

RECOMMENDATIONS FOR TRIBAL PROBATION WHEN SUPERVISING DOMESTIC VIOLENCE OFFENDERS



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CHANGE.



AUTHORS

Elizabeth Bliss

and

Tracy G. Mullins

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INTRODUCTION

The prevalence of intimate partner abuse in Indian Country is substantial, with some reports indicating that Native women suffer domestic violence (ranging from verbal abuse to murder) at higher rates than women of other ethnicities and locations. For example, statistics reported from the National Intimate Partner and Sexual Violence indicate that approximately 84 percent of American Indian and Alaska Native women report experiencing violence (e.g., sexual violence, physical violence by an intimate partner, stalking, psychological aggression by an intimate partner) in their lifetime (Rosay, 2016). Native women are also more likely to be injured during a physical assault and require more medical care (Bachman, R., Zaykowski, H., Kallmyer, R., Poteyeva, M., Lanier, C., 2008); however, only about one-third of women who need medical care as a result of intimate partner violence are able to get the services they need (Rosay, 2016). Yet, despite these troublesome statistics, comprehensive data on crime in Indian country and violence against women under tribal jurisdiction is still lacking. In addition, victims on tribal lands are often reluctant to come forward and report IPV victimization due to concerns about insufficient justice system response (Futures Without Violence, n.d.).

Due to the complicated web of jurisdictional issues (including the types of crimes, offender/victim status, etc.) that dictate what tribal courts, state governments, or the federal government can preside over, there is a significant degree of variability regarding the types of cases handled by tribal courts. For example, The Major Crimes Act vests the federal courts with jurisdiction over certain major crimes, concurrent

with Indian tribal courts, occurring in Indian country¹ including aggravated assault, sexual abuse and contact, murder, manslaughter and kidnapping (Bachman, Zaykowski, Kallmyer, Poteyeva, & Lanier, 2008). Although, the Major Crimes Act did not necessarily divest Indian tribes of the inherent right to prosecute and punish individuals committing these types of offenses, the practical limitations imposed by the Indian Civil Rights Act on sentencing created substantial obstacles to these prosecutions.

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Similar federal oversight has created a significant gap in the safety of American Indians/Alaska Natives abused by non-natives on tribal lands, by preventing the authority of tribal courts to prosecute non-natives. The 2013 Violence Against Women Reauthorization Act included efforts to close this loophole (VAWA 2013). According to the United States Department of Justice, “VAWA 2013 recognizes tribes’ inherent power to exercise ‘special domestic violence criminal jurisdiction’ (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protective orders in Indian country” (US Department of Justice, n.d.). The law went into effect on March 7, 2015. However, before tribes are able to prosecute non-Indians under this Act, they are required to have required provisions in place. The legislation authorized a pilot project which began in early 2014. The tribes who participated in this pilot project are the Confederated Tribes of the Umatilla Indian Reservation in Oregon; Pascua Yaqui Tribe of Arizona; Fort Peck Assiniboine and Sioux Tribe; Sisseton Wahpeton Oyate Tribe; and the Tulalip Tribes in Washington. Since the pilot project expired, several tribes have put into place the requirements to exert special domestic violence criminal jurisdiction.

Mirroring to some extent the American legal system, more and more tribal courts are beginning to use probation as an enforcement mechanism of decisions made by the tribal court, as well as a method to help facilitate positive changes in the lives of justice involved tribal members. As such, supervision of domestic violence offenders is one

¹ Those states that are not Federal Public Law 83-280 (PL 280) states. In 1953, PL 280 transferred federal jurisdiction over Indians on tribal lands to six states, and gave other states the option of taking on such jurisdiction. (Act of August 15, 1953, ch. 505, 67 Stat. 588 (codified as 18 U.S.C. 1162, 28 U.S.C. 1360, and other scattered sections in 18 and 28 U.S.C.).

of the challenges that tribal probation officers encounter in their daily work. It is imperative that tribal probation officers have guidance on how to supervise these types of probationers effectively, while also promoting and protecting the safety of victims involved.

Community corrections officers can help promote victim safety by holding probationers accountable for both their behavior and their compliance with the conditions of their supervision. While victim safety is the primary goal of community corrections efforts in cases involving intimate partner violence, probationer accountability is the primary means for achieving that goal. Secondary to the twin aims of victim safety and probationer accountability is probationer behavior change, which can be achieved through a variety of interventions (Abner, 2012).

Tribal probation is a relatively new practice and, as such, how community supervision is practiced in native communities is still developing. Although the use of probation among tribes is growing, community supervision/probation positions within tribal justice agencies are often an afterthought. In fact, many community supervision/probation officer positions in tribes start out as grant-funded positions. For some tribes, if the grant money is not renewed or the tribe chooses not to incorporate the costs of the program into their overall budget, the position simply fades away, leaving offenders in the community with no systemic supervision. For victims of domestic violence, this sets up a potentially dangerous situation.

In addition, training and technical assistance offered to tribal justice agencies and probation staff on effective community supervision practice is limited. Existing training programs for tribal probation staff generally address the fundamentals of probation practice, with limited training on the specialized information needed for supervising domestic violence cases effectively, despite the prevalence of such cases in tribal jurisdictions.

PURPOSE OF THIS PUBLICATION

This publication is designed to serve as a quick reference guide to community corrections staff in native communities regarding their supervision of domestic violence offenders. This guide is based on the *Community Corrections' Response to Domestic Violence: Guidelines for Practice*, published by the American Parole and Probation Association, with funding from the Office on Violence Against Women. Tribal probation staff are encouraged to review the guidelines document in its entirety (available at <https://www.appa-net.org/eweb/docs/APPA/pubs/CCRDV.pdf>). However, to provide an overview of some of the key elements to supervision of domestic violence offenders, this guidance document has distilled the 41 original guidelines into 5 overall recommendations to address the unique challenges faced by tribal probation personnel in supervising domestic violence offenders. This publication is not intended to educate readers fully about the dynamics of domestic violence, nor about the nuances of responding to crimes committed on tribal land. A list of additional suggested readings and resources used in the development of this guidance document can be found in the reference and supplemental resources list.

RECOMMENDATIONS FOR TRIBAL PROBATION SUPERVISION OF DOMESTIC VIOLENCE OFFENDERS

For the purposes of this publication, we will use the term domestic violence synonymously with the term intimate partner violence. The New York State Coalition Against Domestic Violence (NYSCADV) defines intimate partner violence as a pattern of coercive behavior or tactics that is culturally learned and socially condoned. It can include physical, sexual, psychological, and economic abuse, and is perpetrated by one person against their intimate partner for the purpose of establishing and maintaining control over that person. This definition is consistent with the belief held by many Native American communities that domestic violence is a behavior that is learned.

Domestic violence was essentially unheard of in Native American communities before European contact created a societal shift across tribal lands. Colonizers negatively reshaped Native American societies on many levels by imposing their own beliefs and practices, one of which was the status of women in the eyes of European men. Before Native American contact with Europeans, tribal women were revered as a life force. Native American women were not considered subordinate to Native American men, as European women were to European men. Native American women were significant contributors to the function and progress of their communities. The act of colonization, which displaced Native Americans and decimated their societal structures, imposed the historical European oppression of women onto Native American people.

It is very important to understand the history of how colonization forced Native American societies to shift their belief system of equality and harmony to the patriarchal and misogynistic social structure of the Europeans. For more detailed information on this, we suggest reading the chapter “Historical Overview of Violence Against Native Women” in the publication *Addressing Domestic Violence in Native Communities*² published by Mending the Sacred Hoop. For more information about the dynamics of domestic violence, please read the second chapter of this same publication “A Framework of Understanding”, and Chapter 2, “Domestic Violence: Fundamentals for Community Corrections Practice” of *Community Corrections’ Response to Domestic Violence: Guidelines for Practice*, published by APPA.

BUY-IN FROM OVERSIGHT AGENCY

Effective probation supervision of domestic violence offenders cannot be achieved without support from the agency that oversees probation services for the tribe. Tribal justice agencies that provide supervision of domestic violence offenders should:

- have adequate staff and resources to provide the level of supervision necessary to safely supervise a domestic violence probationer;

² <http://mshoop.org/wp-content/uploads/2012/04/Addressing-DV-in-Native-Communities.pdf>

- have written policies that reflect the recommendations in this document; and
- provide training that specifically addresses the supervision of individuals convicted of domestic violence.

The following recommendations provide guidance for how tribal justice agencies and probation officers can enhance their supervision practices with individuals on probation for domestic violence, while also protecting the safety of the victim. Subsequent sections of this document will provide more information on these recommendations and suggestions for implementation.

RECOMMENDATION 1:

Tribal probation departments should ensure that all probation staff are trained in the dynamics of domestic violence and that they receive ongoing continuing education on this issue throughout their employment.

RECOMMENDATION 2:

Tribal probation departments and their staff should develop active partnerships with domestic violence advocates, other justice system personnel, and other community based organizations to better understand domestic violence and unite in common efforts to promote victim safety.

RECOMMENDATION 3:

The supervision level assigned and the supervision/case plan for individuals on community supervision for domestic violence should be focused on what is shown by research and suggested practice to be most effective in protecting the autonomy and safety of the victim while simultaneously holding individuals on supervision accountable for their actions and facilitating behavior change.

RECOMMENDATION 4:

Tribal probation professionals, tribal judges, and other tribal justice personnel should work together to impose special conditions of release and/or supervision on probationers on community supervision for domestic violence that are tailored to the unique dynamics of domestic violence and are designed to achieve the goals of victim safety, probationer accountability, and prosocial behavior change.

RECOMMENDATION 5:

Tribal probation departments should understand the value and the sensitive nature of victim contact in domestic violence cases and implement policies that prioritize victim safety and confidentiality.

RECOMMENDATION 1:

Tribal probation departments should ensure that all probation staff are trained in the dynamics of domestic violence and that they receive ongoing continuing education on this issue throughout their employment.

The unique and intricate nature of domestic violence, including concerns around victim safety, demands that those who work with victims of domestic violence and/or domestic violence offenders, including tribal probation officers, have knowledge about the dynamics of domestic violence. It is important for officers to be aware of current evidence-based and promising practices associated with victim safety, offender accountability, and community engagement. Tribal probation departments should ensure that all staff, even those that are not directly supervising domestic violence offenders (e.g., receptionist, clerk of court, etc.), receive training on:

- the dynamics of domestic violence;
- the impact that domestic violence has on victims and communities;
- the role that the probation department and probation officers have in responding to domestic violence; and
- the policies and procedures that tribal probation has regarding any aspect of domestic violence.

Tribal probation staff that have direct responsibility for working with domestic violence offenders or victims should receive more advanced training on working with this population. This can include:

- screening probationers to identify if they are a perpetrator of domestic violence or a victim of domestic violence;
- advisable and inadvisable supervision strategies specific to individuals on probation for domestic violence;
- victim contact and support strategies;
- the impact that trauma has on individuals (including vicarious trauma and burnout); and
- any other topics that may be necessary to implement the guiding principles outlined in *Community Corrections Response to Domestic Violence: Guidelines for Practice*.

(See <http://www.appa-net.org/eweb/docs/APPA/pubs/CCR DV.pdf>.)

Training on the dynamics of IPV and effective supervision practices for working with domestic violence offenders and for responding to victims of IPV should not be a one-time process. Ongoing continuing education should be provided to all tribal probation staff each year on this issue to serve as a reminder of the special implications of working with this offender population and to learn new and emerging research and practices in this area.

RECOMMENDATION 2:

Tribal probation departments and their staff should develop active partnerships with domestic violence advocates, other justice system personnel, and other community based organizations to better understand domestic violence and unite in common efforts to promote victim safety.

Domestic violence is a social, health, and justice system problem that cannot be resolved by a single person or agency. Limited research has been conducted comparing recidivism rates for domestic violence offenders in jurisdictions with coordinated systems with those in jurisdictions without such coordination. However, the research that has been done has found that programs addressing offenders (in general) are most likely to be effective when conducted in conjunction with coordinated, communitywide efforts (Saunders & Hamill, 2003). Studies have found that arrest combined with prosecution and/or batterer programs is more effective than any of those used singly (Steinman, 1990, 1991; Syers & Edleson, 1992). Murphy, Musser, and Maton (1998) found that increased offender involvement with prosecution, probation, and counseling was related to reduced recidivism. Shepard, Falk, and Elliott (2002) found that sharing information among agencies regarding danger assessment was useful in reducing recidivism. Several studies also have found that periodic court reviews improve batterer intervention program compliance (Gondolf, 1997). From this research, collaboration and coordinated interventions appear to have a modest, but cumulative effect, lowering recidivism rates of domestic violence offenders, and thereby improving victim safety (Babcock & Steiner, 1999; Murphy et al., 1998).

The foundation of collaboration involves sharing knowledge, information, resources, power, and decision-making capacity so that individuals and organizations may work together to achieve both a significant positive impact in their community and a more consistent response to domestic violence (Piercy, 2000). The following strategies suggest important ways that tribal probation professionals can strengthen community coordination around domestic violence.

Although officers need to be aware of the needs of domestic violence victims and need to know how to address their needs within the context of providing supervision to their batterer, it is not the role of tribal probation officers to provide extensive services to victims. Yet, the needs of victims of domestic violence are often high. Therefore, it is important that officers know what services are available in the community to which they can provide appropriate referrals for victims of IPV.

Develop Working Relationships With Domestic Violence And Victim Advocates

At the very least, tribal probation officers should develop active working relationships with local (tribal, city, county, state—as relevant and available) domestic violence victim advocates, crime victim advocates, and victim service agencies. The individuals working in these agencies will likely have knowledge and access to services and programming in the community targeted to victims of domestic violence. Although officers need to be aware of the needs of domestic violence victims and need to know how to address their needs within the context of providing supervision to their batterer, it is not the role of tribal probation officers to provide extensive services to victims. Yet, the needs of victims of domestic violence are often high. Therefore, it is important that officers know what services are available in the community to which they can provide appropriate referrals for victims of intimate partner abuse. Domestic violence victim advocates, crime victim advocates, and victim service providers are excellent resources for tribal probation personnel in learning about victims' issues, available community services to help with specific victim needs, and safety planning. Therefore, forming partnerships with these agencies and/or individuals is one way to begin building a knowledge base and understanding of how to help victims access needed services.

In general, collaboration with these types of professionals can improve case management with domestic violence offenders and significantly support victim safety. Potential benefits from collaborating with domestic violence advocates include, but are not limited to, the following:

- Advocates can explain the justice system process and help victims understand what to expect at each stage.
- Advocates can be a contact and serve as a buffer between the victim and tribal probation professionals.
- Advocates can explain to victims the documents, paperwork, and kinds of questions that tribal probation professionals may ask.
- Advocates can assist victims with safety planning and help develop strategies that promote safety.
- Advocates can help prepare victims for meetings with tribal probation professionals and may be able to attend meetings to provide additional support.
- If a tribal probation professional does not know how to contact a victim, an advocate may know where the victim is (e.g., in a shelter or relocated to another state), and be able to convey information, while maintaining victim confidentiality.

Working with crime victim advocates provides two additional benefits to tribal probation officers when working with victims of domestic violence:

- Probation may have an easier rapport with crime victim advocates because they are both within the court system.
- Crime victim advocates can help probation with maintaining contact with victims and communicate more freely with probation because confidentiality restrictions are not as stringent.

Coordinate With Batterer Intervention Programs

Batterer intervention programs (also referred to as batterer accountability programs) are used in some jurisdictions as an additional sanction for holding probationers accountable for their choice to abuse their partners. These psycho-educational groups, mandated as part of a larger criminal justice system intervention, are designed to provide an opportunity for participants to examine beliefs and behaviors that condone the use of violence against their intimate partners. The ultimate goal of these programs is to generate cognitive and behavioral changes that reduce violence by perpetrators. The primary focus of a batterer intervention program is offender accountability and stopping the violence and abuse. Any rehabilitative benefits for probationers are secondary (American Probation and Parole Association, 2009).

Keep in mind that batterer intervention programs (BIPs) should not be used in lieu of criminal justice sanctions, but rather a part of a sentence and complement probation supervision. These programs should only be court mandated if the tribal court and probation officer maintain a relationship with the program provider and receive immediate notice if the individual does not comply with even the slightest directive associated with the programs. Tribal courts and probation officers should determine if individuals they supervise have access to a batterers' intervention program. If one is not available within the tribal community, there may be programs available in nearby areas. If there are batterers intervention programs available for use with individuals on supervision, tribal probation officers should introduce themselves to the batterer intervention program staff and learn about the program and its requirements. If probationers are actively involved with one of these programs, tribal probation personnel should maintain open and ongoing communication with the program staff to make sure that probationers are attending and participating as required. Effective communication (built on trust and mutual recognition of each other's viewpoints and constraints) and coordination among tribal probation, batterer intervention staff, victim advocates, and the judiciary is crucial for batterer programs to be effective at inhibiting probationers' attempts to manipulate the system to their advantage.

A memorandum of understanding between the batterer intervention program and the referring agency (e.g., tribal court, tribal probation) can be helpful in documenting how the program will be organized and operated and what the expectations are of the various stakeholders. See figure 1 (on the next page) for some examples of issues that can be addressed in MOUs (formal or informal) between tribal probation and batterer programs.

It should be noted that the use or the non-use of batterer intervention programs is the source of great controversy. Research remains uncertain about the effectiveness of batterer programs. According to the National Institute of Justice “although early evaluations suggested that BIPs reduce battering, recent evaluations based on more rigorous designs find little or no reduction” (Jackson, Feder, Forde, Maxwell, & Taylor, 2003). More recently, the National Institute of Justice (Klein, 2009) found that, “batterer programs, in and of themselves, are not likely to protect most victims” and they suggest that “batterer programs should be supplemented by other measures to assure victim safety from these abusers.” Even with all this variation in modality and uncertainty of effectiveness, 45 states have implemented standards for batterer programs.

Communities that choose to use batterer intervention programs should develop their program with these challenges and limitations in mind. Additionally, offering culturally relevant programming is also necessary. Mending the Sacred Hoop developed a workbook, *Returning Men to Honor*, to assist tribal communities in the development of batterer intervention programs that are relevant to tribal men who commit acts of domestic violence³.

If your community does not have a Batterer Intervention Program in your community, or in a neighboring community, there are still ways you can hold domestic violence offenders accountable. For example, if the probationer sees an individual therapist, you can use your time spent with the probationer to talk with them about how they are applying what they learn into improving their relationship. Another suggestion is to self-educate yourself on BIP programs, such as attending a BIP facilitator training to gain a better understanding of what BIP programs focus on and how they work. The magic of BIP programs is not necessarily the curriculum but rather their connection with courts to ensure compliance with court sanctions.

It is important to note, however, that there are some interventions/services that may be suitable for most offenders that are not suitable for IPV offenders. For example, couples therapy and anger management are two inadvisable practices with IPV offenders and should not be used in lieu of BIP programs. See page 26 for more information on inadvisable practices with IPV offenders.

FIGURE 1**SUGGESTED ELEMENTS TO INCLUDE IN MOUS BETWEEN TRIBAL PROBATION AND BATTERER PROGRAMS**

Community corrections and batterer programs should develop clear expectations of the batterer program, including:

- Cost for tribal probationers attending the BIP (e.g., no charge assessed; cost assessed to probationer; cost paid by probation department if probationer completes BIP successfully, etc.)
- The number of sessions to be provided
- The size of groups
- The curriculum to be used
- What cultural considerations will be built into the BIP curriculum if a non-tribal BIP is used
- If and how victims will be contacted by the batterer program
- How the initial court order will look (e.g., is probationer ordered to complete BIP, or is the probationer ordered to complete a BIP assessment and comply with recommendations of the BIP provider)
- Batterer program intake procedures, such as the information to be received by the batterer program from the court or community corrections officer, time from referral to the screening interview by the program, and the time frame for acceptance into the program. Remember that many offenders re-abuse their victims quickly, and before they are fully involved in supervision, so it is important to get them enrolled and attending a batterer program as soon as possible
 - Method and frequency of contact the tribal probation office can expect from the BIP provider and under what circumstances
 - Procedures that specify how program monitoring will occur and the way any problems will be handled (e.g., sanctions)



Engage In Case Conferencing

Supervising officers should have the ability to discuss cases (i.e., case conferencing) with supervisors and colleagues, as well as other agencies and professionals involved in the case. Discussing cases with other officers (in a manner that protects the privacy of sensitive information) provides a way to explore appropriate responses and get feedback on intervention options and case management strategies. Where necessary, officers should make sure that appropriate releases are signed by individuals on supervision to allow the cross domain sharing of information.

Some agencies have regularly scheduled case conferencing meetings attended by probation personnel, law enforcement, victim advocates, prosecutors, service providers, child welfare workers, and others. In some jurisdictions this type of multi-disciplinary team may be referred to as a domestic violence response team. These meetings are used to discuss specific cases, make case planning decisions, and coordinate services with information and input from all present. Bringing other perspectives into officers' supervision plans can enhance the quality of the response to the probationer, as well as help officers maintain objectivity. The meetings also provide a forum to discuss system processes, identify areas for improved functioning and response, and revise policies and protocols (across the various systems), as needed.

Coordinate Cases Involving Multiple Jurisdictions

The complexity of working with individuals on supervision that are actively involved in criminal and civil cases in other jurisdictions is not new to tribal probation professionals. Cases involving concurrent jurisdiction pose special challenges for coordination and collaboration. Some individuals may be supervised in multiple jurisdictions for various domestic violence cases. Simultaneously, individuals on supervision for domestic violence offenses may have orders from civil courts such as protection orders, child support requirements, and child custody decisions. Further, it is possible that an individual may be supervised on parole and probation at the same time. Immigrants, for example, might be supervised by community corrections while also being under the jurisdiction of U.S. Immigration and Customs Enforcement (ICE; formerly Immigration and Naturalization Services). Fully understanding the individual's justice system involvement and consistently responding to noncompliance requires an initial investigation and periodic checks throughout the supervision period. Multiple courts or other agencies supervising the same individual should share information about the conditions of supervision and coordinate supervision strategies. Without adequate coordination, there is a potential for conflicting supervision conditions and orders (e.g., a stay-away order from criminal court and a parental Visitation order from family court), communication difficulties, and offender manipulation of the system.

Enhance Information Sharing Capabilities

People in today's society are very mobile, and individuals on probation in tribal justice agencies often travel on and off the reservation. Integrated automated information systems including access by law enforcement, prosecutors, courts, and probation, across tribal, state, local, and federal jurisdictions, can

ease the work of obtaining the information identified above. Even if formal information sharing systems are not in place, it is still vitally important to collect as much of this information as possible, and for tribal probation officers to work diligently to form informal partnerships with their counterparts in state, local, and federal agencies to access needed information.

However, most tribal justice agencies encounter significant obstacles related to sharing information with respective state, local, and federal justice agencies (Cobb & Mullins, 2010). Yet, the sharing of information among justice agencies is essential for the effective assessment and monitoring of probationers. Information sharing among justice agencies not only enhances investigations and prevention/deterrent strategies it also assists in the proper allocation of resources.

In a focus group conducted by the American Probation and Parole Association in 2010, the participants (which were comprised of probation officers from state, local, federal, and tribal jurisdictions) felt that the inter-agency sharing of information among jurisdictions would assist them discovering potential patterns of behavior or escalating behavior. This type of information is essential for developing supervision and treatment plans, as well as alerting officers if another jurisdiction is currently looking for a particular individual or has them on supervision as well. (A full report on the focus group's findings and recommendations can be found at <http://www.appa-net.org/eweb/docs/APPA/pubs/IAJTCISRS.pdf>.)

RECOMMENDATION 3

The supervision level assigned and the supervision/case plan for individuals on community supervision for domestic violence should be focused on what is shown by research and suggested practice to be most effective in protecting the autonomy and safety of the victim while simultaneously holding individuals on supervision accountable for their actions and facilitating behavior change.

Considerable research has been conducted over the past few decades about effective interventions in community corrections. The Crime and Justice Institute (2004) presents eight evidence-based principles of effective community corrections practice, stating that these have definable outcomes, are measurable, and have practical realities (such as lower recidivism rates). The eight evidence-based principles for effective interventions are shown figure 2 (on the next page).

FIGURE 2

EIGHT EVIDENCE-BASED PRINCIPLES FOR EFFECTIVE INTERVENTIONS

1. Assess Actuarial Risk/Needs.
2. Enhance Intrinsic Motivation.
3. Target Interventions.
 - a. Risk Principle: Prioritize supervision and treatment resources for higher risk offenders.*
 - b. Need Principle: Target interventions to criminogenic needs.*
 - c. Responsivity Principle: Be responsive to temperament, learning style, motivation, culture, and gender when assigning programs.*
 - d. Dosage: Structure 40-70% of high-risk offenders' time for 3-9 months.*
 - e. Treatment: Integrate treatment into the full sentence/sanction requirements.*
4. Skill Train with Directed Practice (use Cognitive Behavioral treatment methods).
5. Increase Positive Reinforcement.
6. Engage Ongoing Support in Natural Communities.
7. Measure Relevant Processes/Practices.
8. Provide Measurement Feedback.

(Source: Crime and Justice Institute, 2004)

Research on domestic violence is relatively recent when compared to general community corrections research, and studies of community corrections strategies for domestic violence cases are still sparse. However, agencies and professionals must strive to stay abreast of emerging research and incorporate valid findings into practice as quickly as possible.

Remember, supervising someone convicted of domestic violence is very different than supervising any other types of probationers because of the special nature of the relationship between the victim and the probationer. Individuals on supervision for domestic violence not only have physical access to the person they victimized, but they typically have intimate knowledge of the victim's personal information. Additionally, the lives of a victim and an abuser may be intertwined in ways that makes separation very difficult (e.g. having children in common, shared finances, or shared property). Please see Appendix 1 for a comparison of stranger crime to domestic violence.

Another unique aspect of supervising domestic violence offenders is that they typically present to the criminal justice system as first time, low level offenders. Because of this, individuals convicted of domestic violence who are under probation supervision may not be identified as high risk. The authors of this document disagree with this classification and believe that all domestic violence offenders should be viewed as high risk until proven otherwise.

In the publication, *Community Corrections' Response to Domestic Violence: Guidelines for Practice*, the American Probation and Parole Association identifies three primary goals for supervision of individuals on probation for domestic violence.

1. Victim safety and autonomy. Victim safety is the primary goal around which all else must operate when supervising domestic violence offenders in the community. Sometimes, unintended consequences (e.g., leaving a message on a home phone for the victim to call the probation officer that a DV offender may retrieve which could cause the offender to threaten or harm the victim because of the contact) can occur during supervision of domestic violence offenders. Therefore, an overriding precaution to keep in mind during supervision should be: Assure that no remedy causes further harm.

Only when the abuse ends will victims have the freedom to make decisions and engage in activities that allow them to experience autonomy and maintain their safety and well-being. Victims are entitled to be safe and should never be blamed for the violence that has been perpetrated against them. Victim autonomy implies the victim is capable of making independent decisions and is or can be self-sufficient. It means giving victims information and supporting their decisions.

Unknowingly engaging in practices that might increase risks to victims should be averted by investigating and considering the victim's safety from all possible perspectives. For example, tribal probation officers should be cautious about insinuating that a victim should separate from their abuser, because leaving might actually increase a victim's endangerment. See Appendix 2 for a list of some of the risks that victims face during separation from an abuser.

Violations of supervision should be pursued with awareness of potential consequences, and evidence of violations should, whenever possible, be gathered from sources other than the victim. This does not mean that conditions of supervision should not be enforced vigorously. Rather, there may be choices in strategy, and some may provide greater protection for victims than others. This principle underscores the importance of communication with victims and collaboration with domestic violence victim advocates in designing tribal probation responses to domestic violence.

2. Offender accountability. Domestic violence is a choice made by perpetrators and the focus of tribal probation officers should be holding supervisees accountable for their behavior. Strictly enforcing conditions of supervision is the main tool that probation officers have to hold probationers accountable.

3. Intervention. The primary focus of any intervention with individuals on supervision for domestic violence should be holding the probationer accountable and changing the abusive behaviors and criminal thinking patterns with the goal of stopping the abuse. Intervention for domestic violence should be in the form of a batterer intervention program, **not** anger management or couples' counseling. Domestic violence perpetrators may also require additional interventions to address coexisting issues such as substance abuse and/or diagnosed mental health issues. It is important to acknowledge that the use of these programs does not insinuate that upon completion, the potential for domestic violence perpetration no longer exists. Alcohol does not cause domestic violence, therefore an individual who participates in a substance abuse treatment program is not "cured" of domestic violence. Similarly, batterer intervention programs are not "treatment" and should not be depended upon to end a probationer's abusive behavior.

Treatment implies an illness or disorder which the perpetration of domestic violence is not. Treatment often conjures images of traditional mental health approaches, including individual counseling and methods focusing on gaining personal insight and improved interpersonal relationships. However, with domestic violence offenders, the issue is criminal abuse of intimate partners, and the primary goal of intervention should be ending the violence and protecting victims (Adams, 1995; Klein, 1994).

Using Screening and Assessment To Guide Decision Making

Research shows that screening and assessment are the cornerstone of effective community supervision practice, guiding decisions about the most appropriate ways to protect victim safety, hold probationers accountable and provide effective interventions that are designed to change behavior (Crime and Justice Institute, 2009). Appropriate decisions for pretrial release and community supervision require tribal probation professionals to gather and analyze relevant information so that they can discern the individual's risk to re-offend and the individual's criminogenic needs (i.e., needs correlated to a person's risk to re-offend) that should be targeted for intervention. In domestic violence cases, risk assessment should also examine factors associated with the likelihood of continuing violence or increasing danger.

Initial Classification of Domestic Violence Offenders Should Always be High Risk

Initially, all individuals on supervision for cases involving intimate partner abuse should be classified as high-risk and supervised at that level for as long as practical and possible. However, after the individual has successfully complied with supervision for 3-6 months, and the officer has conducted a thorough investigation and assessment of the individual, the officer may determine the level of supervision should be modified.

Considerations For Conducting Screening And Assessments

When conducting assessments, tribal probation officers should gather information from both individuals on supervision and their victims. Assessment activities may include screenings of and/or interviews with victims, risk and needs assessments conducted with probationers, and informal interviews with probationers and other collateral contacts, such as family members or neighbors (Abner, 2012-fact sheet).

Ongoing research continues to examine and identify the risk factors that are associated with predicting recidivism by domestic violence perpetrators, as well as risk factors associated with the likelihood of escalating danger (i.e., dangerousness) in domestic violence cases. The distinction between recidivism and dangerousness risk factors is not absolute. As Websdale (2000) comments, “The absolute distinction between lethal and non-lethal cases is a false dichotomy; rather there is a range or continuum of violence and entrapment that underpins abusive intimate relationships.” The nature of domestic violence makes it difficult to predict future violence; however, it is still important for probation officers to conduct a risk and needs assessment so that supervision practices can be designed to mitigate risk, and services can be targeted appropriately to address identified needs.

Figure 3 (next page) highlights some of the primary risk factors (as identified by current research) that are associated with predicting recidivism by domestic violence perpetrators, as well as risk factors associated with escalating dangerousness in domestic violence cases. Tribal probation staff should be aware of and vigilant about investigating for these risks. As ongoing practice experiences and research of risk factors continues, new areas to investigate may be identified.

Treatment implies an illness or disorder which the perpetration of domestic violence is not. Treatment often conjures images of traditional mental health approaches, including individual counseling and methods focusing on gaining personal insight and improved interpersonal relationships.

FIGURE 3

RISK FACTORS FOR DOMESTIC VIOLENCE RECIDIVISM AND DANGEROUSNESS

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, but 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 probationers increase the likelihood that the individual will continue to commit domestic violence and/or become more dangerous in their domestic violence behaviors. 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 Re-abuse

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, 2003; Hanson & Wallace-Carpetta, 2000; Moffitt & Caspi, 1999; Powis, 2002; Saunders & Hamill, 2003; Websdale, 2000

Besides risk factors for domestic violence recidivism and danger listed in Figure 3, there may be transient (i.e., temporary) acute risk factors present for a particular probationer at a particular time that may increase the chance of violence. Transient acute risk factors might include incidents such as the probationer being served with divorce papers, losing a custody battle for children, or being served with a restraining order. These types of risk situations will vary considerably among probationers, and should be viewed within the context of the probationer's life and their interpretation of the events.

Although not always predictable, victims (as well as victim advocates) often know when some of these types of events are going to occur (e.g., the victim is getting ready to leave the home or file divorce papers). You can encourage the victim and/or victim advocate to let you know, in advance, when these types of things will be happening. If a tribal probation officer is aware of these situations occurring in the life of a probationer, he or she can adjust supervision practices or encourage programming that will help the probationer deal with the stressor with the goal of protecting victim safety during that precarious time. For example, if a victim is planning to serve divorce papers on the probationer, it may be helpful to arrange to work with the appropriate system representatives to have the papers served at a place where the probationer can immediately receive support and crisis intervention in case they react strongly to these events.

Aspects To Consider During Investigations And Assessment

To identify risk and needs, tribal probation should conduct a thorough investigation which includes gathering and assessing information about domestic violence history and patterns, probationer characteristics, other criminal history, victim information, and family composition. Each of these is described briefly below.

Domestic violence history and patterns. Although intimate partner violence is usually repetitive behavior, some domestic violence offenders do not have previous convictions for intimate partner violence. This, however, does not mean that abusive behavior has not occurred before. When conducting an investigation, probation officers should piece together the domestic violence history and patterns from several sources, keeping in mind that there may be multiple past or present victims. The outcome should be a chronological account of domestic violence behaviors that indicates frequency, level of violence, and victim(s).

To construct this picture, tribal probation professionals will need to search multiple sources of information, being sure to use all possible aliases and addresses the probationer may have used in the past. Possible sources of information include:

- Current and previous arrest records;
- Current and previous police reports, 911 calls, and police calls to residence;
- Current and previous protective orders sought by any victim against the perpetrator/probationer;

- Reports from family courts regarding divorces and child custody arrangements;
- Reports from present and previous victims; and
- Reports from collateral sources (e.g., relatives of the victim or probationer, neighbors, employers).

Probationer characteristics. Both demographic and personal information about the probationer will contribute to the investigation and understanding of the pattern of violence. Standard information should be gathered, including the probationer's age, sex, education, and employment history. Further information that should be collected includes:

- Family background and childhood exposure to violence (e.g., violence between parents, being a child victim of abuse).
- Substance abuse history and treatment.
- Mental health problems and treatment history, including diagnoses of depression, anxiety, major psychotic disorders, conduct disorder (during childhood), antisocial personality, other personality disorders, and suicidal threats or attempts. Any prescribed or non-prescribed psychotropic drugs, steroids, or other medications taken presently or in the past should be noted.
- Possession or access to firearms, ammunition, firearms permits, or other weapons of choice including any activities that may indicate weapon expertise or a pattern of use (e.g., military service, hunting). You may also need to consider ceremonial/spiritual/cultural items that may also be considered weapons and decide a course of action for confiscation of or removal of these items from their possession while they are on supervision.
- Parenting history including children, stepchildren, grandchildren, nieces/nephews, etc.
- Personal values and behaviors (e.g., prosocial/antisocial, male dominance, participation and involvement in traditional Native customs and ceremonies).

Family composition and dynamics. When investigating a domestic violence case, it is important to look beyond the victim and probationer and gather information from household members, extended family, as well as others in the community who may be affected by the violence or may have information about it. Information to gather includes, but is not necessarily limited to:

- Who resides with the probationer and their relationship to the probationer (e.g., victim, children, elderly or vulnerable adults, etc.)
- Whether the victim is currently pregnant.

- Effects of the violence on the children, other individuals in the household, and extended family and community members.
- How decisions in the household and family are made.
- How children are disciplined.
- Other systems and professionals with which the probationer and family are involved (e.g., child protective services, therapists, juvenile probation officer, substance abuse treatment).

Criminal history. A domestic violence probationer's criminal history may provide a good indicator of future criminal and domestic violence behavior. Officers should maintain a detailed account of a probationer's arrests and convictions for any crime. However, there may not be a previous criminal history of domestic violence even though there has been a pattern of abuse. As was discussed in the domestic violence history and patterns section, accessing this type of information from other agencies within and outside the tribe may be difficult at times.

As one step toward raising awareness of this issue and advocating for change, in April 2012, the Board of Directors of the American Probation and Parole Association (APPA) passed a resolution that "recognizes and supports the need to allow tribal criminal justice agencies regular and open access to both federal National Crime Information Center (NCIC) and state criminal databases for the purpose of operating in the same safe and informed manner as any other justice agency in the United States, thus enhancing the safety of tribal communities as well as the safety of tribal police and probation officers. Further, access to criminal databases will enhance tribal probation officers' abilities to develop comprehensive supervision plans based on complete and accurate information in order to improve supervision outcomes for probationers in Indian Country." A copy of the full resolution can be found on the APPA website at http://www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA_2&webcode=IB_Resolution&wps_key=cf593e2e-3741-4812-b6ee-a593d7454ff6.

Victim impact information. Tribal probation officers should also solicit information from the victim(s) of the individual on supervision. Individuals on supervision for domestic violence offenses should be told that the probation officer will contact victims both initially and throughout the supervision period. Victims' accounts of the violence should be heard as credible and used as a basis for making case decisions. Victims should be advised, during the assessment process and subsequently, of their rights and the actions they can take to increase their safety (Abner, 2013). It is advisable to have a victim advocate present at least initially when trying to obtain this information.

The type of information to ascertain from victims includes:

- Victim's opinion of the level of danger posed by the probationer. If the victim's perspective indicates lower level of risk than other indicators discuss the contradictory information with the victim describing the reasons why the risk may be higher than believed.

- Relationship and domestic violence history (e.g., length of relationship, marriage, separations, divorce) and current status (e.g., living together, separated).
- Types, frequency, and severity of violence (including noncriminal abuse such as isolation and financial control) perpetrated by the offender.
- Probationer's access to firearms/other weapons, use of alcohol and other drugs, mental health disorders, and homicidal or suicidal threats or attempts.
- Probationer's use of stalking behaviors.
- Probationer's forcing the victim to have sex.
- Injuries sustained by the victim including hospitalizations and those requiring medical treatment.
- Property damage as a result of domestic violence.
- Other losses caused by domestic violence (e.g., separation from cultural ceremonies, lost wages for victim) and whether the victim sought or received any compensation or assistance for these. For example, due to fear of coming into contact with their abuser or the abuser's family, the victim or her children may have had to refrain from participating in community events (e.g., pow wows, community dinners/gatherings, camps, language classes, etc.) or stop attending traditional ceremonies/church/prayer ways. This fear of participating in these types of traditional/cultural events is something that tribal judges need to know and consider, since they often realize that there is no way to compensate for those types of losses.
- Effects of the violence on the victim.
- History of protective orders, shelter use, and relocations by victim.
- Victim's preferences for sentencing, conditions of supervision, release from custody, and notification regarding case actions. When victims provide their recommended conditions of supervision or release, they should be informed that the court may or may not choose to implement their recommendations.

Victim impact statements (which can be written, oral, or taped) are useful tools for gathering this type of information from victims. Through the victim impact statement, victims can provide the court or releasing authority with input in their own words regarding the offense, injury or economic loss, the amount of restitution and reparation sought, and their views about the probationer's release and case disposition. The emotional impact of the offense, the probationer's history of violence toward the victim, and the victim's perceptions of danger also help provide the court with a more accurate picture of the offense and its impact.

Although a victim impact statement is important for domestic violence investigations, if victims do not want to provide a victim impact statement, they should never be required to do so. Victims should always be *given an opportunity* to provide input and information on the impact of crime; however,

victims should *never be forced* to do so. If a victim does not respond to a request to complete a victim impact statement, document attempts to contact the victim using neutral, nonjudgmental terms. Do not assume, and do not write in the report, that the victim was “uncooperative.” Victims might decide not to participate for many reasons, including safety. This is an opportunity to give the court or releasing authority information about why a victim may not feel able to make comments.

In the absence of a response from the victim, most information about the victim can be obtained from other sources such as domestic violence incident reports, 911 transcripts, police reports, and/or through other sources. In addition, some tribal jurisdictions allow the victim to prepare a victim impact statement for someone else to read in court. Others allow victims to have family members speak on their behalf on how the abuse has affected victim and the entire family. Victims should be presented with all their options on how they can participate in this part of the process so they can determine the most and comfortable way for them to participate and provide impact information.

RECOMMENDATION 4

Tribal probation professionals, tribal judges, and other tribal justice personnel should work together to impose special conditions of release and/or supervision on probationers on community supervision for domestic violence that are tailored to the unique dynamics of domestic violence and are designed to achieve the goals of victim safety, probationer accountability, and Prosocial behavior change.

There are several factors present in domestic violence cases that raise the bar on victim safety issues for justice system personnel, from the very beginning of the justice process. First, the unique nature of the relationship between the victim and their perpetrator in domestic violence cases should always be considered. In addition, domestic violence offenses are often classified as misdemeanors, and defendants tend to plea bargain to a lesser crime to receive a reduced sentence. Furthermore, domestic violence perpetrators tend to score low risk on general risk assessment tools, even though the risk they pose to their victim may be very high. Again, this is why they should always be classified as high risk at the beginning of supervision, pending further investigation and monitoring.

Therefore, a thorough pre-sentence investigation that truly reflects the probationer’s pattern of abuse and coercion against intimate partners or other family members can offer the court a powerful resource for determining the appropriate probation term and supervision conditions for domestic violence perpetrators. Some tribal court judges allow tribal probation officers to conduct pre-sentence investigations (PSI) and offer sentencing recommendations prior to the sentencing hearing. When conducting a PSI for a domestic violence case, it is especially important to conduct thorough investigations and analyses of each case to formulate appropriate recommendations that are customized to the particular circumstances of each case. Recommendation #3 outlined more information on the types of information that should be gathered and considered during the investigation and assessment processes.

Special Conditions

The conditions ordered as part of pretrial release or probation should reflect the mutual goals of probationer accountability and victim safety. Most tribal justice agencies have predetermined general conditions for supervision of all individuals placed on pretrial release or probation (e.g., obey all laws, maintain employment, do not leave the area without permission, cooperate with supervision and follow directions of the supervising officer). However, special conditions are also needed for individuals on pretrial release or probation for offenses related to intimate partner abuse. Some considerations for the types of special conditions related to victim protection, probationer accountability, and treatment/intervention may be important to impose on this population are outlined below. Keep in mind, each tribal justice agency or professional will need to consider these recommendations within their specific applicable statutes, laws, and tribal codes.

Special Conditions to Consider Related to Protecting Victim Safety

- Comply with orders of protection.
- Refrain from “offensive contact.”⁴
- Contact is allowed with the victim only with written prior approval of the judge or releasing authority.
- No contact with the victim’s family is allowed.
- No indirect contact with victims through soliciting others to act on your behalf or at your direction, including stalking and harassment.
- No harassing or stalking behavior. *Note: Women stalked by former or current intimate partners are at risk of physical and sexual assault and lethality. The following list serves as an illustration of the variety of criminal and noncriminal behaviors that may constitute stalking.*
 - *Obtaining personal information about the victim without the victim’s knowledge*
 - *Invading the victim’s privacy*
 - *Having unwanted and/or offensive contact with the victim*
 - *Harassing the victim*
 - *Threatening and intimidating the victim*
 - *Endangering the victim (physically, emotionally, financially)*
- Do not use or possess firearms. Disclose and surrender all firearms, ammunition, and firearms permits or licenses to law enforcement and provide proof of forfeiture. *Note: For tribal jurisdictions, this may be expanded to include deadly weapons as relative to the case, or to add other items such as knives, spears, bow/arrows, as well as any spiritual, cultural or ceremonial items that may be considered weapons. Individuals on supervision may be reluctant to surrender*

⁴ It is important that the probationer clearly understand what constitutes offensive contact. In Lane County, Oregon the community corrections staff serve a notice on the probationer that defines offensive contact and secure the probationer’s signature as indication that he has received and understands the notice.

these types of items to law enforcement. The confiscation of these types of items is often dictated by the tribal court judge and varies among jurisdictions. Sometimes the tribal probation may recommend to the judge that the item(s) be remanded to a family member, church, etc. depending on the item. The presence of firearms dramatically increases the risk that a victim of domestic violence will be killed by their intimate partner. But, other weapons are also a concern for Native women. Data from the U.S. Department of Justice found that even though firearms are used most often in murders against women of all races and ethnicities, American Indian and Alaska Native women also have a higher incidence of being killed by both knives and blunt objects when compared to women of other races and ethnicity (Bachman, Zaykowski, Kallmyer, Poteyeva, and Lanier, 2008). (Some additional information and considerations around issues related to firearms and other weapons is located in Appendix 3).

- Abstain from using alcohol or other drugs.⁵ *Note: While substance use or abuse can be correlated with domestic violence, it is not a cause for domestic violence (Bland and Bennett, 2008).*
- Disclose new intimate partner relationships to the community supervision officer and inform new partners why you are on community supervision.
- Do not manipulate legal system to retaliate against the victim.⁶
- Submit to unannounced home visits.
- Submit to warrantless searches and seizures.
- Abide by geographic prohibitions (such as staying away from the victim's home, work, or places the victim spend time) as directed by tribal court and/or the community supervision officer. Assure that community/ceremonial gatherings are considered and included, if necessary.
- Comply with electronic monitoring as ordered.
- Serve time in jail or prison.

Inadvisable Practices for Domestic Violence Case Supervision

Several practices that have merit for traditional case supervision of probationers are inappropriate in cases of domestic violence because they pose additional risk to the victim. In some instances research has shown practices to be inappropriate; other practices are inconsistent with prevailing suggested practice philosophies of domestic violence; and still others are disputed by opinions and research that do not clearly delineate the best approach to take. A few of these practices are discussed briefly on the next page.

⁵ While alcohol or drug use should never be accepted as an excuse for domestic violence, there is a relationship between use and domestic violence; thus, prohibition of use can assist in protecting the victim.

⁶ Through this condition, an offender can be held accountable for manipulative use of legal means to create further victimization of a partner or former partner, such as inappropriate petitions for child custody or visitation, unfounded reports to a child protective services agency, and filing for a restraining order against the victim.

It is important to note that these practices are inadvisable in U.S. communities and may be viewed differently through a lens that is culturally relevant to tribal communities⁷. For example, Peacemaking is a traditional restorative justice method that is a part of many tribal legal systems. The use of elders and the practice of Peace Circles (also sometimes called talking circles or healing circles) have been used in many communities. However, there is currently little data-driven evidence that demonstrates the level of safety or effectiveness of these practices, while at the same time there are reports that these practices are not endorsed by domestic violence victim advocates (Ptacek and Frederick, 2008). For more information on restorative justice practices, see the Restorative Justice section below and review the aforementioned article by Ptacek and Frederick⁸.

It is important to remember that criminal justice based interventions should not be lessened for domestic violence perpetrators. Domestic violence offenders should be held to the same (if not higher) accountability standards as their stranger-crime counterparts, due to the risk that domestic violence perpetrators pose to their victims. Additionally, decisions to use practices like Peace Circles should be made community by community, and it is vital that the voices of victims and the advocates that work alongside them are key contributors to these conversations.

Lastly, one must understand that if interventions are going to be used that require community participation, the community will need to be educated about the dynamics of domestic violence, and have an understanding that victim safety and offender accountability are top priorities. This will help ensure that community members do not collude with the probationer and blame the victim. It may take years of social change work with many different parts of the community to create this knowledgeable environment⁹. Communities that are trying to implement different interventions should strategically evaluate those interventions in an effort to ensure that the unintended consequences mentioned above are not perpetuated.

Couples Therapy

Couples therapy is a counseling strategy that is often recommended for troubled intimate relationships. However, when the members of the couple do not have equal power in the relationship, this approach can be dangerous. Couples therapy requires honesty and negotiation. Victims of domestic violence could be placed in great jeopardy if they are honest or try to negotiate - batterers who are controlling are likely to inflict punishments on the victim outside of the counselor's presence. This approach also places equal responsibility on partners for contributing to the reasons for the problem, which in the case of domestic violence, places blame on the victim for the abuse which is perpetrated by the probationer.

7 For more information on culturally sensitive interventions: p. 116-133 of Violence against American Indian and Alaska Native women and the criminal justice response: What is known. This article can be found on <https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>

8 http://www.vawnet.org/Assoc_Files_VAWnet/AR_RestorativeJusticeIPV.pdf

9 To learn more about social change, please visit the NYSCADV website to find out more about their Primary Prevention Project and for the prevention tool kit www.nyscadv.org

Anger Management

Some people react to stressful situations with anger, but for domestic violence perpetrators, anger is only one targeted strategy used to control their partners. Victims are often blamed by their abusers for causing their anger. Anger management programs may inappropriately suggest to the probationer that anger is the cause of the violence when, in reality, domestic violence is a much more complex issue and a deliberate choice. It focuses on violent acting out fueled by reactive emotional response rather than purposeful behavior motivated by a desire to maintain power and control. Addressing a probationer's displays of anger may be an important component of an intervention strategy, but programs that are limited to this single aspect of intimate partner violence fail to address underlying issues of power, control, and entitlement. If probationers are only referred to anger management programs, victims may mistakenly assume probationers are receiving the help they need to stop their abusiveness, and the victims may discontinue their safety precautions. This, in turn, may actually increase their risk.

Diversion

Helpful and innovative programs have emerged in recent years to divert individuals who commit first-time and minor offenses from the criminal justice system. These are beneficial to individuals in allowing them to avoid having criminal records, and the justice system averts the influx of many cases that have a low risk for recidivism. However, diversion is not recommended for domestic violence cases. It is rare that a domestic violence offender who is arrested and processed through the justice system for the first time is actually a first-time offender. Usually domestic violence offenders have committed many prior acts of abuse before they are ever arrested. Due to the safety implications for their victims, it is important to hold these types of individuals accountable for their behavior and monitor their compliance with conditions of supervision and intervention programs. Thus, pressing formal charges and having individuals charged with domestic violence participate in correctional programs can send a strong message to perpetrators and victims that domestic violence is unacceptable and will be handled in a serious manner by the justice system.

Some Restorative Justice Practices

Restorative justice is a philosophy that guides some corrections work today by setting forth a clear set of values and a vision for responding to harmful behavior. Restorative justice views crime as a violation of people and their relationships with each other. It affects three parties—victims, offenders, and communities. When victims and communities are harmed by crime, they should be restored. Offenders, thus, are obligated to make things right as much as possible. Communities also are obligated to promote

the welfare of all their members, including both victims and offenders. Restorative justice practices attempt to heal victims and communities, to the extent possible, when they have been injured by crime. According to this perspective, victims' needs for information, validation, vindication, restitution, testimony, safety, and support are crucial, and they should be given opportunities for exchange of information, participation, dialogue, and involvement in problem solving. At the same time, offenders' needs and competencies must be addressed. The justice process and solutions to crime belong to the community, rather than just being the purview of justice professionals (Zehr & Mika, 1997).

While the restorative justice philosophy represents an important perspective in addressing criminal behavior, not all practices associated with restorative justice principles are appropriate in cases of domestic violence. Corrections practices should not try to restore relationships between abusers and victims of domestic violence. For example, victim-offender mediation could place domestic violence victims in greater danger, because mediation is based on the premise of equal partners entering into discussion to reach agreements, and the power relationships between an abuser and a victim are never equal. Similarly, the use of community panels or boards to determine offender supervision could place domestic violence victims in greater peril, as those serving on such panels or boards may not understand the dynamics of domestic violence and might unintentionally recommend actions that jeopardize victim safety.

Monitoring and Enforcement

The strength of community supervision of any probationer is grounded in the enforcement of the conditions imposed by the court or releasing authority. If the conditions are not enforced, the supervision is not only without merit, it is potentially harmful. Lack of enforcement allows a probationer to presume that their actions do not warrant consequences and perpetuates the notion of justice system tolerance for continued noncompliant or offending behavior. Domestic violence offenders should be subject to stringent enforcement of conditions because of the potential danger they pose to the victim.

To achieve rigorous enforcement of conditions needed for domestic violence offenders, tribal probation personnel must cooperate and coordinate with other agencies and individuals to obtain accurate and timely information about the probationer's compliance and be prepared to act immediately upon information received. They also must have a clear understanding of the court's position on enforcement and should neither promise nor threaten what the court cannot or will not deliver. Officers should work with the court to develop a common understanding and system of court responses that are most likely to achieve the defined goals of probation supervision.

For example, if a probationer is ordered to participate in a batterer intervention program as part of their probation sentence, arrangements should be made by tribal probation personnel to receive an immediate alert from batterer intervention program staff of a probationer's unexcused absences or noncompliance with program expectations. Once the officer is notified of the unexcused absence or noncompliant behavior, the tribal probation staff should aggressively pursue any additional information needed to inform how to respond and then impose the appropriate sanction/consequence on the probationer for that behavior. Further, the information gathered and the response taken should be shared appropriately

and expeditiously with all who should have access to it, including the court when circumstances merit court action and the victim when safety may be in jeopardy.

Graduated Responses

Domestic violence offenders thrive on power and control. They will exploit situations they perceive give them a right to exert power and control over others. They are very likely to view any tolerance for noncompliance as an advantage and believe it gives them license to continue or increase the noncompliant behavior. Conditions of supervision that might not be so rigorously enforced (e.g., completion of community work services as directed) with other types of probationers must be stringently enforced with probationers on supervision for domestic violence to address what is likely a demonstration of the probationer's efforts at exercising control of the supervision process.

Not every act of noncompliance merits a probation revocation; however, every noncompliant act merits a response and a reappraisal of the probationer. Sanctions should be related to the determined risk to re-offend (i.e., harm the victim). While certain high risk noncompliant behavior or new offenses must receive immediate, maximum sanctions, lesser acts of noncompliance may receive a lesser level of sanctioning depending on the risk to the victim. In addition to providing sanctions when individuals are noncompliant, graduated responses also should include the means for providing positive reinforcement when individuals on supervision are adhering to their goals and adhering to their supervision requirements.

Many behavioral scientists and criminal justice experts also stress the importance of providing probationers with balanced feedback about their behavior. Meyer (n.d.) offers 10 science-based principles of changing behavior using both reinforcement and punishment:

1. Sanctions should not be painful, humiliating, or injurious.
2. Responses are in the eyes of the one exhibiting the behavior (i.e., similar sanctions have different effects on individual offenders, and offenders must perceive the response as fair).
3. Responses must be of sufficient intensity (i.e., graduated rewards and punishments are most effective).
4. Responses (either rewards or punishment) should be delivered for every target behavior.
5. Responses should be delivered immediately.
6. Undesirable behavior must be reliably detected.
7. Responses must be predictable and controllable.
8. Responses may have unintentional side effects (e.g., excessive punishments may result in fear, anger, escape, avoidance; extrinsic rewards for intrinsically motivated behavior can reduce motivation).

9. Behavior does not change by punishment alone. A system of incentives for compliance and completion of supervision/treatment goals can be beneficial. However, incentives should not compromise the victim safety (e.g. reducing supervision contacts). Verbal praises can be a powerful incentive.
10. The method of delivery of the response is as important as the response itself (i.e., must be perceived as fair, empathically and enthusiastically delivered, using motivational interviewing techniques).

When Revocation Is Necessary

Depending on the jurisdiction, if revocation is the appropriate response, officers may have the power to take the probationer immediately into custody, may have to work with the prosecutor to file a petition to revoke, or may be able to petition the court directly. Regardless, all officers should be familiar with the revocation process and any procedures in place to expedite case handling in their respective jurisdiction. If the probationer remains in the community while the court processes the violation, they should continue to be supervised and continue to attend batterer intervention programs and any treatment programs in which they are enrolled. Victims should be notified of the violation process and kept informed of court actions and the probationer's custody status. This is a time of increased risk for the victim, and the officer should increase supervision controls and victim notification accordingly. If a local jurisdiction's detention facility does not have procedures in place for notifying victims when an individual is released from custody, it may be necessary to provide victim notification information with violation reports.

Thoughtful consideration should be given to available sentencing options for domestic violence offenders that are found to be in violation of probation supervision conditions. In some cases, a sentence of incarceration may be implemented. However, incarceration due to a probation violation only provides a short-term response. Therefore, it is important to work with the court during revocation process to assure that if the probationer is incarcerated, once the individual is released, the individual's community supervision requirement is reinstated. A reinstatement to community supervision will likely be the most effective response to promote victim safety and to continue to work on achieving behavior change. In addition, reinstatement with a delayed incarceration (which could be reassessed for suspension) can serve as a viable motivator and reminder of the consequences that exist.

There are some practical barriers for tribal communities in using incarceration as a response to a violation of probation. Some potential barriers include lack of a tribal detention facility, or if a facility exists it is over-crowded and not available for short-term behavior modification stints, lack of an agreement with a non-tribal facility, or lack of monies to fund frequent use of off-site facilities for the purposes of probation violations. Therefore, for communities facing these obstacles, more stringent conditions should be imposed on the probationer. For example, these might include electronic monitoring, curfews, fines, additional community service work, increased reporting, and/or increased alcohol and drug testing. Also, for probationers who do serve time in a facility as a result of a probation

violation, a period of community supervision should be reinstated and the stringent conditions mentioned above should be imposed on the probationer. Re-ordering the individual to probation supervision after he has served time in jail or prison can eliminate what some individuals on supervision perceive as a more attractive alternative: serving the time, then having no ongoing controls placed on them and no one watching what they do.

Warrants for Violators and Absconders

Too often domestic violence offender warrants are given no special handling by law enforcement, despite the potential danger posed by the offender to the victim. Tribal probation personnel need to develop relationships and coordinate with law enforcement to develop a system for expedited service of warrants on probationers being supervised for domestic violence, and for continuing to attempt service when there is difficulty locating the probationer. Tribal probation officers can assist law enforcement agencies in serving warrants by supplying additional information besides the probationer's residence (e.g., the probationer's employer and work schedule, addresses of family members, and areas he frequents). In some jurisdictions warrants for domestic violence offenders are printed on colored paper or placed in brightly colored envelopes to make them readily visible and indicate a higher priority to law enforcement.

Some agencies now list absconders on websites (with or without photographs), in newspapers, and on television programs to enlist public help in locating these individuals. If employing such community involvement strategies, it is important to warn residents that they should not try to apprehend the absconder personally. Methods should be devised for citizens to provide information to tribal probation or law enforcement agencies easily and confidentially.

Wherever it is legally possible, there should be no bond allowed after a domestic violence offender's re-arrest for absconding. They should be held in custody pending a hearing because of the risk they may pose to the victim if they are released. The victim should be notified of the arrest immediately and of any custody changes during the period of the court action. For domestic violence offenders charged with a probation violation, the application of a system of graduated responses should be employed (see Graduated Responses section above).

RECOMMENDATION 5

Tribal Probation departments Should understand the value and the sensitive nature of victim contact in domestic violence cases and implement policies that prioritize victim safety and confidentiality.

In the course of community supervision activities, tribal probation officers do not come into direct contact with victims of the individuals they supervise very often. However, when supervising a domestic violence offender, direct contact with victims of intimate partner violence is often necessary. At a minimum, tribal probation officers need to understand general information about the impact of crime on victims, how to communicate with victims effectively, information on victims' rights and needs within the tribal justice system, and be knowledgeable about the services available to assist victims—within probation and other tribal justice agencies the community at-large.

Probation officers can be proactive in working with victims. In many communities, community corrections officers are only seen as an enforcer and only working with individuals directly involved in the criminal/juvenile justice system. To be seen beyond these roles and to enhance communication with victims, it is critical to create a visible presence in the community. Some tribal community corrections officers have created this presence by participating in community-oriented events and/or prevention efforts in their official capacities as well as utilizing community newspapers and social media outlets to educate their communities on the various ways they help promote community safety.

Additionally, when supervising domestic violence offenders, tribal probation officers also need to understand the unique dynamics of family violence and its impact on victims (see recommendation #1). The needs that victims of intimate partner abuse face—particularly concerning their safety—are often very different from other types of victims. It is also important for tribal probation officers to acknowledge that they may encounter situations when couples will stay together while going through all the criminal procedures. This can have an effect on the honesty and follow through with victims and impact statements. Likewise, it is imperative that tribal probation officers be knowledgeable about safety issues for victims in domestic violence cases so they do not inadvertently put the victim at more risk for harm. Therefore, tribal justice agencies overseeing probation should develop specific policies related to contacting victims of domestic violence. The following section outlines some issues that should be considered when developing these types of policies. Please note, however, this is not meant to be an exhaustive list of considerations.

Inform Individuals On Supervision For IPV That Probation Officers Are Required To Contact The Victim

All individuals on supervision who are identified as domestic violence offenders should be clearly informed that probation will initiate contact with the victim and that the officer will not disclose the

content of any conversations they may have with the victim to the supervisee. It should be clear to the probationer that this is probation department policy, not requested or initiated by the victim. It is best that this information is included in written material, as well as provided verbally. Individuals on supervision for cases involving domestic violence should be reminded of this policy periodically throughout their supervision term.

Initiate Contact With Victims In A Timely Manner

Probation officers should contact victims as soon as possible once the case is assigned to their office. The purpose of the contact should be to:

1. Introduce the supervising officer
2. Explain where the perpetrator is in the process (e.g., pretrial or probation)
3. What pretrial or probation is
4. What the probationer's supervision conditions are (if applicable)
5. How to opt in or opt out of further communications with probation (e.g. written correspondence, form, etc.)
6. Under what circumstances probation will be required to provide notification to victims (e.g., risk of harm, change of perpetrator's status)

Additional information that can be helpful to crime victims, depending on the stage of the justice process includes, but is not limited to:

- The type of information that can be provided to victims while their perpetrator is on community supervision.
- Referral information for advocates and agencies who provide direct services to victims of intimate partner violence

Methods For Contacting Victims

A common difficulty in contacting victims is not having information about their current location. Domestic violence victims may relocate for their safety, or the arrest and subsequent legal status of the offender may affect victims' abilities to remain in their homes. Tribal probation professionals should work with law enforcement agencies and victim advocates to encourage them to ask victims to provide third party contacts able to get messages to them safely if the victim leaves the address given to police at the time of their abusers' arrest. Similarly, when tribal probation professionals first contact victims, they should request alternate contact information to advise them of matters involving their safety.

Techniques for Telephone Contact

Tribal probation departments should be careful when initiating telephone communication with victims. Increasing technological options, such as caller identification, may make it impossible to contact victims without the probationer knowing at the time, or at a later time, that a call has been received from the probation officer's number. One way to address this problem is to determine if the tribal probation department has the ability to block its phone number from appearing on the receiver's caller identification. However, even with this precaution, probationers may be suspicious of calls that are received. If officers contact victims by telephone, they should do so with full consideration of safety risks, and plan accordingly.

The following techniques support the safety of domestic violence victims if the tribal probation professional is making telephone contact:

- Upon reaching the victim by phone, ask if this is a good time to talk. If not, inquire as to whether the victim prefers to be called back later. Assume that the abuser still has control of every conversation.
- Provide the victim with a code word that the victim can use if they are in immediate danger and their abuser is listening.
- Do not leave a message on the answering machine for the domestic violence victim.
- Do not hang up if the abuser answers the phone. Instead, engage them in a conversation related to their supervision (e.g., I am calling to confirm your next appointment at. . . Please bring your most recent pay stub).
- Have protocols in place for a response if a probationer answers the phone at a victim's residence and there is an active order of protection in place prohibiting contact. This would be a clear incident of noncompliance by the probationer and should receive an appropriate response.

Practices for In-Person Contacts with Domestic Violence Victims

- Gather preliminary case information prior to interviewing victims.
- Always interview a domestic violence victim and the probationer separately. Be aware that victims may minimize or underreport the extent of the abuse.
- Conduct the interview at the convenience of and location chosen by the victim.
- Clarify the roles and responsibilities of the tribal probation professional and the tribal probation department. Both the tribal probation professional and the tribal probation department have a unique and powerful role in supporting her safety and autonomy while holding the probationer accountable.

- Tribal probation professionals should tell victims what probation officers can and cannot do. The victim should be instructed to call police for emergency needs rather than the tribal probation department.
- Tribal probation professionals should research, understand, and clearly explain victims' rights under State and Federal laws and regulations. More tribes are also enacting their own victims' rights codes, so tribal probation professionals should also research to see if their tribe has this type of code and adhere to its provisions. The tribal probation professional should use a domestic violence victim contact checklist whenever possible, such as the one shown in Appendix 4.
- Tribal probation professionals should provide and discuss conditions of the probationer's supervision, including the frequency of contact the officer has with the offender, requirements for batterer program participation, no-contact orders, mental health and substance abuse treatment, and fees for which the offender is responsible.

Procedures for Written Communication with Domestic Violence Victims

- It is not recommended for tribal probation professionals to send communications electronically (e.g., email, fax) to domestic violence victims. Neither the sender nor receiver can control whether others have access to this type of communication. Even if a victim contacts a tribal probation professional by email or fax, careful consideration should be given to whether to respond in like fashion.
- If written information is sent by mail or other delivery methods, it may be best to use plain envelopes without a return address. However, if this practice is used, the tribal probation professional has no way of knowing whether the victim actually receives the correspondence. Some domestic violence offenders will routinely control and read a victim's mail, even when it is addressed only to her. Victims also often relocate, and without return addresses, there is no way for the letter to be returned to the agency.
- If written rather than in-person contact is made with victims, the same information as covered above should be included in the correspondence such as the roles and responsibilities of tribal probation department and professionals, victims' rights, and the probationer's conditions of supervision. See Appendix 5 for a sample victim contact letter that can be adapted for any jurisdiction.
- How victims may contact tribal probation officers must also be included as well as other resource information victims may need.

Give Victims A Choice

Tribal probation officers need to be aware of the potential intimidation that many victims, and especially domestic violence victims, experience when interacting with justice system professionals. It is important to remember that many domestic violence victims suffer from a pattern of ongoing abuse and victimization—physical, psychological, emotional, sexual, or financial—and that these abusive acts potentially

have long lasting and traumatic effects on victims (Ganley, 1996). That is, victims have often suffered numerous individual abusive encounters before they decide to actively participate with the justice system. In fact, only about half of all domestic violence victims ever report these offenses to the police.

Every victim of domestic violence is the expert on their own experiences. Therefore, domestic violence victims have a right to choose not to participate in the probation process, and their decisions should be respected.

There are undoubtedly numerous reasons victims choose not to participate with the justice system. For example, they may have encountered scrutiny from justice professionals in the past who questioned which party was the aggressor in the abusive situation, experienced situations where justice professionals expressed resentment when they chose not to file charges against their abuser, been in situations where they did want to get out of the abusive environment and a judge was unwilling to break up the family (Ames and Dunham, 2002), or been frustrated when their abuser was released—potentially after only one night in jail—and returned home to continue the victimization (Goldsmith, 1991).

The reality is that whether victims choose to participate in the prosecution of their abuser, research suggests that for some domestic violence victims, particularly those with few options (e.g., money, support), leaving is often not a viable or safe alternative. Every victim of domestic violence is the expert on their own experiences.

Therefore, domestic violence victims have a right to choose not to participate in the probation process, and their decisions should be respected.

Therefore, a victim's participation and contact with tribal probation professionals should always be voluntary, and the victim should have the right to decline to have ongoing contact with officers at any point during the supervision process (even if

they initially opt-in to receive notification). Even if and when a victim opts out of the option to receive notification, tribal probation professionals should indicate future contact is always welcome when the victim decides it is safe to do so and can be done in a manner the victim indicates would be safe.

Issues To Consider When Victims Opt To Receive Notification

When victims do opt to receive future notification about their case, discuss and plan for future how that future contact should occur. Ask the victim for suggestions on the best way to maintain and protect their confidentiality and safety related to ongoing communication from and with probation. For example, if a victim and her perpetrator receive their mail at a P.O. Box address and only the perpetrator has the key to the P.O. Box, mail would not be a safe or effective way of maintaining contact with the victim. Talk with the victim about their situation and strategize a method for communicating that will not expose the victim to further abuse and retaliation by their abuser.

Considerations For Notifying Victims Who Express A Desire Not To Be Informed Of Future Activity

As has been stated previously, after first contact, probation officers should give the victim the choice as to whether they want to receive further regular contact from probation. However, regardless of whether they consent to further contact, victims should always be notified if the officer feels the level of risk to the victim is increasing for some reason (e.g., the probationer loses his job and the officers feels the probationer is experiencing acute stress that may trigger violence) or if there is a change in supervision status (e.g., probationer removed from electronic monitoring, probationer's probation revoked and sentenced to a short-term jail sentence, etc.).

Protecting Victim Confidentiality

One way many domestic violence victims protect themselves is by not sharing information that they know (or assume) will be disclosed in court or elsewhere and could be used as a rationale by the offender to abuse them further. In other situations, some victims may have relocated for their safety and want to maintain confidentiality of their address.

To the extent possible, the statements, addresses, and telephone numbers of domestic violence victims should be kept confidential. Tribal probation agencies should ensure that all information about victims who are abused is secure, that appropriate precautions are taken to prevent access by abusers to information about their partners, and that there are clear and commensurate sanctions for tribal probation staff who violate security protocol (State of New York, 1998).

Agencies also should establish procedures to protect victim confidentiality when courts subpoena records. For example, the defense counsel may use discovery rules to gain access to tribal probation department records. For this reason, some agencies do not include victim information in the probationer's records. In other agencies, a notation about confidentiality is included in records that

contain victim information so the judge can review it and redact anything that may jeopardize victim safety.

The officer must carefully explain the agency's regulations and policies regarding confidentiality of information at the first contact with victims (and thereafter as needed). Officers should inform victims fully about how information they provide will be shared or used, and with whom it will be shared. If the agency's policy is to disclose certain types of information in court, even if the victim wants it to be kept confidential, make sure the victim knows of that policy at the beginning of the interview. The victim should be told precisely what information, if any, will be shared with the probationer and how information provided by her will be used. The victim should also be informed fully as to what information will be shared with her. Discussing the limitations of confidentiality policies at the first contact with the victim and being honest about these requirements will help establish trust. This also could be a lifesaving measure.

Inform victims about tribal probation professionals mandates for reporting prior to beginning the interview. For example, explain that you will have to report when child or elder abuse/neglect is suspected, when a person threatens to commit a crime, and when a person threatens to harm herself or others.

Interview victims of domestic violence out of the line of sight and hearing range of their abusers. Victims of domestic violence cannot talk freely when their abusers are present. The risk of retaliation is lessened (although not eliminated) and more accurate disclosure is promoted when the parties are interviewed separately.

Victim location and contact information must be kept confidential unless the victim specifically allows release. Do not tell the probationer, or the probationer's agent/attorney, anything the victim has said. Once information is conveyed to another person, be it verbal or written, there can be no control of its dissemination. Tribal probation professionals also should not share information with other agency staff, except on a "need to know basis." Case information that is inadvertently "leaked" through third parties may have significant safety repercussions.

Information about the victim should be kept separate from probationer information in tribal probation department files, and only staff with designated clearance should be able to access the victim information. Automated case management systems must be constructed to offer this same type of security and separation of probationer and victim records. Protect victim information from probationers who may be in your office by keeping it in a locked file cabinet, another office, or password protected computer files.

If the victim gives tribal probation professionals permission to share what they have said, instead, try to obtain the same information from a source that can be cited without indicating that they were the source. For example, if the victim "confides" that the probationer was high on cocaine at the time of the assault, try to find and cite indicators of cocaine/drug use in other sources (e.g. police report, prior criminal

history, medical history, drug test results) and attribute the statement to that alternative source. Tribal probation professionals may need to find and use resources that are not generally utilized in other cases.

CONCLUSION

The recommendations described in this document are rooted in core domestic violence philosophies. There are two fundamental objectives to domestic violence intervention – victim safety and offender accountability. It is important to understand that one cannot be had without the other. In addition, this work cannot be done without employing evidence based practices, considering the unintended consequences of our actions, and holding ourselves and others accountable for our work. This includes knowing what practices are inadvisable for domestic violence offender supervision, and ensuring that probation departments are not using those practices for anyone who is suspected of being a domestic violence offender.

The justice system should be part of a larger concept of social justice that works to stop oppression and end violence toward intimate partners. Agencies and professionals should be aware of and vigilant about correcting individual, institutional, and justice system biases that are more punitive to marginalized groups and that blame victims for the violence and abuse perpetrated against them.

Both tribal probation officers and other participants in the system should be held accountable for their decisions. For example, when cases are returned to court for violations, judges should impose appropriate sanctions. Strategies should be in place to eliminate manipulation or misuse of the justice system by intimate partner domestic violence perpetrators and/or the perpetrators' family members who may, for example:

- attempt to retaliate against their victims through groundless child custody challenges;
- file false reports with child protective services agencies; and
- file for protection orders against their victims.

The allocation of resources demonstrates priorities. Sufficient resources (e.g., time, money, staff) should be committed to domestic violence cases to demonstrate that victim safety and offender accountability are meaningful principles in community corrections practice. Offender accountability and system responsibility are part of a coordinated community response to domestic violence. Written policies and protocols for all parts of the justice system should be developed collaboratively. Mechanisms to prevent breakdowns in communication should be included in working agreements, and agencies and professionals should be challenged and held accountable for any lack of follow-through within the system. Cooperation necessitates openness among systems so that others can view their goals and operations, and so that effective lines of communication can be established for sharing pertinent information.

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APPENDIX 1

THE DIFFERENCE BETWEEN STRANGER VIOLENCE AND DOMESTIC VIOLENCE

STRANGER VIOLENCE	DOMESTIC VIOLENCE
Single Event	Multiple Events
Limited Time Period	Occurs Over Time
Single Intensity Level	Differing/Accelerating Levels of Intensity
Identifiable/Distinguishable Motives	Obscure Motives
Often Random	Never Random
No Prior Relationship With the Victim	Some Type of Relationship (marital, familial, romantic)
No Children in Common	Often Children (support, custody, visitation, emotional issues)
No Economic Ties	Economic Interdependence
Socially Condemned	Socially Minimized and Condoned
Offenders are Blamed	Victims are Blamed
Next Victim Unknown	Next Victim Known
Uncertain and Variable Rate of Recidivism	High Rate of Recidivism
No Post-crime Contact with Victim	Ongoing Contact with Victim
Victim Supports Prosecution	Victim may Oppose Prosecution

Source: New York State Probation Domestic Violence Intervention Project. (2001, August 2). Effective Management of Domestic Violence Cases: Probation's New Approach to Victim Services and Offender Accountability (Handout material for presentation at the American Probation and Parole Association's Annual Training Institute, St. Paul, MN.)

APPENDIX 2

SEPARATION RISKS

Physical and Psychological Abuse

- Threats and violence will get worse for the woman, her friends, or family
- Abuser will follow through on suicide threats and harm himself
- Continued harassment, stalking, and verbal and emotional abuse
- Rape or sexual abuse
- Serious physical harm and/or death

Children

- Emotional, physical, or sexual abuse of the children, especially if the abuser has unsupervised visitation or inappropriately supervised visitation
- Losing children through parental kidnapping or as the result of a legal custody decision

Financial

- Loss of home, possessions, neighborhood
- Losing income or job – loss of partner’s income, quitting a job to relocate or to fulfill the responsibilities of single parenthood, or being prevented from working by abuser

Relationships

- Losing partner, losing the relationship
- Losing help with children, transportation, household
- Women who are older or have disabilities may lose caretaker
- Unsupportive responses from friends, family members, professionals, faith-based community leaders, and other community members
- Not being believed or taken seriously, being blamed, being pressured to do something she’s not ready or able to do
- Being judged as a bad wife, partner or mother
- Being pressured to maintain the relationship
- Actions of “helpers” may increase danger

Arrest/Legal Status

- Being forced into criminal activity
- “Taking the rap” for a crime committed by the abuser
- Partner’s arrest
- Loss of residency status with potential impact on family in country of origin (immigrants)

(NYS OPDV, 2001)

APPENDIX 3

FIREARMS AND OTHER WEAPONS

The presence of firearms dramatically increases the risk that a victim of domestic violence will be killed by their intimate partner. A fact sheet created by “Everytown for Gun Safety¹⁰” compiled the following data:

- American women are 11 times more likely to be murdered with a gun than woman in any other developed country, making this country the most dangerous for women in the developed world when it comes to gun violence (Hemenway & Richardson, 2011).
- More than half of women murdered with guns in 2011—at least 53 percent—were killed by intimate partners or family members (US DOJ).
- The presence of a gun in a domestic violence situation increases the odds a woman will be murdered by 500 percent (Campbell, Webster, Koziol-McLain, 2003).
- A majority of mass shootings are tied to domestic abuse. Everytown’s analysis of mass shootings from 2009 to 2014 shows that in 57 percent of mass shootings, the shooters killed intimate partners or other family members (Everytown for Gun Safety, 2014).

But, other weapons are also a concern for Native women. Data from the U.S. Department of Justice found that “while firearms represent the most likely weapon to be used in murders against women regardless of race, American Indian and Alaska Native women are more likely to be killed by both knives and blunt objects compared to other women” (Bachman, Zaykowski, Kallmyer, Poteyeva, Lanier. Pg. 22, 2008).

Federal law prohibits all individuals with a felony conviction, any domestic violence conviction (i.e., felony or misdemeanor), and those with an active protection order from possessing firearms or ammunition. Although state laws vary greatly, several states have enacted legislation prohibiting all domestic violence offenders from possessing firearms. Tribal probation professionals should undertake the following procedures to disarm domestic violence offenders:

- Be fully informed about firearms laws. These laws should be the foundation for all forfeiture and seizure policies and practices with domestic violence offenders.
- Investigate offenders’ firearms access during pretrial services, investigations, and ongoing supervision of the offender. Investigation practices should include the following steps:
 - Ask the offender if they have access to any firearms (those they own or others allow them to use) and if they have expertise in the use of firearms, such as military experience, hunting, or as a collector.
 - Ask the victim and other collateral sources about the offender’s access to firearms (e.g.,

¹⁰ http://www.ncdsv.org/images/EFGS_Gun-and-VAW_7-2014.pdf

other family members, neighbors), and inform these individuals of firearms restrictions and that supplying the domestic violence offender with firearms or ammunition is illegal.

- Check arrest and conviction information regarding the present criminal incident to learn whether threats or assaults were made with firearms or other weapons, and if so, what type of weapons.
 - Check official records of protective orders to determine whether an active protective order has been issued against the offender. Determine whether the person requesting the protective order alleged that any firearms or other weapons were involved in threats or assaults.
 - Check criminal history records for previous felony or domestic violence misdemeanor convictions against the offender. Determine whether any firearms or other weapons were used during previous crimes.
 - Check state permit registries to determine if the offender has legally purchased firearms in the state.
 - Check protective order records periodically to determine whether protective orders have been issued against any offenders on probation, even if the conviction that led to their supervision is not related to domestic violence.
- Provide offenders with Notice of Weapons Prohibitions. Both oral and written notice should be provided to domestic violence offenders clearly stating that they may not possess firearms. Usually, this notice will apply only to firearms and ammunition, but if an offender has used another type of weapon in previous assaults (e.g., explosives, knives), local jurisdictions may also allow for the prohibition of these weapons. The notice should be provided at every point the offender comes in contact with the justice system (e.g., pretrial, sentencing, probation intake, parole release) and should be provided by all those having authority over the offender including judges, paroling authorities, and supervising pretrial, probation, and parole personnel. If offenders are prohibited from possessing firearms because of a protective order, they may be able to regain possession of those firearms if or when the protective order is no longer in effect. When an offender is allowed to regain the right to possess a firearm, all affected individuals should be notified.
 - Work with local, State, and Federal law enforcement entities to develop protocols for the safe removal, storage, and disposition of offenders' firearms. Officer safety is a central concern for any firearms policy and practice. Unless they are specifically trained and possess the appropriate equipment, tribal probation officers should rely on or partner with law enforcement to conduct searches and seizures. If offenders acknowledge possession of firearms or investigation reveals that a domestic violence offender has access to firearms, tribal probation personnel should immediately require the offender to relinquish them as well as ammunition, other identified weapons, and firearms permits. Offenders may relinquish firearms to law enforcement agencies. If procedures are not already established for this process in the jurisdiction, tribal probation

departments may need to take the lead in developing a plan with local, state, or federal law enforcement agencies. Another option is for firearms to be relinquished directly to tribal probation personnel. If this policy option is adopted by tribal probation departments, procedures must be in place for the appropriate storage and disposal of firearms and ammunition. Offenders may also be given the option of disposing of the firearms themselves. If offenders are to dispose of firearms, they should be required to state specifically to whom and when the firearms will be transferred. Following the planned relinquishment, tribal probation professionals should verify that the surrender occurred and provide the recipient, especially if it is a friend or family member of the offender, with information regarding his or her legal responsibility not to allow the offender access to the firearms.

- If later information discloses firearm possession, or if the offender does not cooperate with an initial plan to remove the firearms, further confiscation procedures are needed. Additionally, it is important to monitor domestic violence offenders for firearms they may acquire during the supervision period. These situations may require searches of their residences, vehicles, and other places they may keep personal property to ensure compliance with prohibition requirements. Searches may be performed routinely or based on suspicion. Courts have consistently upheld the practice of warrantless searches of probationers' residences because probationers do not enjoy the same degree of constitutional protection against searches or seizures as other citizens do. (For a detailed discussion of search and seizure, see Adelman, 2002; Hemmens, 1998a & b; Hemmens, Bennett & Del Carmen, 1999.) Safe procedures for searches and seizures should be spelled out in agency policy and followed carefully. It is advisable to have arrangements with tribal law enforcement agencies for assistance in such situations. Agencies should have policies in place for searches that are consistent with State laws. It is advisable to have department legal counsel and law enforcement agencies involved in formulating policies and in carrying out searches. A search done illegally may mean that the product of the search is not usable in court, including the possibility of new charges being dismissed.
- Ensure that appropriate information is entered in databases. Effective supervision of domestic violence offenders depends, in part, on having all needed information about the offender. It is particularly important in supervising domestic violence offenders that protective order databases and criminal history information be current and complete. Tribal probation professionals should participate in community coordination efforts to ensure that this information is accurate and available to assist in supervision of these offenders. Where possible, efforts should be aimed toward interactive information systems so that this information can be accessed by and shared with appropriate justice system members.
- Respond swiftly and appropriately to any firearm possession prohibition infraction. Agency policy should stipulate procedures to be followed if domestic violence offenders are found in possession of firearms after being notified that they are not allowed to possess them. Even if firearms prohibitions are not a specific condition of their community supervision, all offenders must obey state and federal laws. Working relationships should be developed between tribal probation departments and Federal law enforcement agencies and prosecutors so that offenders who violate Federal gun prohibitions can be charged and prosecuted appropriately.

APPENDIX 4

DOMESTIC VIOLENCE VICTIM—PROBATION CONTACT CHECKLIST

Prior to Meeting

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

Safety

- Always interview out of line of sight and range of hearing of the offender
- Describe all terms and limits of confidentiality policy
- Explain to the woman who is abused that continued involvement with the agency is voluntary.
- Ask about and document safe procedures for future contact
- Offer to provide copies of order(s) of protection
- Discuss preliminary safety plan and refer to domestic violence program
- Provide police contact information

Offender Accountability

- Explain terms of Order and Conditions
- Explain restitution policy, as necessary
- Describe the role of Probation Officers
- Explain offender is in legal custody of the court
- Monitor and enforce Order and Conditions
- Monitor and enforce other court orders
- Inform about implications of Peace Officer status
- Explain “duty to act” and “mandated reporter”
- Describe the Violation of Probation process

- Describe batterer program limitations and protocols, if a condition of Probation Assistance
- Review and provide Notice of Victims' Rights for family offenses
- Inform what Probation can and cannot do
- Offer referral information
- Offer local domestic violence program information
- Provide shelter information, as necessary
- Assist with court access
- Facilitate access to medical care
- Provide 24-hour hotline number for the local domestic violence program
- Inform her how to contact community corrections staff and agency and encourage her to do so

(NYS PDVIP, 2003)

APPENDIX 5**SAMPLE VICTIM IMPACT STATEMENT LETTER FOR PROBATION AGENCIES**

Date: _____

Name: _____

Address: _____

Dear: _____

The Court has directed the Department of Probation to prepare a report on the offender, _____, found guilty of committing a crime against you. That report will be used by the Judge as an aid in determining his/her sentence. The report will contain the offender's legal and social background. It may also include information on the impact of this crime on you. Although you may have already given statements to police or prosecutors, it is important that we insure that your information is presented to the court.

As the victim of this offense, you are entitled to have your feelings about the crime and how it affected you and your family presented in this report. You are also entitled to include documentation of any injury, damages, and/or economic loss you suffered as a result of this crime. You are entitled to seek reparation or restitution for losses incurred. You may find it helpful to discuss your feelings about this crime with me. It is important for the court to have this information for sentencing. Under law you are not required to supply information for the preparation of our report, including the Victim Impact Statement. Please be aware that the offender or his attorney may gain access to information included in the Victim Impact Statement. Should you be concerned about the content of any information provided to us, we can request that the court not disclose such information, but this decision lies with the court.

This report must be completed by _____. In order to include a verbal statement from you, we must speak prior to that date. I have set aside time on _____ between _____ and _____ to meet with you in my office. If you are not available on the above date, please call me at _____ to schedule an alternate time. If I am not available when you call, please feel free to leave a voice mail message indicating your telephone number and a time when I may contact you. If you must speak to someone immediately when you call, you may call _____ and ask for a supervisor.

You may submit a statement to me in writing instead of, or in addition to speaking with me. If you wish to submit a written statement, please send it to me at the address printed above. I must receive your response by _____ so that it can be included in the report to the court. Enclosed, for your information, is a list of service resources that may be of assistance to you.

I look forward to hearing from you.

Thank you,
Your Name
Probation Officer
(NYS PDVIP, 2004)

Sources: Brief for National Network to End Domestic Violence et al. as Amici Curiae Supporting Respondents at 2, Plains Commerce Bank v. Long Family Land and Cattle Co., 128 S. Ct. 2709 (2008) (No. 07-411).

U.S. Department of Justice. Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is known. 2008:49