

**New York State
Model Policy for
Domestic Violence**

**Probation Response to
Domestic Violence**

**A Model Investigation and Supervision
Procedural Package
For Use by Probation
In a Coordinated Criminal Justice
Response to Domestic Violence**

NYS Probation Domestic Violence Intervention Project
NYS Division of Probation and Correctional Alternatives (DPCA)
NYS Office for the Prevention of Domestic Violence (OPDV)
NYS Coalition Against Domestic Violence (NYSCADV)

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Introduction and Overview

The *New York State Probation Domestic Violence Intervention Project* is a partnership between the NYS Division of Probation and Correctional Alternatives, the NYS Coalition Against Domestic Violence, and the NYS Office for the Prevention of Domestic Violence. The “best practices” suggested in this document are a result of that collaboration. This federally funded partnership has several goals. One of these goals is to assist in the development of local probation policies, procedures, and protocols that will guide probation practice in responding to **domestic violence**¹ cases, specifically those that involve **adult intimate partner relationship**² violence. This model procedural package addresses the pre-plea/pre-sentence investigation of domestic violence cases and the supervision of offenders either sentenced to or placed on probation and is applicable to those under interim probation supervision. Such cases are not limited to specific **family offense**³ convictions, adjudications or findings. This package is also useful for other probation cases where domestic violence is identified. Additional information to assist probation officers with identifying and responding to stalking behavior is provided. Probation administrators and officers are encouraged to use or adapt any of the materials in this package.

This package was developed and updated for adaptation by probation departments in localities where a **coordinated community response**⁴ is operating. This coordinated response is recognized as an effective way to address the behavior of offenders who commit acts of domestic violence. However, probation departments may choose to adapt sections of this document for use where there is not yet an established collaborative effort. For example, if probation develops a working relationship with a local **domestic violence program**⁵ and law enforcement in the processing of domestic violence cases in the criminal court, much of the procedural structure for information processing and sharing suggested herein can easily be incorporated into the formalized investigation and report writing as well as the supervision process.

The contents of this package are designed to promote closer collaboration in criminal justice case processing as called for in the Guiding Principles in the *New York State Model Domestic Violence Policy for Counties*⁶. A document entitled *Probation Intervention in Domestic Violence: Guidance for Policy Development*⁷ issued by the New York State Division of Probation and Correctional Alternatives provides specific detail and information that can be adapted as local probation investigation and/or supervision procedures for domestic violence cases. Additional guidance in the handling of domestic violence cases can be found in each local county’s *Domestic Incident Report Policy*.

It should be noted that because the vast majority of victims of domestic violence are women who are abused by their male partners, these materials generally refer to **abusers**⁸ as male and **victims**⁹ as female. Most of the information provided, however, will apply to all victims and abusers regardless of gender, including gay men, lesbians, transgendered people, and men who are physically abused by their female partners. To further assist the reader, throughout this document items that are in bold and numerically referenced will be supported by additional information contained in the Endnotes and Commentary located at the end of this document.

General Considerations and Basic Tenets of Probation

Purpose

The purpose of this document is to outline a consistent probation investigation and supervision response to domestic violence that will maximize **offender accountability**¹⁰ within the context of **victim safety**¹¹.

Policies, protocols and tools

Best practice requires that probation departments ensure a coordinated community response to domestic violence and a uniform response to domestic violence in probation supervision and every other stage of probation involvement. Strategies to accomplish this include:

- Developing, establishing, and disseminating a written domestic violence protocol that addresses offender accountability and victim safety, to be reviewed and revised regularly.
- Establishing and reinforce formal protocols with law enforcement agencies regarding the timely transmission of Domestic Incident Reports (DIRs) from law enforcement to probation departments consistent with the provisions detailed in the Criminal Procedure Law §140.10(5).
- Requesting the input and guidance of the NYS Office of Children and Family Services (OCFS) licensed and/or approved domestic violence service providers to collaborate in the design, implementation and review of any domestic violence initiatives, policies, protocols, tools and training.
- Ensuring that all personnel receive training on changes to domestic violence policies, procedures and protocols.
- Creating a system of monitoring and tracking domestic violence cases.
- Establishing formal relationships with other systems in the community through written memoranda of understanding and/or agreements that specify how each system will interact with other systems.
- Participating in domestic violence task forces, coalitions or workgroups
- Ensuring all personnel of the department receive on-going training by domestic violence advocates on victim safety and confidentiality.

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General Considerations and Basic Tenets of Probation

General guidelines

When supervising cases that involve domestic violence, probation officers should consider the following:

- Make victim safety the highest priority.
- Offender accountability must be a critical probation priority.
- Keep the focus of supervision on the offender's behavior.
- Offenders must comply with all court orders, and any terms and conditions of their release or probation supervision.
- Address other needs of the offender such as lack of employment, substance abuse treatment, etc.
- Do not tolerate any acts of domestic violence or excuses for acts of domestic violence.
- Address every attempt of offenders to deny, minimize, justify or blame abusive behavior on anything other than their own personal choice.
- Do not consider **rehabilitation**¹² as a supervision goal; rather, choose **competency development**.¹³
- Do not refer batterers to **anger management**,¹⁴ couples counseling or **mediation programs**¹⁵ to change the battering behavior.
- Do not give greater leniency to those who commit crimes against people they know, than those who commit crimes against strangers.
- Do not label or blame victims.
- Keep victim contact information secure.
- Neutralize the offender's attempts to manipulate officers or control probation supervision. Avoid any situation that can lead to colluding with the offender.
- Do not attempt to bring the offender and the victim together in a meeting.
- When there is firsthand knowledge that the offender intends to do harm to the victim, there is an obligation to immediately inform the victim and law enforcement.

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General Considerations and Basic Tenets of Probation

Training

All personnel, at all levels of the department, should regularly receive training on domestic violence dynamics and issues from OCFS licensed domestic violence programs or other individuals recognized as experts by licensed domestic violence programs.

Language, demeanor and tone

Demonstrate through language choices, demeanor and tone that domestic violence is taken seriously by the probation department and by every officer. Make careful language choices that:

- Are culturally sensitive.
 - Maintain focus on the offender and his actions and behaviors.
 - Do not label or blame victims. Full responsibility for every act of domestic violence must remain with the offender.
 - Do not collude with the offender. Never accept any reason, justification, or excuse (e.g., alcohol or drug use) for abusive behavior. Reinforce that abusive behavior is a conscious choice.
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Lethality assessments

To date, there is no assessment tool that can conclusively predict the potential lethality of a domestic violence offender. Lethality assessments can give the court, probation and the victim a false sense of security. Since prediction of dangerousness of an offender is not an exact science, we do not recommend lethality assessments in making determinations regarding the offender.

Similarly, regardless of the level of offense that brought the case before the court, **do not** make statements to the victim or the offender that minimize the offender's potential to inflict physical, mental or emotional injury. Consider all domestic violence cases as potential homicides, particularly with heightened safety concerns during separation or following termination of the parties' relationship.

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General Considerations and Basic Tenets of Probation

Weapons

Define weapons broadly (e.g., handguns, rifles, shotguns, spear guns, crossbows, archery equipment, swords, etc.). Always inquire about weapons that may be in the home, available to the offender from friends and family or in the possession of the offender. Ask about all licensed and unlicensed weapons. This will help to enhance the safety of the victim and probation officers. The Order and Conditions of Probation should contain a condition prohibiting the offender from possessing any weapons. Remove weapons as the law or probation conditions allow. Request the voluntary surrender of those weapons for which removal cannot be mandated. In addition to reviewing the *Firearms Prohibition Notice* form with the offender (see Appendix A):

- Routinely include Conditions of Probation that require the removal of all weapons as defined by the probation department.
- Document the presence of all weapons including licensed and unlicensed firearms, rifles, and shotguns in the home.
- Remove weapons as the law or probation conditions allow.

Interpreters

A court-approved interpreter must be used if the officer is not fluent in the language of offenders under probation supervision or being interviewed in connection with a probation investigation, litigants or witnesses. Do not allow the offender, family members, children, or friends to translate for the victim or witnesses because they may compromise the victim's safety.

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General Considerations and Basic Tenets of Probation

Cultural competence

Issues of offender accountability and victim safety require an understanding of the cultural overlays and biases confronting various participants in the legal process. Failure to understand this issue may compromise accountability and safety.

Domestic violence is a form of oppression. Sexism, racism, heterosexism, classism, and ableism include many of the same elements of power and control that condone and support domestic violence. When these forms of oppression intersect, they can significantly increase isolation and other obstacles and barriers facing women who are abused.

Probation officers should consider the following responses within the context of the impact of oppressions on supervision:

- Educate yourself about other forms of oppression and how they impact the experiences of women who are abused.
- Do not allow an offender to use his religion or culture as an excuse or justification for domestic violence. Hold all domestic violence offenders accountable for their actions and behaviors.

Probation departments should consider the following agency practices:

- Commit time for organizational discussions on domestic violence and oppression. Remember that these are complex issues that need adequate time and space. Change is a process.
- Set anti-oppression goals and continually evaluate whether or not your agency is meeting them.
- Promote anti-racist, anti-sexist, anti-heterosexism, anti-ablest, and anti-classist messages and analysis in everything your agency does.
- Create opportunities for people to develop skills to communicate about oppression.
- Promote egalitarian group development by promoting open communication and being aware of who tends to do what work, and who gets recognized and supported. Respect different styles of leadership and communication.
- Don't expect a person to accept a specific role just because they are part of an oppressed group. Be aware of the impact of tokenism and assign roles based on individuals work, experience, and skills.
- Make a collective commitment to hold each other accountable for language and behavior that is offensive so that the agency can be a safer place for everyone.

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General Considerations and Basic Tenets of Probation

Batterer programs

There is no reliable evidence that **batterer programs**¹⁶ stop domestic violence.

Do not rely on batterer programs to change offender behavior or to enhance victim safety. False assumptions about the “effectiveness” of batterer programs can negatively impact the safety of women who are abused.

Offender accountability can best be achieved through effective and consistent use of criminal justice sanctions specifically probation supervision, rather than batterer programs. Batterer programs should be used in combination with criminal justice sanctions that impose consequences for abusers who fail to attend programs, violate the policies of the program, or re-offend. Thus, batterer programs should be considered as one method of holding offenders accountable within a comprehensive supervision plan.

Identifying Domestic Violence

Definition

Domestic violence is a *pattern* of coercive tactics that include but are not limited to economic, emotional, physical and sexual abuse perpetrated by one adult person against a current or former partner, with the goal of establishing and maintaining power and control over the victim. Acts of domestic violence are not necessarily violations of law. A domestic violence offense should be viewed as a *pattern* of behavior not a singular criminal event. These forms of abuse do not occur separately but rather occur simultaneously or in conjunction with each other. Acts of abuse do not usually occur as a result of mental defect but are most commonly a result of behavioral choice.

Process

All cases should be screened for domestic violence and all acts of abuse should be taken seriously. Case assignments and initial contacts should be made as expeditiously as possible. Employing the following process can identify the elements of domestic violence and assist in completing the presentence investigation and report and in developing a supervision plan:

- Determine if the elements of the case meet the definition of domestic violence.
 - Review the case file.
 - Determine which party is the primary aggressor.
 - Conduct an interview with the determined primary aggressor. When the primary aggressor has been sentenced to probation, supervise the case in accordance with this document.
 - Interview the abused person, if she agrees, asking direct questions. The answers to those questions will determine how to proceed (See the section “Providing Services for Women Who are Abused” on page 40.)
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Identifying Domestic Violence

Case review The review process should include a detailed examination of case records and circumstances of the parties involved.

Step	Action
1	Determine offender/victim relationship. <ul style="list-style-type: none"> • Are they related, married, dating or have a child in common? • Past or present dating relationship. • Access to each other's home. • Any other connection between the parties or other people (i.e. family members, new partner)?
2	Document history of orders of protection. <ul style="list-style-type: none"> • Total Number (historical and active) by checking Order of Protection Registry consistent with Executive Law §221-a. • Victims. • Time frame between orders. • Violations.
3	Review charges (past and present). <ul style="list-style-type: none"> • Evidence of violence. • Determine circumstances surrounding all prior arrests (e.g. Burglary charges may be related to ex-girlfriend's/wife's apartment).
4	Examine multiple records and sources* for patterns of abuse. <ul style="list-style-type: none"> • More than one incident? • Escalation of tactics or abuse. • Narrowing of a woman's ability to make choices. • Check dates of abuse against Family Court action. • Family offense petitions. • Leaving/separation violence. • Stalking behaviors.
5	Confirm primary aggressor determination by examining: <ul style="list-style-type: none"> • Level of fear present for each party. Who is afraid of whom? • Comparative severity of injuries. • History of injuries. • Any threats made of future harm (to partner, third party or family)? • Prior history of domestic violence – who has been arrested in past? • Any defensive acts to protect self or third party from injury?

* Please refer to Appendix B - *Building a Domestic Violence Case* for additional suggested sources of evidence.

Identifying Domestic Violence

Interview questions to ask the person who has been abused

The interview should be conducted in a secure and confidential setting. When the person being interviewed is not fluent in English or is hearing impaired, interpreters not related to that person, should be provided to ensure the objectivity and integrity of the interview process. The interviewer should begin by providing information about the limits of agency confidentiality. The interviewer should discuss their duty to act if the person being interviewed expresses intent to harm themselves or reveals reportable information of child abuse or neglect. Remember that abusers frequently abuse the children in the home as well as their victims.

Below you will find a list of suggested questions. A “yes” answer to any of these questions is an indication that this person is being abused. You should discuss some form of safety planning, refer to the local licensed domestic violence service provider program and provide phone numbers of domestic violence hotlines. Discussion may begin with any of the following questions:

Violence is common in many women’s lives so we routinely inquire if your partner has:

- Threatened to hurt you or your children?
- Threatened to hurt friends or family members?
- Abused or threatened to abuse pets?
- Had sudden outbursts of rage or anger toward you?
- Behaved in an overprotective manner?
- Turned minor incidents into major arguments?
- Prevented you from seeing family or friends?
- Prevented you from working or attending school?
- Used intimidation or manipulation to control you or your children?
- Denied you access to family assets (i.e. bank accounts, credit cards, car, etc)?
- Called you derogatory, racial or sexual names?
- Threatened homicide or suicide?

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Identifying Domestic Violence

**Interview
questions**
(continued)

- Forced you to engage in sexual acts against your will?
- Intentionally destroyed your personal property?
- Disabled the household phone?
- Given you concern for your safety or family?
- Made you afraid to go home?
- Pulled your hair?
- Spit on you?
- Hit, punched, slapped, kicked, shoved, or bitten you?
- Threatened you with a weapon?
- Made you afraid to leave your home?

If the answer is “yes” listen non-judgmentally, validate her concerns, provide information about confidentiality, encourage discussion to gather more detail, reassure the victim that no one deserves to be abused and refer the victim to a licensed domestic violence service program (See the section “Providing Services for Women Who are Abused” on page 40.)

Introduction to Stalking

Stalking overview

Probation officers often become aware of some persons on their caseloads who repeatedly commit acts that “annoy,” “harass,” or simply “bother” their current or former spouses or intimate partners. Such knowledge may be gained through a variety of sources, including:

- Law enforcement referrals, including information noted in Domestic Incident Reports (DIRs).
- General monitoring and supervision duties, including unannounced home visits.
- General investigation duties, including information collected for reports and recommendations for pre-disposition/pre-plea/pre-sentence of persons.

Stalking and Cyber Stalking

Regardless of the source of the information, it is rare that the behavior is defined for what it may very well be: *stalking*. In simplest terms, stalking is defined as “unwanted pursuit” and cyber stalking is simply “using technology to stalk.” Cyber stalking is unique in that the stalker does not need to physically confront or be in same area as the target, and they use technology to remain anonymous or enlist third parties.

The crimes of Stalking were established in 1999 and are legally defined in New York Penal Law §§ 120.45, 120.50, 120.55, and 120.60. (see Appendix C – *NYS Stalking Laws* for details) Whether the stalking or cyber stalking is detected by law enforcement and available evidence meets the legal criteria for a conviction in violation of these sections of law depends on particular circumstances of each case. Stalking has the same devastating effect on victims regardless of whether an offender is arrested for or convicted of a specific crime of Stalking.

Probation Response to Stalking

Probation response to stalking

Far too often stalking behavior is minimized by society, including law enforcement professionals, because of a general misunderstanding of stalking and the acts that can constitute stalking behavior. It is crucial that probation officers recognize that individual acts that may not seem like criminal behavior in and of themselves may very well constitute stalking, based on the context in which the offender commits such acts.

Although those victimized by stalking tactics and related abuse may claim that the current incident is the first time that such annoying, harassing, and bothersome behavior has occurred, probation officers realize that this is highly unlikely because their training, knowledge, and experience in domestic violence reveals that people commonly try many times to “fix problems” before calling police. Probation supervisors need to ensure their officers check for stalking whenever they hear of a victim’s concern that their current or former spouse or intimate partner has engaged in more than one incident of any type of “harassment.” Probation officers need to be able to identify stalking and stalking behaviors and when such behavior constitutes a violation of probation or interim probation supervision. In addition probation officers need to know when enhanced supervision is appropriate or when efforts should be focused on coordination with law enforcement to build a criminal case against the offender.

Key elements of stalking

Concerns and complaints can appear insignificant to the probation officer in the beginning because they manifest as violating protective orders or harassing phone calls which can be viewed as low priority. It is therefore, important to question victims thoroughly. For a majority of victims, fear that something will happen is overwhelming and they never feel safe. Key elements to remember are:

- Stalkers may commit crimes in several jurisdictions.
 - Stalking cases can last for years with varying periods of increased activity.
 - Arrest and prosecution of a stalker, or a victim obtaining a protective order may not halt stalker’s behavior; in fact, these may aggravate the situation.
-

Stalking and Domestic Violence

Connection to domestic violence

Evidence shows that the majority of victims know their stalkers.¹ While stalking does not always involve domestic violence, domestic violence invariably includes elements of stalking. Perpetrators who stalk former intimate partners are more likely to have physically or sexually assaulted them prior to termination of the relationship. National research revealed that 81% of women stalked by an intimate partner were also physically assaulted and 31% were sexually assaulted by the same partner.² In a high proportion of cases involving the murder or attempted murder of women, the perpetrator was shown to have stalked the victim beforehand. One study indicated that in 76% of homicides of a female and 89% of attempted homicides of a female there was at least one incident of stalking in the year prior to the commission of these crimes.³

Given the increased fatality risk posed by stalkers, it is important for probation officers to take into account the following factors when writing investigation reports and developing supervision case plans for offenders who are engaging in stalking behaviors toward their intimate partner:

- Stalker already has extensive and intimate knowledge of victim and routines (history, social/family contacts, daily routines, employer, co-workers, neighbors, children, pets).
- Stalker already knows victim's hopes and fears (so easier to exploit them).
- Stalker can make stalking look like "legitimate" reasons for their behavior.
- Stalker has regular contact with victim through children activities, court dates, family, mutual friends, work, school, etc.
- Risk of injury or death is significantly increased if a stalker has access to weapons⁴.

¹ Katrina Baum et al., (2009) "Stalking Victimization in the United States," (Washington, DC:BJS).

² Tjaden, P. & Thoennes, N. (1998). *Stalking in America: Findings From the National Violence Against Women Survey*, National Institute of Justice, NCJ 169592, <http://www.ncjrs.gov/pdffiles/169592.pdf>.

³ Judith McFarlane et al., (1999) "Stalking and Intimate Partner Femicide," *Homicide Studies* 3, no. 4.

⁴ Saltzman, L. et.al, (1992). *Weapon Involvement & Injury Outcomes in Family & Intimate Assaults*.

Identification of Stalking

Stalking behaviors

Stalking is a course of conduct or a pattern of behavior and is generally an escalating series of intentional actions and incidents. Examples of stalking behaviors may include:

- Violation of protective order by visits to victim's home or any other location frequented by victim.
- Making unwanted or persistent telephone calls to victim.
- Sending unwanted or persistent mail, cards, or gifts.
- Trespassing.
- Burglary of victim's home.
- Following victim on foot or by vehicle.
- Showing up at victim's place of employment.
- Spying or monitoring victim by following or using computer. monitoring software, tracking equipment, global positioning systems (GPS) or other technologies.
- Making slanderous statements about victim or false reports.
- Delivery of objects intended to cause fear or "send a message".
- Threats made to victim (direct, veiled or conditional).
- Vandalism or theft of victim's property or that of anyone who is helping her.
- Vandalism affecting the security of victim's home.
- Disabling victim's vehicles.
- Disabling or tapping phone.
- Intercepting mail by filing change of address forms.
- Harassing or threatening by use of computers and internet.
- ANYTHING UNWANTED AFTER RELATIONSHIP BREAK-UP.
- ANYTHING WITH NO REASONABLE, LEGITIMATE PURPOSE.

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Identification of Stalking

Stalking offender characteristics

Offenders who engage in stalking behavior share certain characteristics regardless if their target victim is a stranger or intimate partner. Many of these characteristics are also shared by domestic violence offenders. Probation officers should be especially cognizant of offenders who demonstrate behaviors consistent with the following characteristics or who are described by others as:

- Jealous or extremely possessive and controlling.
- Sense of entitlement over all that a victim does (“You owe me…”).
- Narcissistic & self-centered (unable to empathize with other’s feelings or needs).
- Obsessive and compulsive.
- Quick & frequent swings from “rage” to “love”.
- Having fallen “instantly” in love with their partner/victim.
- Manipulative.
- Deceptive or dishonest.
- Dependent on victim for sense of self.
- Someone who needs to have control over other people.
- Socially awkward or uncomfortable around other people.
- Someone who views themselves as a victim of society/family/others.
- Unable to take “no” for an answer.
- Having difficulty distinguishing between fantasy and reality.
- Unable to cope with rejection.
- Someone who views their problems as someone else’s fault.
- Takes no responsibility for their own feelings or personal actions.

These indicators are replicated as a reference/checklist for probation officers in Appendix D – *Stalking Offender Characteristics Assessment* .

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Identification of Stalking

Victim response to stalking An important element in the process of identifying and documenting stalking is by reviewing cases for details that can reveal victim responses to stalking, even when evidence of offender stalking behavior may be minimal. Probation officers should examine and record how a stalker’s behavior may have impacted a victim’s daily life by determining if the victim has:

- Moved to a new residence.
- Changed jobs or requested a transfer.
- Sought refuge in a shelter or with friends.
- Obtained a new phone number.
- Considered or sought counseling or therapy because of the stalking.
- Put a tap or call trap on phone.
- Told other people about the stalking (friends, family members, co-workers, or security at work).
- Given photos of partner/former partner to security or others.
- Asked for an escort to car or work site.
- Changed work schedule or travel routines.
- Stopped visiting places she used to frequent.
- Taken self-defense courses.
- Bought a personal protection device (e.g. pepper spray).
- Considered or actually purchased a gun.
- Installed alarms or surveillance equipment on car or home.
- Put extra locks on home.
- Bought a “guard dog”.
- Created a safety plan.
- Worked with domestic violence advocates.
- Used a buddy system.
- Requested or obtained an order of protection.
- Informed police.

Note: Appendix E – *Domestic Violence Stalking Assessment* has been developed to guide probation officers who are working directly with victims. This can be used as a guide for interviews or it can be used to assist victims to recall events and details.

Probation Investigations and Reports

Legal history and prior record analysis

Document the offender’s detailed history of abuse, the impact of his behavior on the victim and his response to prior interventions in all investigations and reports completed for criminal, civil and Family Courts. Highlight any violence or patterns of coercive behavior in the report including:

- Details of each prior arrest or Domestic Incident Report where available.
- Offender response to prior justice system interventions where available.
- Orders of protection via Order of Protection Registry.
- Bench warrants/violation of probation warrants.
- Escapes, weapons, and contempt of court charges.
- Incarceration and community supervision.
- Violations of probation or parole or any other court disposition.
- Violations of orders of protection.
- Compliance or non-compliance with court-ordered batterer program.
- 911 calls or other police contacts.

Legal history and other information may be obtained from:

- NYS Division of Criminal Justice Services (DCJS) eJusticeNY for Computerized Criminal History (CCH) records and check other state criminal history records where offender has lived in the past.
- New York State Police Information Network (NYSPIN).
- National Crime Information Center (NCIC).
- National Law Enforcement Telecommunications System (NLETS).
- Criminal Record Information Management Services (CRIMS).
- New York State Order of Protection Registry – available from court clerk.
- Criminal court records.
- Family Court records (neglected or abused child; offender as petitioner or respondent).
- Child Protective Services/Administration for Children’s Services records.
- Probation records. Interview relevant past probation staff if possible.
- Police records. Obtain a “Premise History” from local police records for each address and by name, as determined by local practice (at least the last 24 months).
- Local pistol permit registry, if available.
- Offender interview.
- 911 dispatch center.
- District attorney.
- Victim interview.

Note: Some sources may have duplicative information.

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Probation Investigations and Reports

Description of the present offense

Gather preliminary information from several different sources before interviewing the offender. Confront the offender regarding conflicting facts and note responses. Describe the present offense in as much detail as possible. Include the context in which the offense occurred. If possible, conduct multiple interviews with the offender.

Review case records, including:

- Arrest report.
- Complaint information.
- Domestic Incident Reports (DIR).
- Depositions.
- 911 tapes or transcripts.
- Photos.

Arresting officer interview - Inquire as to:

- Description of the arrest scene.
- What was damaged, destroyed (regardless of value) and any injuries including that of the victim(s) and pet(s).
- Evidence of fear exhibited by the victim at arrest scene.
- Children present during the offense (any related Child Protective Services/Administration of Children's Services reports).
- Excited utterances by victim.
- Oral admission statements by offender and offender demeanor.
- Weapon use or threat of use.
- Witnesses (e.g., neighbors, visitors, bystanders).
- Evidence of any animal abuse or injury.

Offender interview:

- Obtain information regarding present offense (include incidents or arrests disposed of by plea agreement). Assess and record offender's description of the crime/act, rationale and view of culpability.
- Inquire about history of abusing this victim and prior victims (first, worst, and last acts of abuse, time frames, any patterns, and length of relationship(s)).
- Determine access to weapons and/or prior use or threatened use of weapons (describe weapons, their owner/possessor and location).
- Inquire about threats or attempts at homicide or suicide.
- Secure copies of prior orders of protection for current victim and other victim(s).

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Probation Investigations and Reports

Victim Impact Statement

The process by which a Victim Impact Statement (VIS) is obtained and reported must be guided primarily by a concern for victim safety.⁵ Victim safety is the first priority. Every effort must be made to contact the victim or local victim service provider in order to secure a VIS in accordance with Criminal Procedure Law §390.30(3)(b) and DPCA Rule 9 NYCRR Part 350. A VIS is critical to *every* domestic violence report; however, victims should never be required to provide a VIS against their will. Victims have a right to choose not to participate in the probation investigation process and their decisions should be respected. If the victim does not respond, assume that the victim “chose not to participate”. Characterization of the victim’s choice not to participate should never be judgmental. Do not assume, and write in the report, that the victim(s) chose to be “uncooperative” or that she “failed to cooperate”. There are many reasons why a victim might choose not to participate, including concerns about safety. This may be an opportunity to give the court information about why victims may not feel able to make comment. In the absence of a victim response, information for the VIS can be obtained from other sources such as the DIR, 911 transcripts, police reports, and/or a victim advocate. In addition, where the victim is unable to assist in the preparation of the VIS, the information may be obtained from the victim’s family.

Obtaining the Victim Impact Statement

When obtaining the Victim Impact Statement the probation officer should:

- Always interview the victim and offender separately.
 - Conduct the interview at a time and location chosen by the victim.
 - Provide the opportunity for the victim to bring an advocate or friend.
 - Before requesting any information, fully explain the law in this area, department confidentiality policies and mandated reporting requirements for hotline calls if child abuse or neglect is suspected. Provide this information in writing as well.
 - Review terms of all active orders of protection.
 - Provide Victim Rights Notification forms to victims of family offenses, review them, and offer services accordingly. (Criminal Procedure Law § 530.11(6); Family Court Act § 812(5)).
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⁵ Note: Victims who are misidentified as the primary aggressor are sometimes arrested. Officers should be mindful that, in these cases, the *batterer* is actually the person giving the victim impact statement, and be aware of its potential impact on the actual victim of abuse.

Probation Investigations and Reports

Obtaining the Victim Impact Statement (continued)

- Inform the victim of victim notification programs offered by other law enforcement offices and the Departments of Correctional Services and Division of Parole. Giving this information strengthens offender accountability by maximizing communication between the victim and the criminal justice system.
 - Discuss a short-term safety plan based on offender's anticipated sentence.
 - Ask the victim how you can most safely make contact (times, places, third parties, employment).
 - Request releases of information for verbal communication with shelter or advocates, a copy of medical records and other information sources.
 - Request receipts and other documentation of expenses or financial losses incurred as a result of the offense. Document irreplaceable items.
 - Offer referrals to, and information about:
 - 24-hour hotline number for domestic violence service provider, including shelter information, as necessary.
 - Court and law enforcement contacts.
 - Medical care.
 - Crime Victims Board.
 - Review all rights and current legal proceedings in plain language.
 - Encourage victim to maintain contact with the offender's probation officer.
 - If victim cannot be contacted, attempts should be documented in the report.
-

Victim Impact Statement confidentiality

As required by DPCA rules and regulations, "Where a source requests 'confidentiality' the probation officer shall explain that the request can be made to the court to except information from disclosure, but that the court may disclose any or all parts of the report." The court's decision regarding disclosure may occur irrespective of the victim's wishes. Further rule direction includes, "The report shall specify any portions of the report for which an exception from disclosure is requested and the probation officer's rationale for the exception. The identified portions shall be submitted in a separate section of the report in a manner independent of the body of the report, but made a part thereof. Such exceptions shall be requested where: a source has requested confidentiality; disclosure would endanger the safety of any person; disclosure of portions of the report would not be relevant to a proper disposition; a diagnostic opinion might seriously disrupt a program of rehabilitation; or disclosure would not be in the interest of justice." (see 9 NYCRR §§350.6(c)(3)(iv) and 350.7(b)(7))

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Probation Investigations and Reports

Social History

Present circumstances – Document the offender’s current social information, and his personal relationship history with family and intimate partners, such as:

- Violence in family of origin (while this may be useful information for case supervision, be careful not to present this information as a cause of or excuse for abusive behavior).
- Frequency and types of violence against previous intimate partners (first, worst and last acts of abuse, time frames, any patterns).
- History of Child Protective Services/Administration for Children’s Services involvement.

Education, Employment and Military – Examine the offender’s past and present income and evaluate his ability to support dependents and pay restitution. It is also important to document the offender’s history of failure to comply with official mandates, insubordination or other oppositional behavior with authorities. Evidence and sources may include:

- School detention, suspension, expulsion.
- Military service record and discharge summary (DD-214)
- Restraining order or punishment issued pursuant to Uniform Code of Military Justice.
- Documentation of abusive behavior or assault.
- Recent terminations or job changes, disciplinary action, chronic unemployment.

Note: Perfect records do not indicate a lack of dangerousness.

Physical and Mental Health – When documenting physical infirmities, mental health or substance abuse history:

- Never use language that suggests that substance abuse or physical or mental problems *cause* abusive behavior.
- Avoid language that presumes that treatment by a mental health or substance abuse program will address the domestic violence.

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Probation Investigations and Reports

Evaluative Analysis

Focus the Evaluative Analysis⁶ on the safety needs of the victim and the behaviors of the offender. If there is a history of violence, discuss the issue of offender decision making with regard to the use of violence. If there are willful decisions by the offender to use violence, determine and report the purpose of the behavior. Discuss the relationship between the offender's past and present behavior and presumed capacity to maintain a relationship in a legally responsible manner. Any violation of an Order of Protection appearing in the Legal History section should be viewed as an inability to maintain a relationship in a legally responsible manner. In addition to the specific direction contained in the DPCA Investigations and Reports rule:

- Analyze and evaluate past violent or controlling behavior of the offender toward the victim, past partners, children, other family members, and pets in terms of severity and frequency.
- Assess opportunities for continued abuse and/or violence. Consider the possibility of future opportunities as the result of divorce, visitation, custody, and support actions as well as the possibilities of family gatherings and workplace contact.
- Analyze offender's response to prior legal actions or other interventions
- Assess offender's attitudes toward the victim and toward the behavior, as well as his demonstrated ability/capacity to live in a legally acceptable manner (i.e. obey the law, court orders and conditions of release).
- Restate any patterns of abuse.
- Assess offender's attitude toward:
 - the victim
 - his offensive behavior
 - the probation officer and others in authority

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⁶ For additional requirements, see DPCA's Investigation and Report rule, specifically 9 NYCRR §350.7(b)(4).

Probation Investigations and Reports

Certificate of Relief from Disabilities

Certificate of Relief from Disabilities recommendations are routinely made to courts as part of probation investigation reports. For further details, see DPCA's Investigations and Reports rule, specifically 9 NYCRR§ 350.7(b)(6). Additionally, the court may request that probation conduct a Certificate of Relief from Disabilities investigation pursuant to Correction Law § 702(3). When a domestic violence offender files an application for a Certificate of Relief from Disabilities consider the following regarding the restoration of weapons and firearms rights and privileges:

- Probation should not support restoration of weapons to an offender. If restoration is supported, the investigating probation officer should thoroughly justify, in writing, why restoration is recommended, and what impact it is expected to have on the safety of the victim.
- A Certificate of Relief from Disabilities may be written to expressly prohibit a person from applying for a pistol license or permit or possessing firearms or long guns. Include this prohibition as a recommendation to the court, when appropriate.
- A Certificate of Relief from Disabilities issued under New York State law may not necessarily relieve the offender from federal firearm prohibitions. Advise offender accordingly.
- The court must be satisfied that “the relief to be granted by the certificate is consistent with the public interest.” (Correction Law § 702(2)(c)). In all domestic violence cases the victim's safety interests must be considered. Be sure to include this information in any reports generated for the court.
- A Certificate of Relief from Disabilities does not preclude licensing officers from relying upon the original conviction as a basis for exercising discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege. (Correction Law § 701(3)) Notify licensing officers of the offender's status and express any concerns for victim safety related to his access to weapons.

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Probation Investigations and Reports

Recommendations In developing a recommendation to the court, officers should remember that the level of accountability will be determined by the combination of sanctions imposed and the manner of enforcement. Each sanction can also have a financial, social, emotional, legal or safety impact on the victim. Determine how the offender can be held accountable for the pattern of abuse in a manner that is consistent with the victim's safety needs. Recommendations to be considered include:

- Orders of Protection should be consistent with Order and Conditions of Probation when probation supervision is recommended. (See "Orders of Protection" on page 47)
- Probation or interim probation supervision should only be recommended with specific conditions that will make it possible to effectively supervise domestic violence offenders while holding to the basic tenets of victim safety and offender accountability. Batterers programs should not be recommended unless the program exists within and participates in a larger, collaborative criminal justice response, and in conjunction with a formalized structure of probation supervision. Specific probation, including interim probation, supervision conditions should mirror conditions of any existing or recommended Order(s) of Protection.
- Incarceration may be the best criminal justice response to legitimately address the safety needs of the victim and simultaneously hold the offender accountable for illegal abusive behavior. However, even when incarcerated, batterers can and do continue to harass, intimidate, and otherwise abuse their victims. The batterer may do this by: sending letters (written or e-mail), phone calls, using relatives to relay messages, or even enlisting the assistance of friends "on the outside" to relay messages or engage in harassing behaviors. **Because batterers can continue their abusiveness even when incarcerated, it is imperative that any recommendations for imprisonment also include a recommendation that an Order of Protection be issued for the longest time allowed by law (so as to continue if the offender is released early).** Refer to NYS Criminal Procedure Law §530.12(5) for those time limits. CPL §530.12(8) and 530.13(6) require criminal courts and Family Courts to provide a copy of an order of protection to the state or local correctional or jail facility where a defendant/respondent will be detained or to the supervising probation department.

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Probation Investigations and Reports

Recommendations (continued)

- Split Sentences and fines should be considered as part of the range of available sanctions. However, the imposition of fines should NOT be recommended if it appears that the offender's payment of such will impact on his ability to support dependents.

DPCA's Investigations and Reports rule, specifically 9 NYCRR §350.7(b)(5) set forth additional parameters as to recommendations including special conditions relative to restitution to victims, and specific requirements as to anticipated transfers of supervision to another jurisdiction within the state or outside the state as delineated in §350.7(b)(10). In addition federal firearms prohibitions may incur upon conviction for domestic violence offenses.

Batterer programs

Before recommending that the defendant participate in a batterer program, consider the following:

- A batterer program should not be used as a diversion program.
 - Participation in a batterer program should not be the *only* sanction imposed.
 - Only mandated participation in conjunction with a formal monitoring and reporting system (e.g., probation) can enhance accountability.
 - The only information about the participant that program staff can observe and report to the court with absolute certainty are:
 - Attendance Record
 - Fee payment
 - Compliance with other program rules
 - Threats or disruptive behavior
 - Accountability can only be maintained with a swift and certain justice system response to the defendant's failure to abide by a court mandate.
 - The standard response for non-completion should be incarceration, not re-enrollment.
-

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Probation Investigations and Reports

Conditions

Conditions of probation or interim probation supervision should be:

- **Accountability-Focused** – All conditions must support the on-going accountability efforts by probation.
- **Specific and non-ambiguous** – Language should clearly convey the intentions of the court regarding prohibited or required offender conduct.
- **Enforceable** – Conditions that are specific, quantifiable and achievable are more easily enforced.
- **Measurable** – Supervising entities must be able to observe and determine offender compliance.
- **Adaptable** – Conditions must be adapted to the specific circumstances of the case.
- **Legal** – All conditions should be legally reviewed by a county attorney or other legal entity or representative prior to implementation. Restitution should be recommended as part of any disposition where it is sought up the maximum permitted by law.

Note: Conditions should be attached to the report for the judge's signature. For further details as to conditions see Penal Law §65.10(2), 9 NYCRR §350.7(b)(5) and DPCA's Electronic Monitoring Procedures at <http://www.dpca.state.ny.us/pdfs/appendixelectronicmonitoring.pdf>

Starting the Supervision Process, The Case File

Reviewing the case file

The department administration should articulate a clear definition of domestic violence, including the definitions and parameters discussed in other sections of this document. Immediately upon assignment of the case, the supervising officer should first review the file to determine if the case meets the definition. Review the file for the existence and content of all documents pertinent to the case. Those documents should include, but are not limited to, the following:

- Order and Conditions of Probation
 - Relevant Pre-Sentence Investigation/Pre-Plea Reports
 - Complete legal history
 - Victim Impact Statement
 - All current and past **Orders of Protection**¹⁷
 - Current Order of Protection Registry Information
 - Evaluations related to substance abuse, mental health, physical health, etc.
 - Signed releases of information
 - Documentation of the offender's contacts with community agencies
 - Police reports related to the current offense
 - License to carry or possess firearms, or possess rifles or shotguns
 - Domestic Incident Reports (DIRs)
 - Witness statements pertaining to the underlying offense
 - Current Child Support Orders
 - Child Custody / Visitation Court Orders
 - Records or notes related to any indicated CPS or ACS cases
-

The Officer's Case Notes

Case notes

Probation case notes should serve as a quick reference and reminder of the main issues of the case. This should prominently contain all relevant background information including:

- Name and date of underlying crime and its classification
- Name of arresting agency and date of arrest
- Name of the Judge
- Name of the appropriate court of disposition/sentencing
- Date of disposition
- Name, address, and phone number of the offender
- Length of sentence and maximum date of termination
- Name of person(s) that will know how and where to contact the offender
- Names and phone numbers of agency contact persons
- Name and phone number of attending physician or therapist
- Name, address, and phone number of employer

In addition to general information, domestic violence cases should also include:

- Relationship of the offender to the victim
- Conditions of all current Orders of Protection
- Special Orders and Conditions of Probation
- Victim's and children's names. Notes or contact information must be kept in a separate and secure file that is not accessible by the offender as victim information is confidential and to better safeguard such information where a court authorizes disclosure of case records to an offender and/or his attorney.
- Amount of any court ordered fines, surcharges, child support or restitution
- Any other information the officer determines is relevant

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The Officer's Case Notes

Documentation Case notes should be established and used for documenting all activity that occurs in each case. The case notes provide a chronological listing of all events occurring in the case, actions of the offender and observations of the probation officer. Domestic violence cases should be differentiated in some way. (Use colored tape, different colored paper, different colored folders, or some other process to flag those cases such as data element flag in a computerized case management system.)

Documentation is critical when conducting report interviews, developing update reports, completing Pre-Plea Investigations / Pre-Sentence Investigations (PSIs) for new charges, making decisions for supervision, testifying in court, terminating supervision, as well as for supporting officer safety, enforcement and accountability efforts.

The list of dates and events to be documented should include, but not be limited to:

- Letters establishing the initial interview
- Letters notifying the offender of missed probation appointments
- Letters sent to the victim with probation officer's name, telephone number and location. Include your willingness to speak to the victim if the victim desires to do so and provide a phone number for the local licensed domestic violence program
- Amount of and schedule for restitution payments, including payments
- Notes on content and name of the person/agency who called or was called
- Notation of the next interview/report date
- Notes regarding completion of long term goals and short term objectives
- Collateral contacts should include name of person contacted, and name of agency contacted
- Observations made during field contacts
- New charge(s), name of victim and circumstances of new arrest(s)
- Name of agency, and type of program completed
- Status and dates of all programs entered, completed or terminated
- Phone numbers, names of people and agencies involved in the case
- Pre-Sentence Investigation (PSI) and any other relevant reports. Clarify issues with the investigating officer

Continued on next page

The Officer's Case Notes

Documentation (continued)

- Date(s) that the offender and the officer signed and reviewed the Order and Conditions of Probation
- Exact directions to and description of offender's place of employment
- Presence and condition of pets/companion animals in the home
- Potentially hazardous conditions at the offender's home or place of employment
- Names and relationship of other people regularly in the home
- Presence and location of firearms or weapons of any kind and prepare for voluntary surrender if necessary. Consider a wide range of weapons including crossbows, long guns, handguns, knives, etc.
- Specific details of any threats, admissions, expressions of intent to comply or not with court orders or other statements, even if they appear to be made in jest. Immediately confront the offender and notify the victim, police and court of any threats to the victim.
- Agency name, contact person, phone number and address of all agencies having contact with the offender
- Releases of information for substance abuse evaluation and treatment, mental health evaluation and treatment, or batterer program, if included in the order and conditions. Describe terms and limits of department confidentiality policy
- Make, model, color and license plate information of vehicles available for the offender's use
- Names of other people the offender has harmed but are not named in this case
- Any other information the officer determines is relevant. Document and respond to any statements made by the offender relating to the case, the victim, or probation supervision

Note: Consult with a supervisor and the local licensed domestic violence program when victim safety is a concern. In some situations, it may be safer not to record certain victim information.

Note: See Appendix B – *Building a Domestic Violence Case*

Completing the Needs Assessment

Needs Assessment

The function of the New York Correctional Offender Management Profiling for Alternative Sanctions (NYCOMPAS) is to assist the probation officer and offender in prioritizing the goals and objectives of the supervision plan. This assessment should be a collaborative process between the probation officer and the offender. This assessment tool should be used to determine the needs for competency development and law-abiding behavior.

Warning: The NYCOMPAS **was not** designed to address domestic violence. This or any other assessment tool is NOT to be used to determine the level of an offender's dangerousness or lethality.

- Assessment instruments do not replace the judgment of a trained and experienced probation officer
 - Consider overrides to high levels of supervision
-

Assessing Risk of Violence in Domestic Violence and Stalking Cases

Assessing for risk of violence

Probation's role in community safety requires a balanced approach that involves risk management and risk reduction. The assessment of static and dynamic risk factors for future violence should be incorporated into all work with domestic violence and intimate partner stalking offenders and their victims. It is essential to understand that the offender is the only person who can make the violence escalate, de-escalate or end. Enhanced supervision of the domestic violence/stalking offender should be considered even when risk appears low. Probation officers should trust the victim as the person who knows the offender best. If the victim believes that the violence will continue or that it could be lethal, then the victim is probably correct. While often complex, the information gathered during a risk assessment can offer information that will help probation officers to more effectively manage risk by monitoring the defendant and adapting victim safety strategies. As always, no matter what is determined by any risk assessment, it is important to refer the victim to a domestic violence advocate who can provide assistance and link the victim with additional services.

See Appendix F – *Risk Factors For Domestic Violence Recidivism and Dangerousness*

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Assessing Risk of Violence in Domestic Violence and Stalking Cases

Risk assessment process The risk assessment process is composed of several key elements: risk factors, threat assessment, history of violence, weapons, escalation of abuse or stalking behavior and victim perception. These elements should be incorporated in all interviews and evaluations related to a domestic violence or stalking case. Each situation provides unique challenges. This risk assessment process is a guide and not an actuarial-based assessment tool. Specific components of the key elements include:

Risk Factors

- Offender's present or past threats to kill the victim, children, pets, or third parties
- Offender or victim's use of weapons
- Offender's degree of obsession/jealously/possessiveness towards victim
- Offender's violations of protective order with little concern for legal consequences
- Past incidents of violence
- Offender's present or past threats of suicide
- Offender's access to victim, victim's family or friends
- Hostage taking
- Offender's depression or other mental illness
- Offender's drug or alcohol abuse
- Offender's history of prior abuse/stalking of this victim or other victims

Threat assessment

- Does the victim believe the threat?
- Was it made in the presence of others?
- Is the threat detailed and specific?
- Is it consistent with the offender's past behavior?
- Does the abuser/stalker have the means to carry it out?
- Have there been rehearsals of the act that is being threatened?
- Does the threat extend to others?
- Does it involve murder, suicide or both?

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Assessing Risk of Violence in Domestic Violence and Stalking Cases

Risk assessment process (continued)

History of violence

- Was the offender abusive to former partners or family?
- Did the offender choke or attempt to **strangle**¹⁸ the victim or cause head injury?
- Does the offender have a history of violence towards others? A history of sexual assault behavior? Abuse of animals?
- Has the offender destroyed property, including personal property?

Weapons

- Does the offender have access to weapons? Keep weapons in more than one place? Is trained in use of weapons?
- Is having and being willing to use weapons part of the abuser/stalker self image?
- Has past violence included showing of weapons?
- Does the victim possess weapons? Is victim trained to use weapons?

Escalation of abusive/stalking behavior

- Does the offender enlist others to help monitor victim or send messages to her?
- Has the offender made new threats to those around victim?
- Has offender increased or developed new ways to abuse, spy on or stalk victim?
- Has the offender made or increased unwanted attempts to communicate either in person, over the phone, by mail, or through the internet (email, Instant Messenger, webcam, etc.) with messages such as ““I have made a mistake”, “I want to work things out”, “We need to talk” or “I love you.”

Victim’s Perception of the abuser/stalker behavior

- Does the victim believe that the behavior will continue?
 - Does the victim feel that the behavior will escalate?
 - What does the victim think will help increase and decrease safety?
-

Initial Supervision Plan

Initial supervision plan

The initial supervision plan will form a structure for setting goals and objectives for the offender's probation supervision consistent with DPCA's Supervision of Persons Sentenced to or Placed on Probation rule, 9 NYCRR Part 351. Competency development goals should flow from the Needs Assessment. Setting goals to eliminate the offender's domestic violence behavior should be based on the community and probation holding the offender accountable:

- The Needs Assessment should be completed with the offender
- After discussion of the Needs Assessment, the probation officer and the offender should reach agreement for prioritizing the competency development needs of the case. This agreement should not compromise the victim's safety
- The priority for the domestic violence case is offender accountability within the context of victim safety
- Short-term goals for competency development should be developed
- The long-term goal regarding behavior should be to eliminate offensive behaviors that are controlling of an intimate partner

Note: The established goals and objectives should be reviewed frequently and referenced in any reports sent by probation to the Court, i.e.: PSI, Uniform Court Report, Violation of Probation (VOP), etc.

Providing Services for Women Who are Abused

Victims of domestic violence and/or stalking

Probation officers should keep in mind that domestic violence and stalking can have a devastating impact on the victims they are working with either during the investigation or supervision phases of involvement. Victims are often making safety decisions based on offender threats and behaviors that a probation officer will never know about. The physical, mental and emotional toll of domestic violence and/or stalking on victims can manifest itself in ways that are often invisible to probation officers and others involved in the case, including:

- Continuous intense stress/anxiety; hyper-vigilance
- All consuming fear and paranoia
- Feeling vulnerable and out of control
- Disruption of everyday living/routines (self-isolation, move to new home/work location, change phone number and/or other contact info, new leisure locations, change identity)
- Anger, rage, depression, post-traumatic stress
- Guilt, self-blame
- Somatic responses (nightmares, disrupted sleeping patterns, eating disorders)
- Loss of work productivity
- Failure to concentrate, short-term memory loss
- Loss of trust in police and criminal justice system

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Providing Services for Women Who are Abused

What to do when speaking with women who are victims of domestic violence

The probation officer's goal should always be to enhance victim safety and promote her autonomy; anything less is counterproductive. Establishing a working relationship with the local domestic violence program can make this goal more attainable. The following are suggestions when talking with women who are victims of domestic violence:

- In case of emergency, victims should first contact law enforcement or 911
- Explain the terms of the Order and Conditions of Probation
- Provide referrals to the local OCFS licensed and/or approved domestic violence program at each contact, as required by law
- Discuss the limits of the probation department's confidentiality policy
- Validate her concerns
- Provide information about community services and restitution policies
- Present options and alternatives for problem solving
- Collect evidence of abuse including photographs of injuries when possible
- Offer yourself to be a part of her support network
- Discuss safety issues, preliminary safety planning and refer her to a domestic violence advocate for more comprehensive safety planning
- Listen non-judgmentally

See Appendix G – *Probation Domestic Violence Victim Contact Checklist*

What not to do when speaking with women who are victims of domestic violence

You represent the probation department and the justice system. The service you provide may prevent a homicide or injury. When speaking with a woman who has been abused:

- Don't assume she can speak freely
- Don't blame the victim; the offender is solely responsible for the abuse
- Don't promise anything you may not be able to deliver
- Don't assure her safety
- Don't direct the victim or make demands on her
- Don't make negative statements about the offender
- Don't use sexist language
- Don't contact a victim without her permission or when a batterer is present
- Don't depend on the victim to provide evidence or statements, explain that her participation is voluntary and she can stop at any time

See Appendix H – *Working with Women Who Are Abused*

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Providing Services for Women Who are Abused

Victim outreach and contact

It is extremely important for probation officers to keep in mind that in addition to the direct impact of domestic violence or stalking, many victims have also experienced disbelief, apathy, annoyance and victim blaming by friends, family, co-workers, law enforcement and court officials. As a result, victims may not always wish to participate further in the criminal justice response process:

- Be patient and understanding; victims of domestic violence are constantly reevaluating their risks, so their needs and safety concerns may change
- Create a safe environment for victims of domestic violence to disclose abuse if they choose
- Discuss the limitations of batterer programs and do not assume that the offender's behavior will change as a result of the program
- Discuss the Order and Conditions of Probation and Orders of Protection being clear about what might happen if either of these are violated
- Discuss officer and victim safety issues that may impact field work or collateral contacts
- Discuss the probationer's obligation to pay child support and restitution as well as visitation arrangements, if applicable

Enforcement accountability that includes victim input

Some enforcement and accountability efforts will include victim input. Discuss this process fully with the victim, and any implications which may impact her safety:

- Explain who may receive the information that the victim may provide
- Rely on your relationship with local domestic violence advocates to create a mechanism for information sharing that keeps the safety of victims of domestic violence a priority
- Determine information that the victim can provide without being identified as the source
- Identify information that can put the victim of domestic violence at increased risk
- Whenever possible, use sources of information other than the victim, to hold the batterer accountable

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Providing Services for Women Who are Abused

What stalking victims can do

Victims of stalking can be advised to consider employing the following techniques to enhance their safety:

- Stop all contact including any form of communication with the stalker
- Don't let third parties other than law enforcement intervene with the stalker
- Keep a full tank of gas
- Inform security guards and neighbors of stalker; give them photo of stalker
- Change phone, move to new address, avoid places frequented by stalkers
- Install a phone trap, block emails
- Keep a log of all stalker contacts/communications (see Appendix I – *Stalking Logs*)

Note: Victims and probation officers can use any convenient method of documenting stalking behavior. Stalking by definition is a course of conduct therefore any systematic notes recording stalking events can assist law enforcement, prosecutors and probation officers in holding the offender accountable.

When the victim is on probation

When a victim of domestic violence is being supervised by probation, the probation officer should:

- Create a safe environment for victims of domestic violence to disclose if they choose
 - Maintain the probationer's confidentiality
 - Review the Order and Conditions of Probation for potential safety issues
 - Do not recommend or mandate a batterer program
 - Recognize that use of a batterer as a collateral contact may unintentionally re-enforce and validate his power and control over the probationer
 - Provide information about domestic violence services and other resources in the community
-

The First Supervision Report

The function of offender contact and supervision

The primary function of contact with and supervision of domestic violence offenders is to establish and maintain offender accountability through appropriate probation interaction.

General expectations

During the first supervision report meeting with the offender be sure to undertake the following:

- Explain the officer's role in terms of monitoring the offender's full compliance with Order and Conditions of Probation and all other court orders, including Order(s) of Protection
 - Inform the offender that they will be held strictly accountable for negative or offensive behavior. Describe the full range of possible consequences for negative or offensive behavior
 - Explain the department's zero tolerance policy for domestic violence. Do not accept from the offender:
 - Denial of the crime
 - Minimization of negative/offensive behavior or its impact on the victim(s)
 - Justification for negative/offensive behavior
 - Blame of negative/offensive behavior on anyone or anything other than a choice to be abusive
 - Any attempt to seek collusion from the officer
 - Complete the Needs Assessment Form or case management tool
 - Refer the offender to the agencies that will assist the offender in accomplishing the established long and short term goals of probation supervision
 - Establish a reporting schedule
 - Review the payment schedule established by the court for all financial obligations, e.g. restitution, child support, fees, fines, etc.
 - Require the offender to provide copies of all past and current Orders of Protection
-

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The First Supervision Report

General expectations (continued)

- Request the name(s) of the offender's internet service provider(s) and all user/screen name(s), account password (s) and any and all account e-mail address(es)
- Require the offender to provide information about any public or private agency where he is currently seeking services
- Review and explain federal, state and local firearm laws and policy. The offender should sign the *Firearms Prohibition Notice* as found in Appendix A

Note: Probation's expectations of offender behavior must be made clear at initial offender contact and maintained during the entire supervision period. See Appendix J – *Initial Interview Checklist for Supervision of Domestic Violence Offenders*

Review order and conditions of probation

Review Order and Conditions of Probation at the first meeting with the offender. Remind the offender that conditions were established by the court and are not negotiable. The probation officer assigned to the case should:

- Read aloud each condition as written
 - Describe how the officer will interpret each condition
 - Ensure that the officer and the offender sign all copies of the Conditions
 - Ensure that each signature of the officer and the offender is dated
 - Provide a copy of the Conditions to the offender
 - Inform offenders that zero tolerance for domestic violence requires full compliance with all conditions
-

Responding to Stalkers

Stalker interventions

Some stalkers may cease behaviors when warned by law enforcement, but in other cases intervention may trigger more problems. Interventions by probation should aim to reinforce that: a) stalkers are strictly and solely responsible for their own behavior; b) stalking is a serious matter and stalkers should be under a “social hold”⁷; c) the victim receives restitution as ordered by the court; and d) offenders should be provided with an opportunity to cease all stalking and abusive behaviors. Each of the options below should be discussed with victim and assessed for safety. Probation officers must partner with law enforcement and others for many of the following strategies:

Police Interventions

- Contact/warning by law enforcement is most effective when the behavior does not yet constitute a full violation of law
- Counter-stalking (“stalk the stalker”) during pre-trial and post-conviction: may use technology, including GPS
- Arrest and detention of suspect for victim-directed criminal conduct
- Arrest and detention for other criminal conduct (such as drugs, weapon charges)

Court Interventions

- Protective order on behalf of victim and witnesses
- Revocation of weapon permits and weapon confiscation (through conditions of probation, search order, search warrant, court order, condition of bail or through a protective order)
- Bail and other conditions of pre-trial release

Other

- Criminal convictions
 - Jail, fines and restitution
 - Electronic monitoring
 - Psychiatric evaluation and hospitalization, mental health referral, drug and alcoholism treatment
-

⁷ Concept of “social hold” is described in *Creating an Effective Stalking Protocol* U.S. Department of Justice, Office of Community Oriented Policing Services (April 2002) as follows: To disrupt the idea that domestic violence is a “private matter”, and to establish a “social hold” over the abuser. This includes establishing bail, conditions of pretrial release, conditions of probation, and the terms of orders of protection, custody/visitation and support as ordered by the court.

Orders of Protection

Orders of Protection

The information collected by probation regarding the **Orders of Protection**¹⁸ will be used in different ways depending on duties being performed:

- **Investigations** - To determine and record the entire Order of Protection history of the offender for all reports to the court
- **Supervision** - To ensure the enforcement of all active Orders of Protection

Note: See Appendix K – *Order of Protection*

Locating Orders of Protection

Orders of Protection may have been issued or recorded and filed in several jurisdictions. Check the following jurisdictions:

- Where the crime occurred
- Offender residence (past and present)
- Offender employment/school
- Victim residence (past and present)
- Victim employment or school
- Children’s residence or school

Note: The term “jurisdiction” is used to refer to a village, town, city, county, state, the District of Columbia, a commonwealth, territory, or possession of the United States, Indian tribes and other countries.

Verification

Contact the following sources to verify Order of Protection information:

- NCIC Protection Order File
- E-Justice Web Page
- NYSPIN record request
- NYS Order of Protection Registry
- Court Clerk(s)
- Domestic Violence Court Resource Coordinator(s)
- Police Department(s)
- County Sheriff(s)
- Tribal Nations

Note: Offenders, victims, and domestic violence advocates may be able to provide information that can guide probation officers.

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Orders of Protection

Basic elements of a valid Order of Protection

Any Order of Protection should be presumed valid if all of the following are found:

- The order contains the names of the parties
 - The order contains the date the order was issued
 - The order has an expiration date
 - The order specifies terms and conditions against the offender
 - The order contains the name of the issuing court
 - The order is signed by or on behalf of a judicial officer
 - The defendant was present in court when issued or was personally served with the order
-

Officer review and actions for Orders of Protection

When reviewing active Orders of Protection, probation officers should:

- Confirm that Orders of Protection have actually been served upon the offender, or that the offender was present in court when the order was issued
- Review elements that affect the Order and Conditions of Probation such as:
 - Prohibited or required offender conduct
 - Weapons/firearms provisions
 - Custody or visitation provisions
 - Court ordered child support
 - Restitution
 - Mandated attendance in a batterer program
- Notify courts of potential conflicts where multiple Orders of Protection are active and are inconsistent

Note: If the Order of Protection was issued *ex parte* and the offender has not been served, probation officers, as peace officers acting pursuant to his/her special duties, have the statutory authority to perform the service under the NYS Family Court Act §153-b(b); NYS Family Court Act §168(1); and, NYS Domestic Relations Law §240 (3-a) and should be encouraged to do so. Officers must file an affidavit of service with the issuing court.

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Orders of Protection

Review Order(s) of Protection with offender

Each probation officer interacting with the offender should advise the offender that all the conditions of every Order of Protection will be enforced. In addition:

- Ask the offender if any other active Orders of Protection exist. If so, obtain details and direct the offender to provide a copy for the case file
- Check the Order of Protection registry
- For each Order of Protection, read to the offender the following:
 - Prohibited and/or required offender conduct
 - Court of issuing jurisdiction
 - Date of issue
 - Name(s) of protected parties
 - Expiration date
- Describe how each condition will be enforced and provide examples
- Inform the offender that all Orders of Protection are in effect throughout the State of New York and all other states and territories of the United States regardless of issuing jurisdiction
- Explain to the offender that full responsibility for complying with Orders of Protection rests with the offender and not the victim
- **Explain to the offender that the victim cannot violate the Order of Protection.** Clarify that victims, law enforcement, or probation cannot modify Orders of Protection – only the Court can do so

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Orders of Protection

Officer response to violation of an Order of Protection

Victim safety must be the primary concern when responding to violations of Orders of Protection. Officer response will depend on the nature of the violation and how the violation comes to the attention of the officer. A response must be appropriate, timely and certain. Use the following table to determine next steps:

IF	THEN
The victim is the sole source of violation information	Inquire about the safety of all involved and suggest victim call 911 when appropriate. Offer to contact medical services. Preserve the crime scene. Gather and document evidence of the violation from sources other than the victim. If there is no evidence, do not arrest or force the victim to sign an affidavit. Police or probation officer should arrest offender pursuant to the state law and department policy. Initiate criminal complaint against offender for crime(s) committed <i>and</i> for violation of the Order of Protection (see NY Penal Law Article 215 governing Criminal Contempt for details). Initiate a Violation of Probation proceeding.
The violation is a matter of public record or observed by probation officer	Determine status of all new proceedings against the offender. Gather and document evidence of the violation. Interview the offender. Initiate a Violation of Probation proceeding against the offender.

Note: Peace officers’ authority to arrest for violation of an Order of Protection issued to a victim of a family offense is found in Criminal Procedure Law §530.12(8). Peace officers’ authority to arrest for violation of an Order of Protection issued to a victim of a non-family offense is found in CPL §530.13(6). Defer to department policies regarding any arrest.

Offender Contact

Firearm laws

Domestic violence offenders may be subject to various state and federal firearms prohibitions. Firearm laws must be fully enforced and the following action should be taken:

- Notify offender about firearms prohibitions for individuals who are :
 - Subject to qualifying Orders of Protection
 - Convicted of misdemeanor crimes of domestic violence
 - Convicted of a felony or serious offense (e.g. Endangering the Welfare of a Child)
 - Illegal drug users
 - Fugitives from justice
 - Describe range of possible consequences for failure to comply
 - Complete a *Firearms Prohibitions Notice* (see Appendix A) with the offender. Have offender sign and date the form. Keep the original in the case file and provide a copy to the offender
 - Verify firearm surrender, as appropriate
 - Note:** Probation officers who have evidence that offenders may be in violation of federal firearms laws should contact appropriate law enforcement agencies for enforcement and prosecution
 - Employ search orders and search conditions to facilitate confiscation during home inspections, car searches and other site-specific searches
-

Supervision activities

Offender accountability will be enhanced by officers who regularly:

- Supervise in accordance with DPCA's rule, Supervision of Persons Sentenced to or Placed on Probation, and consistent with assessment and classification (9 NYCRR Part 351)
 - Regularly review conditions of probation with offender
 - Make unannounced field contacts and record all relevant observations
 - Routinely check NYSPIN, NLETS, eJusticeNY, CRIMS, and the Order of Protection registry
 - Conduct random checks for alcohol and other drugs, if court ordered
 - Where possible make regular collateral contact with neighbors, family members, etc. Ask if they have heard or seen anything alarming or unusual. Do not violate victim confidentiality
 - Record observations and offender behavior in the context of evidence
 - Monitor compliance with all treatment and education orders
-

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Offender Contact

Graduated sanctions

If the offender breaks program rules or engages in offensive/negative behavior *prior to actual violation of probation conditions*, officers should consider imposing or recommending the following responses:

- Verbal admonition by probation supervisor/officer followed by documentation
- Increase frequency of supervision meetings and field visits
- Increase alcohol and other substance use testing when appropriate
- Send written notification to the court
- Issue an Appearance ticket and request judicial reprimand
- Request a modification of conditions of probation (e.g., curfew, electronic monitoring⁸, home confinement)
- Recommend an Order of Protection be issued with additional prohibitions or requirements imposed on the offender
- Conduct an Administrative Review including offender, probation officer, probation supervisor and/or probation administrator for the purpose of documenting offender's negative behavior. Record this information in a report for the court and provide a final opportunity for a positive change in offender behavior. A memorandum to the Court or VOP should be submitted to the sentencing court that details the misconduct and sets forth a specific plan of action

For additional information, see DPCA's Graduated Sanctions and Violations of Probation rule 9 NYCRR §352.

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⁸ For details as to electronic monitoring see CLP §65.10(4) and DPCA Electronic Monitoring Procedures available on the agency website at www.dpca.state.ny.us/pdfs/appendixcelectronic_monitoring.pdf

Offender Contact

Restitution, child support, fees, fines, surcharges

All financial issues that are a part of the offender's probation should be viewed as issues of accountability. The officer's responsibility is to document the offender's compliance with court ordered payment schedules. Court ordered child support should be included in the Order and Conditions of Probation. All fees, fines, surcharge and restitution payments should be reviewed at every opportunity. The following probation officer activities are recommended:

- Payment schedules should be reinforced by the supervising officer at the first probation report
- Consequences for non-payment of financial obligations should be reviewed with the offender
- The amounts of all required payments should be noted in the officer's case notes
- The offender's financial obligations should be reviewed at each probation report
- The payments or lack of payment towards probation financial obligations should be documented at each probation report
- The offender should provide the officer with documentation of payments upon request
- Conditions of Orders of Protection in relation to the offender's contact with the victim (payment of child support, restitution, etc.) should be reviewed with the offender
- Consequences should be imposed if the offender fails to abide by the established payment schedule. Remember to notify the court of repeated failure to make restitution (See DPCA Financial Obligations Rule 9 NYCRR§353.3(d))
- Travel Permits *should not be issued* if financial obligations are not being met unless extenuating circumstances exist
- Transfer of supervision, interstate and discretionary intrastate, should not be made if financial obligations are not being met

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Offender Contact

Considerations when issuing a travel permit

When the offender requests a travel permit, remember:

- If possible, consult with the victim
 - Travel is a privilege, not a right
 - The offender may be trying to stalk or follow the victim
 - Prior to issuing a travel permit, officers should review Orders of Protection, and the Order and Conditions of Probation for possible conflict
 - Permits may be granted when the probationer is in full compliance with all requirements and travel dates do not conflict with program attendance
 - A new permit should be issued for each instance of jurisdictional departure
 - A copy of any travel permit that is issued should be saved in the file
 - Officers may consider requiring the offender to obtain a police signature and phone number on the first day in the visited jurisdiction
 - *Officers should remind the offender that it is a federal crime to cross any state border to abuse a current or former victim*
 - It may be useful to secure a waiver of extradition
 - To make sure travel permit is consistent with the Interstate Compact for Adult Offender Supervision and its governing rules which impact the duration of a travel permit and may necessitate a formal transfer request in advance. For further details, please see www.interstatecompact.org
-

Transferring Supervision

Transfer of supervision, generally

Remember, a transfer of supervision is a privilege, not a right. In addition to full compliance with statutory and regulatory requirements, officers should evaluate the level of impact, if any, the offender's move and the transfer of supervision will have on the victim. If possible, consult with the victim. When considering a transfer request, evaluate the following:

- Will the offender be able to comply with restitution/child support requirements?
- Will the transfer of supervision jeopardize the victim's or her family's safety?
- Is the offender attempting to follow the victim or her family against her will?
- Is the offender in compliance with the Court's order for child support and/or restitution?
- Will supervision provisions be the same as those ordered by the judge?
- Will the new community have agency services that will meet the offender's needs to achieve the established long and short term case goals?

Note: Ensure that the receiving department or receiving state is provided a copy of the order and conditions of probation and order(s) of protection. Follow all applicable laws and rules with respect to inter/intrastate transfer of probationers (See CPL §410.80, Executive Law §259-mm, ICAOS Rules (for detail see www.interstatecompact.org) and DPCA's Interstate/Intrastate Rule, specifically, 9 NYCRR Part 349).

Process the transfer request only when the above issues have been given full consideration. Do not communicate to the offender that the victim's wishes were considered or influenced the decision.

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Transferring Supervision

Transfer between officers within the same department

When transferring a case between officers within the same department:

- Consult with probation supervisor
 - Have the case reviewed by an officer specially trained in domestic violence (e.g., Probation Domestic Violence Liaison)
 - Consider moving the case into a caseload with enhanced supervision
 - Write a detailed summary with emphasis on offender actions
 - Introduce the victim to the new officer (either by phone or in person) before actual transfer of a case
 - The new officer should review the Order and Conditions of Probation and Orders of Protection with the offender and document the date of the review
 - The new officer should review state and federal firearm laws and local policy
 - Read aloud, for the offender, each condition as written
 - Describe how each condition will be interpreted by the officer
 - Ensure that the officer and the offender sign all copies of the Conditions
 - Ensure that each signature of the officer and the offender is dated
 - Provide a copy of the Conditions to the offender
 - Inform the offender that zero tolerance for domestic violence requires full compliance with all Orders from the court and Conditions of Probation
-

Transferring Supervision

Intrastate or interstate transfers

When transferring cases intrastate or interstate, consider the following:

- Remember that transfer is a privilege, not a right
 - Confirm that cases meet transfer eligibility requirements
 - Abide by the Interstate Compact for Adult Offender Supervision and its governing rules
 - Abide by DPCA rules and regulations⁹
 - Before permission is granted for the offender to reside in another state, opportunity shall be granted to the receiving state to investigate the home and prospective employment/support means of such person and there shall be opportunity for input and timely notice to victims and jurisdictions where defined offenders are authorized to travel or relocate across state lines¹⁰
 - Ensure that there is no gap in supervision by ensuring continual monitoring of the case until transfer is accepted
 - Consult with agency Interstate/Intrastate liaison to ensure that proper procedures are followed
-

⁹ DPCA Rule 9 NYCRR Part 349 and 9 NYCRR §350.7(b)(10).

¹⁰ Per the Interstate Compact for Adult Offender Supervision and Executive Law § 259-mm and the interstate compact rules and regulations (See www.interstatecompact.org)

The Periodic Supervision Report

Periodic supervision report

The periodic supervision report process is an opportunity to consolidate all activity that has occurred in the case for the reporting period. Reviewing the report will provide insight to the status of the case. Part of the report should include supervision strategies for the next report period. The officer must refrain from making assessments of the offender's future behavior and should consult with a probation supervisor prior to any increase or decrease in supervision level.

Record and evaluate the following:

- All scheduled reports attended or not attended by the offender
 - The offender's general attitude toward supervision
 - Any comments or statements made by the offender that give insight to how he views himself
 - Compliance with the Order and Conditions of Probation
 - Compliance with any Orders of Protection
 - Attendance in all programs ordered by the court
 - Compliance with program rules
 - Payments toward restitution, child support, fees, fines, etc.
 - All field contacts
 - All victim contacts
 - All agency, employment, or other collateral contacts
 - Any movement or lack of movement toward the established long-term goals of the case
 - Any movement or lack of movement toward the established short-term goals of the case
 - Any travel permits issued and the offender's destination(s)
 - Officer's general observations of the offender
 - Goals of the next report period
 - Supervision strategies to be employed in the next report period
 - All case conferences held with supervisor
 - Any administrative reviews or reprimands
 - Any other information the officer deems appropriate
-

Violation of Probation

Violation of Probation

Offenders should be held accountable, through a swift and consistent probation response, to violations of the Order and Conditions of Probation. When officers have reasonable cause to believe that the offender has violated a condition of the sentence:

- Secure and document evidence of the violation, preferably from sources other than the victim
 - Request permission from the victim to take pictures of any injuries or destroyed property that might be used as evidence
 - After explaining local confidentiality policies, ask if the victim chooses to provide a statement
 - Collect corroborating statements
 - Interview the probationer
 - Review the case with a supervisor
 - Impose graduated sanctions as appropriate
 - Increase the offender's level of supervision
 - Apply for a search order, if necessary, to secure additional evidence (See NY Criminal Procedure Law §410.50(3) for details)
 - Prepare and submit a Violation of Probation for the court per local policy and in accordance with DPCA's Graduated Sanctions and Violations of Probation rule 9 NYCRR Part 352; effective March 1, 2010
 - Request a Declaration of Delinquency
 - Notify victim or victim's domestic violence advocate of pending change in offender's status. Describe how violations are generally processed and what outcomes or sanctions may result
 - Make provisions for offender to be taken into custody with or without a warrant (See NY Criminal Procedure Law §410.50(5))
 - Arrange to have offender appear before the court (See NY Criminal Procedure Law §410.60)
 - Make disposition recommendations should the Violation of Probation be sustained subsequent to a hearing
-

Case Closing

Case closing summary

Three to four months prior to the end of probation supervision, the probation officer should review the supervision summary and consider whether a violation of probation should be filed along with a request for a Declaration of Delinquency. The following are suggested issues that should be addressed in the case closing summary for cases involving domestic violence:

- Has the offender complied with the Order and Conditions of Probation?
- Has the offender complied with all Orders of Protection?
- Has the offender completed all required programs?
- Have all fines, charges and restitution been paid?
- Has all court ordered child support been paid?
- Have there been any new arrests or convictions?
- Has the officer witnessed inappropriate, abusive, or coercive behavior by the offender?
- Is the officer aware of any continuing power and control efforts by the offender towards his partner?
- Has the victim informed the officer of any immediate threats to her or her family's safety by the offender?
- Has the officer addressed any remaining concerns held by the victim?

Closing the case

A concerted effort should be made to notify the victim one (1) month before probation supervision is terminated. Provide the victim with an opportunity to identify any concerns resulting from the supervision being terminated. Be sure to document them clearly in the case closing summary.

The case closing summary should also include a brief description of offender's competency development efforts during the period of supervision. The choice of the offender to be an abuser is rooted in his belief that he has the right and privilege to abuse his partner. Therefore an officer cannot predict the offender's future behavior or document that the offender has changed the belief systems that support the abusive behavior.

An early termination of the probation sentence for domestic violence offenders is not recommended despite criteria enumerated in Criminal Procedure Law Section 410.90. If early termination is solicited by the offender or his attorney, it is advised that the victim be notified and that the probation officer provide the court with a supervision summary and advocate against early discharge of the probation sentence.

Endnotes and Commentary

¹ **Domestic Violence:** A pattern of coercive tactics which can include physical, sexual, economic, and emotional abuse perpetrated by one adult person against a current or former partner, with the goal of establishing and maintaining power and control over the victim. Some acts of domestic violence are not necessarily violations of law. A domestic violence offense should be viewed as being part of a pattern of behavior, not a singular criminal event. [New York State Division of Probation and Correctional Alternatives: *Probation Intervention in Domestic Violence: Guidance for Policy Development* (April 2000) p. 2.]

Note: The above is an inclusive definition of “Domestic Violence”, which might be otherwise restricted by statutory definitions. However, we urge that the most inclusive definition be used as localities develop and implement domestic violence policies, procedures, and programming.

² **Adult Intimate Partner Relationships:** Includes adult persons who are legally married to one another; were formerly married to one another; have a child in common regardless of whether they were ever married or lived together at any time; are unrelated, but living together or have lived together in the past; are unrelated but who have had intimate or continuous social contact with one another and who have access to one another’s household; and who have or have had a dating or sexual relationship, including same sex couples. [New York State Office for the Prevention of Domestic Violence: *Model Domestic Violence Policy for Counties* (1998) p. 1.]

³ **Family Offense:** Any one of the following offenses (Criminal Procedure Law §530.11 and Family Court Act § 812):

- Disorderly Conduct (PL §240.20) [Note: Acts need not occur in a public place.]
- Harassment in the First Degree (PL §240.25)
- Harassment in the Second Degree (PL §240.26)
- Aggravated Harassment in the Second Degree (PL §240.30)
- Sexual Misconduct
- Forcible Touching
- Sexual Abuse in the Third Degree
- Sexual Abuse in the Second Degree
- Stalking in the First Degree (PL §120.60)
- Stalking in the Second Degree (PL §120.55)
- Stalking in the Third Degree (PL §120.50)
- Stalking in the Fourth Degree (PL §120.45)
- Criminal Mischief in the Fourth Degree
- Menacing in the Second Degree (PL §120.14)
- Menacing in the Third Degree (PL §120.15)
- Reckless Endangerment (PL §120.20)
- Assault in the Second Degree (PL §120.05)

- Assault in the Third Degree (PL §120.00) or an
- Attempted Assault (PL§110.00 and PL§ 120.05 or PL§ 120.00) between spouses or former spouses, or between parent and child or between “members of the same family or household”

“Members of the same family or household” shall mean the following:

- persons related by consanguinity (blood) or affinity (marriage);
- persons legally married to one another;
- persons formerly married to one another; and
- persons who have a child in common, regardless whether such persons have been married or have lived together at any time; and,
- persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an “intimate” relationship include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interactions between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”.

The Family Court and the criminal courts have concurrent jurisdiction over any proceeding concerning acts which would constitute a Family Offense except that if the respondent would not be criminally responsible by reason of age pursuant to §30.00 of the Penal Law, then the Family Court shall have exclusive jurisdiction over such proceeding.

⁴Coordinated Community Response: As described in *Evaluating Coordinated Community Responses to Domestic Violence* [Violence Against Women Online Resources.

<http://www.vaw.umn.edu/Vawnet/ccr.htm> (10/2000) p. 8], a coordinated community response can include or involve police, prosecutors, probation officers, domestic violence advocates, counselors, judges, and others in developing and implementing policies and procedures that improve interagency coordination and lead to more uniform responses to domestic violence cases.

Components of a Coordinated Community (Criminal Justice) Response:

- pro-arrest or mandatory arrest policies
- advocacy for victims
- aggressive and prompt prosecution
- monitoring individual cases
- batterer programs
- strengthening civil protection
- system-wide monitoring

For the purposes of this project, we believe that such a coordinated response, as well as each of its component agencies, must have as overarching goals:

- Prioritizing safety for the victim; and

- Holding the batterer accountable for his behaviors and attitudes.

⁵ **Domestic Violence Program:** Programs that may provide advocacy services, shelter services, information, and other services to a narrowly defined group of crime victims (victims of domestic violence). Domestic violence advocates are often based in, or linked with, a not-for-profit, non-governmental agency. The victim's involvement with advocates is entirely voluntary. The advocate's role is largely defined by the needs and desires of the victim (within the parameters designated by the employing agency), and the overarching goal of the advocate is to support and bolster the victim's decisions and provide information. Although program models may differ, the provision of advocacy services is not contingent upon the existence of a pending court case. The allegiance of the advocate lies with the victim, and the advocate may be called upon to represent the victim's interests to other persons and/or agencies. Advocates and advocacy programs are potentially a major resource for probation officers and departments and vice versa. We strongly advise that this interdependent relationship be encouraged, strengthened, and formalized on the local level as a necessary part of **a coordinated community response to domestic violence.**

⁶ **New York State Office for the Prevention of Domestic Violence. Model Domestic Violence:** Policy for Counties (January 1998) pp. 8-24. The entire policy document is available electronically at <http://www.opdv.state.ny.us/coordination/model/policy-index.html>

⁷ **New York State Division of Probation and Correctional Alternatives, Executive Deputy Director's Memorandum to Probation Directors and ATI Administrators:** *Probation Intervention in Domestic Violence — Guidance for Policy Development.* April 2000.

⁸ **Abuser:** For the purposes of this document, federal funding guidelines and the Probation Domestic Violence Intervention Project identify an abuser as an adult person who perpetrates a pattern of coercive tactics which can include physical, sexual, economic, and emotional abuse against an intimate partner, with the goal of establishing, demonstrating and maintaining power and control over the victim.

⁹ **Victim:** The adult person against whom an *abuser* directs coercive and violent acts. [New York State Office for the Prevention of Domestic Violence. *Model Domestic Violence Policy for Counties* (1998) p.1.]

¹⁰ **Offender Accountability:** Accountability means that an individual is to be held responsible, or answerable for their action or behavior.

As it relates to domestic violence, offender accountability is a core issue when discussing the criminal justice response to domestic violence. The NYS Office for the Prevention of Domestic Violence [NYS OPDV] *Model Domestic Violence Policy for Counties*, published in January 1998, speaks to the issue of offender accountability and comments upon two aspects of holding offenders accountable.

The first and most commonly applied interpretation of offender accountability relates to the imposition, by the justice system, of swift, consistent and meaningful sanctions for abusive behavior. Most people immediately conceptualize arrest, prosecution, conviction and sentencing as being the operational elements of offender accountability.

The second aspect of accountability relates to the reinforcement of individual offenders' sole responsibility for their abusive behavior by the community, particularly by systems other than the criminal and civil justice systems. This issue is addressed in the Guiding Principle [NYSOPDV Model Domestic Violence Policy for Counties, 1998, p.17], which states "Provider's responses to perpetrators of domestic violence should focus solely on the abusive behaviors and reinforce abusers' sole responsibility for their coercive and violent behavior."

This application of accountability operationalizes the tenet that there is no acceptable excuse for domestic violence. Services which respond inappropriately can diminish offender accountability by "buying into" abusers excuses for their behavior. If community services focus on personal or moral deficits, diseases, low self-esteem, early childhood experiences, anger management, diminished intellect, addiction, mental illness or external events as the means to 'treating' or 'solving' domestic violence, abusers may be given tacit support for the excuses they offer to explain their abusive behaviors.

A coordinated community response to domestic violence should recognize this dynamic and community services should be designed to focus on abusers' responsibility for their actions, not minimize their responsibility.

For probation, offender accountability is a combination of the above two concepts, which are applied in the investigation and supervision processes. Conditions of probation must be constructed [and ordered] so as to focus on the offenders' abusive behaviors. Enforcement of the conditions of probation must be aggressively pursued.

Given that probation supervision is the closest form of justice system scrutiny to which offenders may be subjected, in every situation where the probationer does not comply with the conditions of probation, or the [reasonable] directives of the officer, there must be a consequence.

The officer cannot tolerate even slight non-compliance. The officer should use graduated responses or sanctions to confront misbehavior, and should not depend merely upon verbal admonition as the primary consequence for non-compliance. Local probation department administration must support the officer in the application of these consequences.

Application of the second aspect of accountability means that the probation officer must constantly and consistently deny the offender any possible justification for his behavior. An essential consideration of any probation officer activity must be the nature and content of the interaction with the offender. Ensuring that the substance of the personal interaction with the abuser is appropriate is one of the most important responsibilities facing the probation officer. In this interaction, the officer must take care to confront the offender with his abusive behaviors and attitudes, and not allow him to deny, minimize, justify, distort, lie about, or blame others for his behavior.

This form of accountability requires that the officer must not engage in any communication that allows the offender to perceive support for any excuses offered in explaining his behavior. The rules of engagement with the offender must be clear. Professional interactions are not social discourse. The officer must be vigilant to keep the focus on the offender's behavior – not the victim's behavior. The officer must be prepared to confront all offender attempts to deny responsibility. The major focus of the communication between officer and offender should be on whether the offender is 'owning' his behaviors and complying with the conditions of his sentence.

The feelings of the offender, or the fate of any personal relationship that the offender is in, should not be the concern of the officer. Discussion about these issues merely presents the offender with an opportunity to avoid responsibility for his offense.

¹¹ **Victim Safety:** By far, the most important goal in developing system and community responses to domestic violence is enhancing victim safety. Essential to furthering this goal is the acknowledgment that a woman who is abused encounters many obstacles to achieving safety or to ending a relationship with an abusive partner, and the choices she confronts are often dangerous.

Seeking help, getting an Order of Protection, or deciding to leave an abusive partner only makes sense to a woman when, on balance, it reduces the overall risks that she and her children have to deal with.

Safety interventions should reflect the reality that there are risks attached to every decision a woman who is abused makes, and should be designed to evaluate the risks and benefits of different options and to identify ways to reduce the risks.

The interests of victim safety should remain paramount even when there may be a perceived benefit of a program, policy, protocol, or procedure to some other interest. [Excerpted from: New York State Office for the Prevention of Domestic Violence: *Model Domestic Violence Policy for Counties* (1998) pp. 8-9.]

¹² **Rehabilitation:** While conducting pre-sentence investigations, writing periodic supervision reports and preparing memoranda to the Court, probation officers are required to consider the potential for rehabilitation of the offender as a standard part of the process. Probation reports typically assess an offender's amenability to change, addressing community-based rehabilitation as a major consideration in crafting a sentencing recommendation.

Domestic violence is a different type of crime that deserves a specialized approach. Battering is not caused by individual psychopathology, disease, substance abuse, mental disability or emotional disturbance traditionally responded to under a therapeutic/rehabilitative model. Battering is also not a 'relationship problem'. Battering is a choice. Offenders should be viewed as conducting a conscious, planned use of coercive behaviors. Battering behaviors are stopped as soon as a batterer decides to stop using them. Since it is impossible to determine if or when an offender has fully ceased their use of violent and controlling behaviors the guidance for

probation provided by this document focuses primarily on offender accountability and victim safety.

When the term rehabilitation is used for domestic violence offenders involved with probation, it should be limited to personal competency development issues of the individual such as those that are often improved through activities such as educational achievement, mental health services or substance abuse treatment. Thus, competency development is always expected or hoped for in every probation supervision case. But, it is not used as a priority casework strategy when dealing with domestic violence crimes.

¹³ **Competency Development:** Competency development means that the offender will leave probation intervention more capable of living a productive, crime free life than when he started. During probation supervision, the personal competencies of the individual are often improved through activities such as educational achievement, mental health, or substance abuse treatment. Thus, competency development is always expected or hoped for, in every probation supervision case. But, it is not used as a priority casework strategy when dealing with domestic violence crimes. There is an expectation that competency development will be a consideration in probation sentencing recommendations and an inherent consequence of the supervision intervention.

¹⁴ **Anger Management:** An intervention model that attributes battering to out-of-control anger. Anger management programs offer a short-term intervention that teaches batterers to recognize the physiological signs of anger and to then implement relaxation techniques to defuse the anger. The intervention may also teach stress management and communication skills. [Healey, K., C. Smith, with C. O'Sullivan. *Batterer Intervention: Program Approaches and Criminal Justice Strategies*. *Issues and Practices in Criminal Justice* series. Washington DC: National Institute of Justice, February 1998: p. 25]. Battering behavior is a deliberate and willful choice made by the batterer. He has, in actuality, full control of his behavior. Additionally, there is concern that such programs teach the batterer new methods of exercising control over the victim rather than challenging his behaviors and addressing the societal messages that condone or support those abusive behaviors.

¹⁵ **Mediation:** A process or intervention, conducted by a neutral party, intended to promote reconciliation or reach a compromise between conflicting parties. Mediation is not an acceptable intervention when domestic violence is present or identified, in part, because it assumes that the issues can openly and comfortably be discussed. These are conditions that cannot be realistically and safely achieved. Additionally, an underlying assumption of mediation is that the parties each share responsibility in the "conflict" (thus, tacitly blaming the victim for the violence) and the resolution of the complaint (the victim of battering has no power by which to effect a truly just resolution). The New York State Dispute Resolution Association, Inc., in its descriptive information advises, "Mediation is not an option...in cases of domestic violence, child abuse, or other serious and complex issues." (<http://www.nysdra.org/adr.html> September 28, 2000.) Similarly, other interventions (such as couples and marriage counseling, and other forms of dispute resolution) that require or expect cooperative victim participation is dangerous to the victim and should not be utilized for referrals or as a recommended condition of any court order.

¹⁶ **Batterer Program:** A program that includes, but is not limited to, the operation of educational classes/groups for abusers as part of a coordinated criminal and civil justice and community response; demonstration of accountability to women who are abused through ongoing, clear, and cooperative relationships with domestic violence service providers; and the provision of community education and training. [New York State. Office for the Prevention of Domestic Violence: *Model Domestic Violence Policy for Counties* (1998) p.2.]

¹⁷ **Order of Protection:** An order issued by the court during the pendency of a criminal court and/or Family Court action which sets forth conditions of behavior to be observed by those against whom the action is pending for a specified period of time. The intent of the order is to afford the victim protection from further abuse by the defendant/respondent. Although some other state jurisdictions use descriptive phrases such as “full Order of Protection”, and “partial Order of Protection”, as well as other terminology, New York State law provides only for a **Temporary Order of Protection** and an **Order of Protection**

¹⁸ **Strangle:** Often used interchangeably with “Choke”. It is defined as “a form of asphyxia (lack of oxygen) characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck.” [*Strangulation: a full spectrum of blunt neck trauma*. Ann Otol Rhinol Laryngol. 94: 6:1, Nov.1985 pp. 542-46 as cited in Strack, G. and Dr. G. McClane. *How to Improve Your Investigation and Prosecution of Strangulation Cases* (paper for presentation at National College of District Attorneys, Domestic Violence Training (Oct. 1999) Reno, NV.) Whereas, the word “choke” only refers to obstruction of the airways (such as by food), “strangle” includes oxygen deprivation by obstruction of blood flow in addition to that caused by obstruction of the windpipe.

Typically, while responding to the scene of a domestic complaint, law enforcement personnel look for physical evidence of bodily damage (i.e. bleeding and bruising) to assist in making charging determinations or deciding whether to call for medical assistance. Recent findings have indicated that in cases where the batterer has applied pressure to the victim’s neck by way of his hands or an article of clothing so as to “choke” her, the generally accepted (for purposes of establishing probable cause) physical symptoms of bruising or skin discoloration may not even appear — especially immediately after the incident. Further, even if these outward symptoms are observed, they will generally not be true indicators of the internal injury that might have been inflicted. Rather, they will mislead the observer into minimizing the internal injury. As a result, incidents of “choking” where there are no or minimal indicators of damage, are often equated with relatively minor incidents of slapping and are treated as such by law enforcement, the legal system, the batterer, and even the victim.

The medical establishment, however, has entirely different perceptions of the possible effects of wrapping one’s hands (or an article of clothing) around another person’s neck and squeezing. Its perception is, in part, based on the physiology of the neck and the close proximity of major blood vessels to the windpipe – so close as to make it very difficult for a batterer to exert pressure only on the windpipe without exerting pressure on the jugular vein or carotid arteries. The closure of these vessels (very little pressure is actually required) can result in unconsciousness in seconds, and brain damage and brain death within minutes yet leave no outwardly visible injury. As a

matter of practice, whenever the victim presents (verbally or physically) as having been “choked”, a medical exam should be conducted as symptoms can result days later.

Project staff believe that use of the word “choke” (or any of its forms) misrepresents and understates the dangerousness of obstructing another person’s ability to obtain life sustaining oxygen, and the project takes the position that “strangle” is the more accurate terminology to describe these life threatening instances.

APPENDICES

A. Firearms Prohibitions Notice

Probation officers can provide this form to domestic violence offenders at the first supervision meeting. The form is intended to give notice to offenders that they may be subject to federal and state firearms prohibitions. The offender's signature merely indicates that such offender is on notice that state and federal laws regarding firearms prohibitions exist. The signed original can be maintained in the case file and a copy can be provided to the offender. The provision of such notice, combined with formal agreements between probation and federal agencies will enhance enforcement efforts.

NOTICE:

**Firearms Prohibitions for Orders of Protection and Domestic Violence Misdemeanors
Title 18 USC §922 (g) (8) (9)**

I understand that under federal law, individuals who are

1. subject to qualifying orders of protection; or,
2. convicted of misdemeanor crimes of domestic violence,

may not be allowed to ship, transport, possess or receive ammunition or firearms as defined by federal law.

I understand that penalties can include:

Up to 10 years in prison, **and**
Up to \$250,000 fine.

I understand that under federal law, individuals convicted of a felony may not possess firearms as defined by federal law.

I also understand that under state law, individuals convicted of a felony or serious offense may not possess pistols, revolvers, rifles, or shotguns.

Signature

Date

Witness

B. Building a Domestic Violence Case

Build a strong case, with minimal reliance on the victim, by documenting observations and gathering information from a variety of sources throughout the period of supervision. Evidence of domestic violence can manifest itself in ways that can be difficult to recognize or may be easily overlooked. Be sure to consider collecting and recording:

- 911 or other emergency calls, recordings and transcripts
- Sounds while approaching the location
 - Shouting
 - Threats
 - Fearful pleas
 - Children crying or begging someone to “stop”
- Signs of forced entry
- Property damage
 - Whose property was damaged
 - Holes in the wall
 - Photos ripped or burned
- Phone ripped or removed from wall or shattered
- Emotional status of the victim
 - Fearful, crying, angry, passive
- Physical condition of pets or other animals
- Location of children (time of incident and time of police or probation response)
- Observable injuries to the victim
 - Bruises on back of forearms
 - Bruises on neck and throat from strangulation¹⁷
 - Cut on fingers, hands
- Not-so-obvious physical indicators
 - Holding arm or stomach
 - Limping
- Defensive “injuries” to the suspect
 - Scratch marks anywhere (face, arms, back of hands)
 - Bite marks on arms, wrists, hands, chest, legs, genitalia
- Victim’s or witness’s excited utterances
- Suspect’s oral admissions
- Criminal and domestic violence histories of the parties
- Answering machine tapes, voice mail or e-mail messages
- Apologetic cards and letters from the suspect
- Photographs
 - Injuries
 - Property damage
- Statements
 - Children
 - Neighbors
 - Third parties
- Any evidence or statement from the victim or third party telling the suspect to stay away

C. New York State Stalking Laws

PL § 120.45 Stalking in the fourth degree.

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

Stalking in the fourth degree is a class B misdemeanor.

PL § 120.50 Stalking in the third degree.

A person is guilty of stalking in the third degree when he or she:

1. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or
2. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or
4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

PL § 120.55 Stalking in the second degree.

A person is guilty of stalking in the second degree when he or she:

1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shirken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or
4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or
5. Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

Stalking in the second degree is a class E felony.

PL § 120.60 Stalking in the first degree.

A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:

1. intentionally or recklessly causes physical injury to the victim of such crime; or
2. commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.

D. Stalking Offender Characteristics Assessment

Would you describe your partner/former partner as:

- Jealous or extremely possessive and controlling
- Sense of entitlement about you (“You owe me...”)
- Narcissistic & self-centered (unable to empathize with other’s feelings or needs)
- Obsessive and compulsive
- Someone who quickly and frequently swings from rage to “love”
- Having fallen “instantly” in love with you
- Manipulative
- Deceptive or dishonest
- Dependent on you for his sense of “self”
- Someone who needs to have control over other people
- Socially awkward or uncomfortable around other people
- Someone who views him/herself as a victim of society/family/others
- Unable to take “no” for an answer
- Having difficulty distinguishing between fantasy and reality
- Unable to cope with rejection
- Someone who views his/her problems as someone else’s fault
- A person who does not take responsibility for his/her own feelings or actions

Adapted from original assessment developed by Unity House of Troy, Inc.

E. Domestic Violence Stalking Assessment

PART I – Stalking Behavior

Do you believe, or is there any evidence to indicate, that your partner/former partner may be or has been engaged in any of the following behaviors:

- Gathering information about you from your family, friends, the post-office, Internet, employer, school, or other sources
- Persistently approaching you and/or asking you for dates, meetings, or other contact
- Persistently approaching your family or friends
- Leaving you notes or flowers or unwanted gifts
- Observing or following you, or “coincidentally” showing up places where you are
- Sitting or standing outside your home or work place
- Found waiting next to your car in a parking lot
- Vandalizing or disabling your car
- Making false reports about you to authorities, spreading rumors or misinformation or sharing private information about you with others
- Re-routing or stealing your mail
- Vandalizing or destroying your property
- Taking photographs of you or taping your telephone calls
- Sending threatening mail, e-mail or notes or making threatening phone calls, beeper calls or hang-up calls. (The threats may be direct, implied or symbolic, such as a black rose, or understood only by the victim and perpetrator.)
- Threatening your family or friends
- Leaving evidence that your car has been entered or broken into
- Breaking into or entering your home when you are not there
- Breaking into or entering your home when you are there
- Leaving dead animals in your home or car
- Physically attacking you
- Sexually assaulting or attempt to sexually assault you

PART II – Victim Response to Stalking

Have you done any of the following things in response to your partner/former partner's behaviors as listed above or otherwise?

- Moved to a new residence
- Changed jobs or requested a transfer
- Sought refuge in a shelter or with friends
- Obtained a new phone number
- Considered or sought counseling or therapy because of the stalking
- Put a tap or call trap on your phone
- Told other people about the stalking (friends, family members, co-workers, or security at work)
- Given photos of your partner/former partner to security or others
- Asked for an escort to your car or work site
- Changed your work schedule or travel routines
- Stopped visiting places you used to frequent
- Taken self-defense courses
- Bought a personal protection device (e.g., pepper spray)
- Considered or actually purchased a gun
- Installed alarms or surveillance equipment on your car or home
- Put extra locks on your home
- Bought a "guard dog"
- Created a safety plan
- Worked with domestic violence advocates
- Used a buddy system
- Requested or obtained an Order of Protection
- Informed police

F. Risk Factors for Domestic Violence Recidivism and Dangerousness

How to Use: This table is NOT a domestic violence assessment instrument. It is a guide for gathering information about domestic violence cases. It should prompt community corrections professionals to investigate for the presence of these factors. However, it should not be used to determine a risk level or score. Not every person who has some characteristics listed in this table will commit domestic violence. Research shows, however, that clusters of these factors identified in offenders increase the likelihood that the individual will continue to commit domestic violence and/or become a more dangerous domestic violence offender. Research has not identified which combinations or total number of factors identifies the most likely recidivists or most dangerous domestic violence offenders. Many of the same risk factors also predict general criminal recidivism and criminal violence.

Risk Factors for Both Recidivism and Dangerousness

- Criminal history
- Previous domestic violence
- Substance abuse
- Depression
- Separation from victim
- Forced sex
- Male-dominated relationship (e.g., economic control, female isolation)

Additional Risk Factors for Reabuse

- Young age
- Witnessed or experienced family violence as a child
- Fathering children by age 21
- Lack of commitment to prosocial values
- Unemployment or unstable employment
- Lower educational attainment
- Unstable lifestyle (frequent moves, poor accommodations)
- Lower socioeconomic status
- Financial pressures
- Mental illness (e.g., anxiety, schizophrenia)
- Personality disorders (impulsive, defensive, pathological jealousy, immaturity)
- Unmarried; cohabiting
- Blames victim
- Attends treatment reluctantly; drops out of treatment
- Social isolation (of the perpetrator)

Additional Risk Factors for Dangerousness

- Serious injury to victim in prior abusive incidents
- Issuance of restraining orders
- Presence of stepchildren
- Pregnancy
- Sleep disturbances
- Access to firearms; use of weapon in prior abusive incidents; threats with weapons
- Access to victims
- Escalating domestic violence
- Threats of homicide and suicide
- Stalking the victim
- Violence or threat of violence to a pet
- Disregard for system intervention (e.g., resisting arrest, fleeing jurisdiction, violation of restraining orders)
- Controlling and limiting victims' movements and interactions (e.g., imprisoning)
- Public threats to kill or harm (e.g., message on answering machine or in the presence of others)
- Specific forms of violence and abuse (e.g., punching, strangling, arson, household destruction)

Sources: Block, 2000; Campbell et al., 2003; Carlson, Worden, van Ryn, & Bachman, 2000; Hanson & Wallace-Carpetta, 2000; Moffitt & Caspi, 1999; Powis, 2002; Saunders & Hamill, 2003; Websdale, n.d.)

Community Corrections Response to Domestic Violence: Guidelines for Practice, American Probation and Parole Association, 2009.

G. Probation Domestic Violence Victim Contact Checklist

Prior to Meeting

- Contact domestic violence program, as appropriate
- Inform victim about case status
- Explain to victim that her continued involvement with department is voluntary
- Offer to contact on victim's terms (safe and convenient)

Safety

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

Offender Accountability

- Explain terms of Probation Order and Conditions
- Explain restitution policy, as necessary
- Describe role of Probation Officer
 - offender is in legal custody of the court
 - monitor and enforce Probation Order and Conditions
 - monitor and enforce other court orders
- Inform about implications of Peace Officer status
 - explain “duty to act” and “mandated reporter”
 - describe the Violation of Probation process
- Describe batterers program limitations and protocols, if applicable

Assistance

- Review and provide Notice of Victims' Rights for family offenses
- Inform what probation can and cannot do
- Offer referral information
 - OCFS licensed and/or approved local domestic violence program
 - shelter information, as necessary
 - court access
 - medical care
- Provide 24 hour hotline number for the local OCFS licensed and/or approved domestic violence program
- Inform victim how to contact officer and department and encourage her to do so

H. Working with Women Who Are Abused

General Guidelines:

- Advise the woman who is abused that her participation is voluntary—she can begin or cease participation at any time.
- Inform the woman who is abused of your agency’s confidentiality policies at your first contact, and again as necessary.
- Understand that a woman who is abused is constantly evaluating her risks, and from day to day her needs and safety concerns may vary.
- Establish a working relationship with your local domestic violence program - it will make your work easier.

Contact With Women Who Are Abused and Concerns When Setting Up the Case:

- Safekeeping of contact information for a woman who is abused is always a priority.
- Keep the case file out of sight when the offender is in the office, or, if possible, keep the contact information for the woman who is abused in a separate file.
- Know and follow your agency’s policy regarding use of information about the woman who is abused.
- Don’t initiate contact with the woman who is abused while the offender is present.

Contact With Women Who Are Abused and Concerns During Supervision:

- Ensure that the woman who is abused has contact information for the local domestic violence program, if it is safe for her to have it.
- Assist the woman who is abused in identifying her safety concerns and developing a preliminary safety planning.
- Ask the woman who is abused to identify if, when, and how to contact her. Provide for her safety and convenience.
- Explain the terms of the conditions of supervision, your role as a community corrections staff, and any relevant agency policies.

Be Prepared to Discuss (when relevant):

- The limitations of batterers’ programs—they are only a tool of accountability and cannot guarantee that the offender’s behavior will change.
- Safety issues that may impact community corrections professionals and the woman who is abused during home visits, fieldwork or collateral contacts.
- Information that a woman who is abused can provide without being identified as the source (as well as information that would put her at increased risk).
- Order(s) of Protection and violations thereof.
- Probationer or parolee obligations, such as: visitation, child support, restitution, and conditions of supervision.

Working with Women Who Are Abused Who Are Members of Marginalized Communities:

- Be aware of what resources are available.
- Know that just as domestic violence is a result of sexism, many victims of domestic violence experience other oppressions that compound their victimization. These may create additional barriers to their ability to secure appropriate services.

- Recognize each woman's right to identify with the population(s) she chooses, and that the identity might have different meanings for each woman.
- Allow each woman who is abused to give her own meaning to her identity and her experience. Try not to extend that meaning to all the members of the same group.

Working with Women Who Are Abused When They are on Probation or Parole:

- Create a safe environment for a woman who is abused to disclose if she chooses.
- Be aware of conditions of supervision that may put her in increased danger.
- Recognize that use of a batterer as a collateral contact may give them more power and control over a woman who is abused and who is a probationer or parolee.

Working with Women Who Are Abused When Closing a Case:

- Agency policy should require that you notify a woman who is abused at least one month before the probationer or parolee is discharged from supervision.
- Allow the woman who is abused to identify her concerns, and provide appropriate referrals for her.

Enforcement/Accountability that Includes Input from the Woman Who is Abused:

- Allow the woman who is abused to decide if she wishes to provide information.
- Explain, realistically, what may happen with the information that she provides.
- Describe, realistically, how violations are handled and what sanctions may occur.
- Use your relationship with local domestic violence advocates to create a mechanism for information sharing that keeps the safety of the woman who is abused a priority.
- Whenever possible, use information from sources other than the woman who is abused, to hold the offender accountable.

Adapted from *Working with Victims of Domestic Violence: General Guidelines for Probation Officers*, New York State Coalition Against Domestic Violence, 2003.

Community Corrections Response to Domestic Violence: Guidelines for Practice, American Probation and Parole Association, 2009.

I. Sample Stalking Log

Documenting Stalking

Keeping a record of issues and concerns is very important. Even if you do not pursue immediate legal action, tracking the stalker's behavior to show a pattern can help you to build a case or identify the stalker if he/she is unknown.

The sample log below offers one example of a form that can be used to record any and all incidents that concern you. Please keep in mind that stalkers will probably see any log, journal, and/or other information used as evidence in criminal prosecutions against them. Therefore, **document only the facts of the case and do not include any personal information that you do not want the stalker to see.**

Documentation of Stalking Incidents

Date & Time	Location	Description	Response	Witness(es)

J. Initial Interview Checklist for Supervision of Domestic Violence Offenders

Accountability

- Define and discuss accountability
- Discuss attempts by the offender to deny, minimize, justify or blame
- Document any statements made by the offender during this discussion

Orders of Protection

- Copy of all Orders of Protection (OP) for case file
- Determine who is protected by OP
- Review expiration dates
- Review all terms and restrictions
- Confirm service of OP upon offender
- Inform offender that all OPs will be enforced.

Order and Conditions of Probation

- Check for compatibility with all OPs
- Review and explain all terms with offender
- PO and offender sign and date O&C again
- Provide copy of O&Cs to offender
- Inform offender: *Zero Tolerance = Strict Enforcement*

Federal Firearms Prohibition Notice

- Inform offender about State and federal weapons prohibitions
- Inform offender about firearm surrender/confiscation policies
- Review and complete the federal “Firearms Prohibitions Notice” (See appendix B)

Releases of Information (ROI)

- Obtain signed ROI for batterer program, as necessary
- Obtain signed ROI for substance abuse evaluation and treatment, as necessary
- Obtain signed ROI for all mandated programs

K. Order of Protection

Whenever a court issues an Order of Protection or Temporary Order of Protection, Federal Prohibitions against the use, sale, or possession of firearms (as defined by federal statutes) by the defendant/respondent probably result.

Under New York State law, whenever a Family or criminal court issues an Order of Protection or finds that a defendant/respondent has willfully failed to obey an Order of Protection, the court may also be required, given certain circumstances, to revoke a firearms license, order the defendant/respondent ineligible for such license, and order the immediate surrender of any or all firearms owned or possessed by the defendant/respondent [refer to NY Criminal Procedure Law §530.14 (2)(a-b) and (3)(a-b) for criminal court matters, or NY Family Court Act §842-a(2)(a-b) and (3)(a-b) for Family Court matters].

Please note: *Under New York State law, whenever a family or criminal court issues a Temporary Order of Protection, the court may also be required, given certain circumstances, to suspend a firearms license, order the defendant/respondent ineligible for such license, and order the immediate surrender of any or all firearms owned or possessed by the defendant/respondent [refer to NY Criminal Procedure Law §530.14(1)(a-b) for criminal court matters, or NY Family Court Act §842-a(1)(a-b) for Family Court matters].*

Orders of Protection In Criminal Courts

In the criminal courts, an Order of Protection can be issued in addition to any other disposition (including a sentence to probation supervision). The duration of such a criminal court order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such conviction, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed the greater of five years from the date of conviction or five years from the date of expiration of the maximum term of a definite or intermittent term actually imposed; or in the case of a conviction for any other offense, shall not exceed the greater of two years from the date of conviction or two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. [NY Criminal Procedure Law §530.12(5)].

A criminal court Order of Protection [per CPL §530.12(5)] may, in addition to any other conditions, require the defendant:

(a) to stay away from the home, school, business or place of employment of the family or household member, the other spouse or the child, or of any witness designated by the court (the court must make a determination based upon consideration of, among other things whether the Order of Protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons);

(b) to permit a parent or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in CPL §350.11(1), or any criminal offense against the child or against the family or household member or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons; or

(d) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety and welfare of a child, family or household member's life or health;

(e) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this chapter, the family court act or the domestic relations law.

(f) to refrain from intentionally injuring or killing, without justification, any companion animal¹¹ the defendant knows to be owned, possessed, leased, kept or held by the victim or a minor child residing in the household.

Orders of Protection in Family Court

In the Family Court, an Order of Protection (OP) can be issued in addition to a disposition of probation supervision not exceeding one year term. The duration of an OP is for a period not in excess of two (2) years or for a period not in excess of five (5) years upon a finding by the court on the record of the existence of aggravating circumstances.[FCA §842] “Aggravating circumstances” are delineated [FCA §827(a)(vii)] as being:

- physical injury or serious physical injury to the petitioner caused by the respondent,
- the use of a dangerous instrument against the petitioner by the respondent,
- a history of repeated violations of prior orders of protection by the respondent,
- prior convictions for crimes against the petitioner by the respondent, or the exposure of any family or household member to physical injury by the respondent and like incidents,
- behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner’s family or household.

A Family Court Order of Protection [per FCA§842] may include the following conditions of behavior:

(a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, (the court must make a determination based upon consideration of, among other things whether the Order of Protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons);

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

¹¹ Companion animal shall have the same meaning as in Agriculture and Markets Law §350(5) – any dog or cat or any other domesticated animal normally maintained in or near the household of the owner or person who cares for the domesticated animal; does not include a “farm animal.”

(c) to refrain from committing a family offense, as defined in FCA §812(1), or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;

(d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations law;

(e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;

(g) to require the respondent to participate in a batterer's program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; and

(h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order;

(i) to observe such other conditions as are necessary to further the purposes of protection.

(j) to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by the victim or a minor child residing in the household.
