvenile and Family Court Journal 50, at 29

<sup>116</sup> C J Petrucci, D B Wexler and B J Winick, *Therapeutic Jurisprudence and Criminology*, Western Criminology Review 4(2), February 2003, at 1-4

practice in domestic violence courts. In domestic violence cases, however, restorative justice is not generally recommended because of the high risk of placing the victim in a setting where she may be re-abused by the process itself.

Restorative justice is a form of criminal justice that emphasizes reparations to the victim in which the offender is urged to accept responsibility for their offences. This would necessarily entail a meeting with, and making amends to, the victim. Roughly, it's a type of program which would bring the parties together to work out some kind of deal to respond to the crime. In the case of domestic violence, the crime is the battering and violence done to the victim – not an easy thing to make good on.

Even though restorative justice is increasingly popular, it is strikingly similar to mediation or couples' counseling which has shown to be a further danger to the victim. It also misses the point of batterer intervention – instead of focusing on the batterer's changing his beliefs about violence to his partner, it instead tries to “heal” him or “heal” the situation.

Only in the very broadest sense does the Duluth Model express a restorative justice tilt; an article from the Battered Women's Justice Project examined the restorative justice role and how it can increase the risk for battered women:

Because of the power balance implications of battering, it is critical that all current restorative justice practices should include screening for and exclusion of cases involving domestic violence. Any process that places the battered woman in a negotiating relationship with her source of fear offers her a false promise of hope and might, therefore, place her in danger. To date, the restorative justice movement has failed to adequately address these concerns.<sup>117</sup>

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<sup>117</sup> L Frederick and K Lizdas, *The role of restorative justice in the battered women's movement*, Battered Women's Justice Project, 2003, at 6

## **Judicial Response**

The impact of nationwide judicial response to domestic violence has been mixed. The response has received praise from criminal justice agencies, treatment providers, perpetrators and victims. However, recidivism showed only mixed results and did not meet projections or goals. The end result, though, was that the most effective criminal justice system response must include close judicial monitoring and provider monitoring of offenders, with quick sanctions for non-compliance.<sup>118</sup>

Not wanting to develop a court out of nothing, the Murray Court began looking to existing domestic violence courts in search of a model. One that was examined came out of New York City. Because the New York court's domestic violence caseload of about 20%, in 2003 they began to look for other solutions. The 20% was similar to that caseload percentage of Murray. Judith Kaye, the chief judge wrote:

“One possible judicial response to the current situation is to continue to process domestic violence cases as any other kind of case, and to continue to observe systemic failures. Another response, however – the problem solving response – is to try to design court programs that explicitly take into account the special characteristics that domestic violence cases present. If domestic violence defendants present a particular risk of future violence, then why not enhance monitoring efforts to deter such actions? If victims remain in abusive situations due to fear for their own and their children's well being, then why not provide links to services and safety planning that may expand the choices available to them? If cases are slipping between the cracks of a fragmented criminal justice system, then why not work together to improve coordination and consistency?”<sup>119</sup>

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<sup>118</sup> L C Newmark, A V Harrell, C Nisher and J Castro, *Final Report on the Evaluation of the Judicial Oversight Demonstration: Research Report*, Urban Institute, 2007

<sup>119</sup> Judges Journal, American Bar Association, Volume 42, Number 2, Spring 2003

While it is a fine idea to look at other domestic violence courts in other jurisdictions as a model, the court had to develop its own model that would take into account the community's needs and what the community could provide.

In August, 2005, Judy Harris Kluger, Deputy Chief Administrative Judge for Court Operations and Planning of New York's Unified Court System, sent a memo to the judges of the domestic violence and integrated domestic violence courts about a recently completed study on batterers intervention programs. The study was conducted by the Center for Court Innovation which outlined its findings and goals, and recommended practices with respect to domestic violence cases. Judge Kluger wrote:

“Primarily, the study demonstrates that the use of batterer intervention programs alone does not have an impact on recidivism. Given this finding, it is worth reiterating that batterer intervention programs should not be relied upon to change offenders' behavior. Courts should continue to ensure that enhanced judicial monitoring is in place, and where appropriate, utilize probation and intensified community service as sentence options in domestic violence cases.”

The Center examined recidivism rates for both domestic violence and non-domestic violence offenses and “conclusively found that a batterer program sentence did *not* reduce the chances that defendants would re-offend. There was also no difference in rearrest rates between those mandated to monthly monitoring and those mandated to graduated monitoring.”

However, findings did suggest a

“possible impact of judicial monitoring on the total number of domestic violence rearrests. In other words, judicial monitoring appeared to have a modest affect in reducing the total number of domestic violence rearrests but did not affect the probability that at least one rearrest took place.”

The report admitted, though, that it only examined relatively low-level monitoring and that, perhaps, enhanced monitoring would lead to better results. Enhanced monitoring methods would include more frequent appearances in court by the perpetrator, faster and more severe sanctions for non-compliance and better information provided to the court by the treatment providers. Gondolf suggests that judicial monitoring of the perpetrator as part of the sentence and probation is the most effective technique in reducing domestic violence recidivism.<sup>120</sup> Because judicial monitoring is somewhat coercive in nature, it impresses upon the batterer that the court is not going to tolerate non-compliance and that the full weight of the court will be leveled on violators.

Intervention programs have two main goals – to hold the batterer accountable and to reduce recidivism. The idea of having the batterer accept responsibility and accountability for the violence is so they will not be incarcerated. Does this work?

There is no easy answer to this question but there are a multitude of mixed opinions on the success, the usefulness, and the practicality of domestic violence intervention programs from experts on both sides of the aisle. These differences of opinion are probably from the result of not agreeing on the meaning of “does it work.”

E W Gondolf thinks a program works when and “men are prepared to take social action against the women-battering culture,” since it is the fault of a patriarchal society that allows men to beat women;<sup>121</sup> Barbara Hart supports much of Gondolf’s work and thinks wife-beating will end when the country grows an “accountable man”;<sup>122</sup> Peter

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<sup>120</sup> E Gondolf, *The Impact of Mandatory Court Review on Batterer Compliance: An Evaluation of the Pittsburgh Municipal Courts and Domestic Abuse Counseling Center*, Pennsylvania Commission on Crime and Delinquency, 1998.

<sup>121</sup> E W Gondolf, *Changing Men Who Batter: A Developmental Model for Integrated Interventions*, *Journal of Family Violence* 2(4), 1987, at 347

<sup>122</sup> B Hart, *Safety for Women: Monitoring Batterers’ Programs*, Pennsylvania Coalition Against Domestic Violence, 1988

Neidig would see a successful program as one that has led to “typically significant positive change[s],” or at least “statistically significant changes.”<sup>123</sup>

What is this “statistically significant change” to which Mr Neidig refers? Would such a change be of benefit to the victim? Would the victim even notice a “statistical change”? The fact that there may be fewer beatings each week would indicate a statistical change, but would this really matter? Is being hit only six times really an improvement over being hit eight times?

“Although early evaluations suggested that batterers’ intervention programs reduce battering, recent evaluations based on more rigorous designs find little or no reduction. The methodological limitations of virtually all these evaluations, however, make it impossible to say how effective batterers’ intervention programs are.”<sup>124</sup>

There are several types of programs. According to Shelly Jackson, a program manager in the National Institute of Justice’s Office of Research and Evaluation, the first programs were psychoeducational models, typified by the Duluth Model, with its emphasis on patriarchal ideology “which encourages men to control their partners” that is the root cause of domestic violence.<sup>125</sup> This model is indicative of the feminist view that drove the early domestic violence movement – unfortunately to the belief that a woman could never initiate domestic violence. However, there is research to suggest that it is probable that the dynamics of battering and abuse differ for men and women.

There is another much used model other than psychoeducational intervention – cognitive-behavioral intervention. This model focuses on thinking errors and anger

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<sup>123</sup> P H Neidig, *The Development and Evaluation of a Spouse Abuse Treatment Program in a Military Setting*, Evaluation and Program Planning 9, 1986, at 275-277

<sup>124</sup> S Jackson, *Batterer Intervention Programs*, National Institute of Justice, Special Report, June 2003, at 1

<sup>125</sup> R P Dobash, T Dobash and M Wilson, *The Myth of Sexual Symmetry in Marital Violence*, Social Problems 39(1), 1992, at 2



management.<sup>126</sup> This may be the most promising of the models for intervention. Batterers have been found to distort cognition, which can impair the ability to correctly read social clues, or accept blame, or to even morally reason. This creates a greater sense of entitlement on the part of the batterer. Now with his distorted thought process, the batterer is led to demand instant gratification, will then misread a harmless situation as a threat situation, and will confuse wants with needs. The Cognitive-Behavioral programs use behavioral learning techniques to alter the general adaptive behavior of the batterer. This allows the batterer to develop new skills to reinforce acceptable behaviors and acts. The reinforcing effects can lead to positive changes in thoughts and deeds, mainly because changing in thinking will cause changes in behavior. The aim is to help the batterer see that his violence is not uncontrollable, but rather is a foreseeable behavior pattern which he can learn to interrupt by recognizing how he stokes his own rage in order to build up to an abusive incident. Cognitive-Behavioral Treatment has been called “a marriage of social learning theory, cognitive therapy and behavioral therapy.”<sup>127</sup>

Though the literature appears to assume that treatment success means a permanent end to domestic violence, this obviously misses the mark. It is illogical to say that pushing one’s partner on one occasion is equivalent to beating her on ten other occasions. The intent is not to minimize the negative impact of a push or even to minimize non-physical abuse, but rather to proffer that if domestic abuse treatment significantly reduces the frequency and severity of violence that occurs, then it is somewhat effective. While the goal is to completely eliminate all physical and non-physical domestic violence, it

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<sup>126</sup> J C Babcock and J La Taillade, *Evaluating Interventions for Men Who Batter: Domestic Violence Guidelines for Research-Informed Practice*, Kingsley Publishers, 2000

<sup>127</sup> K Healey, C Smith and C O’Sullivan, *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, U S Department of Justice, National Institute of Justice, 1998, at 11

would be unwise to dismiss current treatment intervention programs because violence is not eliminated and recidivism is still a factor. We need to re-conceptualize recidivism. We need to include more than a categorical variable that measures recidivism versus non-recidivism. Differences in the number of assaults, length of time between assaults and rates of rearrest for assaults are all important in understanding the effectiveness of domestic violence treatment.<sup>128</sup>

### **Youth**

Utah lawmakers are considering a bill so a person charged with committing an act of domestic violence in front of a child could face multiple charges if more than one child was present. Rep Kerry Gibson, R-Ogden, says the current law doesn't go far enough because if domestic violence occurs in front of multiple children, only one child is identified as a victim.<sup>129</sup>

The number of children each year who witness their mothers being physically battered ranges in the millions. It is estimated that 10 million children in the United States are at risk of exposure to woman abuse each year.<sup>130</sup> Research shows that even when children are not the direct targets of violence in the home, they can be harmed by witnessing its occurrence.<sup>131</sup> The witnessing of domestic violence can be auditory, visual, or inferred, including cases in which the child witnesses the aftermath of violence, such as physical injuries to family members or damage to personal property. Children who

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<sup>128</sup> D G Dutton, M Bodnarchuk, R Kropp, S D Hart and J P Ogloff, *Wife Assault Treatment and Criminal Recidivism: An 11-year Follow-up*, International Journal of Offender Therapy and Cooperative Criminology 41, 1997, at 9-20

<sup>129</sup> The Associated Press, *Bill would strengthen domestic violence charges*, [www.ksl.com/index.php?nid=481&sid=5519154](http://www.ksl.com/index.php?nid=481&sid=5519154), 02/05/2009

<sup>130</sup> M B Straus, *Children as Witnesses to Marital Violence: A risk factor for lifelong problems among nationally representative sample of American men and women*, at the Ross Roundtable on Children and Violence, Washington, D C, 1991

<sup>131</sup> Child Welfare Information Gateway, *Child Witnesses to Domestic Violence*, 2007, at 1

witness domestic violence can suffer severe emotional and developmental difficulties similar to those of children who are the direct victims of abuse.<sup>132</sup> Children exposed to the battering of their mothers suffer the same harm and display the same symptoms as children who are actually abused, including the symptoms of post-traumatic stress disorder.<sup>133</sup> Researchers report that violence is particularly damaging to young children when they are exposed to assaults between people to whom they are emotionally attached making the likelihood of child abuse high in families where there is domestic violence.<sup>134</sup>

Witnessing domestic violence has other peripheral effects: Living in a violent home is the single best predictor of juvenile delinquency. One Boston study found that children of abused mothers are six times more likely to commit crimes against the person, 24 times more likely to commit sexual assault crimes, and 50% more likely to abuse drugs or alcohol than are children whose mothers are not battered.<sup>135</sup>

Children who witness domestic violence are being abused. As children grow older they may continue on this cycle through as victims or perpetrators. The trauma they experience ripples throughout their lives and throughout all of their associations. One disturbing example is the fast-growing dating violence among teenagers who do not understand what a healthy relationship looks like. This is because it has not been taught to them or even modeled for them in their home life.

The Utah Domestic Violence Council says it seems like pockets of Utah that are particularly struggling in the recession seem to be seeing more incidents of domestic

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<sup>132</sup> S Schechter and J Edleson, *Effective Intervention in Domestic Violence and Child Management Cases: Guidelines for Policy and Practice*, National Council of Juvenile and Family Court Judges, 1999, at 10

<sup>133</sup> E Peled, P Jaffe and J Edleson, *Ending the Cycle of Violence – Community Responses to the Children of Battered Women*, Sage Publications, 1995

<sup>134</sup> J Chiancone, *Children: The Forgotten Victims of Domestic Violence*, Children's Law Report 2(8), 1997

<sup>135</sup> H Guarino, *Delinquent Youth and Family Violence: A Study of Abuse and Neglect in Homes of Serious Juvenile Offenders*, Boston Department of Youth Services, Publication 14, 1985

violence. The Council is forming a work group to gather more specific data. The Council recommends that, “If you are in an abusive situation, please get out. We’ll do whatever we can to help you.”<sup>136</sup>

What of domestic violence as part of the larger family violence picture? As one looks over the literature, it is impossible to miss the broad overlap between research on domestic violence and research on child abuse. The 2001 issue of *Aggression and Violent Behaviour* was dedicated to these risk factors. The articles in the issue suggest that domestic violence is not a phenomenon best understood as an isolated issue, but rather a complicated topic best understood against the backdrop of problems in the family, and in society in general. While this complexity would appear to make subsequent study of domestic violence more difficult, there is some benefit in recognizing domestic violence as only part of a much more complex picture. Perhaps interventions can be constructed to address these multiple issues simultaneously.

When it comes to dating violence among teens in Utah, officials from the Utah Department of Health don’t have solid statistics. Too few cases are officially reported. But a recent poll at Murray High School showed some frightening numbers. Violence Prevention Specialist Katie McMinn said, “When we did that survey, last month, 15 percent were victims of dating violence, just in Murray High School.”<sup>137</sup>

It is not just in Utah, it is nationwide. Another 2009 report from the Chicago area found that one in ten teenagers have suffered dating violence and females ages 16-24

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<sup>136</sup> M Richards, *Increased domestic violence could be due to economic woes*, [www.ksl.com/index.php?nid=482&sid=6098444](http://www.ksl.com/index.php?nid=482&sid=6098444), 07/09/2009

<sup>137</sup> P Nelson, *Boys and girls see warning signs of domestic violence among teens*, [www.ksl.com/index.php?nid=481&sid=5829176](http://www.ksl.com/index.php?nid=481&sid=5829176), 03/12/2009

experience the highest dating violence of any age group.<sup>138</sup> The report interviewed students at Elk Grove High School. The interview showed remarkable acceptance of violence by the students. One female student did say that “no one thinks it’s right for a guy to hit a girl,” but many others said abuse was a “bogus” issue. Other students, both male and female, insisted that violence is sometimes justified in relationships. Teen students often keep quiet, fearing that if they report another student’s aggressive behavior, they will be ostracized. A major problem in school is the difficulty in severing contact with an abuser – many students are forced to see the perpetrator every day while at school, sometimes even in the same class.

In Utah, violence between young couples is becoming more intense and more frequent. According to experts, breaking the pattern can be difficult. “Hollywood would love us to believe that when women go back to abusive relationships, they have bad self-esteem or they’re not very smart...and that’s not the case,” says Melinda Pettingill, prevention education director at the YWCA.<sup>139</sup> According to Ned Searle, director of the Utah Office of Violence Against Women, “There’s always some kind of feeling. They really do love this person. They want the abuse to stop. That’s what they really want, and that’s why they go back.”<sup>140</sup> And the law doesn’t always seem to be on the victim’s side. A recent report by Break the Cycle, a program to end dating violence, gave Utah an “F” grade for making it difficult for teens to obtain a domestic violence protective order.

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<sup>138</sup> M Twohey and B Rubin, *Teens Fearful of Reporting Domestic Abuse*, Catholic Online, 02/24/2009

<sup>139</sup> [www.abc4.com/content/news/4\\_your\\_family/story/Experts-say-controlling-behavior-is-a-harming/12/17/2009](http://www.abc4.com/content/news/4_your_family/story/Experts-say-controlling-behavior-is-a-harming/12/17/2009)

<sup>140</sup> [www.udvac.org/pressrelease-hcdav2008.pdf](http://www.udvac.org/pressrelease-hcdav2008.pdf), 06/29/2009

There is a bill in the Legislature right now, written by teens, about the need for more dating violence education.”<sup>141</sup>

In fact, several students were honored with awards to prevent teen dating violence at the Utah State Capitol. The awards were given as a part of National Teen Dating Violence and Awareness Week. Students created a song, artwork to promote awareness and educate the public about the growing problem. A few students also shared their stories about abusive relationships and how they overcame them. “I thought to show someone who has felt the after effects of it and the feelings of depression and the loss and sorrow,” said Megan Glasman, a student who created art for the project.<sup>142</sup>

Teenagers are not very good at recognizing abuse. They don’t understand that what may be going on is abuse and is unhealthy. Searle said, “I think the abuse that comes from that is the controlling part. It’s the initial, beginning phases of that where they’re manipulating that relationship to go to a certain direction.” Searle says teenage boys are experiencing these precursor signs of abuse just as often as teenage girls are. As adults, men make up most of the abusers, but Searle says they’re noticing a change. “We do know more men are coming forward, which is often more difficult for them in that situation to say that they’re abused,” he said.<sup>143</sup>

There is a theory that domestic violence may, in part, be due to socialization. Straus found that boys who witnessed their parents attack one another were more than three times as likely to assault their wives, or to become victims of their wives’ abuse,

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<sup>141</sup> S Dall, *Experts: Violence in young couples’ relationships increasing*, [www.ksl.com/index.php?nid=481&sid=5782598](http://www.ksl.com/index.php?nid=481&sid=5782598), 03/06/2009

<sup>142</sup> [www.fox13now.com/news/kstu-students-honored-efforts-prevetn-violence.0.4599616](http://www.fox13now.com/news/kstu-students-honored-efforts-prevetn-violence.0.4599616), 02/08/2010

<sup>143</sup> [www.ksl.com/index.php?nid=481&sid=5829176](http://www.ksl.com/index.php?nid=481&sid=5829176), 03/12/2009

than boys who did not experience family violence.<sup>144</sup> The same increased likelihood of being both a victim and a perpetrator of intimate violence also existed for women.<sup>145</sup>

Several studies of the theory have tried to explain it solely as a product of socialization – male expectations of privilege and power. This may not be totally accurate, though. Too many men, socialized in the same culture as abusive men, remain non-abusive. Socialization has to be combined with psychological influences that precede it developmentally. Socialization doesn't affect all boys equally. The deleterious influences dissipate when the boy has a good home role model to help him sort through his daily dose of social pressure junk. From years of personally seeing abusive relationships, the impact of abuse in the family goes far beyond the mere copying of abusive behaviors; it creates an environment perfect for an abusive personality to develop. The impact of socialization on individual men varies greatly. They hold dissimilar beliefs about women, have differing individual needs for personal power with them, and act in varied ways toward them. As social philosopher Myriam Miedzian wrote, “[w]e have to remember though, that over 70% of married women report that their husbands are non-violent and non-abusive throughout their marriages.”<sup>146</sup>

### **Protective Orders**

Published in 2009, *Outcomes of Civil Protective Orders* is a study that compares final sentencing decisions ordered by judges to federal and state sentencing guidelines for protective order violations. The authors reviewed violations that were pled before the largest district court in Utah [3<sup>rd</sup> District Court, Salt Lake City] and found that in the

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<sup>144</sup> M A Straus, R J Gelles and S Steinmetz, *Behind Closed Doors: Violence in the American Family*, Doubleday, 1980, at 251-254

<sup>145</sup> D S Kalmuss, *The Intergenerational Transmission of Marital Aggression*, *Journal of Marriage and the Family* 46, 1984, at 11-19

<sup>146</sup> M Miedzian, *Boys Will Be Boys*, Doubleday, 1991

majority of cases defendants were not sentenced in accordance with federal [or] state guidelines. Although state guidelines mandate defendants who violate a protective order to attend a batterer intervention program, less than one fourth of defendants were sentenced to attend such programs. Fewer than half of the defendants were arrested and incarcerated, as opposed to the 100% mandated by state sentencing guidelines. Federal guidelines mandate that all defendants be ordered to surrender firearms [18 U S C 922(g)(9)], but only six defendants were given that order. This study shows that the [Utah] judicial system could be more aggressive in improving the safety of victims of intimate partner violence by using the full extent of the sentencing guidelines.<sup>147</sup>

In terms of being an effective tool in deterring recidivism, studies have shown that protective orders may be a deterrent to certain batterers. Physical abuse dropped after protective orders were issued and maintained by victims. If the batterers were arrested at the time the order was issued, the physical abuse diminished even further; and if they had children, it diminished less.<sup>148</sup> Research varies, but recidivism rates have been found to range from 23% over two years,<sup>149</sup> 35% within six months,<sup>150</sup> 48.8% within two years,<sup>151</sup> to 60% within one year.<sup>152</sup>

The actual rate of violations is higher if the reabuse is measured by new domestic violence arrests or victim self-reports. The violation rate accuracy may be affected,

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<sup>147</sup> C L Diviney, A Parekh and L M Olson, *Outcomes of Civil Protective Orders*, Journal of Interpersonal Violence 24(7), 2009, at 1209-1221

<sup>148</sup> M Carlson, S Harris and G Holden, *Protective Orders and Domestic Violence: Risk Factors for Reabuse*, Journal of Family Violence 14(2), 1999, at 205-226

<sup>149</sup> See Note 148 *supra* at 205-226

<sup>150</sup> S Keilitz, P Hannaford and H Efke, *Civil Protective Orders: The Benefits and Limitations for Victims of Domestic Violence*, National Institute of Justice, U S Department of Justice, 1997, at 156

<sup>151</sup> A Klein, *Re-Abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don't Work*, in *Do Arrest and Restraining Orders Work?* ed. E Buzawa and C Buzawa, Sage, 1996, at 192-214

<sup>152</sup> A Harrell and B Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in *Do Arrest and Restraining Orders Work?* ed. E Buzawa and C Buzawa, Sage Publications, 1996, at 214-243



though, if there is reabuse over a specific time period or if the victims do not retain the orders or have them withdrawn. For example, in Massachusetts protective orders are in effect for one year, yet almost half of the victims returned to court before the year was up to request the orders be dropped or withdrawn.<sup>153</sup> However in Utah, justice court No Contact orders are not subject to the whims of the victim. It is the Court that issues the order – “the victim cannot waive, alter, or dismiss” the order.

Studies from Seattle courts compared abused women who obtained protective orders to women who were abused but did not obtain orders. The studies found that women with *permanent* protective orders were less likely to be *physically* abused than women without orders. However, women with *temporary* orders (two week orders) were more likely to be *psychologically* abused than women who did not obtain an order. Those women who did not obtain orders were at a higher risk for abuse, drug and alcohol use, more likely to have been assaulted and injured in the initial incident, and less likely to have been married to their abuser. Protective orders were found to be more effective nine months after they were issued than during the first five months.<sup>154</sup>

A 2006 study<sup>155</sup> suggested that if listing of things the defendant cannot do was included in the protective order, this may make a difference in the victim’s safety. Specifically, victims are more likely to be re-abused if their orders bar abusive contact but not strict no-contact. Compared to women whose orders barred all contact, those that barred only *abusive* contact were significantly more likely to suffer psychological

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<sup>153</sup> A Klein, *Re-Abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don’t Work*, in *Do Arrests and Restraining Orders Work?* ed. E Buzawa and C Buzawa, Sage, 1996, at 192-214

<sup>154</sup> V Holt, M Kernic, M Wolf and F Rivara, *Do Protective Orders Affect the Likelihood of Future Partner Violence and Injury?* *American Journal of Preventive Medicine* 24(1), 2003, at 16-21

<sup>155</sup> T Logan, L Shannon, R Walker and T Faraghar, *Protective Orders: Questions and Conundrums*, *Trauma, Violence and Abuse* 7(3), 2006, at 175-205

violence, physical violence, sexual coercion and injuries within one year of the issuance of the protective order.

In Utah, Protective Orders are issued by the district courts. However, justice courts are permitted to issue a “No Contact Criminal Protective Order” pursuant to a conviction, probation and/or release for domestic violence (see Appendix VI). This order has the same standing as a protective order for the period the case is in the Murray court. It is completed by the judge based on information from the prosecutor or from the victim advocate. The order is then served on the defendant and sent to the Administrative Office of the Courts (AOC) which posts it on the statewide system.

Protective orders are violated to an alarming degree by the offender; it is, after all, only a piece of paper. But even if the order is violated by the offender, women express satisfaction with such orders. In 1999 Massachusetts study, 86% of women who obtained an order said the offender either stopped or *reduced* the abuse, even though 59% had to call the police to report a violation. The women expressed feeling that the order demonstrated to the batterer that the “law was on her side.”<sup>156</sup> Other studies have reported that the victims who obtained orders had an improved sense of overall well-being. It may be that even though protective orders do not stop abuse, they reduce the severity of re-abuse. Yet, the victims still reported that they felt empowered and vindicated.<sup>157</sup>

### **Recidivism and Judicial Monitoring**

The whole idea behind the treatment program is as an intervention in the violence and to hold batterers accountable without incarcerating them. There is evidence to

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<sup>156</sup> J Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses*, Northeastern Series on Gender Crime and the Law, Northeastern University Press, 1999, at 29-37

<sup>157</sup> S Keilitz, P Hannaford and H Efke, *Civil Protective Orders: The Benefits and Limitations for Victims of Domestic Violence*, National Institute of Justice, U S Department of Justice, 1997

suggest that combined interventions lead to the best results. Interventions involving arrest, incarceration, victim advocate input, the court's criteria for a batterers' program, and the court's response to non-compliance will contribute to decreasing recidivism.<sup>158</sup>

A major methodological shortcoming of the existing literature on group treatment is the scarcity of experimental studies, leaving open the question of whether intervention itself is responsible for change in an abusive man's behavior. There is an absence of qualitative studies that might provide a greater understanding of how men who do manage to change proceed to non-violence. The qualitative method could also provide a greater understanding of the types of changes required of a batterer for victims to feel safe. Most evaluations, quite naturally, concern themselves with the rate of recidivism among those batterers who *complete* their programs. It was evident when the court looked at other programs and the available literature before starting the Murray program, that "a large number of defendants contacted the assigned provider but never completed the program."<sup>159</sup> To avoid this problem, the court implemented a plan that had the providers be present in court on the domestic violence court day and time. The defendant was not to leave court until enrolled in the program of the designated provider. At that time the program was explained to the defendant. If the defendant had any questions whatsoever, the answers would be provided before he left the courtroom. No defendant would be able to use "I didn't understand" as an excuse for complying with the sentence.

The court system is not alone in this. Nor does the solution to the problem of family violence lie within the court system. It is appropriate though for the court to take a

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<sup>158</sup> J L Edleson, *Woman Battering: Policy Responses*, Anderson Publishing, 1991, at 205-207

<sup>159</sup> A Harrell, *Evaluation of court-ordered treatment for domestic violence offenders: Summary and recommendations*, Urban Institute, 1991, at 19

leadership role in promoting the desired community values. Implementation of these programs will cause social change far beyond the courtroom.<sup>160</sup>

Several major batterer intervention programs studies and evaluations have been published. Early studies, which used quasi-experimental designs, consistently found few programs effective. When more rigorous evaluations were taken, results were inconsistent.<sup>161</sup> This inconsistency is probably due to the differences in evaluation methods. Pure experimental designs, favored by researchers because of their methodological rigor, make finding true effects easier and reduce the likelihood of error but are challenging to carry out in the field; as a result, design flaws may cast doubt on the results.<sup>162</sup> On the other hand, it is important to see how a program is actually put into practice. If the court is not faithful to its goals, then the defendants will be confused and unable to complete the treatment successfully. If the treatment providers are not faithful to the intervention model, then the impact of the intervention program may be compromised.

The research has produced inconsistent findings across the board. Although most seem to agree that the possibility of batterer programs changing offender behavior is increasingly dubious. In looking at four randomized type programs, for example, the research team found that of batterers *randomly* assigned to a program: one found batterer programs do lead to lower rates of reoffending, two others found that the programs have no effect, and the fourth was too ambiguous to be taken as a sample.<sup>163</sup>

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<sup>160</sup> National Council of Juvenile and Family Court Judges, *Family Violence: Improving Court Practice*, NCJFCJ Family Violence Project, Reno, 1990, at 8

<sup>161</sup> J C Babcock, C E Green and C Robie, *Does Batterer's Treatment Work? A Meta-analytic Review of Domestic Violence*, *Journal of Family Psychology*, 2004

<sup>162</sup> S Jackson, *Batterer Intervention Programs, Special Report*, National Institute of Justice, June 2003, at 1

<sup>163</sup> L Feder and D B Wilson, *A Meta-Analytic Review of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers' Behavior*, *Journal of Experimental Criminology* 1(2), S005

Research showed that monitoring often failed to hold offenders accountable because non-compliance was not consistently met with sanctions. Would monitoring work better if it was based on a better application of behavior modification principles such as enforcing consistent and certain sanctions as an answer to any violation, no matter how minor? It is speculated that violent behavior may be suppressed by the offender during the research not due to the treatment but rather from lack of tight court control. Short-term jail sentences, fines, and community service can be used as sentencing options that are likely to change propensity for the offenders to abuse. Since the existing array of criminal justice sanctions do not appear to be achieving the goal of rehabilitation, it becomes important to promote the alternative goal of accountability by tracking program compliance and consistently sanction the non-compliant.

The research literature on batterer programs has produced inconsistent findings, although the possibility that batterer programs might change offender behavior has become increasingly in question.<sup>164</sup> Reviews of domestic violence treatment programs generally report recidivism rates ranging from 15% to 50% in the year after completion of the program.<sup>165</sup>

Batterer programs should not focus on education since it is only a tenuous connection that education will produce cognitive change or, for that matter, any behavioral change. A more direct behavioral modification emphasis would be better served. In fact, the literature has yielded little support for the rehabilitative efficacy of any type of batterer program model, especially anger management and cognitive

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<sup>164</sup> L Feder and D B Wilson, *A Meta-Analytic Review of Court-Mandated Intervention Programs: Can Courts Affect Abusers' Behavior*, *Journal of Experimental Criminology* 1(2), 2005.

<sup>165</sup> R M Tolman and L W Bennett, *A review of quantitative research of men who batterer*, *Journal of Interpersonal Violence* 5, 1990, at 87-118

restructuring. Yet the majority of in-depth program studies have been programs based on group-educational or cognitive-behavioral models.<sup>166</sup>

Unfortunately, not much attention has been given to programs that include substance abuse treatment in combination with batterer intervention programs. Remarkable, since over 33% of the offenders in the studies had a prior criminal history (not personal history, but verifiable criminal history) of drug offending. This would seem to suggest that combining batterer treatment aspects with substance abuse aspects for those who fit the model would make a lot of sense. While exploring any number of alternative models makes sense, improvements in the further use of programs such as accountability and monitoring tools is a good the initial step for courts, especially given the current state of literature on rehabilitation.<sup>167</sup>

Knowledge about batterer program effectiveness is important for several reasons. Increasingly, courts are referring men convicted of domestic violence to batterers' intervention programs suggesting a certain level of public confidence in these programs' worth. Is that confidence justified? A great many victims want to remain in the relationship with the abusive partner and are just looking for help in changing their violent and abusive behavior. Since the batterer seeking counseling is one of the strongest predictors that a woman will return to her batterer, advocates are concerned that batterer programs should not hold out the promise of hope that may lead to injury.<sup>168</sup> Too many

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<sup>166</sup> L Bennett and O Williams, *Controversies and Recent Studies of Batterer Intervention Program Effectiveness*, Resource Center on Violence Against Women, VAWnet, 2001

<sup>167</sup> J S Goldkamp, D Weiland, M Collins and M D White, *The role of drug and alcohol abuse in domestic violence and its treatment: Dade County's Domestic Violence Court Experiment*, Legal Interventions and Family Violence, National Institute of Justice, Washington, D C, 1998

<sup>168</sup> E W Gondolf, *The Effect of Batterer Counseling on Shelter Outcome*, Journal of Interpersonal Violence 3, 1988, at 275-289

further incidents of battering have occurred because the victim thought the treatment would prevent future violence.

In a 2002 interview in *Esquire* magazine, E W Gondolf gave this opinion of batterers programs:

“Batterer programs simply aren’t working. They are failing... Domestic violence is the only field in which you can fail for 25 years and wind up being considered an expert.” But, “Arrest and treatment of batterers are not a complete solution to the problem of wife assault, but they are probably the best solution we currently have.”

A 1999 study by the National Center for State Courts found that eight of ten domestic violence courts ordered batterer treatment. And yet, this survey still showed that research on the efficacy of the domestic violence treatment programs is inconclusive.

Rosenfeld conducted a research review in 1992. He concluded that men who are arrested and complete a court-mandated treatment program were only slightly less likely to recidivate than men arrested and who either refused treatment, or did not complete treatment, or were not assigned to treatment. “In other words, there was little evidence that batterers’ therapy had much additional beneficial effect over...the effect of being arrested, charged, and punished.” He supported the research reports on recidivism rates for those receiving only legal interventions but without treatment at about 39%, and the recidivism rate for those assigned to and completing treatment at 36%<sup>169</sup> - statistically insignificant.

Gondolf reports that 20% of batterer program participants repeatedly reassault their partners despite intervention. Previous typology assignments have suggested these men are antisocial and psychopathic. The majority (60%) of the “repeat offenders” show

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<sup>169</sup> B D Rosenfeld, *Court-Ordered Treatment of Spouse Abuse*, *Clinical Psychology Review* 12, 1992, at 205-226

no serious personality dysfunction. There is no significance difference among the incidences of reassault for personality dysfunction, psychopathic disorder, or personality type, but a significantly greater portion of repeaters shows some psychopathic tendency. The findings contradict overgeneralizations about high risk batterers and imply that batterer counseling may be appropriate for many of them. This 2001 follow-up study of 618 offenders was based on reports from the female partners, and showed a reassault rate of 41% during the 30-month research period.<sup>170</sup> Some studies found repeat reductions following completion of batterer programs while many others found the programs had no affect.<sup>171</sup>

Babcock conducted a meta-analysis of a combination of research reports in 2004. The main idea was to analyze the impact of the programs on recidivism, and the corresponding amount and time of battering imposed on the victims. Babcock compared studies of those men who received legal intervention but no treatment with men who received legal intervention with treatment. The result of the study showed that there were no significant differences on recidivism. The treated batterers showed a 40% chance of being successfully non-violent, and those without treatment having a 35% chance of the same. Surprisingly this also showed that a victim is 5% less likely to be assaulted by an offender who went through the program than by one who is in the legal intervention column.<sup>172</sup> This analysis while showing only a small effect on post-treatment recidivism, does not discount that even a small effect may be very meaningful to some victims.

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<sup>170</sup> E W Gondolf and R J White, *Batterer Program Participants Who Repeatedly Reassault: Psychopathic Tendencies and Other Disorders*, *Journal of Interpersonal Violence* 16(4), 2001, at 393-413

<sup>171</sup> D G Saunders and R Hamill, *Violence Against Women: Synthesis of Research on Offender Interventions*, U S Department of Justice, National Institute of Justice, Washington, D C, 2003

<sup>172</sup> J C Babcock, C E Green and C Robie, *Does Batterers' Treatment Work? A Meta-analytic Review of Domestic Violence Treatment*, *Criminal Psychology Review* 23, 2004, at 1023-1053



Meta-analyses of multiple research studies found that reductions in violence due to intervention programs were small, and particularly small in experimental studies using victim reports of reassaults.<sup>173</sup>

Other research shows that monitoring has varying effects on recidivism. One Bronx study found that judicial monitoring led to a modest reduction in domestic violence rearrests – but the studies used two different monitoring methods, graduated and monthly and did not differentiate the effects. It could not be determined which of the two was the better.<sup>174</sup> Depending on how reabuse is measured, over what time period, and what countermeasures either the victim (e.g., getting a protective order or going into hiding) or the criminal justice system takes (arresting and locking up the abuser), a hard core of approximately one-third of abusers will reabuse in the short run, and even more will reabuse in the long run.<sup>175</sup>

In 2003, the National Institute of Justice (NIJ) released a report that evaluated the most common types of intervention programs with the majority of the findings suggesting that the programs do not change batterers' attitudes toward women or domestic violence, and have little impact on reoffending. The most commonly imposed legal sanctions do not appear to affect recidivism rates. Although courts were initially optimistic about the findings of early experimental research on the deterrent effect of arrest (the Minnesota Experiment) compared with other on-scene police responses such as separation and mediation, follow-up studies did not confirm the conclusion that arresting the perpetrator

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<sup>173</sup> E Peled, P Jaffe and J Edleson, *Ending the Cycle of Violence – Community Responses to the Children of Battered Women*, Sage Publications, 1995

<sup>174</sup> M Labriola, M Rempel, and R C Davis, *Bridging Theory and Practice, A Roundtable responses to domestic violence about court*, Center for Court Innovation, 2005.

<sup>175</sup> National Institute of Justice, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, U S Department of Justice, 2009

makes a difference in the probability of recidivism.<sup>176</sup> Yet, as early as a 1998 study by Murphy et al, it was shown that defendants who experienced more stages of intervention and supervision (arrest, arraignment, conviction, post-conviction supervision and monitoring) recidivated at lower rates than those who experienced fewer such interventions, suggesting that future research should focus more on multiple steps taken by the court system rather than just single solutions.<sup>177</sup> One study did find that men who were married, had “a stake in the community” (owned a home), and completed a full program, were slightly less likely to reoffend.<sup>178</sup>

The main finding of a Center for Court Innovation study (2005) was that mandating offenders into a batterers group program did not lower rates of reabuse and that those assigned to a program were just as likely to reoffend as those not assigned to a program. The researchers do, however, agree that swift sanctions seem to be effective in reducing recidivism and “attributes, but cannot conclusively link these positive findings to the domestic violence court practice of requiring offenders to attend post-dispositional hearings for compliance monitoring.” The study did find increased victim satisfaction with the mandated sentence but this may only mean that the victims are imbued with an optimism that is not justified; alternatively, it might also mean that victims recognize the treatment program does not make them safe but they want the offenders held more accountable by having to attend as an added sentence requirement. Indeed, 49% of the

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<sup>176</sup> J Garner, J Fagan and C Maxwell, *Published Findings from the Souse Assault Replication Program: A Critical Review*, *Journal of Qualitative Criminology* 11, 1995, at 3-28

<sup>177</sup> C M Murphy, P H Musser and K I Maton, *Coordinated Community Intervention for Domestic Abusers: Intervention, System Involvement, and Criminal Recidivism*, *Journal of Family Violence* 13(3), 1998, at 263-284

<sup>178</sup> S Jackson, L Feder, D R Forde, R C Davis, C D Maxwell and B G Taylor, *Batterer Intervention Programs: Where Do We Go From Here?*, Research Report, U S Department of Justice, National Institute of Justice, Washington, D C, 2003.

victims who were dissatisfied with the sentence said they held this view because the sentence was not severe enough, in their opinion.<sup>179</sup>

Even those researchers skeptical of the effectiveness of intervention programs have the hope that the programs will hold the batterer accountable for the violent behavior, but the evidence outweighs the hope. One problem is that while domestic violence courts do indeed use batterers' programs to hold the offender accountable, they use the programs in a haphazard way by not being consistent in using sanctions for noncompliance which is hurting their effectiveness.<sup>180</sup> If the idea is to have the batterer "feel pain" for the crime, then something must be done to affect the batterer.

Other research continues to paint a bleak picture on the effectiveness of treatment programs: a five-year follow-up study of 100 men who participated in the Duluth program (26-week program) reported a 40% recidivism rate for rearrest on domestic violence-related charges;<sup>181</sup> a study of 218 men at a community-based domestic violence program, having been randomly assigned to a cognitive-behavioral program or a psychoeducational program, had recidivism rates of 46% and 48% respectively,<sup>182</sup> and some good news: a lengthy 11-year study of 446 offenders, found an 18% recidivism rate (using arrest records only), substantially lower than other studies which included partner reports. So it would seem that batterers who complete domestic violence treatment are less likely to recidivate and have fewer reassaults when they do recidivate than those who

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<sup>179</sup> M Labriola, M Rempel and R C Davis, *Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a randomized trial at the Bronx Misdemeanor Domestic Violence Court*, National Institute of Justice, Center for Court Innovation, 2005, at 2-9

<sup>180</sup> M Labriola, M Rempel, C O'Sullivan, P B Frank, J McDowell and R Finkelstein, *Court Responses to Batterer Program Noncompliance: A National Perspective*, Center for Court Innovation, 2007

<sup>181</sup> M F Shepard, *Predicting batterer recidivism five years after community intervention*, *Journal of Family Violence* 7, 1992, at 167-178

<sup>182</sup> D G Saunders, *Feminist-cognitive-behavioral and process-psychodynamic treatments for men who batter: Interaction of abuser traits and treatment models*, *Violence and Victims* 11, 1996, at 393-413

drop out of treatment.<sup>183</sup> There were a half-dozen batterer program studies published between 1988 and 2001. Conducted across the country, these studies documented reabuse as reported by victims, ranging from 26% to 41% within five months to thirty months. Five other studies published between 1985 and 1999 of court-restrained abusers from several states found the abuse rates, as measured by arrest and victim reports for the period of four months to two years after their last violent offense, to range from 24% to 60%.<sup>184</sup>

Notice that the treatment programs are group activities. One study found that men who completed more group sessions were significantly less likely to recidivate than those who did not complete any or completed only a few intervention sessions.<sup>185</sup> But then, another study found that the number of sessions completed did not significantly impact the likelihood of recidivism.<sup>186</sup>

Courts should be more forceful with judicial monitoring (with more rigorous applications of positive and negative incentives to foster compliance), changes to program mandates, a greater emphasis on accountability than on rehabilitation when a batterers program is used (by consistently imposing sanctions on non-compliance).

A growing number of courts mandate domestic violence offenders to ongoing judicial monitoring. In theory, judicial monitoring would allow a rapid judicial response to offender noncompliance with court ordered treatment and probation. However, the

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<sup>183</sup> D G Dutton, M Bodnarchuk, R Kropp, S Hart and J Ogloff, *Wife assault treatment and criminal recidivism: An 11-year follow-up*, International Journal of Offender Therapy and Comparative Criminology 41, 1997, at 9-23

<sup>184</sup> National Institute of Justice, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, U S Department of Justice, 2009

<sup>185</sup> J A Gordon and L J Moriarity, *The Effects of Domestic Violence Batterer Treatment on Domestic Violence Recidivism: The Chesterfield County Experience*, Criminal Justice Behavior 30, 2003, at 118-134

<sup>186</sup> F W Dunford, *The San Diego Navy Experiment: An Assessment of Interventions for Men Who Assault Their Wives*, Journal of Consulting and Clinical Psychology 68, at 468-476

effectiveness of monitoring has barely been studied. According to Rempel et al, studies are mixed concerning the impact of judicial monitoring. For example, a quasi-experimental study at the Bronx domestic violence court found that judicial monitoring did not reduce recidivism, although there was a “modest transitory one-year reduction in domestic violence arrests.”<sup>187</sup> However, the same study suggested the quality of the monitoring was sorely lacking. A New York study of one group of offenders sentenced to judicial monitoring and a similar group not sentenced to monitoring found that judicial monitoring failed to reduce the rearrest rate for any offense. The groups were carefully matched for balancing on criminal charges, criminal history, relationship to the victim, and other personal characteristics.<sup>188</sup>

Problem-solving courts are designed to reduce repeat offending by providing treatment through intervention and monitoring to address underlying problems that contribute to criminal behavior. Offenders attend batterers’ programs to undergo specialized probation supervision and reports to the court on program compliance. The key is effective treatment for underlying problems, speed and accuracy in identifying problem behavior while in treatment, and whether changes in offender motivation can be affected.

An R C Davis study suggests that judicial monitoring may reduce recidivism, or have some effect on it, but the literature shows that probationary monitoring may be ineffective, leaving the use of monitoring as inconclusive.<sup>189</sup> Unfortunately, there is little

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<sup>187</sup> M Rempel, M Labriola and R Davis, *Does Judicial Monitoring Deter Domestic Violence Recidivism? Results from a Quasi-Experimental Comparison in the Bronx*, *Violence Against Women* 14(2), 2008, at 187-207

<sup>188</sup> See Note 187 *supra* at 187-207

<sup>189</sup> R C Davis and B G Taylor, *Does Batterer Treatment Reduce Violence: A Review of the Literature*, *Women and Criminal Justice* 10, 1999.

research or literature on the efficacy of judicial monitoring only, or court monitoring only, in place of probation-based monitoring.

One year later, Davis released another study that suggested longer periods of control [judicial monitoring through review hearings] may lead to lower reoffending rates.<sup>190</sup> And yet another study found that offenders who had cases with a greater number of pre-disposition court appearances, hence more court time, had a significantly lower rearrest rate. Does this indicate that a slower management system would be beneficial?<sup>191</sup>

Labriola cites a San Diego study (2000)<sup>192</sup> in which the main emphasis was having a defendant report directly to the court in periodic compliance hearings. This was shown to have been instrumental in better compliance rates and lower recidivism. This seems to support a 1998 Gondolf study which assessed the completion rates both before and after mandatory monthly compliance hearings. These hearings saw the program completion rate rise from 50% to over 65%.<sup>193</sup>

There are two 1997 studies that are anchors to the question about intervention programs and the effectiveness – the Brooklyn Experiment and the Broward County Experiment.

The Brooklyn study had batterers mandated to treatment by judicial order rather than through the probation but only for persons that met an eligibility requirement. The experiment was comparing the court ordered to the community service (probation)

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<sup>190</sup> R C Davis, B G Taylor and C M Maxwell, *Does Batterer Treatment Reduce Violence? A randomized experiment in Brooklyn*, Final Report to the National Institute of Justice, Victim Services, New York, 2000

<sup>191</sup> R Peterson and J Dixon, *Examining Prosecutorial Discretion in Domestic Violence Cases*, Annual Meeting of the American Society of Criminology, Toronto, 2005

<sup>192</sup> San Diego Superior Court, *Evaluation Report for the San Diego County Domestic Violence Courts*, Report submitted to the State Justice Institute, 2000

<sup>193</sup> E W Gondolf, *The Impact of Mandatory Court Review on Batterer Program Compliance: An Evaluation of the Pittsburgh Municipal Courts and Domestic Violence Abuse Counseling Center (DACC)*, Mid-Atlantic Training Institute, 1998

assignees. The treatment was based on the Duluth model (26 week program at 1 session per week) or an eight-week program at two sessions per week. Researchers expected that the men assigned to the eight-week group would have a lower reoffense rate than the 26-week group especially since the shorter period had more men complete the program. But the longer time group had significantly fewer criminal complaints than the control group at six months and 12 months after sentencing. The results support the view that batterer intervention merely suppresses violent behavior for the duration of the treatment. The study does not support the view that treatment leads to a lasting change in behavior. Were that true, the eight-week group ought to have been no more violent than the 26-week group.<sup>194</sup> Since this test was not designed to test the validity of various treatment models, the results cannot be seen as conclusive. Moreover, the results are at odds with results from other studies that found no difference in reoffense rates according to length of treatment.<sup>195</sup>

For example, a 1989 study group led by Chen and Bersani evaluated the effectiveness of an eight-week treatment program for batterers who were mandated by the court to attend; the researchers found that defendants who had attended 75% of the sessions were less likely to recidivate than those who attended fewer sessions. They also found no effect on treatment when tested linearly as to the number of sessions attended. Interestingly, they reported that even though all of the men were court-ordered to attend treatment, 37% failed to attend 75% of the sessions.<sup>196</sup>

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<sup>194</sup> R C Davis, C D Maxwell and B G Taylor, *The Brooklyn Experiment, Special Report*, National Institute of Justice, Washington, D C, 2003, at 15-20

<sup>195</sup> E W Gondolf, *Multi-site Evaluation of Batterer Intervention Systems: A Summary of Preliminary Findings*, Mid-Atlantic Addiction Training Institute, 1997

<sup>196</sup> H Chen, C Bersani, S C Myers and R Denton, *Evaluating the Effectiveness of a Court Sponsored Abuser Treatment Program*, *Journal of Family Violence* 4, 1989, at 309-322

A 2007 Alaska study confirmed that the longer participants stayed in the intervention programs, the less likely they were to recidivate even if they did not graduate. The results were promising enough that the research council recommended to the state that further funding be provided for therapeutic court programs.<sup>197</sup>

The Broward County study followed the classic experimental design – test group and control group. Batterers were sentenced to probation whether they were willing to attend treatment or not. The control group had no treatment program. In the year following the program 24% of each group were rearrested. Assignment to the mandated group was not significantly related to the likelihood of being rearrested, but attending domestic violence classes was significant in predicting rearrests (as was employment and defendant age). Batterers who were assigned to treatment and failed to attend either most or all of the sessions were most likely to be rearrested than those not ordered into treatment. About half of the men viewed battering as acceptable in certain situations. No differences were found between the test group and the control group in the first and second surveys. No initial difference in the views of the proper roles of women; or whether battering should be considered a crime; if the state had the right or even duty to intervene. Both the test group and the control group reported the same likelihood of beating their partners again. The result of this study showed that counseling had no clear, demonstrable effect on the offenders' attitudes. There was some evidence those in the test group were more likely to be rearrested unless they attended all of the court-mandated

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<sup>197</sup> Justice Center University of Alaska Anchorage, *Therapeutic Courts and Recidivism*, Alaska Justice Forum 24(3), Fall 2007



counseling sessions, but not significantly though as those in the control group who had attended few sessions.<sup>198</sup> As reported in the U S Department of Justice study:

“In both studies, response rates were low, many people dropped out of the program, and victims could not be found for subsequent interviews... The tests used to measure batterers’ attitudes toward domestic violence and their likelihood to engage in future abuse were of questionable validity... in the Brooklyn study, random assignment was overridden to a significant extent, which makes it difficult to attribute effects exclusively to the program.”<sup>199</sup>

What can be seen from both experiments is

“that batterers hold more traditional views than non-batterers about women and their proper roles. Batterer intervention programs are based on the premise that teaching men that it is wrong to exert verbal, physical, or sexual control over their partners will lead to changes in their beliefs that will ultimately produce changes in their behavior. The results of these analyses seem to indicate, however, that men directed by courts into batterer programs, as compared to men in the control groups, did not change their beliefs about the legitimacy of battering, their responsibility for these incidents, and the proper roles for women.”<sup>200</sup>

In fact, it is important to not only focus on physical violence. “Official” recidivism (such as arrest) as an indicator of physical abuse will overlook non-physical abuse. Non-physical abuse and control is “a qualitatively different form of behavior than physical violence, with different risk factors.”<sup>201</sup> A long-standing suspicion of batterers’ programs is that men may learn to avoid physical abuse by substituting other forms of control such as intimidation, which are not illegal activities. If the program does not address and

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<sup>198</sup> L Feder and D R Forde, *The Broward Experiment, Special Report*, National Institute of Justice, Washington, D C, 2003, at 5-13

<sup>199</sup> National Institute of Justice, *Special Report: Batterer Intervention Programs*, U S Department of Justice, National Institute of Justice, 2003

<sup>200</sup> S Jackson, *Batterer Intervention Programs, Special Report*, National Institute of Justice, June 2003, at 9

<sup>201</sup> K D O’Leary, *Through a Psychological Lens: Personality traits, personality disorders, and levels of violence*, Current Controversies on Family Violence, Sage, 1993, at 7-30

chooses to ignore non-physical abuse, then the effectiveness of the program becomes a training session in controlling behavior.

Another major study was done for the State Justice Institute in 1991. This was a quasi-experimental study that found batterers who completed short-term court-mandated groups were as likely to commit subsequent physical abuse as men who were found guilty in court but were not mandated to treatment.<sup>202</sup> The findings that treated men did worse on the measure of physical aggression than untreated men, was surprising and sobering. However, it would be incorrect to conclude on the basis of this one study that treatment is ineffective or harmful, though these possibilities must be considered. The study notes several possible explanations for the results. Among the most important considerations was that the treatment model implementation was inadequate. The programs evaluated were relatively short-term (12 sessions) and not very intensive (one hour per session). The follow-up period of four months across the treatment term may not have been long enough to capture the longer term impact of the programs. This study raised another issue – despite the statistical controls and the belief that the court did not exercise any systematic bias in assigning men to treatment, it is possible that unmeasured differences between the treated and untreated controls slant the analysis towards the untreated group. The rate of recidivism for the untreated group was remarkably low, while the treated groups recidivism rates, not exceedingly high, were high for such a short-term follow-up period. What is most difficult to understand about these findings is not the poor performance of the treated men, but the low recidivism of the men not referred to treatment. Oft times though, it seems as if the duration of the program in terms

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<sup>202</sup> A V Harrell, *Evaluation of Court-ordered Treatment for Domestic Violence Offenders: Final Report*, State Justice Institute, 1991

of *time* rather than number of sessions, is important. In those programs designed around a 20-week to 26-week program of 26 sessions, rather than an 8-week to 10-week program of 26 sessions, are associated with lower rearrest rates, over the same follow-up periods.<sup>203</sup> As well, recidivism rates are not affected by the intensity of the programs, meaning the same number of sessions in a shorter period of time does not matter.<sup>204</sup>

Another important study was from 1992, the following year. This study used random assignment of batterers to a treatment and a no-treatment control group. Thirty court-ordered defendants were assigned to a ten session group program which met for 90 minutes each week. The program could be characterized as psychoeducational, with cognitive-behavioral content as well as a focus on sex roles. Although researchers attempted to get partner reports of abusive behavior, they were unsuccessful in gaining enough group comparisons. Based on police reports only, 10% of the treated batterers recidivated while 30% of the untreated controls recidivated.<sup>205</sup>

In light of these results, it is interesting to note that in the Harrell study, using new arrests rather than calls to the police as the criterion, 19% of the treated group and 7% of the control group would be considered recidivists. This highlights that Harrell's findings are contradictory to those of the second study which also found that mandates to treatment were associated with lower, not higher recidivism rates when using official data as the criterion.

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<sup>203</sup> D G Saunders and R Hamill, *Violence Against Women: Synthesis of Research on Offender Interventions*, U S Department of Justice, National Institute of Justice, Washington, D C, 2003

<sup>204</sup> J Edleson and M Syers, *The Effects of Group Treatment for Men Who Batter: An 18-Month Follow-Up Study*, *Research on Social Work Practice* 1(3), 1991, at 227-243

<sup>205</sup> S E Palmer, R A Brown and ME Barrera, *Group Treatment Program for Abusive Husbands: Long-term Evaluation*, *American Journal of Orthopsychiatry* 62, 1992, at 267-272

A South Carolina study found that batterers who went through a domestic violence court were less likely to offend.<sup>206</sup> A 2001 Brooklyn study compared recidivism rates from before the implementation of a program and after its implementation and found that recidivism rates were significantly lower among those defendants who went through the program, and that criminal history was a predictor of how well a batterer would perform in a post-disposition intervention.<sup>207</sup>

What the latest literature increasingly shows is that the concept of intervention and treatment needs to be expanded. Despite the lingering disagreement about the effectiveness of domestic violence treatment, it appears that treatment does result in some positive changes in the batterers who complete the program.<sup>208</sup> One point to expand may be the true definition of domestic violence to include not just the physicality. The literature shows that many batterers recidivate, and those who do not physically assault their partner again tend to continue the psychological abuse – since abuse is a way to maintain a gain in a relationship, there is a questions about how long the gains gained in the intervention are maintained by the batterer.<sup>209</sup> Perhaps intervention programs should include a public education component.

Most all programs, although distinct from each other, do share some common threads. All programs recognize the seriousness of the perpetrator's violent behavior. There is a universal attempt to reduce the perpetrator's ability to blame the violence on

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<sup>206</sup> A G Rover, J M MacDonald and G P Alpert, *Combating Domestic Violence: Findings from an evaluation of a local domestic violence court*, *Criminology and Public Policy* 3(1), 2006, at 109-132

<sup>207</sup> L C Newmark, M Rempel, K Diffily and K Mallik-Kane, *Specialized Felony Domestic Violence Courts: Lessons on implementation and impacts from the King's County experience*, Urban Institute, Washington, D C, 2001

<sup>208</sup> J C Babcock, C E Green and C Robie, *Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*, *Clinical Psychology Review* 23, 2004, at 1023-1053

<sup>209</sup> B D Rosenfeld, *Court-Ordered Treatment of Spouse Abuse*, *Clinical Psychology Review* 12, 1992, at 215-220

the victim, to hold the perpetrator accountable for the abusive behavior, and to replace unacceptable abusive behaviors with mutual trust, respect and support. All programs use a dynamic group setting. All agree that couples' counseling, anger management, and family therapy are not substitutes for domestic violence treatment and should not be part of the perpetrator's treatment. Violent behavior is learned behavior and that being placed on probation or sentenced to jail is only a temporary behavioral alteration. Perpetrators need to be taught to take full responsibility for their behavior; understand the effects of their abuse on their partner and children; understand that abuse is a choice and that they can choose not to be abusive; and to identify and change attitudes and beliefs that lead to abusive behavior.<sup>210</sup> As said by Andrew Klein, Chief Probation Officer, Quincy, Massachusetts, "Batterers treatment alone – absent strict court monitoring, enforced abstinence from drugs and alcohol and, most importantly, without strong behavioral controls to ensure the batterer doesn't continue to abuse while in treatment."

Victims pose another "problem" for the Quincy domestic violence courts. The researchers posited that if the victims did not pursue charges against their batterers (which many victims want to do), the violence would lessen. This may also be a predictor of future abuse. However, the research showed that victims who wanted to drop charges (or have the prosecutor not file charges) were as likely to be revictimized (51% to 48%) as those who wanted to pursue the case.<sup>211</sup> Additional studies in New York found that victim cooperation with the prosecution did not predict recidivism. In other words, when judges imposed sentences to which the *victims* objected, the victims were no more or no

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<sup>210</sup> National Association for Court Management, *The Courts' Response to Domestic Violence*, NACM Mini-guide, 1997, at 9

<sup>211</sup> E Buzawa, G Hotaling, A Klein and J Byrnes, *Response to Domestic Violence in a Pro-Active Court Setting: Final Report*, National Institute of Justice, NCJ 181427, July 1999

less likely to be revictimized than victims who wanted their batterers prosecuted and sentenced.<sup>212</sup>

With all the different types of programs in all the different studies, remarkably some commonalities have emerged. Not surprisingly, not all programs will help every batterer – some are more effective than others depending on the typologies involved. No particular program has been shown to be a beat-all, end-all. One important aspect often overlooked is that the victims of those batterers assigned to programs were more satisfied than the victims of batterers not mandated into a program.<sup>213</sup>

The biggest test in intervention programs is batterer compliance and, naturally enough, programs with little monitoring have the highest attrition rates,<sup>214</sup> while offenders assigned to a more intensive mode of intervention are more likely to complete the program.<sup>215</sup>

The cumulative effect of probation (judicial monitoring) and counseling (batterers' treatment) has been found to significantly lower recidivism.<sup>216</sup> Another study reported that enhanced domestic violence supervision programs have reduced reoffending compared to non-enhanced supervision.<sup>217</sup>

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<sup>212</sup> M Labriola, M Rempel and R Davis, *Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a Randomized Trial at the Bronx Misdemeanor Domestic Violence Court*, National Institute of Justice, Center for Court Innovation, 2005

<sup>213</sup> L Bennett and O Williams, *Controversies and Recent Studies of Batterer Intervention Program Effectiveness*, resource Center on Violence Against Women, VAWnet, 2001

<sup>214</sup> A Harrell, *Evaluation of Court-ordered Treatment for Domestic Violence Offenders: Summary and Recommendations*, State Justice Institute, 1991

<sup>215</sup> S Bocko, C Cicchetti, L Lempicki and A Powell, *Restraining Order Violators, Corrective Programming and Recidivism*, Office of the Commissioner of Probation, Massachusetts, 2004

<sup>216</sup> C Murphy, P Musser and K Maton, *Coordinated Community Intervention for Domestic Abusers, Intervention System Involvement and Criminal Recidivism*, Journal of Family Violence 13(3), 1998, at 281

<sup>217</sup> B Hayler and M Addison-Lamb, *A Process and Implementation Evaluation of the Specialized Domestic Violence Probation Projects in Illinois's Peoria, Sangamon and Tazewell Counties*, University of Illinois Press, 2000

So, the Murray City Justice Court has chosen to apply most of the Duluth Model's aspects into the domestic violence court. Researchers in Scotland found that offenders ordered into counseling using the Duluth curriculum, had a success rate of 73% as opposed to only 33% for those offenders simply placed on probation (no court monitoring). The researchers were able to determine that the program did in fact include the essential elements of the model before they compared its results with those of the control group whose members received no educational intervention.<sup>218</sup>

The Court recognizes that changing a batterer's attitude towards women is a daunting task. For all the information, indoctrination, and education that has started a change in society, it is unfortunate that we still live in a sexist society where women are devalued, where "male privilege" is still in evidence, and where men who do batter women believe they have the right to do so. Findings indicate that men perceive themselves as entitled and obligated to defend their "dyadic existential" frameworks, while recognizing the costs and benefits involved in their use of violence to achieve this end. These men tend to create the rules, judge when they think the rules are being infringed upon, and then take steps to enforce the rules. "Men's construction of the escalation process is not random but rather constructed within a set of personal, interpersonal and socially recognized scripts that delineate the boundaries."<sup>219</sup>

It is a goal of the Duluth Model to change the attitudes of batterers, but the ultimate goal of the program and the Court is 1) the safety of the victims by intervening to stop the violence and, 2) address the power imbalance that is inherent in any relationship where one party has been systematically dominated and subjugated to

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<sup>218</sup> R E Dobash and R Dobash, *Changing Violent Men*, Sage Publications, 1999

<sup>219</sup> Z Winstock, *Structure and Dynamics of Escalation from the Batterer's Perspective*, *Families in Society* 83(2), 2002, at 129-141

another. The research into domestic violence suggests that many battered women want their partners to get some sort of counseling, for them to change, and for the violence to stop. Regardless that the research may or may not agree that a program is effective, it is important within the dynamics of domestic violence and criminal justice systems that the courts should offer men who batter the opportunity to change. If they choose not to change, then the state has the duty and obligation to increase sanctions to stop the violence.

Perhaps as many as one half of women in abusive relationships stay in them for strong cultural, economic, religious, and/or emotional reasons. Jailing their partners often makes their situation worse.<sup>220</sup> In promoting women's safety, the Battered Women's Justice Project reported:

“...advocates must bear in mind that each woman is the victim of this type of abuse primarily because she is a woman, that the culture effectively supports the controlling of women partners in intimate relationships, and that the barriers to her freedom are many.”<sup>221</sup>

Researchers are beginning to confirm what common sense dictates:

“That violence between individuals, while influenced by social and cultural variables, is more parsimoniously explained by an examination of individual characteristics, contexts, and functions of behavior. Not surprisingly, empirical research is beginning to identify shame, individual stressors such as substance abuse and trauma history, and personality characteristics as main contributors to violent behavior in intimate relationships.”<sup>222</sup>

Critics of the Duluth Model claim it fails because it is shame-based, trying to shame the batterer into submission. Just because the facilitators challenge the sexist beliefs of the

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<sup>220</sup> L Mills, *Insult to Injury: Rethinking Our Responses to Intimate Abuse*, Princeton University Press, 2003

<sup>221</sup> L Frederick, *Effective Advocacy on Behalf of Battered Women*, Battered Women's Justice Project, 2006, at 4

<sup>222</sup> S Smith, *It's Time for Domestic Violence Treatment to Grow Up*, [www.ironshrink.com](http://www.ironshrink.com), 1/28/2010



batterer which may cause the batterer to feel shame, this is not the end result sought for. The facilitator is encouraging the batterer by challenging him to get involved in some form of critical thinking. The challenging is a way to foster dialogue between the facilitator and the offender. The deeper the dialogue the greater the opportunity for the offender to recognize how his beliefs lead to self-defeating behaviors and then what he can do to bring about personal change.<sup>223</sup>

The research on the impacts of all the varied interventions suggests that no single step in the criminal justice process, from arrest to prosecution to conviction, is likely to deter perpetrators or likely to reduce the likelihood of battering again, and that many – if not most – perpetrators will recidivate. Research on rehabilitation suggests that a one-size-fits-all program is unlikely to be effective.

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<sup>223</sup> P Freire and A Faundez, *Learning to Question*, Continuum Publishing, 1989

## **METHODS**

The methods used for this research report relied heavily on literature review, data analysis of police and court records, a written survey for defendants to answer (see Appendix IV), another written questionnaire for clinicians (see Appendix V), and oral interviews with defendants, clinicians and victims.

The type of study was a modified cross-sectional research process. The study looked at one group of offenders assigned to the program. This group was randomly selected to take the survey. A part of the sentence of all convicted batterers in the Murray Court is attendance in an intervention program. So there was no opportunity in comparing an assigned group and an unassigned group. For one, the research literature indicated that this had been done several times by several different courts, so there was no reason to repeat the research. For two, as of 2006, Utah law requires attendance in a treatment program.

The defendant survey was given to 100 randomly chosen convicted persons (83 men, 17 women). All of the participants were sentenced based on a Plea in Abeyance Agreement. All defendants were assured of confidentiality. No names were used on the surveys, but each survey was given a Defendant ID number for tracking purposes only.

The defendant survey (see Appendix IV) consisted of six closed-end questions to determine how the defendant felt about the treatment. Two of the questions dealt with the court, one question dealt with the state, two questions dealt with the defendant's accountability acceptance, and one dealt with the treatment provider.

The defendant surveys were collected near the end of the participant's probationary period and/or treatment period.

Another survey was given to 15 clinicians spread over the four different treatment providers used by the Court. All 100 of the surveys were returned to the Court. However, 23 were deemed unacceptable as having incomplete information. The facilitators were assured anonymity and confidentiality. The surveys were assigned a Defendant ID number that corresponded with the Defendant ID number on the defendant survey. Again, no names were used, either defendant or facilitator. The only indication of source on this survey was a place to enter the treatment provider's company name. Not knowing beforehand how many surveys would be returned, the Court needed a way to determine if all treatment providers were indeed participating fairly.

The treatment provider questionnaire (see Appendix V) consisted of ten closed-end questions but with a comments section for each question. Comments were not-solicited, but were welcomed. Two of the questions directed the facilitator to ask the victims' if improvements were seen in the batterer; two questions dealt with continuing violence in the defendant; one question about the facilitator's getting cooperation from the defendant; one question wanted a defendant response to the program; two questions about the defendant's self-evaluation; one question about the immediate future actions of the defendant; and one question was eliminated due to the short observation time and the fairness of the question.

Also the demographics of the defendants were listed. The Murray Court's jurisdictional boundaries are heavily Caucasian which was demonstrated by the defendant demographics. Although the Hispanic population is growing, the test group was still at only 11%. The test population was 87% white and 2% Native American. No African-

Americans were in the test group and it is unknown what percentage of African-Americans was in the total number of domestic violence perpetrators or victims.

Demographics not only listed ethnicity, but also included gender, age, education, occupation or employment, and marital status.

Since the research literature reported substance abuse as being a key component attached to domestic violence, the Court included defendant abuse history as a part of its research. The Court found that fully 69% of the defendants assigned to the intervention program reported substance or alcohol use, enough so that these defendant were assigned to complete a drug/alcohol component of their intervention before embarking on the domestic violence section of the treatment.

Although any mental health issues are not in the realm of the Court, the mental health of the defendants was important to this study. The treatment providers conducted DSM-IV evaluations of each defendant as part of the assessment (Diagnostic and Statistical Manual of Mental Disorders). It is interesting that the diagnoses of the defendants coincided with what the research literature suggested. Other than for use by the treatment providers, the DSM-IV diagnosis of a defendant did not come into play for sentencing.

Not all defendants were interviewed, but a sampling was asked one or two questions pertaining to their perceived success of the treatment. Responses from victim advocates and prosecutors also indicated a positive view of the treatment program.

Periodic checks of the defendants' state criminal records were conducted searching for any violations outside of the Murray Court's jurisdiction. Regular checks with the prosecutor's office also searched for violations.

The providers were required to report any non-reported violations and in the weekly compliance reports of the defendants' behavior. Any violations were acted on by the judge.

## FINDINGS

So, the main question about the domestic violence court rests on the effectiveness of the program, or does it work? Generally, it would appear that the goals of the Murray City Justice Court's domestic violence court are being met. All indications from criminal record checks and from information gathered from the Murray City Police Department point to reduced recidivism as posited in the literature. All indications from self-reporting by batterers are that positive reinforcement of the program is having an effect. All indications from the treatment providers and their follow-up regime are that batterers are not recidivating (to a law enforcement intervention level) during the test period. And from most indications from the victims interviewed, the offenders have taken responsibility leading to reduced violence. These findings suggest that participation and completion of the program is associated with successful completion of the court's probationary period.

However, previous studies indicated that recidivism may occur anywhere from one year to 18 months after the program's completion, which is beyond the probationary period allowed in Utah if the defendant is successfully attending treatment and is in compliance with the program. The Court believes that this favorable outcome is the result of the program's influence on the batterer. The program in Murray had a higher success rate (vis-à-vis recidivism) than other programs reported in the literature. It is due to this responsiveness of the Court that those offenders who completed the treatment intervention were statistically less likely to commit further domestic violence offences than those batterers not completing the program or those in other local court jurisdictions. Probably the program has helped those who completed the program to amend their

traditional, patriarchal beliefs about the role of women, and consequently, the batterer's reliance on violence.

The Murray City Municipal Justice Court, Domestic Violence Court, has determined that court consistency is vital to successfully addressing domestic violence in the community. Therefore, there is a single judge assigned to the domestic violence case (and court) to enforce compliance. The judge is informed of the case and makes decisions based on his knowledge of the defendant and the case. Since one of the main efforts is to have the batterer accept accountability for the violence, having a single judge familiar with the parties involved will go to the issue of accountability and responsibility. Batterers are great manipulators and having only one authority figure for the defendant to deal with has been shown to short-circuit the game playing. The defendant is a person who has, most likely, convinced the victim that the violence was the victim's fault. For the defendant to take responsibility and admit such to the victim, in a court appearance, would most likely not be an option. Therefore, having the defendant directly accountable to the judge for his behavior is enforced at the sentencing and when the court issues its orders.

Court probation or program probation involves intense court supervision, not just of the offenders, but also of the processes. The sentence includes regular court appearances and treatment provider supervision of the offender. This frequency of supervision will ensure that any violations, or non-compliance reports, will garner quick action from the judge.

Having a single judge requires a “dedicated” staff to assist. Dedicated in following the court’s philosophy, but also dedicated in being assigned to the domestic violence court.

Problem solving requires a shift in what is valued in the adjudication process: outcomes (rather than inputs), flexibility in decision-making, listening to people’s concerns, participation by community organizations, and consideration of what is best for the community as well as for victims or defendants. Problem solving also places an emphasis on post-disposition events, which is a significant focus change from traditional case management. Traditional caseload management, for example, is based on cases rather than persons, while “effective management of post-disposition matters may require much more attention to the persons involved in cases.”<sup>224</sup>

There is a case manager/court clerk assigned to the court. The case manager monitors and tracks the defendant’s program and keeps the providers current on their reporting. The defendant has a schedule of treatment that the providers must maintain. The providers must be current with the weekly compliance reports to the court. The case manager provides direct contact with the court which does not require judge involvement.

While the case manager is the information clearinghouse for the providers, the judge also keeps informed on the cases. The Court uses four different providers, but there are several others in the Salt Lake area. The judge, case manager, and court administrator are responsible to research local intervention programs and licencing to ensure the providers are indeed “providing”: adequate and accurate compliance reports, proper probation monitoring, attendance and program payments by the defendants. Information

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<sup>224</sup> D C Steelman, J A Goerd and J E McMillan, *Caseflow Management: The Heat of Court Management in the New Millennium*, National Center for State Courts, Williamsburg, VA, 2004, at 33



and communication are two way avenues, so regular contact and questioning are encouraged. With this “zero tolerance” policy directed towards the defendants, it is also a policy the court has towards the providers. If a provider was to be delinquent in supplying compliance reports, then the provider would be put on warning by the judge. If the provider were supplying inaccurate and false reports, then the provider would be disqualified from the court.

The domestic violence court continually educates and updates the judge, staff, and providers by searching for relevant local training. The Utah Administrative Office of the Courts (AOC) offers a variety of training classes for district court personnel that this court has been able to send personnel, at no cost to the court. By participating in training the Court has shown a dedication and willingness to avail itself of ongoing and current training. It is important to show this dedication to the public to impress that the court has determined domestic violence to be a serious matter.

Even after all this, how does the court define success in providing a venue for domestic violence? While a domestic violence court resembles a problem-solving court, a domestic violence court shows substantial differences, mainly in measuring success and measuring outcomes. While a batterers’ program is a great way to monitor the defendant, it is also an important way to offer therapeutic justice. The court should not be surprised that success is not easily recognizable except as indicated by recidivism numbers. Unfortunately, much research has been presented to show that batterers’ programs, as a way to alter behavior, may not be as successful as other problem-solving methods.

Realistically, a domestic violence court, in and of itself, is not going to eliminate or even reduce domestic violence. About all it can measurably do is reduce recidivism.

But it can increase accountability in the batterers, and it can increase safety for the victims.

Evaluation participants were male or female domestic violence offenders mandated to attend a group treatment program and to abstain from further violent conduct and violations of the law. All attendees were convicted of a domestic violence charge or charges. There was no opting out of the program – if a defendant did not agree to do as the court ordered, the defendant was sent to jail for the full incarceration period allowed by statute. The spouse or partners of the defendants were included, when possible, in evaluating the programs effectiveness. Due to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements, the defendants were required to sign a release so the treatment providers could submit assessments to the court, and for regular reporting of program compliance to the court. It was made clear to participants in the study that information would be kept confidential for purposes of the evaluation. However, confidentiality issues made participant recruitment difficult. Defendants were told that their participation in the evaluation study would not affect the treatment the offenders were to receive. Defendants were also informed that participation or non-participation would have no bearing on any particulars of the sentence and have no affect on the probation.

The study was limited the sampling information. These sampling issues affected both the internal and external validity of the study. Because the women interviewed may not be representative of all battered women, any conclusions drawn regarding the effectiveness of the program on the batterers must be viewed with caution. The study was limited to information that came from the participants. Therefore, it is possible that

factors other than examined by this study affect the observed relationships between the batterers and their victims.

Data analyses were based on program participation between June 2008 and December 2009. Respondents consisted of 100 program participants: 83 males and 17 females. The age of the defendants ranged from 21 years to 54 years. Defendants were primarily Caucasian (87), Hispanic (11), and Native American (2). Only 3 defendants had less than a high school education; the remainder had high school or higher, with over half (51) having some college education. Sixty-two were married, 17 divorced and 21 single but with an “on-going” relationship. (Refer to Table 1.)

**Table 1**

**Demographics of the participating defendants (N=100)**

	(%)
<b>Gender</b>	
Male	83
Female	17
<b>Ethnicity</b>	
Caucasian	87
Hispanic/Latino	11
Native American	2
<b>Age</b>	
21-30	17
31-40	45
41-50	30
51 ^	8
<b>Education</b>	
< High school	3
High school	46
College	49
>College	2
<b>Occupation</b>	
Professionals	49
Laborers	29
Unemployed	11
Welfare	6
Students	2

<b>Homemakers</b>	<b>2</b>
<b>Service</b>	<b>1</b>
<b>Marital Status</b>	
<b>Single</b>	<b>21</b>
<b>Married</b>	<b>62</b>
<b>Divorced/Separated</b>	<b>17</b>

Information on substance abuse and alcohol use, childhood abuse, and criminal participation was taken from the assessments. Of the 100 defendants, 69 reported substance dependency or alcohol use, 61 had parents who were alcoholics (not one reported substance abuse in their parents), 52 experienced abuse or violence as a child (but no report on which parent perpetrated the abuse, or if both participated in the abuse), 31 were from a broken home (no information provided about if the parent remarried), and 18 said they were involved in “other criminal activity” sometime in their life. (Refer to Table 2.)

**Table 2**

<b>Defendant history (N=100)</b>	<b>(%)</b>
<b>Substance abuse/alcohol use</b>	<b>69</b>
<b>Alcoholic parents</b>	<b>61</b>
<b>Abused as a child</b>	<b>52</b>
<b>Parents divorced/separated</b>	<b>31</b>
<b>Other criminal activity</b>	<b>18</b>

The treatment providers submit an assessment (see Appendix VI) of the defendants for sentencing purposes. It is from this assessment that the judge decides the length of the treatment and the appropriate terms of probation. The providers used the DSM-IV criteria to identify the different Axis disorders. The assessment was conducted by an experienced, licenced clinician.

Using this criteria, 18 defendants demonstrated an Axis I diagnosis (major depressive): seven had intermittent explosive disorder, two had major depression, two had schizoaffective disorder, two were bipolar, two with ADHD, one with adjustment disorder, one with impulse control issues, and one showed PTSD. In the Axis II category (personality disorder), 31 demonstrated the following: 24 with an antisocial personality disorder, four narcissists, two with a dependent personality disorder, and one obsessive-compulsive personality. The Axis III refers to medical conditions, with two defendants reporting some past brain injury and four reporting “other medical condition.” (Refer to Table 3.)

Some of the information was provided by spouses and partners. After contacting 66 significant others, 41 agreed to participate in an introductory questionnaire. Of this, only 29 were still available throughout the study period, completing the exit questionnaire.

**Table 3**

<b>DSM-IV reports on the defendants (N=100)</b>	<b>(%)</b>
<b>AXIS I</b>	
No diagnosis	82
Intermittent explosive disorder	7
Major depression	2
Schizoaffective disorder	2
Bipolar	2
ADHD	2
Adjustment disorder	2
Impulse control disorder	1
<b>AXIS II</b>	
No diagnosis	69
Antisocial personality disorder	24
Narcissism	4
Dependent personality disorder	2
Obsessive-compulsive personality	1
<b>AXIS III</b>	
No diagnosis	94
Brain injury	2
Other medical condition	4

The numbers presented in Table 2 and Table 3 seem to rather daunting. However, even though Table 3 and the mental health issues do look uncomfortable, the assessment scores, in total, show that the average defendant is able to function in social, occupational and school settings with only mild symptoms.

The indications from Table 2 are consistent with the existing literature and the characteristics of domestic violence offenders in that many offenders do have problems with drug dependency and alcohol, or were abused as children or witnessed family violence as a child.

One of the major pieces of information the court wants is testing the effectiveness of the program through recidivism rates and program completion rates. The recidivism rate measures the rate of the defendants' use of violence after the treatment program has been completed. The literature had identified program completion rates and recidivism rates as relevant and valid measures of the effectiveness of the interventions (e.g., Shepard 1992; Saunders 1996). The court wanted to determine what part the program played and what part the judicial monitoring played in reducing recidivism. The data was collected after the completion of the program to continue for at least six months. The data was taken from official arrest records and self-reports of defendants and their spouses/partners in the follow-up interviews. Because of the varied definitions of the different agencies the court used a conservative criterion that defined recidivism as rearrest for a domestic violence-related charge, another domestic violence-related charge filed against the defendant, self-reporting from the victim to the victim advocates, or to the treatment providers and probation reports, or the issuance of a protective order against

the defendant. The Court took as an important indicator of the effectiveness of the program the reduction and cessation of reported use of violence. The court takes reporting from victims as an important aspect of recidivism. But, the number of victims who gave information to the evaluator was statistically insignificant. The lack of information from the victim advocates was also an important negative in getting the most accurate snapshot of victim problems. Not having this data is an important piece of missing information that needs to be addressed in further evaluations.

Referring to Tables 5 and 6 for the cases drawn for this study, from January 01 to December 31, 2009, there were 185 domestic violence-assault cases filed in the Murray City Justice Court. From January 01 to December 31, 2008, there were 202 domestic violence-assault cases filed in the court. Of the 100 defendants in this evaluation, 61 of the cases were filed in 2009, and 39 from the latter part of 2008. This type of spread was chosen in order to gather information on new cases recently mandated to the program and cases that are in different stages of progress in the programs.

Of the 185 domestic violence *assault* cases filed in 2009, 36 have gone to warrant as of January 2010, or 19% of the total cases filed. Of these 36 warrants, 21 are for defendants that did not complete the program, and the remaining 15 are for defendants that failed to appear in court on the original charges. Of the 202 domestic violence *assault* cases filed in 2008, there are 17 outstanding warrants that were issued in 2009 for not completing the program, and 26 warrants outstanding warrants issued in 2008 – 17 for failure to appear on the original charges and 11 issued in 2008 for not completing the program, or 21% of the total cases for 2008 have outstanding warrants.

Of the 2009 cases, four defendants were sent to jail without having attended any program (2%), and two were sent to jail for the full term for not completing the program (1%). Of the 2008 cases, seven defendants were sent to jail without having attended any program (3%), and seven were sent to jail for the full term for not completing the program (3%). Of the first seven, six were repeat offenders, and of the second seven, two were repeat offenders.

Of the 2008 cases, 15 were closed as “unsuccessful” (7%), 109 were dismissed based on a Plea in Abeyance agreement (53%) but still enhanceable if new domestic violence charges are filed, and 21 are still on probationary status (10%). There were 14 sent to jail to complete the case and there are 45 outstanding warrants. The numbers would suggest a 65% “success” rate. With a total of 71 defendants of the 2008 cases not completing treatment suggests a 35% non-success rate. However, of the 202 cases, there were 14 repeat offenders either in 2008 or 2009.

**Table 4**

**Domestic Violence Cases Filed 2008-2009**

<b>Domestic Violence</b>	<b>2008</b>	<b>2009</b>
<b>Cases filed</b>	<b>202</b>	<b>185</b>
<b>Cases available to Study</b>	<b>167</b>	<b>149</b>
<b>Warrant failure to appear</b>	<b>17</b>	<b>15</b>
<b>Warrant did not complete</b>	<b>11</b>	<b>17/21</b>
<b>Cases used from available cases</b>	<b>39</b>	<b>61</b>

**Table 5**

**Domestic Violence Case Disposition**

<b>Successful Plea in Abeyance</b>	<b>109</b>	<b>NA</b>
<b>Closed, unsuccessful</b>	<b>15</b>	<b>NA</b>
<b>Still on probation</b>	<b>21</b>	<b>61</b>
<b>Jail, 180 days, no program</b>	<b>7</b>	<b>4</b>
<b>Jail, 180 days, did not complete</b>	<b>7</b>	<b>2</b>



Of the 2009 cases, none have been closed as of the date of this evaluation. However, there were three defendants sent to jail as repeat offenders from 2008, and three from 2009.

**Table 6**

**Defendant survey of the court-ordered treatment program**

1. <u>The court treated me fairly.</u>	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
	0	14	5	40	13
2. <u>The sentence fit the violation.</u>	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
	9	21	3	26	13
3. <u>The treatment classes helped me accept accountability for what I had done.</u>	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
	0	6	29	30	7
4. <u>The Court should not interfere with family issues and problems.</u>	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
	10	17	7	16	22
5. <u>The treatment program did not help me.</u>	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
	6	2	17	36	11
6. <u>The treatment provider did not understand my particular situation.</u>	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
	3	14	23	16	16

All 100 defendants in the evaluation were given a short survey on their experience with the court. They were told the questionnaire would be used in assessing the success of the program in Murray. They were guaranteed anonymity. (See Table 4.)

A large percentage of the responders believe they were treated fairly by the court (74%), and a large percentage thought the treatment program did, indeed, help them in some way (67%), while only half said they held themselves accountable for what they had done (50%).

A positive percentage (55%) thought that the sentence issued by the court fit the violation (with 41% answering that the sentence was not appropriate). Interestingly, 44% thought the court should not be involved in family issues and problems, and the same percentage (44%) felt the treatment provider did not understand the defendant's situation.

Three survey questions had relatively high neutral ratings: 40% on accepting responsibility, 31% on the provider not understanding the defendant's situation, and 23% were neutral on if the treatment provided them any help. These three questions have a common thread and maybe we should look at treatment provider/defendant dynamics in future surveys.

Not one defendant *strongly disagreed* about being treated fairly by the court.

Some statements from the participants do give an encouraging outlook:

- "I learned that my problems are not unique. Lots of people have lots of different problems with their wives. Talking in a group about them is hard, but you do hear a lot of things that help you see your problems. Helps you work on what you were told."
- "I already knew that I was a good person; just had problems."
- "They [agency] helped me be a better person."
- "There are a lot of screwed up people. If the girls would just leave us alone..."
- "I learned a lot of ideas from the other guys. Every little thing that helped them might help me."
- "I thought of all the nice things my wife and I used to do. I guess I screwed it all up. Hope she doesn't hate me."
- "I learned skills that will help me everyday of my life."
- "I really liked learning to set a goal so I could do something good with a bad thing."
- "I'm glad it's over."
- "Listening to the others, about how frustrated they are to have everyone think you're bad. I'm not bad. I needed the help."

Of the 72 defendants that returned the survey, 21 wrote statements, and 13 answered questions asked by the evaluator. Of these 34 defendants, 31 (91%) mentioned different learning in terms of a change in their attitudes.

By all reports, from victim advocates, the prosecutor's office, treatment providers and court interviews, victim safety was enhanced. Over 75% of the respondents felt that they had less to fear from the spouse/boyfriend since they had completed the program. However, the non-spouse relationship had a lower overall satisfaction with the results of

the treatment. This may be because a wife has a very different relationship with a husband than a girlfriend with a boyfriend – economic, children, property, etc.

Several victims said they were just happy that “he finally got help.” This is worrisome in that one would hope the victim doesn’t read too much into the treatment. Victims are told that the program does not provide a “cure” in the traditional use of the word, but only a way for the offender to deal with his behavior.

Multiple interviews were conducted with victims and perpetrators. For victims, about the services they received, their satisfaction with those services, and their experiences with subsequent abuse. All of the women victims had experienced abuse by an intimate male partner prior to their participation in the study. Three separate interviews were held; at the two month time, at the three month time, and then at the six month time.

Preliminary recidivism rates look promising – but there is only a modest size sample and only a short evaluation period.

Couples counseling was not used in any of the treatment programs. Couples counseling is not a recognized component of the court’s policy on domestic violence. Besides, couples counseling can be a reinforcement to the defendant as well as detrimental in the efforts to have the defendant accept accountability for the violence. If the victim were to take any responsibility in the initial violent incident, then the defendant would be excused from taking any responsibility by transferring the fault to the victim. If the victim were ever to be told to take preventative measures when she sees the defendant getting near an explosive stage, then the victim signals that she has accepted

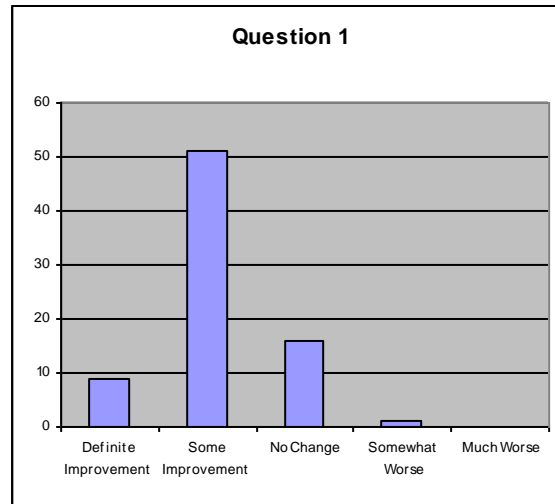
her part in the violent episode by not taking the preventative measure when given the chance.

The treatment providers were also given a survey about the defendants attending the programs. There were 100 surveys issued that coincided with the 100 defendants being evaluated. There were a total of 15 different facilitators from the four treatment providers that work with the court. The facilitators returned all 100 surveys. However, 23 surveys were deemed to be unacceptable, having missing information, incorrect information, and not complete. Of the 77 usable surveys, all of the treatment providers are represented.

The survey consisted of ten questions using a Likert scale ranging from *definite improvement* to *much worse*. Again, the information was to be confidential, identified only by a random defendant identification number. (see Appendix V.) This survey method was chosen as it is a good way to get a profile of the group.

The survey included a few questions that borrow from “branching” as a survey instrument. Instead of respondents being presented a certain question based on their response to an earlier question, there were three pairs of questions that borrowed from each other to elicit a response that would support each other. For example, Question #1 (see Figure 2) and Question #8 (see Figure 8) asked for a response that could be compared to each other – the *victim's* perception of their batterer's behavior and their perception of the batterer's outlook as reported to the facilitator. Although “outlook” and “behavior” are two different psychological and physical actions, they play on each other. If a person reportedly “behaves” badly, then that person's outlook will be low, and vice versa. These types of questions perform a check on each other in the types of responses

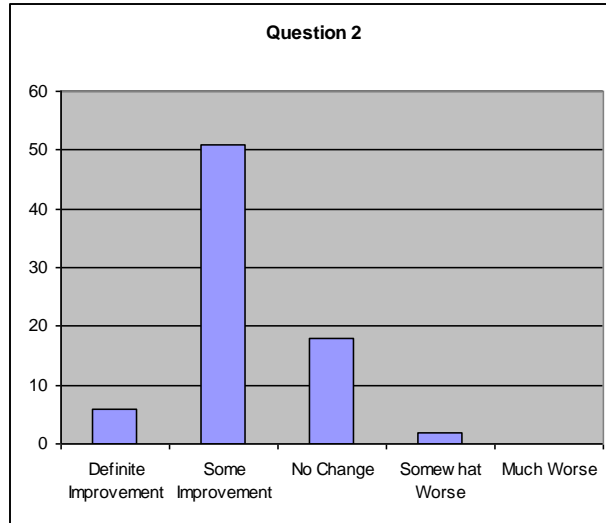
expected. Ultimately, this check worked in that a high number of defendants (60) demonstrated at least an improved behavior while an almost identical number (62) reportedly demonstrated a noticeable (positive) change in their outlook.



**Figure 2. Does the offender's intimate/domestic partner report improved behavior in the offender?**

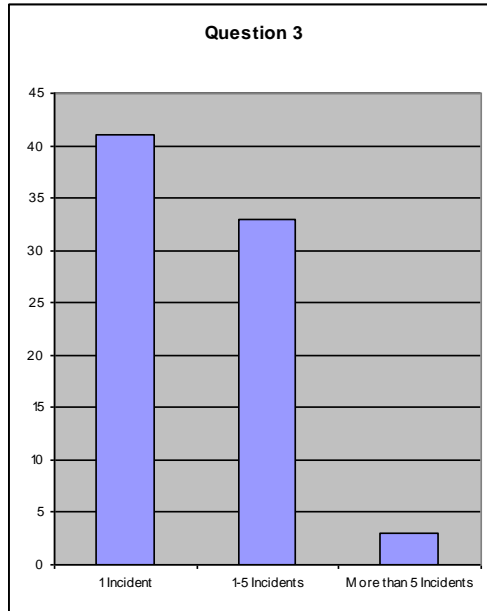
Along the same lines, Question #2 (see Figure 3) and Question #7 (see Figure 7), support each other; the *offender's* response to the facilitator was the subject of these two questions. The facilitator's responses indicated a rather high level of increased defendant self-esteem (57) with a more moderate increased defendant outlook on their situation (40).

In comparing the first pair of questions (1 and 8) and the second pair of questions (2 and 7) it is interesting to note that the perceptions of the victims is significantly higher than the perceptions of the facilitator. But it is interesting to take notice that both perceptions are positive rather than negative. The discrepancy may be due to the fact that the victims were anticipating a good outcome to the treatment where the facilitator, using a more critical eye, was seeing a more real picture of the situation.

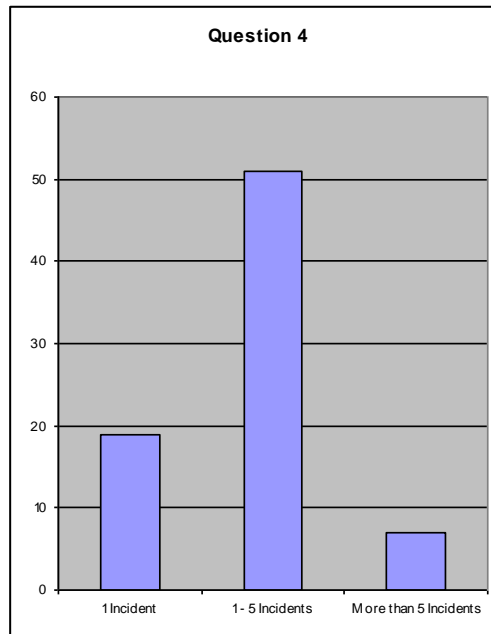


**Figure 3. Has the offender demonstrated an improvement in self-reported self-esteem?**

The final pair of interconnected questions dealt with violence – Question #3 (see Figure 4) and Question #4 (see Figure 5). These two questions listed the number of violent incidents or abusive incidents reported to the facilitator. Again, the responses came from the victims for one question and from self-reporting by the offenders for the other question. The victims reported far more single abusive episodes than did the offenders, but the offenders self-reported more multiple incidents than did the victims. This may be due to the definition of an incident – by the time the offenders are in the program, it has been explained to them that occurrences of yelling, or other non-physical events, can be interpreted as an incident. This definition is either not part of the victims’ new reality or the victim has not been adequately informed of the definitions given to the offender while in the treatment program.



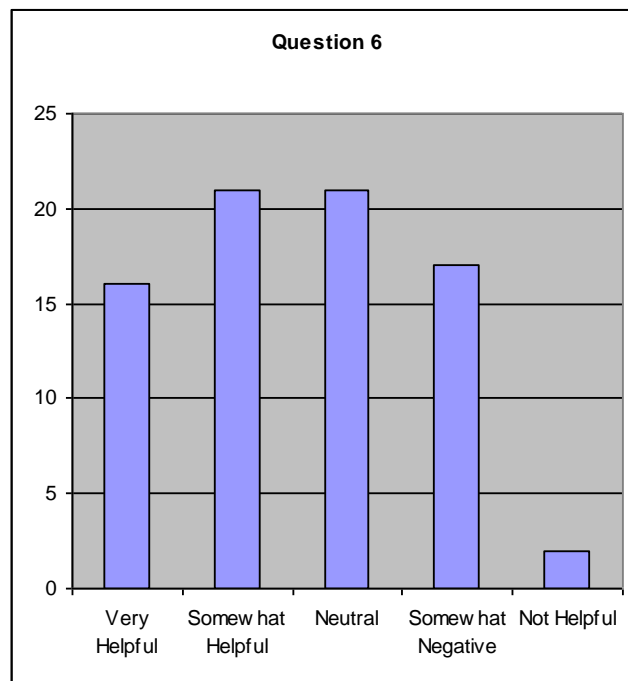
**Figure 4. What are the partner-reported recidivism rates of violence or other abuse?**



**Figure 5. What are the offender self-reported recidivism rates of violence or other abuse?**

Within the survey was a question (#5) that seemed to have been very actionable and workable in the pre-test – “What treatment components are helpful as perceived by the offender and his partner?”

In the original conversations with the facilitators and other treatment provider personnel, this question was determined to be important in determining from the people directly involved what aspects of the program were noticeable, perceptive, and/or memorable. After the survey was completed by the facilitators, it was proffered that this question posed too many aspects, or that the definitions, while discernable to the providers were really not identified as separate or categorical to the victims and offenders. They either don't know the differences or more likely don't care, as the nuances have little or nothing to do with their overall concept of the intervention program.

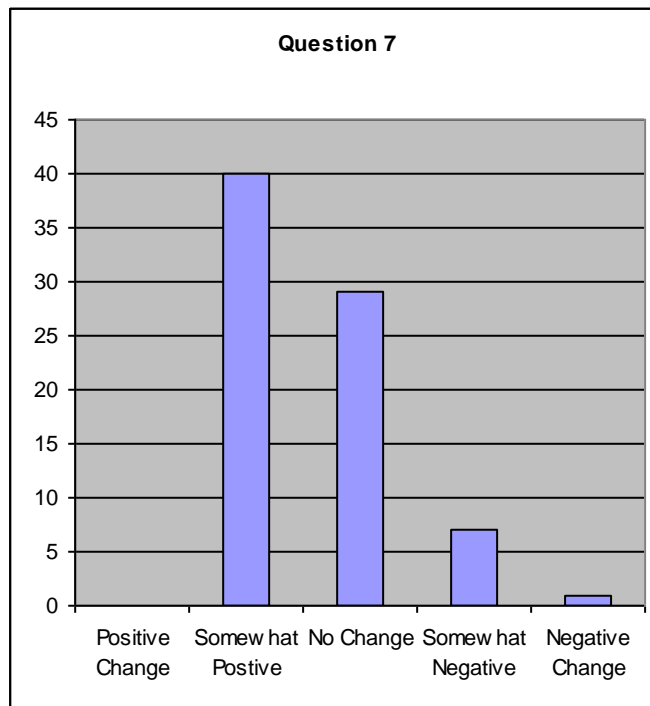


**Figure 6. Does the offender report the facilitators' behaviors as being helpful?**

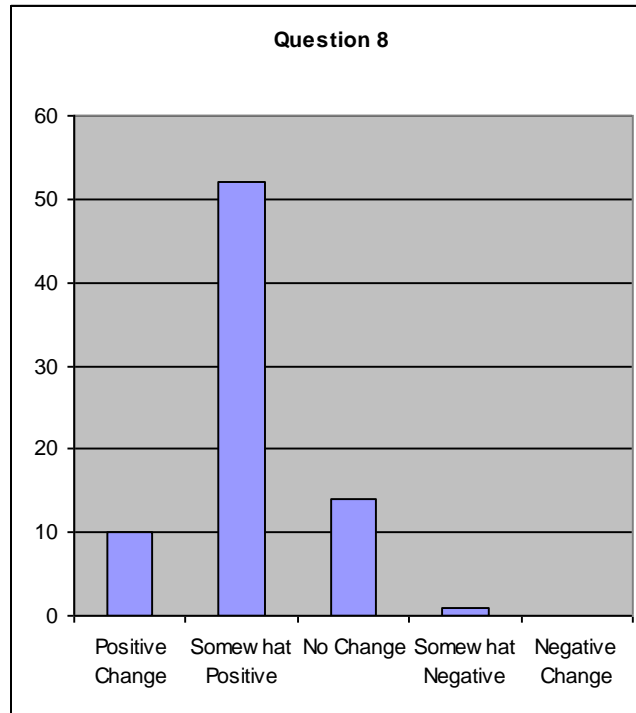
Question #6 (see Figure 6) is another perception question asked of the offenders. It is important to know and understand if the offenders understand the role of the facilitators. A facilitator is much more than a referee for the treatment group. The facilitator is licensed by the state to provide the treatment for the intervention program



and the offender must know this. If the offender believes the facilitator has a lesser role than he/she does, then the treatment may not be taken as seriously as it should. If the offender thinks the facilitator is not performing the tasks of a treatment provider then, again, the offender is not going to be whole-heartedly into the program. This is also a check on the treatment provider for the court to determine the efficacy of the provider in question.



**Figure 7. Does the offender report changes in his outlook?**

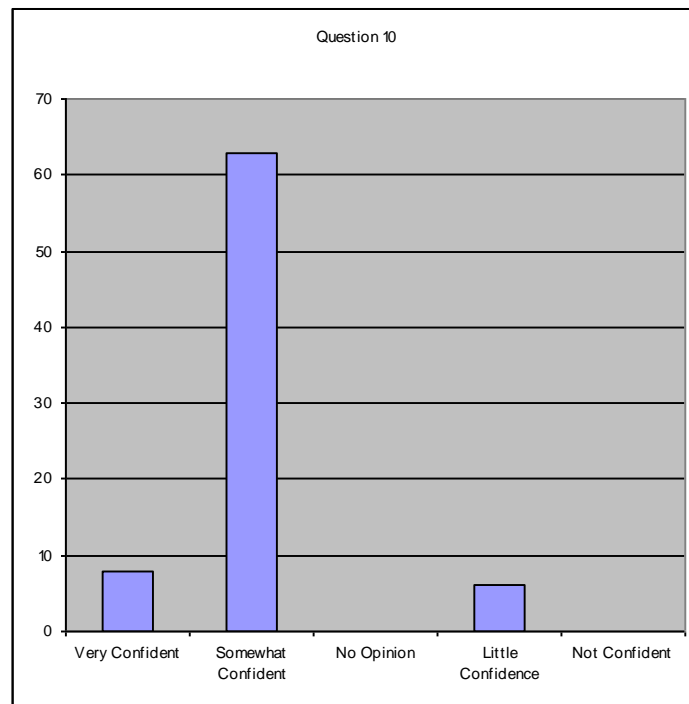


**Figure 8. Does the victim/partner report noticeable changes in the offender's outlook?**

Question #9 was eliminated during the review at the end of the survey. This was another question that seemed very appropriate and applicable during the pre-test. However, once the study was implemented and the survey included, in the view of the facilitators, the question did not allow enough “time in program” to provide accurate or fair answers. This does not preclude the question being part of future surveys, but more than likely it would be more appropriate in surveys covering the end of 18 month of two-year time periods.

The closing question, Question #10 (see Figure 9), required the facilitators' view of the immediate future of the defendant vis-à-vis recidivism. The question focused on the confidence each had in an offender to not recidivate. From “very confident” to “not confident” this was a “best-guess-timate” on the part of the facilitators. This is not a grade given to the program, and not a grade given to the offender as to his successful completion of the program. It is a clinical assessment, based on the offender's

performance in the intervention program, as to the chances of recidivating or falling prey to a behavior pattern that led to the problems the offender had in his relationships with intimate partners, his relationship with the community, and ultimately the criminal justice system.



**Figure 9. How confident is the facilitator in the progress made by the offender to not recidivate?**

The model that Murray City has created does not follow the traditional methods. Historically, the punishment for husbands beating wives was less severe than if the man committed the same crime against a stranger. This paradigm must change.

Because all of our domestic violence cases are dealt with by the same judge and court team, these individuals have gained a certain expertise in the issues. The team approach has enabled the court to process cases more quickly, reducing the opportunity for a batterer to intimidate his partner into abandoning the charges.

The team may see repeat offenders and have a more detailed background about the case that may help be more sensitive to the victim. Correspondingly, the fact that fewer individuals will delay with these cases may help deter future violence. Offenders know that if they batter again, they will face the same team.

The Murray domestic violence court has created a treatment and intervention program that is doable and achievable. Every defendant is mandated to attend. The defendant has all policies explained to them and must acknowledge his understanding of what the court expects from him. It is made clear to the defendant that the responsibility for complying with court orders lies solely with the defendant. The court will monitor his progress, enforce the rules, but will not babysit him. It is important that the court acts quick against non-compliant offenders.

The court takes the position that increased judicial monitoring would positively affect recidivism. The court found that judicial monitoring had an effect on recidivism, but not nearly to what we hoped.

The Murray program looked long and hard at the Brooklyn experiment (Davis et al. 2000). The Court was encouraged by the results suggested by the Brooklyn experience that indicated a tight court control was important and effective in reducing recidivism.

As with Brooklyn, the Murray Court mandates defendants into a 26-week program. That is a long time for a defendant to be under court scrutiny. In comparing the Murray Court program results with the research literature, it would appear that the court has a significantly lower re-arrest rate.

Since probationary monitoring is in part responsible for lower reoffense rate, as the Brooklyn study seems to indicate, judicial monitoring may be even more effective.

Judicial monitoring is theorized to impress defendants with the realization that the court knows what and how the defendant is doing in the program. There is evidence to suggest that defendants are less likely to be rearrested while under the court's supervision – not because of the treatment classes themselves, but because of the continued court control. The court found the batterer program produced a protective effect beyond that which would have been to a loose monitoring. If batterers were assigned to attend batterer classes in conjunction with intensive judicial monitoring and they exhibited lower recidivism rates than batterers not in a program, then it would be the program and monitoring that was causing the behavioral change. Research on effective responses to battering suggest batterer intervention and court oversight with responsive law enforcement efforts do affect outcomes.<sup>225</sup>

There are some differences Murray has with the Brooklyn study. Originally the Brooklyn study was not to test court control. The Brooklyn idea of court control was very loose with the defendant only nominally under court control – they did not have to report regularly back to court, but only if the court called them in. The Murray Court's perception of court control is embodied in the threats of immediate and serious sanctions. The defendants in Murray are regularly scheduled to report to court for compliance hearings, where the program requirements are reiterated to them and where the progress in their treatment program is reviewed.

The treatment program review is to verify with the provider, also present in court, that the defendant is doing what the court ordered, from community service to random

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<sup>225</sup> E W Gondolf, *Mandatory Court Review and Batterer Program Compliance*, *Journal of Interpersonal Violence* 437, 2000

drug tests to school or work attendance. The Court is interested in the full gamut of the defendant's life while in the program. Non-compliance brings sanctions.

The Court recognizes that domestic violence is a complex social issue. From a review of the literature it is apparent that no one intervention model will "fix" the batterer, just as no one intervention program will be able to provide all the services needed by the victims.

This is not for a lack of trying. Researchers have made several inroads based on the studies and experiments in domestic violence intervention, many quite sophisticated, but the work needs to continue in efforts to identify the elements that are effective.

Meanwhile, other courts and jurisdictions continue to develop and implement domestic violence courts. These new entities are turning to what is already "out there", not wanting to reinvent the wheel. They need to have the latest information, the latest theories and the latest practices to choose from when making their decisions on their programs. With the increasing proarrest laws the pressure will continue to mount.

The study of batterer intervention programs used by the criminal justice system will not answer the question of what "works." The whole scheme of domestic violence intervention needs to be examined, including the role of the courts, treatment providers, victim and offender advocates, and stakeholders.

It is a recognized fact that domestic violence has existed for ages. It is a recognized fact that this needs to be acted on and it is the community that needs bring the pressure to bring action. With the awakening of the public to the problem of domestic violence in the 1980s, services for domestic violence victims have grown exponentially. However, battering continues.

The abuser's problem is not sensitivity. The abuser has already figured out how to succeed in his world, and the court is not going to change his behavior until and unless the abuser decides if the cost-benefit analysis of abuse has changed. The court must do this by making the cost greater than the benefit. The batterer needs negative consequences (sanctions) to affect his life before he will change.

The focus is shifting to the batterer and how society should intervene. How and when should the court act? What punishments should be imposed? How can the court change a person's personal behavior?

From this author's reading of the research, the type of monitoring and control exercised by the Murray Court is a minority situation. Though studies are few, the Murray Court's type of specialized probation monitoring is more effective than the standard probation methods in affecting future violations.

Studies that have been done on this attribute the effectiveness to quick responses to non-compliance, close victim contact, and the intense supervision of the defendant. Having this close contact, especially of low risk misdemeanants, did affect their behavior towards reoffending in that monitoring seemed to have affected the offender's attempts to reoffend. Offenders were able to succeed by changing their thinking patterns and behaviors.

The Murray City Court's domestic violence component can issue a no-contact order, but it is only in effect for the trial period. It is a lesser version of a Temporary Protective Order. (In the state of Utah, a protective order can only be issued by a district court.) A no-contact order is limited in scope and duration, but it is a lawful order of the court to make the defendant accountable for any illegal contact, or attempt to contact, the

victim, or others as listed, in the order. In reality, a no-contact order or a protective order is just a piece of paper. There is little evidence that such orders *prevent* future violence. They do offer the prospect that reported violations can be used as an indication of a pattern of abuse (a paper trail) which can be a basis of arrest and prosecution by a violating batterer. A protective however, can be a predictor of rearrest in a domestic violence situation, whereas no other actions such as the case being dismissed, the defendant going to jail, or the defendant being assigned to a treatment program have a predictive value. Non-court issues such as marital status, living arrangements, education or employment were predictive. Other than the use of a weapon or a prior arrest, a protective order is a predictor of rearrest.

One of the challenges facing the Domestic Violence Court is the collection and development of accurate information about the long-term results of domestic violence cases, and the impact of the intervention program on domestic violence recidivism.

Currently the Court is developing methods of data collection to systematically track the outcome of domestic violence cases.

The Court has developed a set of goals:

1. Determine the nature of the domestic violence cases that come before the Court;
2. Enhance judicial education and knowledge of the dynamics of domestic violence;
3. Evaluate the Court's response to its existing domestic violence intervention program;



4. Develop recommendations for better use of the current case management system; and
5. Analyze the need for future data collection, and a more workable methodology.

Utah has domestic violence criminal statutes. It is important to note that while cases that come before the Murray City Court are *alleged* violations of the Utah domestic violence statutes, and the cases that are heard are not representative of all criminal domestic violence cases in Utah, let alone the Salt Lake Valley. The consistency of case file date varies from court to court and from year to year.

But of the 2008-2009 domestic violence cases that came before the Murray City Domestic Violence Court, the study found (see Figure 10):

1. 69% of the defendants entered a Not Guilty plea;
2. 21% entered a Guilty plea;
3. 10% entered a No Contest plea.

The study has found that 72% of first time offenders enter into a Plea in Abeyance agreement, while 0% of second time offenders are offered such an agreement. Of the Not Guilty pleas entered, after further Pre-Trial discussions or after trial (bench or jury) 66% have a Guilty final disposition.

All defendants found Guilty, no matter if under a Plea in Abeyance agreement or not, are mandated to attend the intervention program.

Intervention programs should alert more domestic violence victims to available services and attempt to increase the number of women receiving counseling and support services.



**Figure 10. 2008-2009 Domestic Violence Dispositions**

In researching this paper, the Court found that victims are often reluctant to appear in court to testify against their abusers, even though victim cooperation with prosecutors may be related to less subsequent abuse. Domestic violence intervention programs, then, should take steps to reduce the number of dismissed cases (non-Plea in Abeyance dismissals), and dropped cases (nol-prossed). Court records show that 33% of domestic violence cases were nol-prossed mostly because the victims failed to appear in court.

Domestic violence programs should consider contacting victims to convince them to appear in court. This may involve enhancing efforts to contact victims after an arrest has been made and convincing them of the importance of participating in the prosecution of the batterer. It may involve better communication between advocates, prosecutors and victims to ensure victims understand their options and the potential consequences of their choices. Perhaps prosecutors should issue subpoenas more frequently to bring them to court.

## CONCLUSIONS & RECOMMENDATIONS

The Murray City domestic violence court must address the needs of its own community. There are certain principles to which the Court must adhere to lead to that success. The measurement of success is primarily measured by reduced re-offending but was found to include:

- reduced delay in case processing
- increase in the proportion of guilty pleas
- a higher proportion of convictions
- greater consistency in sentencing
- greater compliance with court orders
- consistency in sanctions for program violations
- increased satisfaction with the process by the victims.

Cooperation is a very important component for the administration of justice, especially in these types of cases. However, it is up to the judge assigned to the domestic violence court to take measures to ensure cooperation with the court parties involved. Primary in this is case management. Ernest Friesen writes that, “Courts cannot fulfill their purposes if they can’t manage their cases.” He says the key to this is the court simply doing its job.

“Lawyers settle cases when they are prepared. It is the court’s job to make sure they are; if hearing and trial dates are firm, if you limit continuances and monitor cases – they will be. If a court does that, it can manage its case load.”<sup>226</sup>

**Conclusion.** The domestic violence court has one permanent judge assigned to hear cases. This ensures the consistency in the program, and reduces the chance of defendants,

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<sup>226</sup> P Koelling, *An Interview with Ernest C Friesen, Jr*, American Bar Association, Judge’s Journal 49(1), 2010, at 4-6

who are great manipulators, from “gaming” the system. This conclusion goes hand in hand with a dedicated staff assigned to the domestic violence court. The Murray Court has a permanent clerk and case manager assigned to support the judge and provide clerical duties for the domestic violence cases. It is the duty of the case manager to keep track of the compliance reports received from the treatment providers pertaining to the defendants. Currently the providers send to the case manager a compliance report the week prior to the next scheduled review date set for the defendant. (This does not preclude the provider notifying the court immediately upon a non-compliance issue with the defendant.) The case manager reviews the case and discusses the non-compliance issues with the judge. Both the judge and case manager review the history of the defendant while in the program and determine if sanctions, and what sanctions, are to be leveled against the defendant during the next review appearance.

**Recommendation One.** The Court should increase the frequency of the compliance reports to a weekly submittal because the defendant is attending weekly sessions. With many of the defendants being mandated to participate in drug/alcohol testing on a weekly basis, weekly reporting would increase the likelihood of the court being more proactive in any non-compliance activities of the defendants.

**Conclusion.** Judicial monitoring of the defendants in the treatment program has been accepted as the most effective technique in reducing recidivism. It is within the monitoring program that defendant compliance is enforced and reinforced, relying on the full authority of the judge, as the “hammer” of enforcement. The judge must use this authority to the fullest extent permitted. One problem identified in some of this Court’s proceedings is the willingness to let one or two non-compliance reports pass without

applying strong sanctions, such as limited jail time. It has been too easy to dismiss a violation as only a “minor” violation. It is up to the Court to be more serious about the non-compliance reports. Giving people a “second chance” can be motivating at times, but should only be used in a very limited manner with batterers, not only to reinforce the court’s “zero tolerance” take on domestic violence but also the victims’ perception of the court’s actions.

From the information available through this study, judicial monitoring did appear to have a modest effect in the reduction of recidivism and in rearrests within the Murray City jurisdiction.

It has proven important that the judge explain his sentencing pronouncements to the defendant, as well as the terms of probation, and the array of consequences available to the court to address any violations of the program conditions. For example, it is important that the defendant understand he is not to possess any firearms during the probationary period. The defendant must also understand that domestic violence offences in Utah are enhanceable (see Appendix III). That regardless if the case is under a Plea in Abeyance agreement the violation will remain in the defendant’s criminal history available only to courts and law enforcement. He must understand that an enhanceable charge can be lifted one degree in seriousness if a future conviction for a domestic violence offence is entered.

The monitoring must last the length of the probation. An issue arose during the first year of the Murray domestic violence court surrounding the length of the treatment program and if or how a defendant would be reassigned to the program after dropping out. When looking at the state code, however, the length of treatment is decided by the

providers through the intake assessment (and by state licensing conditions), not by the Court. The domestic violence court was routinely criticized for being too punitive and then for not being punitive enough. It was to the credit of the Court that policies and procedures were maintained and not haphazardly tossed aside due to the criticisms. Complaints were acknowledged and identified, then examined and reviewed. They were either taken as important enough to bring about an amendment to the process, catalogued for future reference, or discounted as not applicable to the Court's mission and function.

**Recommendation Two.** The Court should make better use of what has been called the "coercive authority" of the judge, balanced by the intensive monitoring component of the intervention program. Defendants must know with certainty what a conviction of this offence means.

**Conclusion.** Treatment cannot effectively serve a social function for the simple reason that a therapist/clinician/facilitator is not legitimized to punish and control people. This is the judge's function. Batterers must believe the judge is in control. A batterer will have little or no respect for his victim, but he will respect a judge, particularly when that judge will actually *use* sanctions, not just threaten to use them.

This must be made clear to the defendant *and* to the clinician *and* to the victim. However, it is important to separate the function of the judge (punishment) from the function of the clinician (treatment). The Court must make clear the distinct separation of punishment, legal decision-making and the responsibility for change. Any blending will only confuse the defendant. Separating punishment from treatment will provide the following:

1. It will make it easier for the group facilitator to engage the defendant.

2. The participants will be more open in talking about issues of change rather than trying to look good for the weekly compliance report.
3. The facilitator can be an agent of change instead of compliance enforcement agent.

The Court knows that arrest alone is *not* always a better deterrent than non-responsiveness; nor is it worse than other alternatives. On the contrary, when paired with other responses (prosecution, mandatory counseling), there is evidence that coordinated community responses can be a deterrent. Harrell's 1991 study of batterers mandated and batterers not mandated to attend treatment found no positive effect favoring treatment. Other studies, though, have demonstrated positive effects for intervention with similar types of comparisons (Palmer, 1992).

More and more studies are looking at post-hoc evaluations, moving away from single evaluations. Randomized comparisons of several different interventions are now the norm.

Most programs run standardized curricula in which a diverse group of men participate. Programs seldom offer tracking of particular subgroups, e.g., first-time offenders, or men who are reportedly violent only with intimate partners, or men who are just generally violent, or those with significant mental problems. Research has been attempted to identify typologies of men who batter, but has only lead to more specific programming based on these classifications.

The Court understands that a batterers' intervention program cannot work alone but should be part of a community response towards domestic violence. The Court can start by understanding the need for collaboration, "...a mutually beneficial and well-

defined relationship entered into by two or more organization to achieve results they are more likely to achieve together than alone.”<sup>227</sup> The Court believes that a coordinated response to domestic violence is likely to reduce violent incidents than a community that lacks accountability.

Batterers’ intervention programs are designed to be utilized within a community which focuses on using its institutions to diminish the power batterers have over their victims. For example, a coordinated community response can be established with a multi-disciplined approach – treatment providers, probation programs, shelters, prosecutors, law enforcement personnel, and the court.

**Recommendation Three.** The judge should craft orders designed to reduce the risk of recidivism. Therefore, responses to non-compliance (sanctions) should be immediate, fair, certain, and consistent.

**Conclusion.** One relatively “new” concept the Murray Court has been experimenting with is effective Therapeutic Justice (TJ). TJ is using the law as a therapeutic agent, focusing on the law’s impact on the emotional life and psychological well-being of the individual. This is not a “touchy – feely” diversion. Therapeutic jurisprudence

“...shifts the focus of ‘the problem,’ manifested by the persons [sic] behavior, from punitive to rehabilitative. In some situations it means that criminal behavior can be viewed in the context of any underlying physical, psychological, social or economic circumstance dealt with by effective social intervention rather than by harsher sentences.”<sup>228</sup>

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<sup>227</sup> K Winer and K Ray, *Collaboration Handbook: Creating, Sustaining and Enjoying the Journey*, Amherst Wilder Foundation, 1994

<sup>228</sup> V Topp, *Specialist Courts – The Impact Upon the Individual*, LIV Conference, Mental Health Legal Center, 2002, at 1



It relies on three powerful contemporary trends: the new problem-solving court movement, the logic of American court reform, and the changing role of judges.<sup>229</sup> The

Court can use the principles of TJ to enhance its operations. The

“...principles include ongoing judicial intervention, close monitoring of and immediate response to behavior, integration of treatment services with judicial case processing, multidisciplinary involvement, and collaboration with community-based...organizations.”<sup>230</sup>

The Court should not be hesitant to review the use of therapeutic jurisprudence. As Judge William Schma said in the 2000 issue of *Court Review*, “[i]t is important for judges to practice therapeutic jurisprudence because – like it or not – the law does have therapeutic and anti-therapeutic consequences.”

Even Roscoe Pound, the most formidable 20<sup>th</sup> century foe of specialized courts, regarded the creation of new style courts as an “organic process” by which courts adapt to changing social conditions.<sup>231</sup> Wheeler quotes Pound as to his discouragement:

“Multiplying of tribunals is a characteristic of the beginnings of judicial organization. When some new type of controversy or new kind of situation arises and presses for treatment, a new tribunal is set up to deal with it.” (citation omitted)

If so, the Murray Court judge will have to know how to structure the court’s practices to maximize its therapeutic potential. Wexler believes that “even such [a] mundane matter as the ordering of cases in the courtroom can maximize the chance that defendants awaiting their turn before the judge can experience vicarious learning.”<sup>232</sup>

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<sup>229</sup> D B Rottman, *Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges)?* *Court Review*, Spring 2000, at 22

<sup>230</sup> D B Wexler and B J Winick, *Therapeutic Jurisprudence*, Abstract ID 110101507, 2008, at 1

<sup>231</sup> R Wheeler, *Courts of Limited and Special Jurisdiction*, *Encyclopedia of the American Judicial System*, 517, 1987, at 525

<sup>232</sup> See Note 230 *supra*, at 5

**Recommendation Four.** The court should pursue the implementation of therapeutic justice in decision-making. The court should pursue training and education where offered for this “new” concept.

**Conclusion.** There was a great deal of research and investigation completed on domestic violence courts before the start-up of the Murray City domestic violence court. The staff developed a series of “best-practices” for the Murray Court, which are not necessarily the practices used in other courts.

With this being the first evaluation of the Murray court, it has been evident that the evaluation process is an on-going function for determining the success of the court.

**Recommendation Five.** Continue with additional research on issues regarding batterer intervention from other Utah courts and nationwide courts.

**Conclusion.** This evaluation of the Murray Court has led to the development of further ideas to make the success even greater. As other Murray court programs continue to develop, evaluation plans will be put in place to assess their effectiveness. The challenge will be to identify which programs, or parts of programs, provide the most effective approaches for dealing with batterers.

What does the Court do?

1. All domestic violence cases are set to a single court and judge.
2. Case management techniques are maintained for a workable case load.
3. All convicted persons are mandated to attend the domestic violence intervention program.
4. There is intensive court monitoring of each defendant’s progress as the court recognizes most reoffending takes place early in the program.

5. The *minimum* length of the mandated program is 26 weeks. The Court will retain the option of ordering a defendant into a 52-week program if supported by clinical observations.
6. No defendant attends more than one 90-minute session per week.
7. The program includes a Victim Impact Panel requirement.
8. There are Court sanctions for compliance violations. Sanctions are in the domain of the Court, not the program providers.
9. All defendants are held to the same standards of program attendance, compliance, and sanctions.
10. The Court is not interested in how many attendees are “fixed,” but rather on how many do not comply with the Court’s orders.
11. The Court does not make contact with spouse/partners of defendants convicted of domestic violence. However, the Court does want safety issues presented if any arise.
12. Violence events during the program are treated as a crime.
13. The Court recognizes that change takes precedence over inaction.
14. The Court maintains training and education for court personnel.
15. The Court reaches out to the community for “buy-in.”
16. The Court will maintain on-going assessments of the program.

The goal is reducing recidivism by reducing crime. Holding offenders accountable for complying with the program instead of tossing them in jail is not being “soft” on crime. It should be taken as a form of punishment. The idea behind the intervention program is to

reduce the risk of the batterer reoffending and reduce the chances of victimization to the partner.

**Recommendation Six** The Court will continue to examine other programs and program reports as they are published.

**Conclusion.** The Court has little input in the victim advocate program. In Murray City, the advocates are housed within the Murray City Police Department not the court. As such, the advocates are oft times called to the scene of a serious domestic violence incident. The advocates (and the police officers) provide the victims a pamphlet with information about the incident in question, information on resources available to the victims (e.g., telephone contact numbers for shelters and legal services), and information on domestic violence in general (e.g., obtaining a protective order). The victims are given information on maintaining their safety.

The advocates assist the victims with the City Prosecutor's Office on keeping in contact and in how to follow the case.

The pamphlet, however, contains no information about the court process or information on the Court and/or court programs. An important tool the Court can use when it comes to sentencing the defendant is a Victim Impact Statement (VIS) which, in essence, is a written statement to the court expressing the victim's "feelings" and ideas about the case, and what the victim desires of the court. In the vast majority of the cases there is no VIS submitted to the Court.

An important perception for victims is to feel they are in the information loop. It is left to the advocates to provide current information to victims so as to reduce their burden in keeping in contact with the court as the case progresses through the system.

**Recommendation Seven.** Victims must have immediate access to victim advocates and victim services. Victim advocates should stress the importance of a Victim Impact Statement being given to the court for consideration. Victim advocates should consider attending court with the victims.

**Conclusion.** The Court has the option of issuing a No Contact Criminal Protective Order (see Appendix VII), pursuant to a conviction of the batterer and probation as part of the sentencing.

There are separate rooms in the courthouse available to the victims where they may wait without fear of any pre-hearing contact with the defendants. If the court bailiffs are informed of a pending case of particular interest, they will escort the victims to and from the courthouse. The Court can delay the batterer from exiting the courtroom until the victim has left the area.

Within the domestic violence courtroom is an area set away from the general gallery where victims may sit without fear of contact from defendants or friends of defendants.

However, the Court needs to know when such a situation and reaction is required. The advocates have contact with the prosecutors and can either have the prosecutor request assistance from the court or the advocates can give the information to the court clerk. During this study period, non-notification has been a weakness in this part of the Court's efforts to have the victim feel safe.

The safety of the victim is not just limited to the physical plant of the courthouse. It is recognized that the intervention program is an attempt to end the violence and thus provide safety for the victim.

The Murray Court requires all persons convicted of domestic violence to participate in a batterers' intervention and treatment program. This assignation is post-adjudicatory and is part and parcel of the probationary period. Successful completion of the program is more than likely a condition of any Plea in Abeyance agreement reached with the prosecutor.

Since research has suggested that about one-third of women will be physically assaulted by a spouse or partner sometime in their lives, a batterers program is not only a positive action taken against a batterer but may also be an action that is a benefit to women by most likely reducing incidents of domestic violence.

The Murray Court's intervention treatment program is based on the Education Model (or psycho-education model). The research on domestic violence does not prove that this model stops domestic violence, nor do any other treatment models appear to do so. But its goals are the closest to matching the philosophy of the Court in providing for victim safety and batterer accountability.

Realize this: many women will stay with their abusive partner even after that person is arrested and convicted. This makes it essential that the court identify and implement effective measures to alter the offenders' bad behavior. Strict incarceration will only delay future violence. Since the hope that an offender will be helped while in the program is a major cause of victims returning to their abusers, the program and thus the court are responsible to monitor their own ability to prevent violence. What victims want most is to be safe. Arrest, prosecution, and conviction on their own accord do not necessarily translate into safety.

It would be naïve and unrealistic to expect the law or the court to end domestic violence. However, it is definitely within the power of the law and the court to offer victims a modicum of protection. It is also within the power of the law and the court to challenge the attitudes of violent men. It is the legal interventions that perform an important role in motivating violent men to seek help in changing their attitudes.

The demand is there. Victims, batterers, prosecutors, defenders, the criminal justice system, treatment providers, and the community are all searching for a venue in which to solve the “problem” of domestic violence. It has, however, pretty much devolved to the courts to provide an “answer.” In looking around the community, the leadership in expanding the reach of a problem-solving court is going to be dependent on the Court.

**Recommendation Eight.** The Court has an interest in keeping the victim safe, and to have the victim feel safe. The court security plan should be rewritten to include a section on domestic violence responses and victim safety.

**Conclusion.** The technology the Court has available is limited. However, this evaluation did not uncover any gaps in case management or information, other than it is a dated system.

In fact, the Utah Department of Health’s Violence and Injury Prevention Program made more than 30 recommendations in its 2005 report, “Domestic Violence Fatalities in Utah.” Few have been approved for further study. For example, one of the recommendations is for a state database to track offenders who move and change addresses often. Another recommendation was to require judges and prosecutors to

review a defendant's entire case history before any sentencing recommendations were made or implemented.

The state did develop a system where one court can access a case as view-only from another court. This system, "Xchange," is valuable in that a court can see exactly what happened in a defendant's case other than just the disposition. Sentencing can be enhanced and be more pointed when certain aspects are known pertaining to that particular defendant.

**Recommendation Nine.** The Court must incorporate technology into case management systems. Data management and technology can streamline information maintenance and ensure a steady flow of updated information to court staff.

**Conclusion.** Domestic violence is not just a man-on-woman or husband/wife crime. For example, the Court will have to develop standards for women batterers that come up on charges. For judicial fairness, female violators will be treated the same as their male counterparts, but with the realization that the dynamics of the violation will be much different. "Individuals who are controlling of their partners are much more likely to also be physically assaultive; and this holds true for both male and female perpetrators."<sup>233</sup>

Law enforcement will, more than likely, be intervening in gay and lesbian relationship violence that will be new to the Court. The Court must learn to be sensitive to this issue. With the expanding minority/alien populations in Utah, especially Hispanic, the Court will be addressing issue vastly different from what it faces now.

**Recommendation Ten.** The Court must be forward looking in evaluating and anticipating domestic violence issues that will soon be presenting themselves in the future.

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<sup>233</sup> R Felson and M Outlaw, *The Control Motive and Marital Violence*, Violence and Victims 22(4), 2007, at 387-407



## APPENDIX I

Relevant sections of Utah Operation of the Courts, Article 4 Internal Court Operations Rule 4-409. Council of approval of problem solving courts.

Intent:

To establish criteria for the creation and operation of problem solving courts, and to create a process for ongoing reporting from and evaluation of problem solving courts.

(1)(B) *Problem solving court.* As used in these rules, a problem solving court is a targeted calendar of similar type cases that uses a collaborative approach involving the court, treatment providers, case management, frequent testing or monitoring and ongoing judicial supervision. Examples include drug courts, mental health courts and domestic violence courts.

(5) *Operation of the problem solving court.* All problem solving courts must adhere to the following requirements, unless specifically waived by the Judicial Council:

(5)(A)(i) In a criminal proceeding, a plea must be entered before a person may participate in the court. Testing and orientation processes may be initiated prior to the plea, but no sanctions may be imposed until the plea is entered. Prior to the acceptance of the plea, each participant must sign an agreement that outlines the expectations of the court and the responsibilities of the participant.

(5)(B) Eligibility criteria must be written, and must include an assessment process that measures levels of addiction, criminality, and/or other appropriate criteria as a part of the determining eligibility.

(5)(D) Compliance testing must be conducted pursuant to a written testing protocol that ensures reliability of the test results.

(5)(C) The frequency of participation in judicial reviews will be based on the findings of the assessments...judicial reviews should be conducted by the same judge each time.

(5)(E) Treatment must be provided by appropriately licensed or certified providers, as required by the Department of Human Services or other relevant licensure or certification entity.

(5)(F) ...ensure confidentiality and security of participant information...must conform to applicable state and federal laws, including the Government Records and Access Management Act (GRAMA), HIPAA, and 42 CFR 2.

Appendix II  
**The Murray City Municipal Justice Court  
Domestic Violence Court**

**Mission Statement**

Based on the one family, one judge concept, the Murray City Municipal Justice Domestic Violence Court exists to handle all related cases pertaining to a single family where the underlying issue is domestic violence. The Court seeks to promote justice and to protect the rights of all who appear while providing a comprehensive approach to case resolution, increasing offender accountability, ensuring victim safety, integrating the delivery of social services, and eliminating inconsistent and conflicting judicial orders.

**Statement of Goals**

1. Informed judicial decision-making based on comprehensive and current information on all matters involving the family;
2. Consistent handling of all matters relating to the family by a single presiding judge and coordinating a consistent message and response concerning domestic violence;
3. Efficient use of court resources, with reduced numbers of appearances and speedier dispositions and promoting cooperation, coordination, and communication among the court, criminal justice agencies, and service providers;
4. Promotion of victim safety through elimination of conflicting orders and decisions, and ensuring that abusers are held accountable for their illegal behavior;
5. To improve direct and support services to victims and perpetrators of domestic violence;
6. To increase community awareness about domestic violence and to educate adults and children about alternatives to violence.

## Appendix III

### Title 77 Utah Code of Criminal Procedure Chapter 36 Cohabitant Abuse Procedures Act

#### **77-36-1**. Definitions

As used in this chapter:

(1) “Cohabitant” has the same meaning as in Section **78B-7-102**.

[“Cohabitant” means an emancipated person or a person who is 16 years of age or older who:

- (a) is or was a spouse of the other party;
- (b) is or was living as if a spouse of the other party;
- (c) is related by blood or marriage to the other party;
- (d) has one or more children in common with the other party;
- (e) is the biological parent of the other party’s unborn child; or
- (f) resides or has resided in the same residence as the other party.

Cohabitant does not include:

- (a) the relationship of natural parent, adoptive parent, step-parent to a minor; or
- (b) the relationship between natural, adoptive, step, or foster siblings who are under 18.]

(2) “Department” means the Department of Public Safety.

(3) “Divorced” means an individual who has obtained a divorce under Title 30, Chapter 3, Divorce.

(4) “Domestic violence” means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. “Domestic violence” also means commission or attempt to commit, any of the following offenses by one cohabitant against another:

- (a) aggravated assault, as described in Section **76-5-103**;
- (b) assault, as described in Section **76-5-102**;
- (c) criminal homicide, as described in Section **76-5-201**;
- (d) harassment, as described in Section **76-5-106**;
- (e) electronic communication harassment, as described in Section **76-9-201**;
- (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections **76-5-301**, **76-5-301.1**, and **76-5-302**;
- (g) mayhem, as described in Section **76-5-105**;
- (h) sexual offenses, as described in Title 75, Chapter 5, Part 4, Sexual Offenses, and Title 76, Chapter 5a, Sexual Exploitation of Children;
- (i) stalking, as described in Section **76-5-106.5**;
- (j) unlawful detention, as described in Section **76-5-304**;
- (k) violation of a protective order or ex parte protective order, as described in Section **76-5-108**;
- (l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, 2, Burglary and Criminal Trespass, or 3, Robbery;
- (m) possession of a deadly weapon with the intent to assault, as described in Section **76-10-507**;
- (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section **76-10-508**;
- (o) disorderly conduct, as described in Section **76-9-102**, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with any domestic violence offense otherwise described in this Subsection (2). Conviction of disorderly conduct as domestic violence offense, in the manner described in this Subsection (2)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Section 921 et seq.; or

- (p) child abuse, as described in Section **76-5-109.1**.
- (5) “Marital status” means married and living together, divorced, separated, or not married.
- (6) “Married and living together” means a man and a woman whose marriage was solemnized under Section **30-1-4** or **30-1-6** and who are living in the same residence.
- (7) “Not married” means any living arrangement other than married and living together, divorced, or separated.
- (8) “Separated” means a man and a woman who have had their marriage solemnized under Section **30-1-4** or **30-1-6** and who are not living in the same residence.
- (9) “Victim” means a cohabitant who has been subjugated to domestic violence.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 375, 2008 General Session

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Title 77 Utah Code of Criminal Procedure  
Chapter 36 Cohabitant Abuse Procedures Act

**77-36-1.1 . Enhancement of offense and penalty for subsequent domestic violence offenses.**

- (1) For purposes of this section, “qualifying domestic violence offense” means:
  - (a) a domestic violence offense in Utah; or
  - (b) an offense in any other state, or in any district, possession, or territory of the United States, that would be a domestic violence offense under Utah law.
- (2) A person who is convicted of a domestic violence offense is:
  - (a) guilty of a class B misdemeanor if:
    - (i) the domestic violence offense described in this Subsection (2) is designated by law as a class C misdemeanor; and
    - (ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or
    - (B) the person is convicted of a domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense;
  - (b) guilty of a class A misdemeanor if:
    - (i) the domestic violence offense described in this Subsection (2) is designated by law as a class B misdemeanor; and
    - (ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or
    - (B) the person is convicted of a domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense;
  - (c) guilty of a felony of the third degree if:
    - (i) the domestic violence offense described in this Subsection (2) is designated by law as a class A misdemeanor; and
    - (ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or
    - (B) the person is convicted of a domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense.
- (3) For the purposes of this section, a plea of guilty or no contest to any qualifying domestic violence offense in Utah which plea is held in abeyance under Tilt 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Title 77 Utah Code of Criminal Procedure  
Chapter 36 Cohabitant Abuse Procedures Act

**77-36-2.6. Appearance of defendant required – Determinations by court.**

- (1) A defendant who has been arrested for an offense involving domestic violence shall appear in person before the court or a magistrate within one judicial day after the arrest.
- (2) A defendant who has been charged by citation, indictment, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.
- (3) At the time of an appearance under Subsection (1) or (2), the court shall determine the necessity of imposing a protective order or other condition of pretrial release including, but not limited to, participating in an electronic monitoring program, and shall state its findings and determination in writing.
- (4) Appearances required by this section are mandatory and may not be waived.

Title 77 Utah Code of Criminal Procedure  
Chapter 36 Cohabitant Abuse Procedures Act

**77-36-2.7. Dismissal – Diversion prohibited – Plea in abeyance – Order pending trial.**

- (1) Because of the serious nature of domestic violence, the court, in domestic violence actions:
  - (a) may not dismiss any charge or delay any disposition because of current divorce or other civil proceedings;
  - (b) may not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;
  - (c) shall waive any requirements that the victim's location be disclosed other than to the defendant's attorney, upon a showing that there is any possibility of further violence, and order the defendant's attorney not to disclose the victim's location to his client;
  - (d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic violence;
  - (e) may dismiss a charge on stipulation of the prosecutor and the victim; and
  - (f) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a, Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of that status.
- (2) When the court holds a plea in abeyance in accordance with Subsection (1)(f), the case against a perpetrator of domestic violence may be dismissed only if the perpetrator successfully completes all conditions imposed by the court. If the defendant fails to complete any condition imposed by the court under Subsection (1)(f), the court may accept the defendant's plea.
- (3) (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant is charged with a crime involving domestic

violence, the court may, during any court hearing where the defendant is present, issue an order, pending trial:

- (i) enjoining the defendant from threatening to commit or committing acts of domestic violence or abuse against the victim and any designated family or household member;
  - (ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;
  - (iii) removing and excluding the defendant from the victim's residence and the premises of the residence;
  - (iv) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim and any designated family member; and
  - (v) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member.
- (b) Violation of an order issued pursuant to this section is punishable as follows:
- (i) if the original arrest or subsequent charge filed is a felony, an offense under this section is a third degree felony; and
  - (ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under this section is a class A misdemeanor.
- (c) The court shall provide the victim with a certified copy of any order issued pursuant to this section if the victim can be located with reasonable effort.
- (4) When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a domestic violence offense, the specific reasons for dismissal shall be recorded in the court file and made part of the statewide domestic violence network described in Section **78B-7-113**.
- (5) When the privilege of confidential communication between spouse, or the testimonial privilege of spouse is invoked in any criminal proceeding in which a spouse is the victim of an alleged domestic violence offense, the victim shall be considered to be an unavailable witness under the Utah Rules of Evidence.
- (6) The court may not approve diversion for a perpetrator of domestic violence.

Amended by Chapter 238, 2009 General Session

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Title 77 Utah Code of Criminal Procedure  
Chapter 36 Cohabitant Abuse Procedures Act

**77-36-5. Sentencing – Restricting contact with victim – Electronic monitoring – Counseling – Cost assessed against defendant.**

- (1) When a defendant is found guilty of a crime and condition of the sentence restricts the defendant's contact with the victim, an order may be issued or, if one has already been issued, it may be extended for the length of the defendant's probation. The order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.
- (2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in an electronic monitoring program.
- (3) The court may also require the defendant to pay all or part of the costs of counseling incurred by the victim, as well as the costs for defendant's own counseling.
- (4) The court shall:

- (a) assess against the defendant, as restitution, any costs for services or treatment provided to the abused spouse by the Division of Child and Family Services under Section **62A-4a-106**; and
- (b) order those costs to be paid directly to the division or its contracted provider.
- (5) The court shall order the defendant to obtain and satisfactorily complete treatment or therapy in a domestic violence treatment program, as defined in Section **62A-2-101**, that is licensed by the Department of Human Services, unless the court finds that there is no licensed program reasonably available or that treatment or therapy is not necessary.

Amended by Chapter 68, 2003 General Session

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Title 77 Utah Code of Criminal Procedure  
Chapter 36 Cohabitant Abuse Procedures Act

**77-36-5.1. Conditions of probation for person convicted of domestic violence offense.**

- (1) Before any perpetrator who has been convicted of a domestic violence offense may be placed on probation, the court shall consider the safety and protection of the victim and any member of the victim's family or household.
- (2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with one or more orders of the court which may include, but are not limited to, an order:
  - (a) enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;
  - (b) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;
  - (c) requiring the perpetrator to stay away from the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or household member;
  - (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;
  - (e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;
  - (f) directing the perpetrator to surrender any weapons that he owns or possesses;
  - (g) directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
  - (h) directing the perpetrator to pay restitution to the victim; and
  - (i) imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.
- (3) The perpetrator is responsible for the costs of any condition of probation, according to his ability to pay.
- (4) (a) Adult Probation and Parole, or other provider, shall immediately report to the court and notify the victim of any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and any threat of harm made by the perpetrator.
- (b) Notification of the victim under Subsection (4)(a) shall consist of a good faith reasonable effort to provide prompt notification, including mailing a copy of the condition to the last-known address of the victim.

Title 76 Utah Criminal Code  
Chapter 5 Offenses Against the Person

**76-5-109.1. Commission of domestic violence in the presence of a child.**

(1) As used in this section:

(a) "Cohabitant" has the same meaning as defined in Section **78B-7-102**.

(b) "Domestic violence" has the same meaning as in Section **77-36-1**.

(c) "In the presence of a child" means:

(i) in the physical presence of a child; or

(ii) having knowledge that a child is present and may see or hear an act of domestic violence.

(2) A person commits domestic violence in the presence of a child if the person:

(a) commits or attempts to commit criminal homicide, as defined in Section **76-5-201**, against a cohabitant in the presence of a child; or

(b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section **76-1-601**, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child.

(3) (a) A person who violates Subsection (2)(a) or (b) is guilty of a third degree felony.

(b) A person who violates Subsection (2)(c) is guilty of a class B misdemeanor.

(4) A charge under this section is separate and distinct from, and is in addition to, a charge of domestic violence where the victim is the cohabitant. Either or both charges may be filed by the prosecutor.

(5) A person who commits a violation of this section when more than one child is present is guilty of one offense of domestic violence in the presence of a child regarding each child present when the violation occurred.



Appendix IV  
**Murray City Municipal Justice Court**  
 688 E Vine Street  
 Murray, Utah 84107

**Court Requested Client Survey**  
**Domestic Violence Court Ordered Program**

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Provider**

**Defendant ID Number:** \_\_\_\_\_

You have been convicted of a domestic violence violation and have been sentenced to a batterers' treatment program. This questionnaire will be used in assessing the success of the Murray City Domestic Violence Court Program in its goal of addressing the seriousness of this violence. Responses will be used for statistical analysis and assessment only. The Court has requested that the Treatment Provider to which you have been reporting conduct the survey at the request of the Court. The answers and responses are confidential – the Defendant ID Number is to track the level of violation to which you were convicted.

1) The Court treated me fairly.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

2) The sentence fit the violation.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

3) The treatment classes helped me accept accountability for what I had done.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

4) The Court should not interfere with family issues and problems.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

5) The treatment program did not help me.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

6) The treatment provider did not understand my particular situation.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

Appendix V  
**Murray City Municipal Justice Court**  
688 E Vine Street  
Murray, Utah 84107

**Treatment Provider Questionnaire – Domestic Violence**

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Provider**

Since the implementation of the Murray Court’s mandated treatment of domestic violence offenders in 2006, there has been a need to evaluate the effectiveness of the program. Some studies have found batterer treatment programs to be largely ineffective, with no significant differences between those who received group treatment and those who did not in terms of their attitudes, beliefs and behaviors. Other studies have shown an improvement in the attitudes and functionalities of batterers’ behaviors. The Court has launched this study of its own, in-house domestic violence cases to determine its effectiveness in preventing and/or reducing recidivism.

Every convicted batterer in the Murray Court program must complete a batterers treatment component of probation. The defendants are assigned to a provider on a random basis at the time of sentencing. As you know, providers are required to have a representative in court on the designated domestic violence appearance/pretrial date and on subsequent review hearing dates. For the convenience of the Court and for caseload management, these dates have been specifically assigned to Mondays, and Tuesday/Thursday afternoons in a dedicated courtroom.

Our study will cover a 6-month follow-up period to evaluate the effectiveness of the treatment program based on your reporting to include program participants, their partners, facilitators, and official state arrest records (from the state’s Bureau of Criminal Identification) and local police incident reports.

Starting from 01 June 2009 and the subsequent 6-month period, we would like to collect quantitative and qualitative data for evaluation. The quantitative data is to measure behavioral changes that you report in program participants in cessation of reported violent behaviors, and positive changes/results in the relationship as reported by the batterers partner. Qualitative data is an examination of reported positive changes in the offender as reported by the provider’s treatment administrator. Such changes should include observed in the participants’ outlook in personal choice changes, personal action choices, and personal accountability.

Please answer the following ten questions: Defendant ID Number: \_\_\_\_\_

1) Does the offender’s intimate/domestic partner report improved behavior in the offender?

1	2	3	4	5
<i>Definite Improvement</i>	<i>Some Improvement</i>	<i>No Change</i>	<i>Somewhat Worse Behaviour</i>	<i>Much Worse</i>

*Comments:* \_\_\_\_\_

2) Has the offender demonstrated an improvement in self-reported self-esteem?

1	2	3	4	5
<i>Definite Improvement</i>	<i>Some Improvement</i>	<i>No Change</i>	<i>Somewhat Worse Behaviour</i>	<i>Much Worse</i>

Comments: \_\_\_\_\_

3) What are the partner-reported recidivism rates of violence or other abuse?

1 incident or less: \_\_\_\_\_  
1 – 5 incidents: \_\_\_\_\_  
More than 5 incidents: \_\_\_\_\_

Comments: \_\_\_\_\_

4) What are the offender self-reported recidivism rates of violence or other abuse?

1 incident or less: \_\_\_\_\_  
1 – 5 incidents: \_\_\_\_\_  
More than 5 incidents: \_\_\_\_\_

5) What treatment components are helpful as perceived by the offender and his partner?

Anger management: \_\_\_\_\_  
Control issues: \_\_\_\_\_  
Cycle of Abuse: \_\_\_\_\_  
Substance abuse: \_\_\_\_\_  
Parenting: \_\_\_\_\_  
Relationship Management: \_\_\_\_\_  
Critical thinking: \_\_\_\_\_  
Thinking errors: \_\_\_\_\_  
Personal accountability: \_\_\_\_\_  
Psychological factors: \_\_\_\_\_

6) Does the offender report the facilitators' behaviors as being helpful?

1	2	3	4	5
<i>Very Helpful</i>	<i>Somewhat Helpful</i>	<i>Neutral</i>	<i>Somewhat Negative</i>	<i>Not Helpful</i>

Comments: \_\_\_\_\_

7) Does the offender report changes in his outlook?

1	2	3	4	5
<i>Positive Change</i>	<i>Somewhat Positive Change</i>	<i>No Changes</i>	<i>Somewhat Negative Change</i>	<i>Negative Change</i>

List the changes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8) Does the victim/partner report noticeable changes in the offender's outlook? (\_\_\_\_ N/A)

1	2	3	4	5
<i>Positive Change</i>	<i>Somewhat Positive Change</i>	<i>No Change</i>	<i>Somewhat Negative Change</i>	<i>Negative Change</i>

List the changes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9) Is the post-treatment offender profile consistent with self-reported changes?

1	2	3	4	5
<i>Positive Change</i>	<i>Somewhat Positive Change</i>	<i>Not Supported</i>	<i>Somewhat Negative Change</i>	<i>Negative Change</i>

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10) How confident is the facilitator in the progress made by the offender to not recidivate?

1	2	3	4	5
<i>Very Confident</i>	<i>Somewhat Confident</i>	<i>No Opinion</i>	<i>Little Confidence</i>	<i>Not Confident</i>

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Any other information on the successful completion of the program by the offender: \_\_\_\_\_

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The information you have provided herein is confidential. It will not be used against the defendant in any further incidents. The information is being collected for educational and statistical purposes only and will not be disseminated.

Thank you for your participation in this survey

## Appendix VI

### Treatment Provider Assessment Report (Generic)

Name

DOB

SSN

Date of Evaluation

Case #

Control #

Referral Source

Evaluator

Screening Method

Clinical Interview

DSM

Identifying Information

Social History

Education

Employment History

Substance Abuse

Treatment

Physical Health History

Mental & Emotional Health History

Marital Status

Legal History

Client Description of Incident

Police Report

Assessment

Diagnosis

Recommendations

Appendix VII  
IN THE MUNICIPAL JUSTICE COURT IN AND FOR THE CITY OF MURRAY  
COUNTY OF SALT LAKE, STATE UTAH

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City of Murray,

Plaintiff,

NO CONTACT CRIMINAL  
PROTECTIVE ORDER  
pursuant to conviction,  
probation and/or release for  
domestic violence

Case No. \_\_\_\_\_

vs.

Judge \_\_\_\_\_

---

Defendant

Date \_\_\_\_\_

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This matter came before this Court on \_\_\_\_\_, on which date the above named defendant, (hereinafter “the defendant”) pled not guilty to one or more offenses involving domestic violence. Because of the concerns over the potential of repeated violence directed at the victim, \_\_\_\_\_ (hereinafter “the victim”), and pursuant to the authority granted under Utah Code 77-36-2.5,

IT IS HEREBY ORDERED that, as conditions of bail in this matter:

The defendant shall not threaten to commit or actually commit any act of violence against the victim or any of said person’s family or household members.

The defendant shall not harass, telephone, contact, or otherwise communicate with the victim, directly or indirectly. This means that the defendant shall have no contact whatsoever with the victim or any of the victim’s family or household members. Contact includes communication that is in person, in writing, by telephone, or through a third person.

- \_\_\_\_\_ 1. The defendant shall stay away from the victim’s residence and shall not enter or remain near the premises of said residence.
- \_\_\_\_\_ 2. An officer from the Murray City Police Department or any other law enforcement agency having jurisdiction over the protected locations shall assist in the removal or obtaining of the defendant’s personal belongings at the victim’s residence or otherwise in the victim’s possession.
- \_\_\_\_\_ 3. The defendant shall not purchase, possess, or use any firearm or other dangerous weapon during the bail period.
- \_\_\_\_\_ 4. If applicable, all visitation involving children of the parties shall be arranged through a mutually acceptable third party.
- \_\_\_\_\_ 5. Defendant is prohibited from possessing or consuming alcohol or any non-prescribed controlled substance.

This Order shall remain in effect during the entire duration of the defendant's probationary period or unless otherwise modified by this Court.

**This Order is given under the authority of this Court and is directed toward the defendant. The victim cannot waive, alter, or dismiss this Order. Only the Court has the authority to enter, modify, or revoke this Order. VIOLATION OF THIS ORDER IS A CLASS A MISDEMEANOR, subjecting the defendant to a maximum jail sentence of one year in jail and a fine and surcharge of \$4,625.00, or both.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge, Murray City Municipal Justice Court

CERTIFICATE OF SERVICE TO DEFENDANT

Defendant hereby acknowledges receipt of the foregoing No Contact Criminal Protective Order, and agrees to abide by the terms set forth therein.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant for Attorney



**IN THE MUNICIPAL JUSTICE COURT IN AND FOR THE CITY OF MURRAY,  
COUNTY OF SALT LAKE, STATE OF UTAH**

CITY OF MURRAY

**DOMESTIC VIOLENCE  
ENHANCEMENT**

vs.

\_\_\_\_\_  
Defendant

Case No. \_\_\_\_\_

**DOMESTIC VIOLENCE**

A person is guilty of DOMESTIC VIOLENCE if that person commits any criminal offense involving violence or physical harm or threat of violence or physical harm. Or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one co-habitant against another. Domestic violence includes, but is not limited to, the enumerated below.

**ENUMERATED OFFENSES**

**CLASS B MISDEMEANORS**

- Assault
- Harassment
- Telephone Harassment
- Stalking
- Unlawful Detention
- Criminal Mischief
- Criminal Trespass if committed in a dwelling

**CLASS C MISDEMEANORS**

- Criminal Trespass when not committed in a dwelling

**CLASS A MISDEMEANORS**

- Assault if causes substantial bodily injury to another
- Violation of a Protective Order
- Possession of a deadly weapon with intent to assault
- Criminal Mischief if the actor's conduct recklessly endangers human life or the actor's conduct causes or intends to cause pecuniary loss equal to or in excess of \$30.00 but less than \$1,000 in value.

**PENALTIES**

CLASS A MISDEMEANORS – the **maximum** penalty for this offense is (1) one year in jail and/or (2) a fine of \$2,500, with an additional surcharge of 85%.

CLASS B MISDEMEANORS – the **maximum** penalty for this offense is (1) 180 days in jail and/or (2) a fine of \$1,000, with an additional surcharge of 85%.

CLASS C MISDEMEANORS – the **maximum** penalty for this offense is (1) 90 days in jail and/or (2) a fine of \$750, with an additional surcharge of 85%.

**PENALTY ENHANCEMENTS**

When an offender is convicted of any Domestic Violence offense, and is subsequently convicted of a Domestic Violence offense that is a misdemeanor within a five year period, the penalty for that subsequent offense is enhanced by one degree above the penalty otherwise provided in the statutes. A plea-in-abeyance is considered a conviction.

I (please PRINT your name) \_\_\_\_\_ have read and understand the above information.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

## Glossary

Anger Management – Domestic violence is a result of an individual’s inability to control or express his anger. Treatment is to teach batterers to recognize the signs of anger and to resolve it with relaxation techniques. This been discredited as a domestic violence cause since domestic violence is a power and control issue not an anger issue.

Battered Woman Syndrome – Women remain in an abusive relationship because of extreme fear and the belief that there is no escape.

Cognitive Behavioral Model – Posits that violence is a learned behavior. Men batter because they are imitating what they witnessed as children. This behavior is treatable because if something is learned it can be unlearned. The treatment provides techniques for dealing with situations that can lead to violence. Depends on anger management as a technique.

Cross-Sectional Research – Studies of one group at one point in time offering a quick glimpse or snapshot of the phenomena being studied. It is a representative sample of the group which allows researchers to generalize research findings.

Cycle of Violence – A violent event has three different phases: the tension-building phase (victim tries to placate the batterer), the battering incident phase, and the honeymoon phase (where the batterer shows remorse).

Duluth Model – The most widely recognized type of Education Model. The model uses structured exercises to enable men to understand the origins and effects of their belief system. It is based on the theory that violence is intentional and is a system of abusive behaviors used by the batterer to maintain power and control over their partner.

Education Model – Domestic violence is a learned behavior reinforced by societal condoning of violence against women. The program explains the negative consequences of patriarchal and controlling behavior and teaches the benefits of relationship non-violence. The program is designed to hold batterers accountable by requiring them to take responsibility for their choices. Uses group therapy instead of individual counseling.

Experimental – Two criteria: a) random assignment to groups, and b) manipulation of an internal variable. The researcher tries to maintain control over all factors that may affect the outcome of the study, then the researcher attempts to predict the results.

Family System Model – Also known as couples counseling. Domestic violence is an end result of poor family interactions, where each person bears some responsibility for the behavior of the other person. Both partners should learn communication skills and conflict resolution methods to solve domestic disputes.

Feminist Theory – Battering emphasizes the role of violence in maintaining control over a female intimate partner. The “violence” includes physical violence, emotional abuse,

sexual violence, social isolation, and withholding financial resources to “undermine a woman’s autonomy and limit her power in the relationship.”

**Intergenerational Theory** – Violent behavior is transferred from generation to generation. A battered partner remains in the abusive situation because of the system’s resistance to change and need to maintain balance.

**Longitudinal** – Examines the outcome measure with a longer follow-up period and examines the outcome measure at various time points.

**Meta-Analysis** – The process of synthesizing research results by using various statistical methods to retrieve, select, and combine – the systematic method that takes data from a number of independent studies and integrates them using statistical analysis.

**Plea in Abeyance** – The court may, upon finding the defendant has successfully completed the terms agreed upon, may reduce the degree of the offense or dismiss the case. Although dismissed from the defendant public record, the courts and law enforcement still see the violation on the person’s record. If the violation is an enhanceable offense, the dismissed charge will affect the second and subsequent penalties.

**Psychological Entrapment Theory** – A woman is unable to leave an abusive relationship because she has invested time, energy, and emotion toward achieving a goal of a nonviolent intimate relationship. She feels she has too much invested to leave.

**Psychotherapeutic Model** – Claims to address early childhood problems in order to end the current pattern of violence. This model uses individual counseling sessions with the batterer instead of group sessions. Individual therapy traditionally focuses on the batterers’ family history and emotional needs to process unresolved emotional trauma.

**Quasi-Experimental** – No random assignment of participant groups. This makes the researcher unable to make cause and effect conclusions.

**Subculture of Violence Theory** – Domestic violence occurs more often in certain subcultures than in others. Battering occurs in lower-class families more often than middle-class families because violence is a more acceptable way to settle conflicts.

**Therapeutic Jurisprudence** – An approach to law that uses the tools of the behavioral sciences to assess the law’s therapeutic effects and, when consistent with other important legal values, to reshape the law and legal processes in ways that can improve the psychological functioning and emotional wellbeing of the individuals affected.

**Traumatic Bonding Theory** – Domestic violence is blamed on intimate emotional bonding and unhealthy attachment. Each partner creates ways to control the other to avoid being abandoned.

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