



**Probation Interviews with Victims of Battering:
Building a Foundation for Current and Future Safety**

**James E. Henderson, Jr.
with Jane Sadusky**

April 2014

The Battered Women's Justice Project
1801 Nicollet Ave S. Suite 102 Minneapolis, MN 55403
technicalassistance@bwjp.org
800-903-0111, prompt 1

Probation Interviews with Victims of Battering: Building a Foundation for Current and Future Safety

James E. Henderson, Jr.

with Jane Sadusky

Introduction

Engaging with the victim helps probation officers understand what makes the ongoing situation dangerous and what particular signs might signal reoccurring violence. If the victim is linked to an advocacy program that is also working cooperatively with the probation department, it is far more likely that steps can be taken to disrupt escalating violence.¹

Probation becomes involved in a domestic violence-related crime at the end of a long chain of actions involving many practitioners and steps, from the first emergency-911 call through plea negotiations or trial. Probation contact with a domestic violence offender might extend from twelve to twenty-four or more months, depending upon the nature of the offense and sentence. Probation is thus uniquely situated to manage risk on behalf of the individual victim(s) of the current crime as well as on behalf of future victims if the probationer's behavior does not change.

The American Probation and Parole Association (APPA) guidelines for practice recognize probation's distinct role in increasing safety and autonomy for victims of battering, reinforcing offender accountability, and intervening to change abusive behavior.² Along with intervention in domestic violence-identified cases, probation is also positioned to identify and work with victims of battering who are on probation for other crimes, often directly related to the nature and impact of the violence they have experienced. Regardless of how a probation agent comes into contact with a victim of battering, building a relationship that contributes to safety rests on how that agent talks with that victim, from the first point of contact onward. The approach to interviewing presented in this guide seeks to maximize engagement, minimize offender retaliation, and link victims of battering with key resources and support.³

Interviews that (1) maximize engagement, (2) minimize retaliation, and (3) link victims with support and resources

¹ "Probation Supervision in Domestic Violence-Related Offenses," *The Blueprint for Safety: An Interagency Response to Domestic Violence Crimes*, Praxis International, 2010, p.105. www.praxisinternational.org

² *Community Corrections Response to Domestic Violence: Guidelines for Practice*, May 2009, American Probation and Parole Association, <http://www.appa-net.org/eweb/docs/APPA/pubs/CCRDV.pdf>. (Hereinafter referred to as *APPA Guidelines for Practice*.) See Chapter 9, "Guidelines for Victim Safety and Autonomy," for a broader discussion of the considerations and strategies related to probation contact and interaction with victims of battering.

³ This approach to probation interviews with victims of battering was developed by author James Henderson in the ten years that he supervised a domestic violence caseload in Washtenaw County, MI, one of three sites in the U.S.

Definition and language

Domestic violence is a big category; many kinds of actions get thrown into it, from a slap on the arm to repeated strangulation. Many kinds of relationships get thrown in as well, from teenager to parent, sibling to sibling, and intimate partner. Most of the domestic violence that involves criminal legal system intervention is what has come to be known as *battering*: i.e. the ongoing use of physical, sexual, and emotional intimidation, coercion, violence, and other tactics intended to control and dominate an intimate partner. Historically, battering has been and remains most characteristic of men's dominance over women in intimate relationships, although more knowledge is emerging about battering in same-sex relationships. Most of a probation domestic violence caseload is related to a male partner battering his current or former female partner. Therefore, this guide will generally refer to the victim of the crime as "she." The practices and strategies presented, however, apply to situations of battering regardless of gender. Understanding the context of any given act and pattern of behavior is essential: the intent, the meaning to the victim, and the impact. Who stops seeing friends, talking with people, or going places? Who is afraid? Who is in danger?⁴

A shift from information-gatherer to information-provider

A Shift in Role

The APPA guidelines acknowledge that "community corrections professionals are generally unaccustomed to making victim contact, and such contact often adds to the complexity and challenges of supervising domestic violence cases."⁵ The unfamiliarity rests in part with probation's historical role and tasks: evaluating data obtained via interviews and investigation, formulating a plan for the defendant's rehabilitation, making recommendations to the court for appropriate sanctions, and supervising compliance with the court's sentence. In this role, the victim of any crime is primarily a source of information rather than someone whom probation has a central responsibility to protect. Increased attention to victims' rights in the criminal legal system in general has contributed to probation's increasing attention to a victim's safety and information needs. Recognition of the distinctive characteristics of intimate partner violence and the ways in which probation can be protective of current and future victims has further shifted and expanded its role in domestic violence-related crimes.

Domestic violence supervision requires a unique blend of community correction practices. These practices attempt to incorporate multiple agencies (e.g., advocates, law

Department of Justice Judicial Oversight Demonstration Initiative (JOD). The final report on evaluation of the JOD and its implications for research, policy, and practice is available at <http://www.urban.org/publications/411498.html>.

⁴More than 90% of "systematic, persistent, and injurious" intimate partner violence is perpetrated by men. National Institute of Justice (NIJ), Measuring Intimate Partner Violence, <http://nij.gov/topics/crime/intimate-partner-violence/Pages/measuring.aspx> (citing research review by Michael S. Kimmel)

⁵ APPA *Guidelines for Practice*, p. 157.

*enforcement), supervision and intervention components for offenders, and concerted attempts to contact and interact with victims.*⁶

Nonetheless, it remains challenging for many in probation to interact with victims of battering as someone other than an informant (i.e., as someone other than a data point or source of information that enables probation to manage the case). The victim-as-informant helps probation produce a sentencing recommendation and secure offender compliance with the sentence and rehabilitation plan. When a victim is unavailable or reluctant to communicate with probation, she can too often be seen as an impediment to getting the job done or as uninterested in seeing the offender held accountable or even as blocking his efforts to succeed. The victim then becomes the problem: the problem of missing information or lack of a victim impact statement or the offender missing appointments because she is not being supportive enough.

The shift in probation's role to one of **providing information and strategizing together** with a victim of battering to address safety needs is significant for current and future victims of an offender's violent and abusive behavior. Information from a victim about the history and context of the violence is undeniably useful in establishing a sentence and sanctions that are appropriate to the severity of the crime and the danger the offender is likely to present to the current and future victims. This is more likely to happen when a victim sees probation as helpful in meeting her interests and needs. Those needs might include enhancing safety for herself, maintaining economic viability, protecting children, ensuring that the offender stays out of her life, or, for some victims, using probation as an opportunity to get help for the offender, whether batterer intervention or alcohol or drug treatment.⁷ Most victims are far more concerned about future violence and rehabilitation services than punishment for past acts.

Interviews are:

- ✓ Victim-centered
- ✓ Trauma-informed
- ✓ Strengths-based

The approach to probation interviews with victims of battering presented in this guide is a paradigm shift: from information gatherer to information provider. Instead of measuring a successful interview by how much detail about the assault and trauma a victim has provided—i.e., how useful the victim has been to the probation case—the primary measure is whether a victim leaves the interview with information about the nature of battering, the specific risks she might face, and the community services that will help meet her needs. Questions are the pathway to providing information rather than to extract details. At the same time, those very questions can also contribute to a victim's interest in sharing a more complete account of the nature of the harm that she has experienced than the information acquired via a fill-in-the-blank approach.

⁶ APPA, p. 158.

⁷ For example, "Victim Satisfaction with the Criminal Justice System," *NIJ Journal*, Issue 253, January 2006, National Institute of Justice, <http://www.nij.gov/journals/253/Pages/victim.aspx>.

Features

While each interview with a victim of battering is distinctive according to the person's needs and what she or he has experienced, the following structure guides the conversation in ways that are most helpful to most victims. Because the approach begins and ends with the victim directing the interview, it is more likely to identify and address an individual's distinct needs.

Overarching qualities: victim-centered, trauma-informed, and strengths-based

Fundamental to a victim-centered approach to probation interviews with victims of battering is the clear recognition that the victim is not on probation.⁸ It can be easy to slip into familiar ways of interviewing that are focused on completing necessary forms and moving the case forward. The victim is not on probation, however, and the interview is never an interrogation about what she should or should not be doing.

A victim-centered interview starts and ends with attention to the victim's concerns and needs.

Living with the ongoing coercion, control, and violence that characterizes battering impacts victims' lives in many ways. An individual's experience will vary according to the nature and severity of the abuse, the resources and support available, and the many intersecting realities of her life, from health and economic circumstances to history of oppression, individual resiliency, and what is happening for her children if she is a mother. A probation agent will encounter many victims for whom trauma is not confined to the impact of past events, but who have to manage the threat and/or reality of ongoing abuse and stalking. Some may be dealing with reactions and feelings—e.g. fear, terror, shock, disbelief, isolation, confusion, despair, distraction, mistrust—that make daily functioning and interactions more difficult, including interactions with interveners such as probation agents. Awareness of the impact of trauma is therefore a prerequisite for victim interviews, drawing on basic skills of connection and reflection. Connection skills include the “ability to engage, be available, be present, convey empathy, avoid judgment, and be open and honest about what we are offering,” and reflection skills include “self-awareness and responsibility for understanding our own needs and reactions, both of which help to sustain our connection skills.”⁹

Utilizing a strengths-based approach reinforces opportunities for interaction and engagement, from the point of first contact onward. This requires being attentive to and acknowledging a victim's strategies and successes in trying to stay safe, protect her children, and manage the demands of daily life under the impact of battering on everything from physical and emotional health to economic stability. An acknowledgement of success could be something as seemingly minor as saying “you were ten minutes early for our appointment and I know that's hard to do when you have to get your kids to school and deal with the traffic to get here.”

⁸ With the exception of a victim of battering who might be on probation for other crimes or a domestic violence-related crime. See discussion under Settings: Female Offenders.

⁹ “Impact of Trauma on Interaction and Engagement: Information Sheet for Domestic Violence Advocates,” National Center on Domestic Violence, Trauma & Mental Health, December 2011. Center resources such as this tip sheet are also useful to probation agents and any practitioner working with survivors of battering. <http://www.nationalcenterdvtraumamh.org/>

Starting the interview

A victim has no obligation to talk with or stay in contact with probation: that is made clear from the initial point of contact onward. The first contact is most likely to be via an informational letter or telephone call. Where probation has a regular presence in a domestic violence court or dedicated docket, the first contact might be in the courtroom.¹⁰ Whether via telephone or face-to-face, the first in-person contact sets the tone for any subsequent interviews. If the opportunity to establish an atmosphere of engagement is lost at this early stage it can be difficult or impossible to recover later. Any kind of direct victim contact can turn into an interview and an opportunity for probation to convey information about what is happening and concern about a victim's safety and well-being. A victim-centered interview starts and finishes with attention to the victim's concerns and needs.

- Review and reiterate confidentiality limits.

It is essential to be transparent about what probation is doing and will do, and how any information provided by the victim will be used and who will have access to it under what circumstances.

Appendix A illustrates one approach to providing this information in a written format that a victim can carry away from an interview conducted in a presentence investigation. In addition—and always in any victim interview—read or relay the information verbally and ensure that the victim understands that she is **not required to share information with probation** and the **defendant is entitled to see any report**.

Attention to confidentiality must be a constant throughout probation's contact with victims of battering. While a review of confidentiality begins with the first interview, it is not a one-time event.

Include an explanation and reminder of the limits of confidentiality at the beginning of each victim interview, whether part of a presentence investigation or an ongoing check-in. Avoid assuming that simply reading a notice out loud or providing a written copy is sufficient to ensure that a victim truly understands the parameters of confidentiality. Ask the victim how she understands what will happen to the information she provides and who will see it.

SAFETY – Whatever the setting, the following safety considerations are essential in probation contacts with victims of battering:

- Always interview out of the offender's sight and hearing
- Describe all terms and limits of confidentiality
- Explain that involvement with the agency is always voluntary
- Ask about and document safe procedures for future contact
- Offer to provide copies of order(s) of protection
- Discuss a preliminary safety plan and refer to community-based advocacy
- Provide police contact information

APPA Guidelines, p. 160

¹⁰As a probation agent with a regular and active presence in a domestic violence court, author James Henderson often had first contact with a victim in the courtroom. In-person contact in the courtroom requires close attention to safety and must not occur within the sight or hearing of the offender.

- Set any forms that need to be completed aside and find out what the victim would like to talk about.

There are some things that I'd like to talk with you about, but where would you like to start?

Listening to her concerns is likely to provide insight into the impact of the incident crime, the offender's past use of violence toward her, and her immediate concerns related to safety and well-being. It might be, for example, that she is afraid of becoming homeless or becoming unemployed if she loses her partner's income or his availability to care for the children while she is at work. She might be most concerned about how the offender's violence has changed in intensity and frequency or shifted to threats involving the children or stalking. She might want to talk about decisions she has made regarding separation and ending the relationship. Starting with and listening to what a victim is most concerned about establishes an atmosphere of respect and attention.

- From the beginning and throughout the interview, phrase questions that convey permission to talk and that create a safe, supportive environment.

For example:

How can I be helpful to you?

I'm glad you chose to meet with me today. What would you like to talk about?

Please, take your time.

I can see this is hard for you to talk about.

That must have been very frightening.

I can see that you care about . . . are concerned about . . .

Use questions not as an interrogation or command, but as an opening and encouragement to raise concerns and fears. As a victim feels respected and listened to—as she sees that this probation agent cares about what has happened in her life—she is likely to be more candid and share information relevant to the presentence investigation or ongoing management of risk or compliance with conditions of probation, and to whatever documentation and reporting is required.

- Provide information about the criminal legal system process and probation’s role.

A victim’s understanding about the criminal case process will vary according to the extent to which there has been an ongoing connection with community-based advocates and/or with victim/witness specialists in the prosecutor’s office. Some victims may be generally familiar with probation’s role while others may have limited information. Provide a review of what is happening and is likely to happen in the criminal case process from the point of probation onward. Avoid assuming that someone else has explained how the criminal legal system works or that all victims understand it in the same way.

- Ensure that the victim understands the confidentiality limits.
- Discuss the probation agent’s role and the limits of supervision.
- Review the conditions of probation and answer any questions about what is included or excluded.
- Review what the offender has been and will be told about the conditions of probation and his responsibility for complying with them.
- Explain how probation conditions will be monitored and enforced.

To keep the conversation going

<i>This . . .</i>	<i>Not this . . .</i>
<ul style="list-style-type: none"> ▪ <i>Other women have told me...</i> ▪ <i>Often when this happens...</i> ▪ <i>What would you like to see happen?</i> ▪ <i>How might this option work for you?</i> ▪ <i>Tell me about your life with...</i> 	<ul style="list-style-type: none"> ▪ <i>You need to...</i> ▪ <i>You should...</i> ▪ <i>You must...</i> ▪ <i>Why didn't you how did you let this happen?</i> ▪ <i>Why didn't you...?</i> ▪ <i>If I were you...</i> ▪ <i>As a battered woman...</i> ▪ <i>What is the defendant's history of abuse?</i>

Continuing the interview

Probation has an interest and a need to learn certain things that a victim of battering is most knowledgeable about, including the impact of the crime, ongoing safety needs, appropriate restitution, and factors related to lethality and risk. In the approach to victim interviews presented in this guide, probation learns what a victim knows by engaging and listening as the interview continues rather than turning to a checklist of yes-and-no questions.

- Convey understanding of the impact of battering.
 - Avoid reinforcing any justifications or excuses a victim might offer for the abuse; do not collude in reinforcing a batterer’s messages of blame.
 - Acknowledge examples of power and control tactics as abusive.
 - Provide examples of how coercion and control are used.
 - Identify criminal behaviors.
 - Validate a victim’s experiences and acknowledge her strengths in attempting to stay safe.

- Listen for indicators of heightened risk and lethality, such as:¹¹
 - A separation, divorce, or return to living together
 - Strangulation
 - Stalking
 - A victim's level of fear and expression of increased concerns about the offender's behavior
 - Changes or new concerns related to children and access to children via formal or informal supervised visitation or exchange
 - A victim's concern that the offender is feeling adrift, hopeless, isolated, or suicidal
 - Increase in frequency, severity, or type of violence in recent months
 - Almost daily impairment by alcohol or drugs

- Use open-ended questions or observational statements and qualifiers.

Such an approach opens a path for a victim to share information about the impact of the abuse or her concerns about her partner's behavior or the conditions of probation. For example:

- *Many of the men on probation for this kind of crime . . .*
- *A lot of women . . .*
- *A lot of women have told me . . .*
- *Often when this happens . . .*
- *It has been my experience . . .*
- *Research indicates . . .*
- *Sometimes / often we see . . .*
- *I can see that you . . .*

- Guard against shutting down the conversation by telling the victim what to do, criticizing the batterer, or victim-blaming.

Victims of battering are bombarded with messages about how “stupid” and “crazy” they are. They are told repeatedly that no one will believe them or help them, particularly anyone connected to the criminal legal system. A probation agent can help counteract those messages.

- Pose questions about possible alternatives and decisions rather than telling the victim what to do.
 - *What would you like to see happen?*
 - *Here are some options. Let's look at how they might work for you.*
- Avoid statements that carry blame, such as “how did you let that happen” or “why didn't you.”

¹¹ These few examples are presented for illustration; they are not a complete set of factors related to increased danger and markers of lethality. For a more detailed discussion see “Intimate Partner Homicide,” NIJ Journal, Issue 250, 2003, National Institute of Justice, <http://nij.gov/journals/Pages/jr000250.aspx>

- Avoid statements that tell the victim what to do, such as: “you need to” or “you should” or “If I were you.”
 - Use every opportunity, regardless of how seemingly small, to reinforce her strengths.
 - Be alert to inadvertently reinforcing the batterer’s behavior and justifications for the abuse. For example, if she says “I guess I should have shut up” or “I know I provoked him,” make it clear that whatever she may or may not have said or done, the abuse is not her fault or responsibility. A person does not have to earn the right to be free of violence and abuse.
 - At the same time, avoid criticizing or attacking the batterer as a person. Acknowledge her concern for his well-being, if expressed. Emphasize that you are there to help support his opportunities to change the behaviors that have landed him on probation.
- Avoid assumptions that the person before you sees herself as a victim or survivor of battering or domestic violence.

For many women, “victim” is a highly charged and offensive word, even when all indicators of what they have experienced suggests that battering is a reality in their lives and that they have been the victims of crimes. It may clearly be a reality and they may also be at high risk of serious injury or death, or at risk of killing their partner. Women use many strategies to resist and manage the violence in their lives, including fighting back, threatening to expose the batterer to others, or threatening to hurt him emotionally or economically. It is common to hear women say “I stand up for myself” or “I’m no doormat” or “I got my licks in first.”

Encourage dialog . . .

- *Where would you like to start?*
- *How can I be helpful to you?*
- *Please, take your time.*
- *I can see that this is hard for you to talk about.*
- *That must have been frightening.*
- *I can see that you care about . . . are concerned about . . .*
- *What would you like to see happen?*
- *Is there anything you wanted to talk about that we haven’t covered?*

- Listen for how a woman describes herself and follow her lead. If she says outright, “this ‘domestic violence’ form doesn’t apply to me, I’m not a victim,” pay attention.
 - Acknowledge that it is a general form for the type of crime and perhaps it does not apply in her situation.
 - Reinforce again that she is not required to share any information with probation.
 - Explain that there may be some information that you will provide that might be useful, or not, and she is under no obligation to follow up.
- Use open-ended, observational, non-judgmental, and non-blaming questions and statements. Follow her lead.
- Reinforce any statements of concern for the offender. Present the probation agent’s role as one of listening to those concerns and helping the offender succeed on probation “so that we can stay out of your business.”

Concluding the interview

In an atmosphere of connection and engagement, by the conclusion of the interview the probation agent will have obtained much or most of the information needed for a particular purpose (see additional discussion under Settings). Some interviews, such as those related to a presentence investigation, will be lengthy and detailed; others may last no more than a five- or ten-minute phone call to inquire about any concerns a victim might have as supervision proceeds.

- Check for and obtain any essential information that may have been missed.

There are a couple of things that I might have missed . . . let me take a look at the information form and make sure that we've covered everything.

This wrap-up helps clarify any missing or confusing information, provides the victim with an opportunity to address additional details or questions she may have, and minimizes the need for a repeat interview.

- Develop a preliminary safety plan and offer to connect the victim with advocacy if that has not previously occurred.

Have you talked with anyone at Our County Advocates? Would you like to?

Did you figure out what will help you and your children stay safe?

Developing a safety plan is as much or more a matter of dialogue as it is a set of questions on a pamphlet or form. By the conclusion of the interview, many aspects of the plan will have taken shape or whatever existing safety plan is in place will have been reviewed. The probation agent will learn whether or not the victim has access to a working phone, when and where she can be safely contacted, the extent of her support system, strategies for seeking immediate safety when an attack is imminent or occurring, whether her children are able to call for help, and other common elements of a safety plan.

When a community has an active, effective coordinated interagency response, the connection with advocacy and preliminary safety planning will most likely have occurred before the offender reaches probation. Nonetheless, probation has a role in ensuring that whatever safety plan was established earlier—which might have been six or more months ago—remains relevant. Conditions that impact safety planning can and inevitably do change, such as a decision to file for divorce or moving out of a shared residence or a lost job or a child who has suddenly become ill.

Probation agent as information-provider . . .

- Probation conditions and monitoring
- Safety planning
- Advocacy
- Culturally-relevant services
- Health, housing, and economic support

The probation agent will also have gained a sense about the extent to which the victim is connected with community-based advocacy. Some women may have avoided and do not want to contact the identified or primary advocacy organization. They may have had a prior negative experience or be discouraged by language access or lack of culturally-specific advocacy. Rumors about what happens in a community-based advocacy organization are common and often entirely false, such as contacting the domestic abuse program means that you have to go to a shelter or that going to the shelter means that you have to file for divorce. Some women avoid anything labeled domestic violence or abuse because they do not see themselves as victims of abuse. For some women—and possibly those who are most isolated and most at risk—probation may be the primary location of any discussion of and attention to ongoing safety needs.

- Provide links to community and culturally relevant resources

When probation is positioned to know the full range of community resources is available, links to those resources will be more specific to individual needs and circumstances. Again, while this is a core function of community-based advocacy, not every victim of battering will have made or want to make that connection with the identified advocacy organization. Knowing what is available and being able to accurately describe which organization or agency can do what can make the difference between a victim leaving a probation interview with a meaningful connection to advocacy, services, and resources or leaving as disconnected and isolated as when she arrived. Individual circumstances—such as complex safety needs or housing—might also warrant a direct call from the probation agent to a specific advocate or other person who can be of more immediate and ongoing help.

- Conclude with a last question focused on the victim's concerns and needs and a review of next steps.

Is there anything you were hoping we would talk about that we haven't covered.

A victim-centered interview begins and ends with the victim's concerns and needs. This final question opens a path for a victim to raise questions or problems that she may not have thought to bring up at the start of the conversation but that have crystalized as the probation agent has provided information and as she has shared information about her life. Perhaps it is a concern related to safety or second thoughts about what might happen if the abuser sees what she has said written in a report or a question to clarify what will happen if conditions of probation are not met—primarily it is a way to ensure that a victim of battering leaves a probation interview with all questions addressed.

Here is what will happen next . . .

A victim should leave an interview—whether in-person or on the phone or whether an hour long or five minutes—with a clear understanding of what comes next. There should be no mystery or confusion about where information will go and who will see it or

unanswered questions about confidentiality. Any known court dates or subsequent probation calls or deadlines related to the case should be reviewed and written down for the victim.

Settings

Probation agents have contact with victims of battering in different settings, with presentence investigation and ongoing supervision being the most common. The general probation caseload of female offenders is also likely to include many women who have been or are victims of battering. This guide therefore also addresses considerations in interviewing female offenders in ways that take the experience of battering into consideration.

Presentence investigation

The lengthiest and most in-depth interviews with a victim of battering typically occur during the presentence investigation (PSI) stage. By the time a victim of battering sits down with the probation agent who is conducting the presentence investigation, she will have had to recount what happened in the incident crime multiple times. For example, if she was strangled and sexually assaulted, she may have had to tell and relive the experience as many as nine times to (1) responding patrol officers, (2) on-scene investigator, (3) emergency room personnel, (4) Sexual Assault Nurse Examiner (SANE), (5) specialized sexual assault and/or domestic violence response team, which might include one or more investigators and advocates, (6) charging prosecutor, (7) prosecutor's victim/witness specialist, (8) prosecutor assigned to plea negotiation and/or trial, and (9) community-based advocate. This situation is more likely when the interagency response and documentation are poorly coordinated across the different points of intervention.

Many victims of battering will arrive at the presentence interview with considerable reluctance and doubt about the entire criminal legal system process and whether the probation agent will be of any help. Conducting an interview that is victim-centered and trauma-informed provides an opportunity for a victim to regain some measure of control over what is happening. Rather than starting with the court's need for a PSI report, this approach begins and ends the interview by finding out how she is doing and what she needs.

Considerations in the PSI:

- Provide and clarify information about the process. For example:

Ms. Jones, we're here to talk about the 'presentence investigation' for Mr. Jones—I'll explain what that is and answer any questions that you have.

I appreciate your coming here today. I want to make sure that you know that you don't have to talk with me.

You can decide whether or not to answer a question. I will never document that you have refused to answer a question.

Do you have any questions about what has happened with the case up to now?

- Gather available statements, reports, and information about the case prior to the interview. Rather than ask the victim to recount the events yet again, present your understanding of what happened and ask for clarification. For example:

Ms. Jones, I've read all of the police reports and statements. I'm sorry that you had to go through that experience. It must be difficult to talk about. Here's how I understand what happened to you . . .

Is there anything I missed or need to correct?

Is there anything that you would like to add?

Is there anything that you've told me that you are concerned about Mr. Jones hearing?

- Before concluding the interview, schedule a time to call the victim and review the PSI report prior to submitting it to the court. During the call, address any safety issues related to information in the PSI report. For example:

Here is what I'm planning to tell the court and this is what Mr. Jones will see when he gets to court . . .

Is there anything in my report that concerns you? What is that, and why?

I will think about whether I need to include that information in order to make the sentencing recommendation. If I have to include it, we will figure out how to make it as safe as possible for you.

Nothing should be included in the final presentence investigation report that would be a surprise to the victim. She should know what the report will say and exactly what the defendant will see and hear. This step helps identify information that the probation agent may have heard or recorded out of context during the PSI interview. It provides a safety check on the contents of the report. If the probation agent concludes that information she is reluctant or fearful about including must be shared with the court—e.g., threats to kill, new information about the severity of past violence, threats to abduct or harm children—they can strategize together on how and when to submit the report in the safest way possible. This might include involving community-based advocacy that can work with the victim, if that connection has not been made already, and including specific monitoring conditions in the sentencing recommendation.

Ongoing supervision¹²

Probation agencies vary in whether the presentence step is completed by the same agent that will be conducting ongoing supervision of the offender. Ideally, the supervising agent will already have had opportunities to meet and talk with the victim and will have a greater knowledge about the case and the victim's needs and safety considerations than an agent whose first contact is post-sentencing.

Where probation response is organized such that the supervising agent is not the same person who conducted the presentence investigation, conducting a thorough victim interview at the front end of supervision provides a much more complete picture of the threats the offender is likely to pose to the victim. It also provides an avenue to explain and reassure the victim about what will happen during the probationary period and provide information about compliance and resources available to her and her family.

When probation supervision in domestic violence-related cases includes regular monitoring reports and hearings before the court, a victim can expect regular telephone check-in calls from the agent. This might be as often as monthly in the first ninety days and less frequently at a later point if probation conditions are being met and there are no elevated safety concerns. In some circumstances, ongoing contact might be far more frequent, even weekly, if there are heightened concerns about danger and lethality.

Ongoing supervision may also involve home visits for some probationers. Home visits require that the agent be particularly attentive to safety considerations when the victim of battering is present. There can be no expectation or requirement that she will have to vouch for anything that the probationer is saying. Any questions to her must be out of the probationer's sight and hearing.

Female offenders

In a community that has paid attention to minimizing the arrest and prosecution of women who use illegal force in response to battering, a probation caseload should include very few female offenders convicted of domestic violence-specific crimes. Police will be well-prepared to first determine whether one party has used illegal force in self-defense. If self-defense cannot be established, officers will complete a thorough predominant aggressor assessment and prosecutors will place reasonable controls on the person's use of violence without making a victim of

Probationer home visits and victim interviews

- Conducted out of the probationer's sight and hearing
- No requirement or expectation that a victim will vouch for what a probationer says

¹² See *probation Group Reporting: Innovative and Effective Supervision in Domestic Violence Cases*, James E. Henderson and Jane Sadusky, Battered Women's Justice Project, www.bwjp.org.

battering more vulnerable to ongoing abuse.¹³ Consequently, few cases of “victim defendants” would be likely to reach probation when such a response is in place.

When a probationer is a victim of battering who has used violence against her or his abuser, the use of a general batterer’s program is inappropriate. Such cases require specialized programming that is built around recognition and understanding of the context and scope of battering and the nature of resistance and reaction to that violence.¹⁴ Interviewing a victim of battering who is also a defendant for using reactive violence against her abuser requires listening for and attention to situations and behaviors that are associated with an increased risk of re-offense if the battering continues and increased potential severe or lethal violence.¹⁵

- Expressions of feeling increasingly entrapped in the abuse
- Reactions to harm done by the batterer to the children
- Inability to stop excessive drinking or drug use
- Ongoing sexual and/or physical abuse
- Belief that the victim defendant’s abuser is using the courts, child protection, and/or the mental health system as a form of harassment and abuse

Where a community has not paid close attention to keeping battered women out of the criminal legal system process or providing a response that is appropriate to a victim’s use of illegal force, it is likely that some women arrested for assaults may have acted in self-defense. A high proportion of the general female probation caseload includes women who are or have been physically and/or sexually abused in the lifetime. Estimates range from 57% to 85%, with most of the abuse occurring at the hands of current or former male partners. Many victims of battering report being coerced to commit crimes such as using or selling illegal drugs, writing fraudulent checks, property theft, welfare fraud, and identity theft. Some report being coerced to “take the rap” for crimes their partners have committed. Interviews with female offenders therefore require attention to the likely possibility that battering has been or is part of their life experience.¹⁶

APPA Guidelines recommend screening women offenders for domestic violence and providing support and assistance for identified victims. Appendix B includes an example of one approach to screening. Many victims of battering will not volunteer any information and women who are

¹³ “Predominant aggressor” is the party who by his/her actions in the incident and through known history and actions has caused the most physical harm, fear, and intimidation against the other. It does not mean the party who uses physical violence first or who calls 911 first. Predominant aggressor factors include: offensive and defensive injuries, seriousness of injuries, threats, parties’ heights and weights, which party has the potential to seriously injure the other, prior history of domestic violence, and witness statements. See *Training Memo-Interventions with Victims of Battering as Suspects or Defendants*, a supplement to the Praxis Blueprint for Safety (hereinafter Praxis Training Memo). Download at http://www.praxisinternational.org/blueprint_materials.aspx.

¹⁴ For an example of such programming, see Mary E. Asmus, *At a Crossroads: Developing Duluth’s Prosecution Response to Battered Women Who Fight Back*, 2007. Download at <http://www.bwjp.org/articles/article-list.aspx?id=10>. Related resources include those available through the National Clearinghouse for the Defense of Battered Women, <http://www.ncdbw.org/publications.htm>.

¹⁵ Praxis Training Memo.

¹⁶ APPA *Guidelines for Practice*, pp. 172-174. Guideline 33: “Women offenders on community supervision are screened for a history of or current domestic violence and if abuse is present, they are provided the same supportive services as are non-offender victims.”

on probation may be even more reluctant, whether fearing repercussions from the batterer, mistrust of the criminal legal system, or disliking the “victim” label. Asking questions in as universal and nonjudgmental way as possible —“I routinely ask everyone”—may encourage some women to speak about their experiences, although yes/no questions may limit the discussion and provide little information about the frequency, severity, and impact of the abuse. To use such a screening tool effectively requires being prepared to follow up: “please tell me more . . . how often does that happen/did that happen . . . what is an example?” Others may decline to respond to such questions when asked directly, but will share more about their lives as trust and credibility with the probation agent develops.

The principles of motivational interviewing can be particularly helpful in working with women in the general probation caseload, given the likelihood that battering and other violence by an intimate partner has been part of their lives. The principles include: (1) expressing empathy, (2) supporting self-efficacy and capability to change, (3) rolling with resistance rather confronting, and (4) developing discrepancy between where someone is and where they want to go in life. Motivational Interviewing is consistent with the victim-centered, trauma-informed, and strengths-based approach presented in this guide. The kinds of questions utilized open up pathways for women on probation to bring forward experiences and concerns about their safety and their strengths. For example:

How are things going?

I appreciate . . .

Mind if we explore . . . further?

In understand you’ve been struggling with . . . It’s challenging to . . .

What have you tried? How did that work?

What’s worked well? Not so well?

On a scale of 1 to 10, where are you at with . . . What would get you to 10?

Many of the approaches emphasized throughout this guide also apply to interviews with women in the general probation caseload who have experienced battering and other violence by an intimate partner in their lives, e.g., conveying an awareness of the reality of violence in women’s lives, being alert to indicators of increased risk and danger, being attentive to safety planning, and providing links to community advocacy and resources. Above all, women on probation will benefit from an emphasis on open-ended, observational, and nonjudgmental questions that can help counteract the longstanding if not lifetime constraints on the ability to speak freely that many have experienced.

Appendix

- A. Domestic Violence Information Form – Probation Presentence Investigation
- B. Screening for Domestic Violence – One Approach

Resources

- Battered Women’s Justice Project
BWJP provides probation-related webinars, publications, and training at <http://www.bwjp.org/probation.aspx>. BWJP is the national resource center on criminal and civil justice responses to intimate partner violence (IPV), and provides training and technical assistance on development of coordinated and effective multidisciplinary approaches to these cases. BWJP also provides technical assistance on coordinating civilian and military system responses to IPV involving military service personnel, including the assessment of co-occurrence of IPV and combat-related post-traumatic stress disorder. For more information, see <http://www.bwjp.org>.
- American Probation and Parole Association
The APPA’s detailed practitioner’s guide, *Community Corrections Response to Domestic Violence: Guidelines for Practice*, is available at http://www.appa-net.org/eweb/dynamicpage.aspx?webcode=VC_FreePubsReports. The guide presents “a proactive community supervision approach” to intervention in domestic violence cases.
- Praxis International
The Blueprint for Safety is an integrated, collective policy that addresses intervention in domestic cases across all points of the criminal legal system, including probation. Download Blueprint policy and protocol templates and training memos at http://www.praxisinternational.org/blueprint_materials.aspx.

This document was supported by Grant No. 2007-TA-AX-K015 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this document are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

APPENDIX A

[Reviewed with victim and read out loud; translated and interpreted when necessary]

DOMESTIC VIOLENCE INFORMATION FORM Probation Presentence Investigation

Defendant _____ Victim _____

Victim's #: H _____ W _____ C _____

Victim's E-mail _____ Best time to call _____

The judges of Our County want to ensure that all individuals victimized by domestic violence have the opportunity to meet with a probation officer soon after a conviction is entered. The Court is interested in providing you with information to increase your safety, as well as obtaining information that will help us make recommendations. However, please be aware that probation officers must share information with the Court. ***You are not required to share information with probation, especially if you believe that such information may endanger you.*** Any information you share today could and will be documented in a presentence report. Probation, attorney(s) in the case, judges, and batterer intervention agencies can see this report. ***The defendant is also entitled to see the presentence report.*** If you have concerns that you want to keep confidential, we encourage you to speak with **Our County Advocates** at: **(111) 222-3333**. Any information you furnish Our County Advocates is held in strict confidence and will not be shared with the Court or anyone outside that agency without your permission.

The officer's meeting with you today will cover:

1. Your rights under the law
2. What the Court can and cannot do
3. Probation's role
4. Safety planning
5. Restitution assessment
6. History of defendant's abuse
7. Lethality/risk assessment of defendant
8. No contact order assessment
9. Our County Advocates' services and other community resources
10. Your recommendations
11. Any other issues you care to discuss

The judges review cases of domestic violence throughout the term of probation to make sure the defendant is complying. A probation officer will attempt to contact you before each court review hearing to check on your safety and see if you have any concerns the court should address. You may call the probation officer at: (111) 789-1011 to share your concerns. An Our County Advocate is also often in court and can tell you the outcome of the court review.

If you feel you are in danger, you should call the police at 911.

APPENDIX B

Screening for Domestic Violence – One Approach

Asking questions in a universal—“I routinely ask everyone”—and nonjudgmental way may encourage many women to speak about their experiences. Using yes/no questions can limit information about the frequency, severity, and impact of the abuse, however. Be prepared to follow up: “please tell me more . . . how often does/did that happen . . . what was that like for you . . . what is an example?”

“Violence is common in many women’s lives, and I ask about it routinely. Does your partner...”

- Constantly criticize you and your abilities as a spouse or partner, parent, or employee?
- Humiliate or embarrass you in front of other people?
- Behave in an overprotective manner or become extremely jealous?
- Threaten to hurt you, your children, pets, family members, friends or himself?
- Get angry suddenly or lose his temper?
- Destroy personal property or throw things around?
- Deny you access to family assets like bank accounts, credit cards, or the car?
- Control all finances and force you to account for what you spend?
- Withhold medication or deny you access to health care?
- Threaten to reveal your HIV status?
- Force you to work in jobs not of your choosing?
- Use intimidation or manipulation to control you or your children?
- Hit, punch, slap, kick, shove, strangle or bite you?
- Deny you access to your immigration documents?
- Prevent you from going where you want, when you want, and with whomever you want?
- Make you have sex when you don’t want to?
- Make you do things sexually that you don’t want to do?
- Control your expression of gender identity or sexual orientation?
- Threaten to “out” you if you are lesbian, gay, bisexual, transgender, or transsexual?”

Community Corrections Response to Domestic Violence: Guidelines for Practice, May 2009, American Probation and Parole Association, PP. 173-174. Download at <http://www.appa-net.org/eweb/docs/APPA/pubs/CCRDV.pdf>

Developed by the New York State Coalition Against Domestic Violence and also published in *The Probation Response to Supervision of Women Who Are Abused*, Sherry Frohman and Connie Neal, commissioned by Violence Against Women Online Resources, 2005. Download at <http://www.mincava.umn.edu/documents/commissioned/probationanddv/probationanddv.html#nyscadv2004a>