

**La Crosse County
Domestic Violence Safety and Accountability Audit –
Phase 2: Post-arrest through prosecution**

Findings and Recommendations

July 2007

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Acknowledgments

The leadership, vision, and participation of many agencies and individuals in La Crosse County contributed to the Domestic Violence Safety and Accountability Audit.

The support and cooperation of key public safety and community-based advocacy agencies made this work possible. They contributed staff time to the audit team and arranged for interviews, observations, and access to documents.

Sheriff Michael Weissenberger, La Crosse County Sheriff's Department
Sheriff Steve Helgeson, La Crosse County Sheriff's Department
Chief Edward Kondracki, La Crosse Police Department
Deb Hansen, New Horizons Shelter and Women's Center
Diane Holmay, Vice President, Nursing Division and
Women and Children's Center, Franciscan Skemp Healthcare
Brian Theiler, Gundersen Lutheran Medical Center
Jane Klekamp, La Crosse County Justice Sanctions Program
Pamela Radtke, La Crosse Co. Clerk of Court
Scott Horne, La Crosse Co. District Attorney's Office
Roger LeGrand, La Crosse Co. Family Court Commissioner's Office

The Safety Audit Team contributed countless hours of time and expertise in making sense of what we found.

Rita Carranza, Victim Services Coordinator, DART/La Crosse Police Department
Loralee Clark, Deputy District Attorney, La Crosse County District Attorney's Office
Andrew Dittman, Patrol Deputy, La Crosse County Sheriff's Department
Deb Hansen, Executive Director/Liz Beard, Housing Advocate New Horizons Shelter & Women's Center
Tonya DeLap, Jailer, La Crosse County Sheriff's Department
Maureen Funk, Coordinator, Gundersen Lutheran Domestic Abuse/Sexual Assault Program
Jan Morgan, Social Worker, La Crosse County Justice Sanctions Program
Officer Avrie Schott, La Crosse Police Department
Nancy Scott, Coordinator, Safe Path, Franciscan Skemp Healthcare
Donna Walters, Victim/Witness Coordinator, La Crosse County District Attorney's Office
Safety Audit Coordinator: Dar Jaeger
Safety Audit Consultants: Jane Sadusky, Praxis International, and Rhonda Martinson, Battered Women's Justice Project

The following individuals provided invaluable assistance in sharing information and insights about domestic violence case processing, gathering text and statistical information, and arranging for interviews, observations, and training room availability:

La Crosse Co. Circuit Court Judge Elliott Levine, formerly State Public Defender
Captain Doris Daggett, La Crosse County Jail/Sheriff's Department
Karen Frey, La Crosse County District Attorney's Office
Captain Michael Horstman, La Crosse County Sheriff's Department
Tera Peters, La Crosse County District Attorney's Office
Lori Portner, Crime Victims Project/ Domestic Violence Intervention Project

Thank you to the focus group participants who generously shared their experiences with battering and community response.

This project was supported by Grant No. 2003 WEBX 0041, awarded by the Office on Violence Against Women, U.S. Department of Justice. Points of view in this product are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Introduction

How do post-arrest and prosecution responses to domestic violence cases in La Crosse County enhance or diminish victim safety and batterer accountability?

In October 2005 the La Crosse County Domestic Violence Intervention Project¹ released the findings and recommendations from a Safety and Accountability Audit that examined criminal case processing from 911 to arrest. Building off its long history of statewide leadership in changing community response to domestic violence, DVIP continued its exploration via a second phase Safety Audit of release from custody through prosecution.

It cannot be overemphasized that it is a brave act for systems and communities to examine their own work and then share the results with others. We all want to believe that our good intentions and commitment make all victims safer and all offenders more accountable. Peoples' lives are complex, however, as are the elements of risk and safety for any victim of battering. Equally complex institutions, such as the criminal legal system, are often a poor fit for meeting what individual victims of battering need to stay safe. Building safe communities, however, requires ongoing attention to making a better fit between the institutional response and individual needs. La Crosse has again been willing to engage in a process of community analysis and problem-solving that not only identifies gaps in safety, but points the way to closing those gaps.

Methodology

The Domestic Violence Safety and Accountability Audit, developed by Praxis International, Inc., uses a local interdisciplinary team to look at how work routines and ways of doing business strengthen or impede safety for victims of battering.² By asking *how* something comes about, rather than looking at the individual in the job, the process reveals systemic problems and produce recommendations for longer-lasting change. The Safety Audit is designed to leave communities with new skills and perspectives that can be applied in an ongoing review of its coordinated community response.

The Safety Audit is built on a foundation of understanding: 1) institutional case processing, or how a victim of battering becomes “a case” of domestic violence; 2) how response to that case is organized and coordinated within and across interveners; and, 3) the complexity of risk and safety for each victim of battering. To learn about victims' experiences and institutional responses, the audit team conducts interviews, including victim/survivor focus groups; observes interveners in their real-time-and-place work settings; and, reads and analyzes forms, reports, case files, and other documents that organize case processing. Over a series of debriefing

¹ Acronyms used throughout this report: DVIP (Domestic Violence Intervention Project); CCR (coordinated community response); and, DART (Domestic Abuse Reduction Team).

² Praxis International, Inc., (218) 525-0487; www.praxisinternational.org. Over forty communities nationwide have used the Safety and Accountability Audit to explore criminal and civil legal system response to domestic violence, the intersection of domestic violence and child abuse, and the role of supervised visitation and exchange in post-separation violence.

sessions, the team makes sense of what it has learned in order to articulate problem statements, support them with evidence, and frame the kinds of changes that need to occur.

Since the Safety Audit focuses on institutional processes rather than individual workers, there are no systematic sampling procedures. Instead, interviews, observations, and text analysis sample the work process at different points to ensure a sufficient range of experiences. Interviews and observations are conducted with practitioners who are skilled and well-versed in their jobs. They are co-investigators with the audit team. Their knowledge of the institutional response in everyday practice and their first-hand experience with the people whose cases are being processed supply many of the critical observations and insights of the audit.

Safety Audit data collection and analysis pay attention to eight primary methods that institutions use in standardizing actions across disciplines, agencies, levels of government, and job function. These “audit trails” help point the way to problems and solutions.

1. Rules and Regulations: any directive that practitioners are required to follow, such as policies, laws, memorandum of understanding, and insurance regulations.
2. Administrative Practices: any case management procedure, protocols, forms, documentary practices, intake processes, screening tools.
3. Resources: practitioner case load, technology, staffing levels, availability of support services, and resources available to those whose cases are being processed.
4. Concepts and Theories: language, categories, theories, assumptions, philosophical frameworks.
5. Linkages: links to previous, subsequent, and parallel interveners.
6. Mission, Purpose, and Function: mission of the *overall process*, such as criminal law, or child protection; purpose of a *specific process*, such as setting bail or establishing service plans; and, function of a worker in a *specific context*, such as the judge or a prosecutor in a bail hearing.
7. Accountability: each of the ways that processes and practitioners are organized to a) hold abusers accountable for their abuse; b) be accountable to victims; and, c) be accountable to other intervening practitioners.
8. Education and Training: professional, academic, in-service, informal and formal.

In a Safety Audit, our constant focal point is the *gap* between what people experience and need and what institutions provide. At the center of our interviews, observations, and case file analysis is the effort to see the gap from a victim’s position and to see how it is produced by case management practices. In locating how a problem is produced by institutional practices, we simultaneously discover how to solve it. Recommendations then link directly to the creation of new standardizing practices, such as new rules, policies, procedures, forms, and training.

Audit question, scope, and data collection

The La Crosse County Safety Audit – Phase 2 explored this question:

How do post-arrest and prosecution responses to domestic violence cases in La Crosse County enhance or diminish victim safety and batterer accountability?

This question reflected the DVIP's intention to continue the examination of criminal legal case processing. Information gathered in the first Safety Audit, along with information from focus groups and the team's expertise, suggested several lines of inquiry, including pretrial release conditions, victim visibility and voice in post-arrest actions, and charging decisions.

The audit team completed a two-day training and began its data collection on July 20-21, 2006. Between then and December 2006, team members conducted interviews and observations, analyzed prosecution case files, and met for multiple debriefing sessions. The team's findings are based on information gathered during the following activities:

- ✓ 2 Community focus groups with a total of 7 participants
- ✓ 46 Individual interviews, including police/patrol officers, jailers, district attorneys, public defenders, victim/witness coordinators, community advocates, clerks of court, district attorney's office support staff, Justice Sanctions bond evaluators and case managers, and supervisors of related agencies/departments
- ✓ 87 Observations, including La Crosse County Jail Intake/Booking, 5 circuit court judges and their respective courtrooms and hearings, Justice Sanctions' assessment process for pre-trial release
- ✓ Text analysis of over 75 prosecution files, law enforcement domestic violence policies and protocols, Justice Sanctions forms and 10 case files, case processing forms and victim information packets from the District Attorney's office, Jail Intake/Booking and Release forms, bond sheets used by the courts and jail, and New Horizons' forms related to victim notification. A detailed analysis was completed of 10 Justice Sanctions' files and 34 prosecution files

Findings and Recommendations

Each team member had several opportunities to participate in framing the findings and to review and comment on this report. Gap statements have been rewritten, clarified, added, and set aside in this collective effort. The goal was to produce an account of gaps and changes that the team agreed on, while making note of questions that required further inquiry or fell outside of the immediate scope of the study.

This report sums up the Safety Audit and identifies gaps to address in the ongoing intervention in domestic violence in La Crosse County. It uses quotes and excerpts from focus groups, individual interviews, Justice Sanctions and prosecution case files, policies, and team members' observations to support its findings. Each gap is presented in a way that an ad hoc work group or implementation committee could initiate the discussion and craft solutions for closing the gap.

Each statement includes suggestions for how to close the gap, highlighting the type of changes that may need to occur. The report also identifies who might be involved in that process, with an emphasis on contributions by victims of battering and the practitioners most directly responsible for safety and intervention.

Recognizing a strong foundation

A Safety and Accountability Audit is designed to identify practices that impede safety and accountability. Its focus is on discovering and articulating problems. Its effectiveness, however, requires a strong foundation. This is reflected in the La Crosse community's longstanding commitment to figure out how things are working and examine how its response to battering and other forms of domestic violence can be strengthened.

La Crosse County's strong foundation of coordinated community response was visible throughout this Safety Audit. Nine different agencies contributed personnel and staff time and assisted in setting up interviews, providing time for observations, and sharing reports and case files. There is a network of working relationships across multiple interveners and openness to innovation within the criminal legal system and beyond.

The community has many resources for victim advocacy, including a comprehensive domestic abuse services agency and a strong advocacy presence in both hospitals. Victim support is available from initial police response through prosecution. There is an effort to make telephone contact with every victim after an incident of violence, both to provide information on an offender's release from jail and to provide a connection with prosecution-based victim services. A specialized, multidisciplinary response team has been in place for several years as part of the response to the highest risk cases.

Efforts are made to practice vertical prosecution in domestic violence cases, providing consistent expertise and familiarity for victims throughout the duration of the case via the same prosecutor. Dedicated prosecutors handle most domestic violence cases and contribute a better understanding of repeat domestic violence offenders, including criminal history, patterns of battering, and patterns of violating conditions of pretrial release, probation, or Justice Sanctions.

Individuals with great compassion and concern for victim safety and well-being characterize the coordinated community response. For example, focus group participants cited the following kinds of actions that made a difference for individual victims.

- [What makes an 'excellent officer'?] *non-judgmental...compassionate...understanding...takes time to investigate*
- *The [prosecutor] looked me in the eye and heard me...*

- [DART advocate] *went everywhere with me; if I wasn't at a hearing, she was...*
- [The judge] *wasn't light on him; kept denying his requests to continue...*
- *Me, my advocate, and the DA talked together...others are quick to take plea deals and don't care about the impact on the victim. They should talk with the victim and see what she wants to do.*

Discovering gaps

A Safety Audit looks closely at how work is organized and coordinated for practitioners in their response to domestic violence. It is primarily concerned with identifying and analyzing gaps in safety for victims of battering. This Safety Audit discovered the following gaps related to post-arrest response to domestic violence cases in La Crosse County.

1. Pretrial release conditions do not consistently account for potential risk to victims of battering.
2. Aspects of courthouse and courtroom organization, environment, and procedures diminish victim safety and offender accountability.
3. Victims' voices and visibility are inconsistently incorporated into prosecution and Justice Sanctions responses.
4. Linkages between some key intervening agencies and/or aspects of case processing could be more fully developed, maintained, and documented in ways that best support victim safety and offender accountability.
5. The prosecution and case disposition process, and in particular the response to repeat offenders, can diminish batterer oversight and accountability.

IMPORTANT: At points throughout this report we use excerpts from “redacted” case files and other records to illustrate findings. That means that dates, individual names, and addresses have been changed or removed. Where a name has been changed, any resemblance to a resident of La Crosse County is coincidental.

Gap 1: Pretrial release conditions do not consistently account for potential risk to victims of battering.

How is it a problem? For which victims of battering?

“The question of pretrial release conditions in domestic violence cases is one of balance, balance between constitutional rights of the accused and protections of victims of crime, between safety and accountability, between ensuring appearance at trial and protecting others from harm, between a consistent response and the unique aspects of each case, each person, and sometimes the balance between space in the jail and the goal of safety.”³ General standards and practices regarding pretrial release have historically had little to say about how such conditions should work in domestic violence cases. Pretrial release conditions provide an early point of intervention and the potential to restrict and monitor battering behavior pending resolution of a criminal case. They can leave victims of battering more vulnerable, however, particularly when set without a clear look at potential danger, lack of regard for the impact of different conditions on a victim’s safety and well-being, and non-existent or limited communication about when, how, and under what circumstances a suspect will be released from custody and monitored as the case proceeds.

What contributes to the gap?

There is no formal pretrial release assessment being conducted by any one person, department or agency that fully accounts for the dangerousness of an offender or the nature of battering as a pattern crime. The prosecutor does attempt to address risk in his/her recommendations for pretrial release, drawing on the facts of the crime, the offender’s criminal history (as included in the police report and in CCAP, the local database of criminal histories), prior victimization, and drug or alcohol abuse. In our observations we found that the district attorney’s office makes recommendations to the court for cash bonds when an offender’s behavior reflects repeat battering, when there is significant injury to the victim, or when the offender has a documented history of violating court conditions. The Audit process did not reveal any formal parameters used by prosecution to determine recommendations for pretrial release conditions.

Some offenders are referred by the court to Justice Sanctions⁴ to determine their appropriateness for release and to establish conditions of release based on a risk and needs assessment. Justice Sanctions utilizes the LSI-R, the Level of Service Inventory-Revised (Andrews and Bonta) as a tool to assess risk and need (pre- and post-sentence), but the tool was not designed with battering as a central factor in determining risk. The interview guide that is used to score an offender on levels of risk and supervision includes a category related to family/marital. However, it addresses intimate relationships in general: i.e., “Do you have frequent arguments...have you been

³ Jane M. Sadusky, *Pretrial Release Conditions in Domestic Violence Cases: Issues and Context*, Battered Women’s Justice Project, 2006.

⁴ Justice Sanctions is a county agency that provides evaluation and supervision of primarily adult offenders on pre-trial release supervision and those already sentenced. It monitors offenders who have been charged and/or convicted of all types of misdemeanor and felony charges. It offers programs such as day reporting, electronic monitoring and drug/alcohol testing.

Gap1: Pretrial release conditions

contemplating separation or divorce...are you experiencing any harassment from your ex-partner...does your partner give you any physical, psychological, and/or sexual abuse?” Under the criminal history section of the interview guide, one question asks: “Do you have an official record of assault or violence?” Accounting for battering, then, becomes very individual and reliant on individual interviewing skill and knowledge, rather than a systematic process across the agency. The LSI also relies exclusively on information provided by the offender. No other assessment tool or process is in place for assessing risk. Thus, excluding the factors that a prosecutor considers in making pretrial release recommendations, domestic abuse offenders on pretrial release are not formally being evaluated for battering issues and dangerousness to the victim. Additionally, in our review of ten Justice Sanctions’ files, four did not have a copy or a completed copy of the LSI present in the file.

We found that the majority of offenders with domestic violence charges are not referred to Justice Sanctions prior to release or to establish pretrial release conditions. Only 2 of the 34 cases that we reviewed went to Justice Sanctions for monitoring as a condition of pretrial release. In most cases then there is no opportunity for any formal assessment of risk or need and the court has limited information about the offender’s criminal history, history of battering, substance abuse and mental health issues. By default, the responsibility for whatever level of dangerousness assessment occurs prior to release in most cases lies with the prosecutor, who does not interview the offender and typically does not have an opportunity to speak with the victim.⁵ When a referral is made to Justice Sanctions they do not routinely have contact with the apparent victim in the incident prior to making pretrial release recommendations, or if the offender is already on pretrial release supervision under another case. However, if an offender is sentenced and on Justice Sanctions’ supervision with a no-contact condition, they do attempt to make contact with the victim.

The use of Justice Sanctions for assessment and supervision of pretrial release conditions is ambiguous. It is unclear how it is determined who gets referred to Justice Sanctions and why. The Audit Team found:

- Some offenders who appear at intake hearings or bond reviews are ordered to report to Justice Sanctions upon release for supervision and determination of release/supervision conditions. However, other offenders are ordered to participate in a specific program offered by Justice Sanctions prior to any formal assessment being completed. Though referrals are made by the court, they can also be recommended by a prosecutor or defense attorney. Referrals are made at initial appearances, bond reviews, and as conditions of a sentence or probation violation.
- In some cases, the court orders Justice Sanctions to make recommendations to the court prior to the release of an offender and in others the offender is released without any Justice Sanctions involvement, assessment or recommendations to the court. It is unclear how that decision is reached.

⁵ Justice Sanctions has one staff member who utilizes the Spousal Assault Risk Assessment (SARA). She incorporates some of its questions and aspects as she conducts an LSI interview with an offender, but only she has the individual background to do this. Additionally, the caseload she supervises is comprised of sentenced offenders.

Gap1: Pretrial release conditions

- Justice Sanctions also routinely assesses inmates of the La Crosse County jail for appropriateness of release and makes recommendations to the court for pretrial release conditions without an order by the court.

Also consistent across the Audit Team's review of the pretrial process is the use of signature bonds as a condition of pretrial release. Judges ask both the prosecution and defense what their recommendations are in relation to bond. However, there does not appear to be a formal process in place that assists a judge in evaluating risk related to bond amounts and types, particularly when an offender has violated pretrial release conditions or has failed to appear in the past.

A signature bond is most often imposed, at times even when a prosecutor recommends cash bonds. Numerous prosecution and Justice Sanctions files reflected the prosecution's recommendation for a cash bond, but the recommendation was not always followed by the judge.

Examples:

- Case 2A-B: Offender was granted a signature bond on two occasions (one after violating prior pre-release conditions). Prosecutor recommended cash in both appearances.
- Case JS-02: Prosecutor recommended cash, but offender received a signature bond.
- Case JS-05: Prosecutor opposed bond reduction, but it was granted.

Of the 37 initial appearances in 34 cases involving 25 offenders, 15 offenders received a cash bond with 4 that were later converted to a signature bond. 22 offenders received signature bonds upon release from jail. The charges in these cases involved 67 misdemeanors and 30 felonies. Many of the cases, as illustrated later in this discussion, involved a pattern of arrest and release with no consistent response to bond violations. Typically, but not always, there is an increase in the amount of the bond each time an offender violates pretrial release conditions.

The Audit Team also learned that when an offender is released from custody, no one person is responsible for explaining the conditions of release to the offender or the victim. When an offender is released from custody, the jail staff notifies New Horizons staff, who are responsible for contacting the victim and notifying her of the release. This process raises concerns related to the timeliness of the notification and the subsequent safety of the victim, particularly when New Horizons staff are unable to reach her. [See the discussion in Gap 3 related to victim voice and visibility.]

The following cases illustrate escalating violence, significant injury, repeat violations of pretrial release conditions, and a pattern of bond conditions that clearly do not deter the offender and raise concern for victim safety. There is a pattern of repeated arrest and release with no apparent consistency in bond types, amounts, and conditions of release.

(Cases 2A-B):

4/12/06: **Battery charges:** Victim was dragged out of bed by her hair, head-butted three

Gap1: Pretrial release conditions

- times, and her arms were twisted.
Injuries: Abrasion to her forehead, red marks to both arms
Pretrial release conditions: \$1500 signature bond, no contact with victim, no alcohol, Justice Sanctions (for determination of programming for pretrial release supervision) and curfew
Prosecution recommendation: “cash please”
Law enforcement recommendation in police report: requests that the Court not lift the “no contact” condition due to escalating violence and threats
- 4/23/06: **Request to Lift No Contact:** submitted by victim and lifted by Court - The victim states in her request, “...it was verbal...not hurt” and also cites financial reasons.
- 5/07/06: **New charges:** Battery, Disorderly Conduct, Criminal Damage to Property, Bail Jumping; two counts, same victim. Victim is not allowed to sleep, and her head print is left in the cupboard door where it had been slammed by offender. Offender threatens to cut his neck and tell police that she did it. He throws a knife at her indicating that her fingerprints will be on it. On the way to the jail, the offender threatens to kill himself.
Injuries to victim: bruises to eyes and head, cracked rib, cigarette burn to leg
- 5/11/06: **Pretrial Release Conditions:** \$2500 signature bond, no contact with victim or address
Prosecution recommendations: Prosecutor requests “cash bond, please; Justice Sanctions inadequate; abused victim three times since May; guns and retaliation in reporting.”
- 5/20/06: **Request to Lift No Contact:** submitted by victim and lifted by Court- the victim states in her request, “...no effects...no bruising...I exaggerated...”
- 6/12/06: **Violation of bond conditions:** contact with victim and use of alcohol
- 6/14/06: **New charges:** Battery, Disorderly Conduct, Intimidation of a Victim, Bail Jumping; two counts. Offender slapped and pushed victim into a wall after victim called police to report offender’s use of alcohol.
Injuries to victim: none noted
Pretrial release conditions: \$1000 cash
- Offender Criminal History:** Domestic Disorderly Conduct (1988), Transporting Firearms (1994), Disorderly Conduct (2004), Bail Jumping (2005), Bail Jumping (2005)
Dangerousness: weapons in home, brandishing weapon in offense, threats to self and victim, history of domestic violence, use of alcohol, repeated violations of pretrial release, escalating violence, police and prosecution voice concern, significant injury to victim⁶

(Cases 10A,B,C,D):

- 09/11/05: **Charges:** Open Intoxicant, OAR, other traffic
Pretrial release conditions: \$250 signature bond
- 10/09/05: **New charges:** Substantial Battery, Disorderly Conduct, Bail Jumping; two

⁶Factors related to dangerousness referenced in all cases in this report are drawn from the following resources: *Danger Assessment*; Jacquelyn C. Campbell, 1985, 1988; *Risk Assessment for Intimate Partner Violence*, Jacquelyn; Campbell, Phyllis W. Sharps and Nancy Glass, 2000; and *Lethality Assessment Tools: A Critical Analysis*, Neil Websdale, 2000.

Gap1: Pretrial release conditions

counts. Offender strangled victim with both hands and bit her in the face, with infant present. Victim waited until offender left to contact police.

Injuries to victim: unable to breathe, trouble swallowing
Officer notes bite marks to face and marks to neck. Medical attention received by victim.

- 10/13/05: **Criminal complaint:** False Imprisonment, Felony Aggravated Battery, Misdemeanor Battery, Bail Jumping; two counts
Pretrial release conditions: \$2500 cash bond
Prosecution recommendations: cash bond
- 10/16/05: **Request to Lift No Contact:** Prosecution objects due to “very serious domestic, not the first domestic, strangulation, young child present, victim needed medical attention.” Request is denied.
- 11/17/05: **Request to Lift No Contact:** Prosecution objects and request is denied. victim states in her request, “...never happened before...he helps me with money...I don’t fear him...”
Bond review: bond reduced to \$1000 cash; Justice Sanctions ordered (for determination of programming for pretrial release supervision)
- 12/18/05: **Request to Lift No Contact:** granted - Victim states in her request, “...he’s a good dad...would like to go to counseling...”
- 12/21/05: **New Charges:** Disorderly Conduct, Battery, Criminal Damage to Property; 2nd victim. Offender threw bottle at sister, slapped her in the face, and dislodged the phone. Victim’s mother in another state called 911.
- 12/26/05: **Pretrial release conditions:** \$1500 cash bond, no contact with victim
- 02/09/06: **New charges:** Disorderly Conduct, False Imprisonment, Bail Jumping; two counts, same victim as in first case. The offender and victim had an argument on the way home from offender’s reporting at Justice Sanctions. Offender pulled the phone out of the wall, punched a hole in the wall, grabbed the victim by the throat and strangled her. He threw the victim to the floor and prevented her from leaving. Infant present during the incident.
- 2/26/06: **Pretrial release conditions:** \$2500 signature bond, no contact with victim
- 4/04/06: **Request to Lift No Contact:** modified
Offender criminal history: Burglary (2002), Possession of Marijuana, Hit and Run (2002)
Dangerousness: multiple victims, history of domestic violence, child present, strangulation on two occasions, significant injury, use of alcohol/drugs, on probation at time of offenses, repeat violations of pretrial release conditions and Justice Sanctions’ supervision
- (Case 4-SM):
- 5/04/06: **Charges:** Disorderly Conduct While Armed; two counts, Criminal Damage to Property, Intimidation of a Victim. Offender pinned the victim to the ground where children were sleeping, grabbed a baseball bat and threatened the victim, grabbed a phone from a child present and threw it against the wall, brandished a knife and threatened to kill himself with child standing behind him.
Pretrial release conditions: \$1000 signature bond, no contact with victim, children or address, no alcohol or bars, curfew 10pm-6am

Gap1: Pretrial release conditions

- 5/06/06: **Request to Lift No Contact:** no objection; no contact lifted for children - Victim states in her request: "...good dad...never hurt the kids..."
- 5/07/06: **Request to Lift No Contact:** no objection; no contact lifted for victim - Victim states in her request, "...not threat to me...all due to alcohol..."
- Offender Criminal History:** Disorderly Conduct; two counts, Theft; 2 counts (dates unknown)
Dangerousness: history of domestic violence, children present, use of alcohol, brandished a knife and threatened to kill self, threats to victim

(Case 6M):

- 06/04/06: **Charges:** Felony False Imprisonment, Felony Second Degree Reckless Endangerment (Child), Disorderly Conduct, Battery, Criminal Damage to Property. Victim and offender had an argument whereby the offender prevented the victim from leaving. The victim took her infant and was fleeing in her vehicle. The offender threw a flower pot at the vehicle, breaking a window in the vehicle.
Injuries to victim: Officers note healing bite mark to victim's arm.
- 06/06/06: **Pretrial release conditions:** \$1500 cash bond
- 06/09/06: **Request to lift no contact:** prosecution objects; request denied - Victim states in her request "...exaggerated the incident...no prior domestics...together 7 years..."
- 06/25/06: **Request to lift no contact:** prosecution objects; request denied - Victim states in her request "...need help with childcare...don't want him to be charged..." and she indicates she needs childcare from him so that she could continue to work.
- 07/27/06: **Request to lift no contact:** no objection; request is modified - Victim states in her request, "...need help with childcare...going to school and working..."(referring to the offender).
- 07/28/06: **Bond review:** bond modified to \$1500 signature bond
Offender criminal history: Bail jumping; two counts, Graffiti, Theft (Dates Unknown)
Dangerousness: six year history of abuse with violence documented by family letters, child present and endangered, history of strangulation, history of significant injury to victim, previous threats to kill

(Case 9-SM):

- 06/04/06: **Charges:** Criminal Damage to Property, Disorderly Conduct; two counts, Bail Jumping; two counts. Victim and offender were breaking up. When offender returned home, he tore a door off its hinges, put holes in a wall, and was destroying property. Three neighbors subdued the offender until police arrived. Victim was in her vehicle attempting to leave, and she was not appropriately dressed for weather conditions.
- 06/04/06: **Pretrial release conditions:** no contact with victim, neighbors, no alcohol \$1000 signature bond
- Offender criminal history:** Violation of Domestic Abuse Restraining Injunction; two counts, Bail Jumping; two counts, Felony Theft, Misdemeanor Theft, OWI (Dates unknown)

Gap1: Pretrial release conditions

Dangerousness: prior history of domestic violence, history of violating restraining orders, use of alcohol, relationship ending, public assault, history of violating pretrial release conditions, on bond at time of offense, children present, victim expressed fear of offender and retaliation

(Cases 1A-B):

03/27/06: **Charges:** Disorderly Conduct by Phone; two counts. The offender was calling the victim, his ex-partner, 30-40 times per day/night. He threatened to “put her head in a vise and kick her ass.”

04/02/06: **Pretrial release conditions:** \$150 cash bond, no contact with victim or address

04/13/06: **Violation of pretrial release condition:** alleged contact with victim

05/11/06: **Violation of pretrial release condition:** alleged contact with victim

06/17/06: **New charges:** Criminal Damage to Property, Unlawful Use of Phone, Bail Jumping; two counts, Disorderly Conduct; 2nd victim involved. Offender accused his girlfriend (2nd victim) of taking his four children to his ex-partner’s home. The offender put two holes in the wall, broke a door jamb and made threats to harm the 2nd victim.

06/18/06: **Pretrial release conditions:** \$1150 signature bond, no contact with victim 1, mother/sister of victim 1, or address/phone of victim 1

06/30/06: **Pretrial release conditions:** \$500 cash bond, no contact with victim 2, children of victim 2, no alcohol

Offender criminal history: Disorderly Conduct/Bail Jumping (2004). Interfering with 911 Calls (2000), Felony Harassment (1999), Felony Domestic Assault (1999), Misdemeanor Domestic Assault (1999), Inflicting Corporal Injury to Spouse (1996), Bad Checks (1992)

Dangerousness: stalking behavior, threats, multiple victims, significant history of felony and misdemeanor domestic abuse with sanctions including prison time, use of alcohol, children present, custodial issues/divorce, use of family to control/intimidate victim, multiple victims, on probation at time of offenses, repeated violations of pretrial release conditions, out of state residence, fear expressed by victim

The following Justice Sanctions cases also reflect a pattern of repeated arrest and release while pending sentencing on an earlier domestic violence-related charge.

Example (JS Case 05):

6/17/06: Domestic charges of Substantial Battery, Battery, and Disorderly Conduct
File reports indicate the offender put a cigarette out on the victim’s face at a bar and threw a beer can at her head. Both fled the scene. The following day, police went to the home where both parties were present. The victim’s father told police where the offender was hiding in the home. The victim had a new burn mark to her thigh and a black eye. Male party was arrested.

Date

Unknown: Initial appearance/bond hearing: \$2500 cash bond and probation order hold; no contact with victim, victim’s father, or bar

6/30/06: New charges of Disorderly Conduct, Assault and Bail Jumping

7/03/06: Probation hold dropped; warrant issued

Gap1: Pretrial release conditions

7/10/06: Sentenced on probation revocation to 11 months in jail. Court order indicates that offender may ask later for Electronic Monitoring.
7/14/06: Offender is granted 30 day furlough from jail
7/16/06: Bond reduction to \$500 cash with same conditions and Justice Sanctions monitoring. Prosecution opposed bond reduction. Offender posts bond.
9/04/06: Electronic monitoring requested and granted
09/26/06: Offender is sentenced after pleading to charge of Substantial Bodily Harm
Criminal history: By offender report, 40-50 prior convictions
Victim contact: None noted in file

Example (JS-02):

1/21/06: Charges: OWI (2nd), OAR (2nd), Bail Jumping; 2 counts
1/23/06: Initial Appearance/bond hearing
\$1500 Signature bond (state requested cash) with conditions that include no alcohol, curfew, no driving, comply with Justice Sanctions; pretrial release supervision begins.
2/03/06: Violation: new domestic charges of Disorderly Conduct While Armed, Bail Jumping (use of alcohol), False Imprisonment
Initial Appearance/Bond Hearing
\$150 cash bond on the Disorderly Conduct charge, No bond on the False Imprisonment, and \$1000 cash on the Bail Jumping charge; conditions include no contact with the victim, no alcohol/bars
Justice Sanctions case is closed
2/13/06: Justice Sanctions case is reopened; no court orders in file to indicate Justice Sanctions pretrial supervision was ordered
2/21/06: Violations: no electronic monitoring since 2/15/06, Failure to Appear for alcohol testing 2/16-2/19; order to detain issued and case is closed
Criminal History: Possession of Marijuana, OWI, multiple OAR's (dates unknown)
Victim Contact: None noted in file

An additional example (Case 3A-B), further illustrates this pattern of repeated violations of pretrial release conditions (including contact with the victim, use of alcohol, and new charges of battering the same victim), all within a ninety-day time period. The offender's criminal history reflects bail jumping charges as well. Even after repeat violations the bonds are signature bonds, despite the prosecutor's recommendations for cash bonds in February and May. There is little information contained within this chronology of events that reflects accountability for the offender related to his pattern of battering, and consideration of safety for the victim.

(Case 3A-B):

1/18/06: Charge of Disorderly Conduct as a Repeater
1/20/06: Pretrial release conditions of **\$500 signature bond**, no contact with the victim, no alcohol or bars
3/17/06: Bail Jumping charges (non-arrest)

Gap1: Pretrial release conditions

4/11/06: Arrest; Bail Jumping; two counts (contact with victim, use of alcohol), Disorderly Conduct and Battery; **\$1500 signature bond**

4/13/06: Arrest; Bail Jumping (contact with victim)

4/14/06 **\$1500 signature bond**

4/16/06: Arrest; Bail Jumping; two counts (contact with victim, use of alcohol)

Criminal History: Burglary, Theft (1982), Disorderly Conduct (1990), Possession with Intent To Manufacture (drugs) (1991), Bail Jumping x2 (2002), Disorderly Conduct (2002), Disorderly Conduct and Bail Jumping (2003)

Victim Contact: None noted in file

How do we close the gap?

1. Establish a consistent and standardized process for determining pretrial release conditions in domestic violence-related crimes that best accounts for protection of victims of battering and the public.
2. Hold a “dangerousness summit” where all intervening agencies, from arrest through disposition, convene to examine how danger and risk are established and addressed in domestic violence cases and examine how the process can be strengthened.
3. Explore options for a mandatory pretrial release information class or video that explains all conditions of release.
4. Define the purpose and intent in referring an offender in a domestic-violence related crime to Justice Sanctions as a condition of pretrial release.
5. Explore and enhance the enforceability of bond conditions related to Justice Sanctions’ conditions: i.e., “comply with Justice Sanctions.”
6. Consider creating a dedicated position to coordinate processing and review of domestic violence cases, with a particular focus on cases where the offender has multiple offenses or violations of pretrial release conditions.
7. Explore the possibility of specialized caseloads for Justice Sanctions’ staff who supervise domestic violence related cases, both pre- and post-sentence.

Gap 2: Courthouse and courtroom organization

Gap 2: Aspects of courthouse and courtroom organization, environment and procedures diminish victim safety and offender accountability.

How is it a problem? For which victims of battering?

A Safety Audit that explores criminal case processing from post-arrest through prosecution inevitably touches on aspects of courtroom environment and procedures. This is the setting where decisions are made regarding conditions of release, where victims are required to appear at a variety of hearings and stages in the process, and where victims can be intimidated or their safety otherwise compromised by the actions of offenders and their friends and family. For victims of battering, this environment can be particularly stressful and threatening. The extent to which they feel protected and informed about the procedures and events occurring within the courthouse and courtroom influences their trust that prosecution and the criminal legal system can in any way contribute to their safety. Is there an advocate present? Can people hear what is being said? Are explanations of procedures and decisions clear and readily understood by those affected?

What contributes to the gap?

The Audit Team was involved in 87 observations, the majority of which occurred in the courthouse. Each team member was able to observe proceedings on at least two occasions across all five of the criminal court judicial rotations. Team members observed intake court proceedings (which included requests to lift no-contact conditions), diversion hearings, bond reviews, preliminary hearings, sentencing hearings, revocation hearings, domestic violence judicial reviews, and trials. Based on those observations and subsequent interviews with staff involved in these processes, as well as an analysis of case files, the Audit Team reports the following findings:

- Court proceedings are swift with little or no explanation of the decisions made. Initial appearances for misdemeanors and requests to lift the no-contact order are each generally less than two minutes in length.
- No child care is available for victims who appear in court as observers or participants related to the case. Children of victims and/or offenders are routinely present in court during proceedings.
- The purpose of the soundproof “media room” enclosed by glass in the back of the courtroom is unclear. The Audit Team observed media staff utilizing the room, often with cameras present. Victims (with or without children present) did not appear to routinely utilize the room or have a similar space available to them.
- There is an unclear or absent explanation of conditions of release. No one person is accountable for explaining the conditions to the offender or the victim.

Gap 2: Courthouse and courtroom organization

- The current process does not account for limitations with language, literacy or cognition on the part of the offender or victim. *Certified* interpreters are not routinely available for victims and/or offenders.
- Audit team members observed routine contact between offenders in custody and members of the audience. Victim/offender communication is occurring in the court room without record or monitoring. One audit team member observed a court officer step between a victim and offender communicating in the court room in an effort to discontinue the interaction.
- There are no security or police officers present outside the court rooms in the lobby area. Contact can occur between victims, offenders, family/friends of the victim and/or offender in these areas with no record or monitoring.
- There was rarely a community-based advocate present in court with a victim who was requesting to lift a no-contact order or for any other proceeding related to a domestic violence case. On occasion the Audit Team observed the Victim/Witness Coordinator from the District Attorney's office with a victim, but not routinely.
- Justice Sanctions staff, who sometimes conduct pretrial release assessments and file reports of noncompliance on offenders, rarely appear in court to address the recommendations they have made.
- The Audit Team did not observe any probation officers providing feedback or recommendations to the court related to the release of an in-custody offender who was also on probation. Often the prosecutor or the offender provided information about probation status or indicated that probation had initiated a hold, but the Audit Team did not observe any input from probation, either directly or indirectly via a prosecutor.
- Victim address information required for witness fees can be accessible as open records information.
- Many offenders appear in court without representation by an attorney.
- There is no dedicated docket for hearing domestic violence related cases. (The exception is for sentenced offenders in domestic violence cases who must appear for a judicial review of their case.) Domestic violence related cases are on court dockets with all types of criminal cases (which could involve any combination of pretrial release conditions, preliminary hearings, further bond review, diversion hearings, or sentencing). A victim of battering may have to wait several hours for the case to come up, often in close proximity to the batterer or his friends and family.
- Because judges rotate on intake court, an offender could have multiple open cases, domestic or otherwise, that a judge may not be aware of unless the prosecutor has the time and opportunity to share that information. This may contribute to the variance in bond types and amounts in situations where there are repeat patterns of arrest/release.

Gap 2: Courthouse and courtroom organization

When an offender appears on a bail jumping charge, however, an attempt is made to assign processing of the new charges to the judge who heard the underlying case.

- While vertical prosecution means that the same prosecutor makes decisions on a case as it proceeds, he/she may not always be available to appear in court for a proceeding.

How do we close the gap?

1. Implement a process for a preventive security presence outside the courtrooms.
2. Explore the possibility of offenders making their initial appearance from another location, with the use of closed circuit television.
3. Expand the practice of vertical prosecution in domestic violence case disposition to include judges.
4. Explore establishing a dedicated docket for domestic violence cases.
5. Assess the role of and need for probation officers and Justice Sanctions staff to appear in court to address alleged violations of pretrial release and conditions of sentenced supervision and probation.
6. Review and establish processes to protect victim address and location information from disclosure as open court records information.
7. Assess the need for and availability of *certified* court interpreters.
8. Assess options for monitoring/recording court room activity in relation to communication between offenders and audience.
9. Explore options for providing child care for court proceedings.
10. Re-examine the purpose and intent of the “media room,” particularly as it relates to safe space for victims of battering during court proceedings.
11. Explore how court processes could be revised to improve case participants’ and observers’ understanding of actions and orders, while also meeting court operational needs.

Gap 3: Victims' voices and visibility are inconsistently incorporated into prosecution and Justice Sanctions responses.

How is it a problem? For which victims of battering?

“When a woman who is beaten in her home dials 911 for help, she activates a complex institutional apparatus. In the next few days as many as a dozen workers, representing six or seven different agencies and as many as five levels of government, will act on her ‘case.’ For her, the call is more straightforward. She wants a large police officer, or several average-sized ones, to stand between her and the man who was hurting her, and to make him understand that if he doesn’t stop now, something bad will happen... The same set of circumstances can generate simultaneous cases in the civil protection order court, the child protection system, and the divorce court. The woman whose experience has become a series of cases will not necessarily see these multiple practitioners as distinct entities. Her life is a continuous lived experience, not a collection of separate or isolated cases. Each intervening practitioner, on the other hand, sees her situation through a specific functional lens which provides a narrow framework of concern and intervention.”⁷

A victim’s voice and visibility can readily get lost as a prosecutor or bail evaluator or victim-witness specialist carries out the steps necessary to move each individual case through a specific point of criminal case processing. A victim of battering may not necessarily see a prosecutor or bail evaluator as helpful to her safety and well-being, particularly if their decisions mean economic hardship for her or if past experience tells her that she cannot count on these community systems to control the person who is harming her. Prosecutors often face difficult decisions about where and how to account for a victim’s fears and well-founded understanding of what she needs to stay safe, while also trying to exercise state control and authority over an obviously dangerous offender.

What contributes to the gap?

The Audit Team reviewed 34 prosecution files and 10 Justice Sanctions files. The Audit Team also completed 87 observations and 46 interviews. Victims’ voices were often conspicuously absent. It was difficult to ascertain whether and how a victim was linked with the multitude of agencies working to hold the offender accountable and provide resources to her, *and* whether and how those agencies were taking her voice into consideration.

- The discussion in Gap 2 addresses victim voice and visibility in aspects of the court organization, environment, and procedures.
- As discussed in Gap 1, there is no **formal** assessment conducted by any one person or agency related to risk or dangerousness, though the prosecutor attempts to address this individually in recommendations for pretrial release.

⁷ Ellen Pence and Jane M. Sadusky, *The Praxis Safety and Accountability Audit Tool Kit*, Praxis International, 2005, p. 1.

Gap 3: Victims' voices and visibility

- Victims are sent a packet by the district attorney's office after the offender's initial appearance on a domestic violence-related charge. In 2006, the office mailed over 2500 victim information packets to victims of all types of crimes. The packet includes the conditions of pretrial release and a statement of crime victims' rights, provides phone numbers to call to discuss the case, and requests that the victim advise the DA's Office whether she or he would like to be kept informed of proceedings related to the case. The packet arrives at a time when a victim of battering may be feeling particularly unsafe and/or recovering from injuries, when she may have left the area, and when she may be inundated with contacts (written and telephonic) from community advocacy agencies. It is a time that can be very chaotic, stressful, and overwhelming. The forms related to victim notification, restitution, and impact must be returned to the District Attorney's office before a plea agreement is offered, and typically within seven days after a victim receives them. In the majority of prosecution files that we analyzed most closely, victims did not respond to the packet.
- The Victim/Witness Coordinator attempts to contact the victim in all domestic-abuse related cases by telephone within twenty-four hours of the offender's initial appearance. A prosecutor can and often will make phone contact with the victim for a variety of reasons such as determining her wishes for prosecution, the likelihood that she will be available as a witness, and to learn about the offender's history of violence and risk to the victim and community. Decisions related to release and pretrial release conditions, however, are routinely made without victim input. As noted above, there is a short turnaround time between the incident and when a victim receives and must return the victim impact form. The district attorney's office is often unable to reach victims, as well.
- When the case involves a dual arrest, the Victim/Witness Coordinator must inform the party who might contact her with a request to lift the no-contact order that she cannot discuss the facts of the case. This is to avoid the possibility of self-incrimination by the arrested person. A battered women who has been arrested, however, may be left without information that would connect her with advocacy and other support.
- None of the prosecution or Justice Sanctions files noted victim involvement with DART or a referral to DART.
- There was minimal reference in prosecution and Justice Sanctions files to indicate whether the victim was working with an advocate.
- There was little indication in Justice Sanctions files that there was contact with the victim in cases of pretrial or post-sentence supervision.
- Justice Sanctions routinely assesses inmates for pretrial release supervision without victim input and typically without reviewing the police report in the case. The police report is not included in the referral from the court. Additionally, the criminal complaint may not be available at the time that an offender is being evaluated for pretrial release supervision.

Gap 3: Victims' voices and visibility

- When multiple jurisdictions and agencies are involved with an offender it is difficult for the victim to know who to contact with issues and concerns.

Examples:

- Cases 10A-B-C-D: The offender was granted permission by an out of state probation officer to attend a child's sports game. It was unknown if this was communicated to the victim.
- Cases 1A-B: There were numerous jurisdictions and agencies involved with an offender who had children and ongoing custody issues related to the divorce.
- When an offender is released from custody, jail staff contacts New Horizons, who in turn attempts to make contact with the victim to make notification of offender release. This is meant to enhance victim safety, but the time between release and notification to New Horizons can be very short. Most often an offender is in the process of leaving the jail or has been released when the call to New Horizons occurs. A victim's knowledge of an offender's release is often after the fact. In the 2005 Safety Audit, for example, focus group participants expressed uncertainty about knowing when a suspect has been released from jail. In some cases they did not understand why he could be released at all or so quickly, or were surprised at the low bond amount.
- The prosecutor often makes phone contact with a victim in relation to the prosecution of a case, for a variety of reasons. Numerous files had detailed notes of the prosecutor's conversation(s) with victims. However, it is a difficult position for some victims to be in if she is fearful that there will be retaliation for her cooperation. For example, one file noted the victim's opinion that her words were used against her. It is also a difficult task for one or two primary prosecutors to successfully contact every victim and assess the relationship, dangerousness, fear, and other factors related to decision-making when the office processes over 2000 referrals of domestic violence cases in a given year. As discussed in Gap 1, prosecutors make an effort to assess risk based on the information they have related to the offender and victim and incorporate that assessment into their bond recommendations.

Gaps related to no-contact orders

Our review of prosecution case files, interviews and observations, revealed that the courts routinely impose a "no-contact" condition of pretrial release in domestic violence cases. This process raises concerns about how it enhances victim safety or encourages her voice to be heard.

Currently, if a victim would like the court to lift the no-contact condition, she must contact the District Attorney's Office. The victim speaks by phone (or in person if she has gone to the office) with the Victim/Witness Coordinator. The coordinator completes the "Request to Lift No Contact" form while speaking with the victim. The reasons that the victim is making the request are recorded on the form. The victim is given a date to appear in court at which time the judge will consider her request. The prosecutor receives a copy of the request prior to the hearing date

Gap 3: Victims' voices and visibility

and puts his/her recommendations in writing on the form. On the day of the hearing, the victim presents to the district attorney's office, picks up a sealed copy of the request and presents it to the judge at the hearing. The judge is not aware of the prosecutor's recommendations until he/she asks the prosecutor in open court to state their recommendation.

A victim is generally not questioned in court related to her concerns for safety or about any of the reasons she cited for making the request. This reflects a longstanding concern about victims being required to make statements in open court that could be detrimental to their safety. At the same time, however, a prosecutor may or may not have spoken to the victim prior to her appearance and the level of fear, coercion and/or risk she may be experiencing could be unknown.

- There is no dedicated docket for the court to hear requests submitted by a victim to lift the no contact. The current process is that the requests are heard on a daily basis at the end of intake court, in open court. Victims must wait until the end of the intake docket, with the waiting time contingent on the quantity of cases being heard on that day. Thus, victim and offender can be present simultaneously.
- There is little to no opportunity offered for a victim to address the court related to a request to lift the no-contact if she would like to do so. Her input is routinely not requested or encouraged. Any dialogue related to the request is heard in open court where offenders, children of the victim/offender, and family or friends of the offender can be present.
- When a victim's request to lift a no-contact condition is heard, the prosecutor is given an opportunity to provide input and/or objections to the judge, based on whatever assessment of risk the prosecutor can make with information about the offender and victim that might be available within the limited time available to review it. The prosecutor may have had a conversation with the victim, but most likely will not have had direct contact. The victim's voice is represented by her conversation with the Victim/Witness Coordinator, who documents a victim's reasons for the request, generally relayed via a phone conversation. The offender may or may not still be in custody.
- The judge who hears the request does not solicit this information from the victim at the time of the hearing. Some judges routinely asked victims if they had been coerced into making this request or if they were doing so under their own free will. Again, a blanket practice of requiring all victims to respond to such questions in open court does not necessarily contribute to a particular individual's safety.
- Audit team members observed victims being asked during intake court proceedings for the offender whether she wanted the no-contact condition lifted, regardless of whether the victim had submitted such a request. This was usually in response to an offender's request to lift the no-contact order.

Gap 3: Victims' voices and visibility

- There do not appear to be parameters that guide judges in decisions to lift, modify or deny a request by a victim for the condition to be lifted. Typically, the request to lift the no-contact condition is granted if the prosecutor does not object.
- Of the 34 prosecution cases that the Audit Team examined most closely, 58% of the victims represented (15 of 26), submitted a request for the no-contact condition to be lifted. Of those victims, 73% submitted multiple requests. Victims' requests to lift no-contact orders fell into three main categories:
 1. Economic and childcare needs
Examples: *"...he helps with the money..."*
"...he's a good dad..."
"...his name is on the lease..."
"...he is my support and bill payer..."
"...just moved here...I rely on him to pay bills..."
"...need childcare so I can work..."
"...need help with childcare..."
 2. Fear of the offender
Examples: *"...fears for her safety when he drinks..."*
"...usually when angry, he's violent..."
 3. Dynamics of battering and the pressure on victims to mask or deny what has happened
Examples: *"...it never happened before..."*
"...I don't fear him..."
"...I exaggerated..."
"...no bruising...not hurt...no effects..."
"...not a serious incident..."
"...it was my fault..."
"...never been physically abusive..."
"...he helps me with my mental health issues..."
- Though there is obvious collaboration between the District Attorney's Office and community advocacy agencies, the one or two prosecutors who process over 2000 domestic abuse-related cases each year are charged with a monumental task: examining the content of these requests in combination with the facts of the case, the linkages to other agencies, the history of abuse, and the risk and dangerousness potential of the offender to the victim. This volume of domestic violence referrals makes it difficult to consider each case individually and draw out patterns of ongoing violence.
- As noted in Gap 2, there was rarely a community-based advocate present in court with a victim who was requesting to lift a no-contact order. On occasion the Audit Team observed the Victim/Witness Coordinator from the District Attorney's Office with a victim, but not routinely.

Gap 3: Victims' voices and visibility

Contributions from the focus groups

Two focus groups were held in June 2006, with a total of seven participants. (Focus groups are conducted in a Safety Audit to help draw a better understanding of battered women's experiences and suggest paths for the team to explore.) With the exception of one woman who had recently moved to La Crosse, all of the women's current or former partners had been arrested at least once on a domestic violence-related charge in La Crosse County.

Across the groups, women spoke of the "hard work" of living with battering, whether in an on-going relationship or post-separation. Focus group participants described trying to get away, but being screened out of housing or being told that they had too many children for emergency shelter; repeated calls or contacts from abusive partners that kept occurring without consequence; a feeling of not being taken seriously as they tried to communicate their fears and concerns; and an overarching assumption by community systems that women must leave the relationship, and a feeling that support is contingent on their leaving.

Women identified a lack of understanding about or exploration of everything that sits behind and around prosecution or other interventions: their fears and the complexity of violence, risk and safety that they dealt with every day; and needs for housing, employment, and safety planning that are not being met. While participants offered examples of how individual practitioners had been helpful, they emphasized that such responses were not system-wide.

- *The judge said, 'Why do you stay? Why do you take him back...you should know better.'*
- *They ask, 'Are you sure you're afraid?' How afraid do I have to be?*
- *They just assume that every case is the same and women want to get away from their husbands, and not all do.*
- *It was a hard decision to make, to be back with my husband. But it was either be on the street or get out of town, and my family's here, my kids are settled here...Inside, I'm always scared. I always have this knot in my stomach.*
- *'We will help; call us,' ...then when we call, it's 'oh, you need to meet special criteria' to get any help.*
- *There's no place to turn without being seen as negative, without being labeled, and it's professionals doing the labeling. [What are those labels?]. . .welfare queen, looking for a handout, lazy, don't want to help themselves... [from African American participants].*
- *Why can't the DA who's prosecuting call you up and talk about how this has affected you, talk about the impact? The person that's doing the case needs to feel my fear.*

Gap 3: Victims' voices and visibility

- *You can't walk in my shoes, but you can at least understand why I'm walking this way.*
- *If you got women together like this and they could really tell how afraid women are, maybe they [legal system] would understand.*
- *The police come and 'he's bad', so they handcuff him and leave. They leave you with your kids, your experiences, your fears.*

Across the focus groups, participants did not articulate a strong link with the victim/witness supports available through the prosecutor's office. One group was asked to review the information packet sent to victims and read it from the standpoint of their own experience and recollection about this kind of contact.

- *I read it, but that was the last of it*
- *I always got the notification after the court date*
- *They contact you about the sentence or plea, but no matter what you say, you won't get it.*
- *If you don't have it back by such and such a date, it doesn't count...like it should be at the top of my priorities.*

Participants offered many frustrations with criminal no-contact orders (both enforcing and dropping them) and with civil restraining orders.

- *You're seen as stupid, hallucinating, or trying to cause trouble when you try to report a restraining order violation.*
- *Five women have reported violence by him, including one since me, but all he gets is a fine...he's had the same judge for every case for every woman he's battered.*
- *The restraining order makes him mad; it makes it worse instead of better.*
- *I was getting 20 or 30 calls a day cussing me out. I was scared to go here or there, I was always watching my back...it took [the police] three days to call me back.*
- *The [no contact] form is so cold, so impersonal. There's not compassion, no humanity...[the process] is really harsh, it lumps everyone together as individuals and there's no chance to tell people how you really feel.*
- *He busted the restraining order fifteen times; he followed me everywhere...it wasn't until he broke into my house that anything happened...the house had more rights than I did.*

Participants had similar frustrations with enforcement of conditions of release and probation.

- *I told his PO [probation officer] he was drinking and I was scared to be around him. The PO never called back.*
- *He paid, he got out. The officer told me he'd get help, but they never did anything about his going to [batterer intervention] classes. It was voluntary, but I thought it was mandatory.*

Gap 3: Victims' voices and visibility

- *He bonded out at intake court with a friend's credit card.*
- *He was drinking the whole time he was on probation and they knew it, but there was no action.*
- *He brags, 'the jails are overfull; they're not going to arrest people on probation.'*

These comments by focus group participants reflect their perception that there are insufficient efforts to involve them in the prosecution and supervision (pre- and post-sentence) of an offender. They refer to a lack of understanding of the dynamics of domestic violence across the systems that “process” domestic violence related incidents. Their comments mirror the Audit Team’s work in relation to “lumping” domestic violence cases into a single category without further exploration of the pattern of battering, the level of victim fear and risk, and dangerousness of the offender. Numerous agencies can be involved with a victim of battering or an offender, but if the link is not maintained and developed throughout the process, accountability and safety can be diminished.

How do we close the gap?

1. Explore establishing consistent and standardized guidelines to assist in making decisions to lift, modify, or deny individual requests to lift pretrial no-contact orders, drawing on available research and contributions from survivors of battering.
2. Explore establishing a dedicated docket or venue for victims who request to lift the no-contact condition of pretrial release.
3. Examine the benefits and possible unintended, negative experience of requiring that a victim meet with a designated advocate, particularly in cases of significant danger, prior to a judge hearing her request to lift a no-contact condition.
4. Establish protocols related to linking and strengthening victim advocacy involvement across intervening agencies in a domestic violence case.
5. Review and assess the process related to use of the District Attorney’s Office victim input packet and follow-up when victims do not respond.
6. Review current practices related to on-site advocacy response to incidents of domestic violence.
7. Establish policies for Justice Sanctions staff regarding victim contact and input in domestic violence cases, taking into account the need for training, experience, and links with community-based advocates related to understanding domestic violence and danger assessment.
8. Examine whether advocacy agencies such as DART and the identified victim in the case could be part of the Justice Sanctions’ release of information.

Gap 3: Victims' voices and visibility

9. Provide further training for staff of intervening agencies involved in processing domestic violence cases and expand community education related to the purpose and intent of advocacy resources (i.e., the focus of advocacy should not be to convince or encourage a victim to leave the relationship).

Gap 4: Linkages between agencies

Gap 4: Linkages between some key intervening agencies and/or aspects of case processing could be more fully developed, maintained and documented in ways that best support victim safety and offender accountability.

How is it a problem? For which victims of battering?

No practitioner acts independently from those who proceed or follow him/her as a criminal case moves from initial response to final disposition. A patrol officer relies on information from dispatch to understand the type of call, location, and potential danger. Dispatch relies on information from the responding officer in deciding whether to send additional officers, notify a supervisor, or send an ambulance. A prosecutor relies on the details in the 911 recording and thoroughness of the officer's investigation. A pretrial release agency relies on information from the arrest report and sources for criminal case history in making recommendations that protect victims and the community. The ways in which practitioners are linked can be strong or weak and can enhance or diminish offender accountability. They can account for the unique circumstances and dangers related to battering or take a one-size-fits-all approach that treats a fight between patrons in a bar no differently than an intimate partner assault in a home. The quality of the linkages between those intervening in domestic violence cases has a direct bearing on the quality and thoroughness of the information that victims of battering receive about actions that directly affect their safety and well-being, from decisions about pretrial release conditions to plea agreements to disposition and sentencing. One commenter has characterized the significance of these linkages in this way:

A prosecutor with the most aggressive domestic violence policy will not succeed without the support of the other justice system components. Each participant must understand their role and its importance. When police make good arrests and conduct good investigations, prosecutors are more likely to win a case. When a victim advocate provides a battered woman with information about prosecution and her role, the victim is more likely to participate as a witness. When judges give strong messages that domestic violence is unacceptable, both in their sentences and by their words from the bench, they reinforce the efforts of police and prosecutors. By contrast, when batterers “slip through the cracks” created by lack of follow-through or consistency by each component of the system, they become emboldened; they may now have reason to believe that even the vast power of the criminal justice system cannot stop them.⁸

What contributes to the gap?

The procedures within the La Crosse County District Attorney's Office indicate that at least one prosecutor will attend each DART and Domestic Abuse Task Force meeting, if time permits. Weekly meetings occur at the District Attorney's Office, involving a prosecutor, victim witness advocate, advocates from New Horizons, and DART staff. Participants discuss domestic violence incidents that have occurred in the past week in order to voice concerns and issues and to ensure that a victim has been contacted. It is an opportunity for community advocacy agencies

⁸ Linda A. McGuire, Esq., *Criminal Prosecution of Domestic Violence*, Battered Women's Justice Project, 1994, available at www.bwjp.org.

Gap 4: Linkages between agencies

to link with the District Attorney's Office and enhance victim safety and offender accountability. However, maintaining those linkages throughout the prosecution of a case appears to weaken as the case is processed. It is also notable that not all agencies who are linked to victims and offenders attend the meeting. For example, Justice Sanctions staff, who supervise pretrial release and sentenced offenders, do not attend.

The 2005 Safety Audit encouraged a closer look at the ways in which participants in the Coordinated Community Response Task Force were linked: "The Task Force and practitioners who have day-to-day responsibility for domestic abuse calls seem to be poorly linked. At one debriefing session we realized that several members of the team had little or no awareness of what the CCR did, how it was organized, who participated, and how it related or might relate to their work."

The 2006 Phase 2 Safety Audit explored more deeply and found the following examples of the ways in which linkages between those intervening in domestic violence cases in La Crosse County could be better developed or maintained.

- DART connection or response is not evident in case files for prosecution or Justice Sanctions.
- Community advocacy connection or response is not evident in case files for prosecution or Justice Sanctions.
- A DART list of active cases does not routinely reach patrol officers, the District Attorney's Office, Justice Sanctions, or the La Crosse County Jail.
- Justice Sanctions' conditions (pre- and post-sentence) do not routinely reach the District Attorney's Office, the La Crosse County Jail or patrol officers.
- Conditions of diversion agreements do not routinely reach Justice Sanctions, the La Crosse County Jail or patrol officers. Because a violation of a diversion agreement is not necessarily criminal in itself (e.g., failing to attend a required batterer intervention program or alcohol abuse counseling), if an officer became aware of a violation he could not take the offender into custody, unless there was also an actionable criminal offense involved. Any agency linked to the case could nevertheless notify the diversion coordinator of the alleged violation.
- At the time an offender is being evaluated for release and/or conditions of supervision, Justice Sanctions does not generally have available to it the police report for the incident that resulted in the arrest. The Victim/Witness Coordinator also does not always have the police report readily available prior to a proceeding or when talking with a victim.
- Notification of an offender's release from jail generally occurs as the offender is being released, leaving little room for a victim to be notified in enough time to make any necessary safety planning and precautions.

Gap 4: Linkages between agencies

- Underlying domestic violence charges can be missed when an offender is incarcerated on bail jumping charges due to alcohol or driving violations. The victim may still want to know that an offender was jailed and/or released in these situations, as those kinds of behavior can suggest increased risk.
- There is inconsistent knowledge and lack of joined efforts between agencies when an offender is involved in and being supervised across multiple jurisdictions. Examples: Cases 1A-B and 10A-B-C-D. Details for these cases are cited in Gap 1.
- La Crosse County Jail phone recordings of offenders with domestic violence related charges are not readily identified or retrieved. A prosecutor can request a call history by identifying a specific number that the offender called. There is no proactive process in place to protect the victim from ongoing intimidation and coercion, or to flag cases that are likely to involve attempts to intimidate a victim/witness from jail. Paying closer attention to offenders' calls from jail in domestic violence cases suggests a possible strategy for dealing with the implications of *Crawford v. Washington*. La Crosse County and other jurisdictions, for example, have had success in utilizing jail tapes as evidence of witness tampering and intimidation and as a way of showing that defendants had forfeited their right to confront the witness against them.⁹
- There is no process in place to monitor offenders who could be considered repeat offenders, such as those who have repeated violations of pretrial release conditions, and/or may have numerous active cases within La Crosse County jurisdictions or outside of them, such as in neighboring counties or in Minnesota.
- There is no process in place to evaluate the potential risk/danger to victims with key agencies who may be actively working with the victim and/or offender.
- There is no well-established link to family court to identify domestic violence cases that have active involvement in that venue, as well as in criminal court.

How do we close the gap?

1. Increase awareness between intervening agencies about how linkages between them can better enhance victim safety and offender accountability.
2. Establish or refresh policies and/or guidelines related to establishing and tracking linkages between agencies working with victims and offenders.

⁹ See, for example, *Prosecuting Witness Tampering, Bail Jumping, and Battering From Behind Bars*, Vera Institute of Justice, 2004, which describes strategies developed by the Milwaukee County District Attorney's Office. *Crawford v. Washington* (2004) changed the standard for determining when hearsay statements are admissible in criminal cases and introduced new challenges in pursuing "evidence-based" or less victim-reliant prosecution.

Gap 4: Linkages between agencies

3. Review the process for distributing the DART active cases list and provide education to recipients on how it can be used and for what purposes.
4. Ensure that a process is in place for all intervening agencies, including the Victim/Witness Coordinator in the District Attorney's Office, to have law enforcement reports available at the time of pretrial release assessments and/or prior to the offender's initial appearance.
5. Explore how agencies in multiple jurisdictions within close proximity can improve communication, documentation, and overall linkages related to victim and offender involvement.
6. Explore how linkages with Family Court can be strengthened.
7. Review and assess processes related to victim notification when offenders violate pretrial release conditions in domestic violence cases.
8. Explore how conditions of Justice Sanctions and diversion agreements could reach intervening agencies, including law enforcement and the jail.
9. Review processes for victim notification related to an offender's release from custody, paying particular attention to the time line of the release and notification attempts as it relates to victim safety.
10. Survey all intervening agencies to assess current data collection practices and capacity for tracking domestic abuse cases and response at each point of case processing.
11. Explore options for discovering victim/witness intimidation in domestic violence cases, including monitoring offender phone calls while incarcerated.

Gap 5: The prosecution and case disposition process, and in particular, response to repeat offenders, can diminish batterer oversight and accountability.

How is it a problem? For which victims of battering?

A prosecutor's decision about whether, when, and how to take any particular domestic violence related case to trial is shaped by many factors. The cost associated with a trial is an ever-present reality. There are considerations of case load and the time a trial demands, not only of prosecutors, but law enforcement officers, victim/witness staff, court personnel, and the victim. There are considerations related to the thoroughness of the investigation and the victim's availability and support for the trial, as well as whether she or he makes a "believable" or sympathetic case for a jury. All of these factors contribute to an understandable reluctance to pursue a trial and a preference for obtaining voluntary guilty pleas, if not to the original arrest charge, then to something.

The reduction and dismissal of charges that accompany plea agreements carry the potential to dilute the impact of sanctions for ongoing coercion and violence, however, and reinforce batterers' efforts to pressure or force victims to drop their support for prosecution. When final dispositions in domestic violence cases are widely incongruent with the original arrest charges it is worth a closer look. To understand how prosecution decisions strengthen or diminish victim safety and batterer accountability, we must explore how plea agreements and other dispositions are reached, keeping in mind: 1) victim input into the decisions; 2) the impact on potential sanctions and state oversight of domestic violence offenders; 3) how the decisions account for persistent, ongoing, and severe battering; and 4) whether and how decisions are based on poor investigation practices and evidence-gathering.

What contributes to the gap?

In 2005 and 2006, over 2000 domestic violence incidents were referred to the office each year. Two of the eight attorneys in the La Crosse County District Attorney's Office respond to domestic violence cases as a primary assignment. They are responsible for reviewing the cases referred by law enforcement and determining whether they will decline or pursue prosecution. This includes ongoing consultation with officers and investigators, compiling a criminal history for each offender, drafting criminal complaints, making pretrial release recommendations to the court, and responding to victims' requests to lift no-contact conditions. They research the facts of the case and collaborate with advocates and other professionals who may be working with an offender or victim. They correspond with attorneys representing the offender to address prosecution and disposition of the case. They may attempt contact with victims directly. Violations of pre-trial release, including new charges, may surface which need assessment and potentially additional prosecution and/or other action. Within these working conditions also lie the constant consideration and responsibility of making decisions that account for risk and danger to each victim and accountability of each offender.

The La Crosse County District Attorney's Office practices and prioritizes vertical prosecution,

Gap 5: Prosecution and case disposition

meaning that efforts are made to keep the same prosecutor involved throughout the case. This is significant for consistency, accountability, and safety in domestic violence cases. Where the process seems to break down, however, is when an offender violates pretrial release conditions (with or without a new offense) and makes an initial appearance before a judge or prosecutor who may not be familiar or knowledgeable about the original case. At this time, another decision is being made about conditions of release possibly without knowledge of dangerousness or victim safety and/or fear. When an offender with an underlying case appears for a violation of pre-trial release conditions, La Crosse County District Attorney's Office makes every attempt to assign the case to the prosecutor who was involved in the original case.

Review of Prosecution Cases Overall

All of the 34 prosecution cases that the Audit Team analyzed resulted in plea agreements. While the Domestic Procedures for the La Crosse District Attorney's Office indicates that a Stipulated Negotiated Plea and/or plea record should articulate the justification for the plea agreement, the justification was not generally visible in the prosecution files.

The Audit team analyzed 34 cases involving 25 offenders.¹⁰ The cases were opened in the six to twelve months prior to the start of the Safety Audit. Across these 34 cases, a total of 97 charges were filed against the defendants (67 misdemeanors and 30 felonies). Eight of the 25 offenders were charged with new domestic violence offenses or bail jumping for violating pre-trial release conditions after the original case flagged for the Safety Audit was opened and still active.

- 30 convictions resulted: 26 misdemeanors and 4 felonies
- 4 of the 25 offenders were convicted of an ordinance violation
- 11 of the 25 offenders were sentenced to probation
- 5 of the 25 offenders entered into a diversion agreement
- 8 of the 25 offenders were sentenced to Justice Sanctions monitoring
- 8 of the 25 offenders were sentenced to a Domestic Abuse Assessment
- 11 of the 25 offenders were sentenced to jail, all of whom were originally ordered to serve their jail sentence in the community with Justice Sanctions monitoring
- None of the cases went to trial

¹⁰ The Audit team analyzed 13 prosecution files that involved single arrests of a male or female party. The disposition breakdown is as follows: 13 original charges were filed against the defendants: 28 misdemeanors and 9 felonies; 10 convictions resulted from these charges: 9 misdemeanors and 1 felony; 2 resulted in convictions of an ordinance violation; 4 resulted in diversion agreements. 4 of the 13 cases involved Justice Sanctions monitoring and 5 of the 13 cases involved probation as conditions of their sentence. 4 of the 13 cases involved the condition of a Domestic Abuse Assessment. None of the cases went to trial.

The Audit team analyzed 7 prosecution files that involved 6 dual arrests of 3 females and 3 males. The disposition breakdown is as follows: 13 original charges were filed against the defendants; 7 misdemeanors for the male parties and 6 misdemeanors for the female parties; no felonies. 4 convictions resulted from these charges; 3 misdemeanors for the male parties and 1 misdemeanor conviction for the female parties. 2 resulted in convictions of an ordinance violation; 1 male and 1 female, and 1 case resulted in a diversion agreement for the female party. 1 of the 7 cases (male party) involved Justice Sanctions monitoring in his sentence on 2 cases, and 1 of the 7 cases (female party) involved probation as a condition of her sentence. 1 of the 7 cases involved the condition of a Domestic Abuse Assessment. None of the cases went to trial.

Review of Dual Arrests

Concerns about the understanding and methods of determining “primary physical aggressor” emerged in the 2005 Safety Audit. Interviews with officers and advocates and review of incident reports suggested varied interpretations and in some cases missing or incomplete investigation of self-defense considerations that lead to the arrest of victims who were experiencing ongoing battering. While the 2005 Safety Audit was underway, the Wisconsin Legislature repealed the primary physical aggressor language, replaced it with “predominant aggressor,” provided guidance on how to make that determination, and discouraged (but did not prohibit) the arrest of more than one party.

Under the changes to Wisconsin’s mandatory arrest law that took effect on April 1, 2006, law enforcement officers are to consider the following criteria in determining the predominant aggressor in an incident where the offender is not readily apparent.¹¹

1. The history of domestic abuse between the parties, if it can be reasonably ascertained;
2. Statements made by witnesses;
3. The relative degree of injury inflicted by and on the parties;
4. The extent to which each person present appears to fear any party;
5. Whether any party is threatening or has threatened future harm against another party or another family or household member; and,
6. Whether any party acted in self-defense or in defense of another person.

While the statute does not specifically address district attorneys’ charging decisions, it suggests factors to consider in evaluating cases involving defendants who may be victims of battering (sometimes referred to as “victim defendants”). Prosecutors can use these criteria to proceed in ways that best address safety for victims of battering, while also taking into account the nature of any illegal acts and ongoing patterns of abuse. In cases involving victim defendants, application of these predominant aggressor considerations might support dismissing the original arrest charge, reducing the charge, or utilizing a prosecution diversion agreement.

Many victims of battering use force at some point to defend themselves or in reaction to the threats and abuse they experience.¹² Misapplication of the concept of predominant aggressor, however, can lead to the arrest and prosecution of the *least* dangerous person, with significant consequences for ongoing safety and well-being. These include: restricting access to safety resources; reinforcing batterer power and coercion; increasing the risk of ongoing violence and intimidation; increasing the possibility of a victim losing her children in a child protective services or custody action; reducing future reporting, outreach, and intervention; increasing the possibility of eviction, particularly for victims living in income-based housing; further isolating victims of different cultural and language traditions; and, magnifying the vulnerability of those

¹¹ §968.075, Wis. Stats.

¹² Women’s use of resistive and reactive violence is receiving increased attention. For example: *Re-Examining ‘Battering’: Are All Acts of Violence Against Intimate Partners the Same?*, Ellen Pence and Shamita Das Dasgupta, Praxis International, Inc., 2006, available at www.praxisinternational.org.

Gap 5: Prosecution and case disposition

who have an addiction to alcohol and/or drugs, or are already under criminal legal system sanctions.

Prosecutors can provide an important check on misapplication of predominant aggressor considerations by carefully reviewing arrest decisions, exploring all self-defense considerations, and exercising their discretion in charging and disposition decisions in ways that account for ongoing battering and consideration of which offenders pose the greatest danger, and to whom. This is not to say that arrest and prosecution are never warranted when a victim of battering has used illegal violence, but that prosecutors play a significant role in making decisions that do not inadvertently reinforce ongoing coercion and violence. Community-based advocates and other CCR partners can be important links in reviews and decisions related to predominant aggressor factors and ongoing battering.

In our review of 34 prosecution case files, the Audit Team analyzed seven files that involved “dual arrest” cases (the arrest of two individuals involved in a domestic violence incident)¹³ Each case, from the initial arrest through the prosecution process, raised questions about how battering was viewed as a pattern crime or how the predominant aggressor factors outlined above were considered. The primary focus appeared to be on aspects of the case that justified charges against both parties.

In the dual arrest cases reviewed during the Safety Audit, we wanted to understand: 1) What was the disposition and could we tell whether and how it accounted for predominant aggressor factors? 2) How did the prosecutor’s decision account for which person was most likely to be at more risk from the other? 3) How were links and supports for victim defendants visible in the case disposition, particularly for those who seemed more vulnerable to violence because of alcohol or drug use?

(Cases 1A-B): These cases occurred **before** the April 1, 2006 change in the mandatory arrest law.

Charges: Male party walked into the police station with bloodied clothes, bleeding from injuries to his arm. He was taken to a local hospital for evaluation. Police reports indicate that this 6’4” 180lb male complained to his 5’2” 102 lb. girlfriend that she was not giving him enough attention. An argument ensued, and he grabbed her by the leg, squeezed and twisted her leg. He threatened to hurt her “like he did to his ex-girlfriend.” The female slapped his face 3-4 times. He took a kitchen knife and cut himself in the arm and later told police he was suicidal. The officer noted in his report that the female was the “primary aggressor...and should be charged along with [male offender].” The female’s children were asleep in the home. In this case, the officer contacted a prosecutor for permission to allow a signature bond on scene. She was

¹³ The 2006 overall dual arrest rate in La Crosse County, as calculated from data compiled by the Domestic Violence Intervention Project was 5.42% (48 of 886 arrests). While this is relatively low, it is nonetheless important to include dual arrests in any review of criminal case processing, because of the potential for unintended negative impacts on victim safety and offender accountability. This dual arrest rate calculation may include cases that do not involve intimate partner relationships, such as the arrest of two brothers or sisters, which are not readily identified in the data. Nor does it reflect the category of “non-arrest cases,” which are cases where an arrest would have been likely had the offender or offenders been at the scene. In 2006 there were 244 such non-arrest cases.

Gap 5: Prosecution and case disposition

charged with battery and disorderly conduct. The male was hospitalized on a chapter hold¹⁴ and charged with Disorderly Conduct While Armed.

Pretrial release conditions: The male was later arrested and posted a \$150 cash bond. He failed to appear and was arrested four months later. A \$500 signature bond was granted at that time. The female was given a \$650 signature bond at the time of the incident. Both parties' pretrial release conditions included no alcohol or bars, and no contact with each other.

Injuries: No injuries noted to female. Male had self-inflicted wound to his arm.

Request to Lift No Contact: none

Criminal histories: The female had no criminal history. The male had eight prior offenses with the majority being domestic-related.

Dangerousness: The male had a significant history of domestic violence, was using alcohol at the time of offense, threatened the female, used a weapon, engaged in self-injurious behavior and expressed suicidal intentions. He told the Judge at sentencing that he was mentally ill. The female's statement in the police report reflected fear... "I am scared of him... he has a really bad temper... I thought he was going to break my leg." The female's mother appeared at a court proceeding to ask that the no contact condition remain in place.

Disposition: The female pled to a Disorderly Conduct ordinance violation with a fine imposed of \$186. The male pled to the original charge and was ordered to six months Justice Sanctions Day Reporting. He had numerous violations of his Justice Sanctions supervision. The sentence was later amended to straight jail time, which he served. No domestic abuse assessment was ordered.

(Cases 2A-B): These cases occurred **after** the April 1, 2006 change in the mandatory arrest law.

Charges: A physical altercation occurred between a man and a woman in a gas station parking lot. There were numerous witnesses. The male pushed the woman to the ground and struck her... the female chased the male into the gas station and a verbal and physical confrontation ensued. The police report reflects a statement by the male party that if he intended to hurt her, he "would have hit her a lot harder... all I did was push her to the ground." Police note in the report that "male is predominant aggressor" and he was subsequently arrested. However, the female is referred to the DA's office for determination of charges. Both parties are charged with Battery and Disorderly Conduct.

Pretrial release conditions: Male received a \$650 cash bond. The female received a \$1000 signature bond. Both had conditions that included no contact with each other, no alcohol or bars. Both bonds are later modified to \$500 signature bonds.

Request to Lift No Contact: A request was submitted by the female party and denied by the court, with objections by the prosecutor indicating that both parties were violent and intoxicated in public. The request was resubmitted approximately one month later with no objection from prosecution if a new bond was signed. The victim stated in her request that "...it was

¹⁴ A Chapter 51 hold refers to Wisconsin State Statute 51.15, a statement of emergency detention by a law enforcement officer. A probable cause hearing must be held within 72 hours of detention. A police officer must have cause to believe that the subject is mentally ill, drug dependent or developmentally disabled or that the subject evidences behavior which constitutes a substantial probability of physical harm to self or others. The officer must document that the detention is based on specific and recent dangerous acts, attempts, threats or omissions by the subject as he/she observed or was reliably reported to him/her.

Gap 5: Prosecution and case disposition

verbal...not hurt...” and she cited financial reasons for the request. In her second request she stated “...no effects...no bruising...I exaggerated...”

Injuries: Police report noted that male had scratches to his face and neck. The female had scratches under her chin, a cut to her right wrist, and a cut and abrasion to her left elbow.

Criminal histories: The female had no criminal history. The male’s history included Child Abuse (originally filed as a felony 2004), Resisting Arrest (2002), Theft (2004), Disorderly Conduct (2000), Disorderly Conduct (1999), Criminal Damage to Property; two counts (1990).

Dangerousness: The male had a significant criminal history, including domestic violence charges, and felony child abuse charges. He minimized responsibility, engaged in threats, and the event occurred in a public location with both parties using alcohol.

Disposition: The male pled to Disorderly Conduct as an ordinance violation and was given a fine. The female pled guilty to Disorderly Conduct and entered into a diversion agreement with conditions that included 40 hours of community service, AODA assessment, one-on-one counseling for “anger, feelings, taking responsibility.”

(Cases 3A-B): These cases occurred **after** the April 1, 2006 change in the mandatory arrest law.

Charges: Police responded to the home of a woman who had called 911 to report a verbal argument that was occurring there between her son and a female party. According to reports, the female had found the male at another female’s residence and removed the distributor cap from his vehicle. The male jumped on the victim’s car and “grabbed her by the throat” through the car window as she was attempting to leave. She drove to his mother’s home; he followed and an argument ensued when he arrived. This incident resulted in charges of Disorderly Conduct and Bail Jumping for both parties. Two months earlier, police had responded to their home when they became uncooperative with child protection workers who were attempting to remove their infant from the home and place the infant in protective custody. In the process, they learned that a domestic incident had occurred that morning between the parties. Police reports indicate that the male had pushed the victim to the ground, “grabbed her by the neck,” and bit her on the wrist. The male was charged with Battery and Disorderly Conduct.

Pretrial release conditions: The first incident described, which was a dual arrest, involved a cash bond of \$1150 for the male which was converted 12 days later to an \$1150 signature bond. The female received a \$1000 signature bond. Both parties were ordered to have no contact with each other. In the second incident, a \$650 cash bond was ordered for the male, with no reflection in the case file of specific pretrial release conditions.

Injuries: The police reports from the second incident described did not make reference to injuries sustained to either party. In the first incident, police noted bruising and teeth impressions on the female’s wrist, as well as a red mark on her neck.

Request to Lift No Contact: The female submitted two requests after the first incident to lift the no contact. Prosecutor objections included the need for the male to have treatment, and that he has a record. The female submitted a third request to lift the no contact after the second incident, and it was granted. She notes in her request that he is her support and bill payer.

Criminal Histories: The male had convictions for Sexual Assault of a Child, Phone Harassment and Exposing a Child to Harmful Material (1994), and an additional conviction for Sexual Assault of a Child (1995) that resulted in a prison sentence and numerous returns to prison for parole violations. The female’s criminal history included convictions for Battery and Criminal

Gap 5: Prosecution and case disposition

Damage to Property (2003), Criminal Damage to Property (2002) and Domestic Disorderly Conduct (2000).

Disposition: In the dual arrest case, the male party pled to disorderly conduct and the female pled to Bail Jumping. The female was sentenced to 12 months probation with conditions of an AODA assessment and Domestic Abuse assessment. The male party pled to Battery in the first case. He was sentenced concurrently to 90 days Justice Sanctions with Day Reporting for both cases.

Dangerousness: Both parties were using alcohol, and the incidents occurred in public. There was a long and significant history of domestic violence between the male and female. Their infant child was present during the second incident described, and their child was removed by Child Protective Services. The male was a registered sex offender and demonstrated a history of violating pretrial conditions as well as probation and parole conditions. He strangled and bit the female on more than one occasion.

These three dual arrest cases raised several questions for the Safety Audit regarding review of predominant aggressor factors, gauging which person was most likely to be at most risk, and accounting for the impact of a conviction on possible victim defendants.

In two of the three cases officers identified a predominant aggressor at the time of the arrest and used the language for the same in their reports, but the reports did not contain documentation to support that determination. In Case 1A-B, describing the female party as the “primary aggressor” did not appear warranted by the circumstances described.

In each of these three cases involving dual arrests, physical violence occurred between both parties, but with a marked difference in nature and severity, as illustrated in the following comparison of actions and threats.

Case	Male Party	Female Party
1A-B	6’4 180 lbs Grabbed female by the leg, squeezed and twisted her leg Threatened to hurt her “like he did to his ex-girlfriend” Took a kitchen knife and cut himself in the arm Told police and female party that he was suicidal Self-inflicted wound to arm	5’2 102 lbs Slapped male party’s face 3-4 times “I am scared of him...he has a really bad temper...I thought he was going to break my leg” Told the male party, “Why don’t you go kill yourself?” No injuries to her
Sentence	Pled guilty to original charge of disorderly conduct with weapon; 6 months Justice Sanctions’ day reporting; later amended to jail time because of numerous violations of day reporting	Pled to a disorderly conduct ordinance violation; \$186 fine
2A-B	Pushed female party to the ground and struck her; hit her when inside the gas	Chased male party into the gas station and struck him, after he had pushed her to the

Gap 5: Prosecution and case disposition

Case	Male Party	Female Party
Sentence	station Scratches to his face and neck	ground and struck her Scratches under her chin, cut to right wrist, cut and abrasion to left elbow
	Pled to disorderly conduct ordinance violation; fine	Pled guilty to disorderly conduct and entered diversion agreement: 40 hours community service, AODA assessment, one-on-one counseling for “anger, feelings, taking responsibility”
3A-B	Incident 1: Pushed female to the ground, “grabbed her by the neck” and bit her on the wrist; she told police “it was hard to breathe” No injuries to him Incident 2 (dual arrest): [two months later]: Jumped on the victim’s car and “grabbed her by the throat” through the car window as she attempted to leave	Incident 1: no violence by female party noted in police report Bruising and teeth marks on her wrist, red mark on her neck Incident 2 (dual arrest): Removed distributor cap from male party’s vehicle
Sentence	Sentenced concurrently for both cases: 90 days Justice Sanctions’ day reporting Incident 1: pled to battery Incident 2: pled to disorderly conduct	Incident 2: pled to bail jumping (previous open disorderly conduct ordinance case) 12-months probation, AODA assessment, domestic abuse assessment

While sentencing practices per se were beyond the immediate scope of this Safety Audit, they are nevertheless linked to charging decisions and practices. In the dual arrest cases, the women were more likely to end up with more conditions attached to their sentences. In other words, with more “work” to do, such as completing a domestic abuse assessment or counseling. Two of the three women arrested had no reported criminal history. The partners of all three women had multiple domestic violence and/or child abuse and sexual assault convictions.

While a plea to an ordinance violation or a \$186 fine might seem relatively insignificant, for a victim of ongoing battering it may only enhance her partner’s coercive control. It reinforces his claims that “the cops won’t help you” and the repeated message that “you’re really the problem, you even got arrested.” Well-intentioned requirements for alcohol and drug assessment or other counseling can be similarly used against her. Putting her on probation or under a diversion agreement can reinforce his control even further.

There was an absence in the files of linkages between the District Attorney’s Office and other agencies that might be involved with either party in the case and might help prosecutors evaluate an incident in light of a larger pattern of abuse and predominant aggressor considerations. The Audit Team did not see information that reflected links with DART, New Horizons or other community advocacy agencies, for example. Likewise, there was little indication that there was a connection with corrections (in-state or otherwise) or Justice Sanctions during the pretrial release

Gap 5: Prosecution and case disposition

period. While it may be that a victim or offender was connected to community resources and intervention, the case file did not generally reflect those links and collaboration. (See the discussion under Gap 4)

Review of Single Arrests

In the 13 cases involving single arrests of males and females, all offenders were charged with more than one offense. In three of those cases, offenders pled guilty to more than one offense. The following cases illustrate the breakdown of original charges and final convictions:

Case 4-SM: **Original Charges:** Disorderly Conduct While Armed (two counts); Theft (two counts)

Plea: Disorderly Conduct While Armed

Offender threatened the victim with a bat, then brandished a knife and threatened to kill himself with young child standing behind him.

Case 5-SM: **Original Charges:** Disorderly Conduct, Battery, Resisting/Obstructing

Plea: Disorderly Conduct, Resisting/Obstructing

Offender struck the victim in the head three times with a closed fist.

Case 6-SM: **Original Charges:** Disorderly Conduct, Battery, Criminal Damage to Property, False Imprisonment, Second Degree Recklessly Endangering The Safety of a Child

Plea: Battery, Criminal Damage to Property, Disorderly Conduct

Offender strangled the victim who had a healing bite mark to her arm, then broke window of a vehicle with infant inside; injuries noted.

Case 8-SM: **Original Charges:** Aggravated Battery, Disorderly Conduct, Criminal Damage to Property, Intimidating a Victim

Plea: Aggravated Battery, Misdemeanor Intimidating a Victim

Offender kicked in the door to the room where victim had locked herself in, jumped on top of her, punched her in the head, ripped her shirt off, strangled her...finger impressions to her neck, golf-ball size bump on her head.

Case 9-SM: **Original Charges:** Disorderly Conduct (two counts), Bail Jumping (two Counts), Criminal Damage to Property

Plea: Disorderly Conduct

Victim hurriedly fled home in her underwear after offender became violent. Neighbors subdued him until police arrived.

Case 1-DIV: **Original Charges:** Substantial Battery, Disorderly Conduct

Plea: Disorderly Conduct (Diversion)

Pushed her into a wall, grabbed her by the throat and squeezed, threw her to the ground...she had fractured hand, multiple bruises to arm, back, eye, throat, red marks on neck

Gap 5: Prosecution and case disposition

Case 5-DIV: **Original Charges:** Harassment, Disorderly Conduct, Unlawful Use of Phone

Plea: Unlawful Use of Phone (Diversion)

Offender engaged in stalking behavior and later self-injurious behavior involving a knife.

These cases involve incidents of significant violence with risk factors including strangulation, threats, use of weapons, self-injurious and suicidal behavior, public displays of violence, children present, and alcohol use. Many factors can contribute to accepting pleas to reduced charges. In some cases, the police report may have lacked information to support the case; in some, the victim may not have supported the prosecutor's efforts, for a multitude of reasons (including fear, threats, and economic hardship), or the plea may reflect what she saw as a safe, fair outcome in the case. A prosecutor may have recommended probation with conditions related to domestic violence and/or substance abuse assessments and treatment, but the offender rejected probation as a condition of a sentence. Case volume and the need to move cases in a timely manner also reinforce plea decisions. The process warrants a closer look, however, when cases involving significant violence and history of abuse involve pleas, which in turn may lead to sentences that reflect relatively little batterer oversight and accountability.

None of the 19 offenders in the single arrest cases outlined above were referred to Justice Sanctions for pretrial release monitoring. Offenders were charged with numerous offenses, but often pled to less serious and fewer charges. Only 5 of the 19 offenders (25%) were ordered to a domestic abuse assessment as a condition of their sentence. Post-sentence, 11 of 19 (58%) offenders were supervised by either Justice Sanctions or probation as conditions of their sentence.

Review of "Multiples"

The Audit Team analyzed 14 cases that involved six male offenders with multiple domestic violence related cases/charges. Five of the six offenders were charged with new domestic related crimes after the original case came to the Safety Audit's attention and while it was still active.

- 13 original charges were filed against the defendants; 9 misdemeanors and 4 felonies (1 of the cases involved original charges that were traffic or ordinance violations)
- The 6 offenders in total amassed 34 new charges while their original case was still active; 17 misdemeanors and 17 felonies
- Total original charges, then for the 14 cases (including new offenses) was 47 charges; 26 misdemeanors and 21 felonies
- 2 of the 6 offenders were referred to Justice Sanctions for pretrial release supervision
- 16 convictions resulted from these charges; 13 misdemeanors and 3 felonies
- 0 of the 14 cases resulted in a diversion agreement
- 0 of the 14 cases resulted in a conviction for an ordinance violation
- 5 of the 6 offenders' sentences involved a jail sentence and/or Justice Sanctions monitoring
- 5 of the 6 offenders' sentences involved a condition of probation

Gap 5: Prosecution and case disposition

- 3 of the 6 offenders' sentences involved the condition of a Domestic Abuse Assessment
- 1 of the 6 offenders' sentences involved the condition of "anger management"
- None of the cases went to trial

Case 10A-B-C-D:

Original Charges + 2 incidents of new offenses:

- 1) Bail Jumping (two counts);
False Imprisonment, Felony Aggravated Battery, Misdemeanor Battery
- 2) Disorderly Conduct, Battery, Criminal Damage to Property, Bail Jumping
- 3) Disorderly Conduct, Battery, False Imprisonment, Bail Jumping (2 counts)

Plea: False Imprisonment, Misdemeanor Battery as a Repeater

Cases involved 2 victims; one victim was strangled on two occasions and bit in the face with injuries noted; the other victim was slapped by the offender.

Case 2A-B:

Original Charges + 3 incidents of new offenses:

- 1) Battery
- 2) Battery, Disorderly Conduct, Criminal Damage to Property, Bail Jumping (two counts)
- 3) Bail Jumping
- 4) Disorderly Conduct, Battery, Intimidating a Victim, Bail Jumping (two counts)

Plea: Battery; 3 counts

Cases involved the victim being repeatedly head-butted, sustaining bruises, a cracked rib, and a cigarette burn. Her head was slammed into a cupboard door with the impression remaining there.

Case 3A-B:

Original Charges + 4 incidents of new offenses:

- 1) Disorderly Conduct as a Repeater
- 2) Bail Jumping
- 3) Bail Jumping (two counts), Disorderly Conduct, Battery
- 4) Bail Jumping
- 5) Bail Jumping (two counts)

Plea: Disorderly Conduct as a Repeater, Battery as a Repeater, Bail Jumping (two Counts)

Cases involved the strangulation of the victim and property damage.

Case 1A-B:

Original charges + one incident of a new offense:

- 1) Disorderly Conduct by Phone (two counts)
- 2) Criminal Damage to Property, Unlawful Use of a Phone, Bail Jumping (two counts), Disorderly Conduct

Plea: Unlawful Use of a Phone (two counts), Criminal Damage to Property

Cases involved two victims, property damage and stalking behavior.

Gap 5: Prosecution and case disposition

Case 7A-B:

Original charges + one incident of a new offense:

- 1) Battery, Intimidating a Victim, Disorderly Conduct
- 2) Bail Jumping

Plea: Battery; Disorderly Conduct

Cases involved property damage and victim's hand being injured.

Case 3A-B:

Original Charges + one incident of a new offense:

- 1) Disorderly Conduct as a Repeater, Possession of Marijuana
- 2) Resisting/Obstructing Police, Disorderly Conduct

Plea: Disorderly Conduct as a Repeater; Resisting/Obstructing

Cases involved two victims; no injuries.

These cases of “multiple offending” reflect a pattern of arrest and release and re-offense with significant violence and dangerousness. The sentences include jail time in the community with Justice Sanctions monitoring and the majority (5 of 6) ordered to probation. When the offender repeatedly violates pretrial release conditions and re-offends, he amasses more and more charges. The prosecutor is left with the task of determining how to reach a disposition in all of the cases that accounts for this pattern of battering and dangerousness to the victim. In theory, a sentence that includes incarceration and probation supervision provides appropriate sanctions while addressing issues that the courts believe contributed to the crime. In practice, offenders with this pattern of repeat offenses have already demonstrated a disregard for court orders. A victim's safety was in jeopardy in these cases throughout the pretrial release period, demonstrated by the offender's pattern of arrest and release. Given the danger and complexity of these types of cases, linkages and collaboration with community agencies becomes necessary to most thoroughly account for victim safety and offender accountability.

Review of Diversion Cases

La Crosse County has developed a diversion program as an alternative to the usual course of prosecution. The Domestic Procedures for the La Crosse County District Attorney's Office includes Diversion Parameters, one of which indicates that “the domestic abuse assessment should be initiated within 20 days of the diversion hearing...”¹⁵

Our review of prosecution cases found several significant offenses with potential risk to victims where the diversion agreement was not upheld and/or a domestic abuse assessment was not

¹⁵ The Diversion parameters utilized by the La Crosse County District Attorney's Office are general guidelines that have been established for all types of criminal cases. They address length of sentence, restitution, weapons/firearms, penalties (usually community service, and guilty pleas (not Alford pleas). Suggested parameters where appropriate involve alcohol and drug assessments/treatment, psychiatric evaluations, compliance with medication, and financial obligations to certain agencies when children are involved. Parameters related to domestic abuse cases include a domestic abuse assessment, Men's Abuse Program or anger management counseling (to start within one month of agreement), financial obligations to domestic violence programs, parenting classes and/or education related to the effects of abuse, violence and/or neglect on children, and no contact conditions where appropriate. There are also parameters specific to cases of disorderly conduct.

Gap 5: Prosecution and case disposition

ordered. Offenders were excused from conditions of the original agreement that addressed issues of sexual assault, stalking behavior, and battering. The diversion coordinator initiated what appeared to be appropriate responses to violations of the agreement by filing motions for revocations in two of the three cases cited below. In both cases the offenders were excused from the diversion agreement (case dismissed) or an aspect of it (sex offender treatment). Also of concern was the absence of an order or follow-through with a domestic abuse assessment.

The following cases reflect inconsistent enforcement of diversion conditions and/or a lack of focused attention to the batterer. They also suggest that as of 2006, prosecutors could not necessarily rely on judicial enforcement of diversion agreements, raising questions about whether and to what extent they should be used.¹⁶

(Case 1-DIV):

Charges: Substantial Battery and Disorderly Conduct. Victim and offender were downtown drinking. Witnesses observed her fall during the evening, which was related to her intoxication level. The victim wanted to go to the bathroom, but the offender said “no” and pushed her against the wall, grabbed her by the throat and squeezed, then threw her to the ground. The offender indicated that he was trying to calm her down.

Injuries: Victim received medical attention and was diagnosed with a fracture to her hand. Medical staff noted multiple areas of bruising to her arm, back, eye and throat, as well as red marks to her neck and jaw.

Pretrial release conditions: \$1500 signature bond, no contact with victim, no alcohol or bars

Offender Criminal History: OWI

Dangerousness: significant injury to victim, strangulation, public offense, no responsibility taken by offender, victim expresses fear of retaliation

Disposition: Offender entered into a one year diversion agreement for the charge of Disorderly Conduct with dismissal of the Substantial Battery charges. Conditions included a domestic abuse assessment, AODA assessment, no alcohol or bars, and no contact with the victim.

Motion for revocation: Offender did not complete the six month recommended batterer intervention program. The offender’s parents addressed the Court in a letter indicating why he did not need to participate in the batterer intervention program. A motion for revocation was denied, and the offender was excused from the diversion agreement condition. The Court imposed a motion to dismiss the case, rendering the diversion agreement and conditions moot.

(Case 2-DIV):

Charges: This case involved an adolescent victim and an adult offender who was significantly older (7-8 years). The victim contacted police in an effort to retrieve her personal property from his residence and in the course of the investigation officers discovered that he had initiated a sexual relationship with her prior to her turning sixteen. The case was charged as a misdemeanor, though Wisconsin law would have allowed for felony charges.

Pretrial release conditions: \$250 signature bond, no contact with victim or her residence

Offender criminal history: Loitering

Dangerousness: The victim was a juvenile, this was a sexual offense and the offender did not take responsibility for his behavior. He re-offended while under a diversion agreement.

¹⁶ As the Safety Audit neared completion, three of the five circuit court judges were replaced via election.

Gap 5: Prosecution and case disposition

Disposition: The offender entered into a diversion agreement for one year with conditions of restitution, sex offender assessment and treatment as recommended, no violations of the law.

Motion for revocation: The offender failed to participate in sex offender treatment as recommended by the evaluator. The court excused him from that diversion agreement condition because he did not want to attend, and extended his diversion.

New charges: The offender was charged with felony drug offenses.

2nd Motion for revocation: The diversion agreement was revoked due to the new offense. Offender was convicted of misdemeanor sexual assault of a child over the age of 16 and fined \$224.

(Case 5-DIV):

Charges: Harassment, Disorderly Conduct, Unlawful Use of Phone. The offender was phoning victim's cell phone repeatedly, leaving threatening messages subsequent to a break-up initiated by the victim. The offender was following the victim and threatening her and her new boyfriend. The offender engaged in self-injurious behavior just prior to police intervention.

Pretrial release conditions: \$150 cash bond, no contact with victim or victim's boyfriend, no contact with their addresses or phones

Offender criminal history: none

Dangerousness: stalking behavior, threats to victim and victim's boyfriend, self-injurious behavior and suicidal ideation, contact with victim after initial arrest

Disposition: The offender entered into a 12 month diversion agreement for the charge of Unlawful Use of Phone (other charges dismissed in agreement) with conditions of 60 hours community service, individual counseling and medication as prescribed. The offender successfully completed diversion and charges were dismissed. No domestic abuse assessment was ever ordered.

Review of 2005 Safety Audit Cases

There are similar features in the dispositions of the cases that the Audit Team analyzed in the 2006 Safety Audit and those in the reports and case files that were reviewed most closely in Phase 1. The 2005 Audit Team analyzed 28 cases, including 19 single male arrests and 9 dual and/or female arrests. Sentencing was not included in the scope of the first audit. A review of the dispositions in those cases reflected the following observations:

- None of the cases went to trial.
- The majority of the victims did not respond to the intake packet sent by the District Attorney's Office.
- In all cases where the offender was charged as a habitual domestic offender, all habitual charges were dismissed.
- 7 cases involved felony charges with zero felony convictions; the offenders in 5 of the 7 felony cases were granted signature bonds.
- A domestic abuse assessment was ordered as a condition of sentence in 8 of the 28 cases.
- In cases with multiple charges, 12 offenders pled guilty to only one charge.
- The majority of the cases involved signature bonds, even when there was a prior failure to appear on the same case.

Gap 5: Prosecution and case disposition

- Vertical prosecution was practiced in the majority of the cases.
- 10 of the 28 offenders were sentenced to probation.

How do we close the gap?

1. Conduct training for law enforcement on assessing predominant aggressor and articulating those decisions in incident reports.
2. Explore establishing a case review process in prosecution of dual arrest cases that more fully accounts for predominant aggressor considerations and safety for victim defendants.
3. Explore establishing a dedicated position to review and monitor domestic violence cases, particularly where there are instances of multiple violations of pretrial release and/or new domestic-related offenses.
4. Review the use of domestic abuse assessments in case dispositions.
5. Review the process for reaching plea agreements particularly related to safety and accountability, including improving victim input and documentation of dangerousness factors.
6. Reexamine the purpose, function, and agency representation and participation in the weekly domestic violence case review meeting convened by the District Attorney's Office.
7. Review protocols related to the diversion review process and contracts with offenders.
8. Explore options for dispositions involving offenders with multiple open domestic violence cases.
9. Utilize the Coordinated Community Response Task Force to define *accountability* and establish how accountability should be incorporated into domestic violence case processing [including offender to victim; intervening agency to victim; and practitioner to practitioner].
10. Conduct further training on battering as a pattern crime for agencies intervening in domestic violence cases.

What kind of changes will help close these gaps?

The gaps identified in this Safety Audit are **not** the result of individual practitioners who are unconcerned about their work or uncaring or unaware of the impact of battering on peoples' lives. La Crosse is a community with a long tradition of attention and care. The gaps are produced by a variety of case management processes and the ways in which institutions organize and coordinate work. These include: 1) agency mission, purpose, and function; 2) concepts and theories; 3) rules and regulations; 4) administrative practices; 5) resources; 6) education and training; 7) linkages within and across agencies and institutions; and 8) accountability. Closing them requires changing how work is organized and any one recommendation may involve one or more change across these eight primary methods. Discovering the gaps leads directly to ideas for the kinds of change that might be required to create new ways of organizing work, with the overarching goal of enhancing safety for victims of battering and shrinking the gap between what people experience and need and what institutions provide.

Appendix B presents an overview of the forty-eight recommendations addressed in this report and illustrates the type of changes that might be involved in implementing each recommendation. It is not a finite or exclusive list, but a way of opening a path to implementation.

Who should be involved in addressing these gaps?

Closing the gaps discovered in this Safety Audit requires the collective effort of many agencies and individuals. La Crosse's tradition of coordination across intervening systems and community-based organizations makes that collective effort more possible. The Coordinated Community Response Task Force and the Domestic Violence Intervention Project already provide an overarching framework for organizing implementation projects. Obviously, not every agency needs to be involved or should be involved in closing every gap and determining who needs to be at the table for what discussion will be an essential aspect in the ongoing work. Reviewing the process for distributing the DART active case list (Gap 4 recommendation), for example, would not involve public defenders, court administration, or the family court. Or, exploring options for a mandatory pretrial release information class or video (Gap 1) would not involve the 911 communications center.

Across the range of gaps and related recommendations, the following agencies and practitioners will be involved in crafting solutions.

- Coordinated Community Response Task Force
- DVIP
- La Crosse County District Attorney's Office; prosecutors, investigators, victim/witness coordinators
- Public defenders
- Court administration
- Justice Sanctions
- Department of Corrections; probation and parole officers
- Patrol officers and supervisors

- La Crosse County Jail officers and supervisors
- New Horizons advocates
- DART officers and advocates
- Hospital domestic violence programs
- La Crosse County Communications Center; call-takers, dispatchers, and supervisors
- Family Court Commissioner
- Circuit Court judges
- Victims and survivors of battering from diverse communities and social positions
- Multi-cultural advocates
- Administrators and others responsible for policy oversight
- Practitioners, researchers and advocates engaged in the national dialogue on safety and danger assessment, pretrial release processes, mandatory arrest laws and the concept of predominant aggressor, battering in diverse communities

More trails, more questions

In any Safety Audit, observations, questions, and odd thoughts emerge that do not fit under any specific gap or warrant a gap statement of their own. There may not be enough information on hand or it may be something noticed at the end as the report is put together. Sometimes it is a “duh!” kind of moment, recognizing a trail that should have been followed earlier on, but was somehow missed.

- **Review Fast Track prosecution practices**

After the 2006 Safety Audit was underway, La Crosse County launched the “DV Fast Track.” The goal was to move misdemeanor domestic violence cases from arrest to disposition within two weeks. This approach offers the promise of dealing with the large volume of misdemeanor cases more quickly, offering defendants a plea offer at the same time the complaint is filed and leading to more immediate guilty pleas. The timing may also take advantage of the period when a victim is most upset about what has happened and most out of the reach of a battering partner, before threats, coercion, and economic pressures accelerate. Reflecting its longstanding coordinated community response, La Crosse has been adjusting its model almost from the beginning. For example, two weeks proved to be too short a turnaround time; it has been expanded to four weeks. An unexpected consequence of the shorter time frame was that it was prolonging some of the more difficult cases because defendants would not plead guilty so quickly.

- How will this pace affect the already high demands on prosecutors with primary domestic violence case assignments?
- How will the fast track approach affect the already high numbers of pro se defendants? Might it exacerbate this problem if more defendants cannot secure counsel in the allotted time?
- How will victim input be assured and how will victims be prepared for this time frame and approach?

- How realistic is it to expect contact with the Victim/Witness Coordinator within twenty-four hours of the initial appearance, given existing staffing levels and availability?
 - How will the fast track approach affect victims of battering who have been charged? Does this accelerated case processing allow sufficient time to adequately review predominant aggressor and self-defense considerations?
- **Look closer at female arrests and predominant aggressor considerations**

The discussion about dual arrests under Gap 5 addresses questions raised during the Safety Audit about “victim defendants” and establishing who needs protection from whom as considerations in safety-oriented case processing. Only as the report was being completed was there recognition that while the dual arrest rate in La Crosse County in 2006 was a relatively low 5.42% of arrests, the overall female arrest rate was 28.44% (252 of 886 arrests).¹⁷ This suggests that an examination of how predominant aggressor considerations are applied also requires a closer look at female arrests.

- To what extent are victims of battering represented in female arrests for domestic-violence, either as dual arrests or single arrests?
- To what extent do female arrests reflect the application of predominant aggressor considerations?
- Does women’s use of violence differ from men’s in terms of severity and impact?
- How do services and links across intervening agencies respond in ways that support battered women’s safety and address their use of illegal violence?

The Safety Audit text analysis included three cases involving female single arrests. In two of the three there was information from either a witness or the arrested woman that the apparent victim had been abusive to her in the past or had assaulted her prior to the action she was arrested for. For example, one woman was arrested when responding officers saw her hit the victim in the face and upper body with her hands. She told police that she had called 911 because he hit her on the head and threw her across the room.

- **Examine “non-arrest” cases**

Questions about the nature of “non-arrest” cases emerged while reviewing DVIP data and calculating the dual arrest rate. As noted in Appendix C, in 2006 there were 244 cases so classified, meaning that an arrest would have been made had the offender been at the scene or readily located. (In some jurisdictions these are known as “gone-on-arrival” cases.)¹⁸ In 2006 the non-arrest cases represented 244 (21.6%) of the 1130 cases where

¹⁷ This calculation may include cases that do not involve intimate partner relationships, such as the arrest of two sisters or a mother and daughter. Nor does it reflect the 244 “non-arrest cases” where an arrest would have been likely had the offender or offenders been at the scene.

¹⁸ Non-arrests are distinguished from “verbals,” defined as incidents involving law enforcement response, but with no arrest or no grounds for arrest. These are also referred to the district attorney’s office for review and sometimes result in charging and arrest or citation.

an arrest was supported by the initial investigation.

- Is there any pattern or theme to the kinds of domestic abuse-related incidents that get classified as non-arrest?
 - How readily are offenders in non-arrest cases located?
 - What kind of follow-through, review, and warrants are involved?
 - What kinds of safeguards are put in place for victims in non-arrest cases?
- **Pay closer attention to the volume of domestic violence criminal case processing**

The Safety Audit consulted case volume and disposition figures compiled by the District Attorney's Office. Comparing those numbers with other tallies of domestic violence incidents in La Crosse County, however, shows considerable variation in numbers of incidents and/or their classification, as illustrated in Appendix C. It will be helpful in determining where and how to best use available resources, as well as securing additional support, to have the most accurate picture possible of the volume of cases.

Conclusion and next steps

If there is a single, overarching conclusion from the Phase 2 Safety Audit, it is the challenge to refresh the mission, purpose, and function of La Crosse County's coordinated community response to battering and other forms of domestic violence. There is much in place in the criminal case processing that has been examined here, as well as in Phase 1, that works well in supporting safety for many victims of battering. The goal of a Safety Audit, however, is to discover those areas where the fabric of safety has frayed or has yet to cover. Closing the gaps identified in this Safety Audit will mean making changes that address many aspects of intervention, including:

- Pretrial release conditions
- Use of no-contact orders
- Victim visibility and voice in decision-making
- Advocacy assistance and availability in criminal case proceedings
- Response to multiple cases of severe, ongoing battering (including the role of prosecution, DART, and Justice Sanctions)
- Timeliness of victim notification when an offender is released from jail
- New strategies for acting on a batterer's ongoing intimidation of a victim/witness
- Purpose and use of domestic abuse assessments
- Community assumptions about what battered women "should" do and beliefs that advocates should persuade them to do it (i.e., they should leave)
- Definitions and goals related to accountability

Because a Safety Audit is always trying to ask questions from the standpoint of victims of battering, there are inevitably cases that stand out as illustrating many of the gaps that are discovered along the way. In this Safety Audit, it is not so much a single case or two that provides that perspective, but the level of violence that many victims of battering experience on

an ongoing basis from batterers who have repeated encounters with the criminal legal system, but seem to experience relatively little sanction.

He dragged her out of bed by her hair, head-butted her repeatedly, twisted her arm... abrasion to her forehead, red marks on both arms... Three weeks later: He wouldn't allow her to sleep, slammed her head into a cupboard door (leaving an imprint of her head)... bruises to eyes and head, cracked rib, cigarette burn on leg... Three weeks later: he slapped and pushed her into a wall... He strangled her and bit her in the face (in front of her infant)... unable to breathe, trouble swallowing, bite marks to her face and marks to her neck... Five months later: he pulled the phone out of the wall, punched a hole in the wall, grabbed her by the throat and strangled her... He pinned her to the ground where her children were sleeping, threatened her with a baseball bat... he had a knife in hand and threatened to kill himself... He called her (ex-partner) thirty to forty times, day and night, threatening to "put her head in a vise and kick her ass"... Less than three months later: (different woman, current girlfriend): punched two holes in the wall, broke a door jamb, threatened her... He put a cigarette out on the victim's face, threw a beer can at her head... burn mark to her thigh and black eye... Struck the victim in the head three times with a closed fist... Strangled the victim, bite marks to her arm, broke a window of a vehicle while her infant was in it... Kicked in the door to the room where she had locked herself in, jumped on top of her, punched her in the head, ripped her shirt off, strangled her... finger impressions to her neck, golf-ball size bump on her head... Pushed her into a wall, grabbed her by the throat and squeezed, threw her to the ground... she had fractured hand, multiple bruises to arm, back, eye, throat, red marks on neck...

The impression across the cases and observations is of battered women caught between seeking safety, attempting to escape, sometimes burdened by addiction or mental illness, and often caught by economic constraints that leave little option but to protest a mandatory no-contact order.

Across both the 2005 and 2006 Safety Audits, similar themes emerged related to the complexity of risk and safety and key aspects of danger assessment that needed to be reexamined and addressed.¹⁹ Building on a strong coordinated community response and longstanding willingness to take a close look at its intervention practices, La Crosse now has the information at hand to guide its work and strengthen that response.

¹⁹ See Appendix A for an overview of findings from the 2005 Safety Audit.

La Crosse County Domestic Violence Safety and Accountability Audit – Findings and Recommendations from Phase 1, October 2005

911 through arrest

1. Many victims of battering receive multiple contacts and packets of information from multiple interveners, without a clear understanding of interveners' various roles or the accuracy of the information.
2. Some victims receive incomplete information about operating emergency cell phones.
3. Response to domestic violence incidents does not thoroughly account for the complexity of risk and safety for victims of battering from different social positions.
4. Understanding and methods of determining "primary physical aggressor" vary among law enforcement officers in La Crosse County.
5. Key aspects of safety and danger assessment are inconsistently applied or have not been well-developed in the 911 and initial law enforcement response.
6. Information about the presence and well-being of children and teens is inconsistent in 911 calls and patrol reports.
7. It is unclear that DART intervention consistently reaches victims of battering who are most at risk of ongoing violence, intimidation, and coercion.
8. Intervening agencies do not consistently produce statistical information that contributes to an accurate understanding of reported domestic violence incidents.

2006 La Crosse County Domestic Violence Safety and Accountability Audit – Post-Arrest through Prosecution Overview of Gaps and Recommendations

Gap 1: Pretrial release conditions do not consistently account for potential risk to victims of battering.

Gap 2: Aspects of courthouse and courtroom organization, environment and procedures diminish victim safety and offender accountability.

Gap 3: Victims’ voice and visibility are inconsistently incorporated into prosecution and Justice Sanctions responses.

Gap 4: Linkages between some key intervening agencies and/or aspects of case processing could be more fully developed, maintained, and documented in ways that best support victim safety and offender accountability.

Gap 5: The prosecution and case disposition process, and in particular the response to repeat offenders, can diminish batterer oversight and accountability.

<i>Recommendations</i>	Mission, purpose, & function	Concepts and theories	Rules & regulations	Administrative Practices	Resources	Education & training	Linkages	Accountability
	<i>What kind of change might help close this gap?</i>							
1.1 Establish a consistent and standardized process for determining pretrial release conditions in domestic violence-related crimes that best account for protection of victims of battering and the public.	√	√		√			√	√
1.2 Hold a “dangerousness summit” where all intervening agencies, from arrest through disposition, convene to examine how danger and risk are established and addressed in domestic violence cases and address how the process can be strengthened.	√	√				√	√	√
1.3 Explore options for a mandatory pretrial release information class or video that explains all conditions of release.			√	√	√	√		
1.4 Define the purpose and intent in referring an offender in a domestic-violence related crime to Justice Sanctions as a condition of pretrial release.	√			√			√	
1.5 Explore and enhance the enforceability of bond conditions related to Justice Sanctions’ conditions: i.e., “comply with Justice Sanctions.”			√	√		√	√	
1.6 Consider creating a dedicated position to coordinate processing and review of domestic violence cases, with a particular focus on cases where the offender has multiple offenses or violations of pretrial release conditions.	√			√	√		√	√
1.7 Explore the possibility of specialized caseloads for Justice Sanctions’ staff who supervise domestic violence related cases, both pre- and post-sentence.				√	√		√	
2.1 Implement a process for a preventive security presence outside the courtrooms.	√			√	√			
2.2 Explore the possibility of offenders making their initial appearance from another location, with the use of closed circuit television.			√	√	√		√	
2.3 Expand the practice of vertical prosecution in domestic violence case disposition to include judges.	√	√		√	√		√	√
2.4 Explore establishing a dedicated docket for domestic violence cases.		√		√	√			
2.5 Assess the role of and need for probation officers and Justice Sanctions staff to appear in court to address alleged violations of pretrial release	√			√	√		√	√

	Mission, purpose, & function	Concepts and theories	Rules & regulations	Administrative Practices	Resources	Education & training	Linkages	Accountability
and conditions of sentenced supervision and probation.								
2.6 Review and establish processes to protect victim address and location information from disclosure as open court records information.			√	√		√		
2.7 Assess the need for and availability of <i>certified</i> court interpreters.			√	√	√		√	√
2.8 Assess options for monitoring/recording court room activity in relation to communication between offenders and audience.			√	√			√	
2.9 Explore options for providing child care for court proceedings.	√			√	√		√	
2.10 Reexamine the purpose and intent of the “media room,” particularly as it relates to safe space for victims of battering during court proceedings.	√			√	√			
2.11 Explore how court processes could be revised to improve case participants’ and observers’ understanding of actions and orders, while also meeting court operational needs.	√			√	√	√	√	√
3.1 Explore establishing consistent and standardized guidelines to assist in making decisions to lift, modify, or deny individual requests to lift pretrial no-contact orders, drawing on available research and contributions from survivors of battering.	√			√		√	√	√
3.2 Explore establishing a dedicated docket or venue for victims who request to lift the no-contact condition of pretrial release.	√	√		√	√		√	√
3.3 Examine the benefits and possible unintended negative experience of requiring that a victim meet with a designated advocate, particularly in cases of significant danger, prior to a judge hearing her request to lift a no-contact condition.		√	√	√	√		√	
3.4 Establish protocols related to linking and strengthening victim advocacy involvement across intervening agencies in a domestic violence case.	√	√		√	√	√	√	√
3.5 Review and assess process related to use of the District Attorney’s Office victim input packet and follow-up when victims do not respond.	√			√	√		√	
3.6 Review current practices related to on-site advocacy response to incidents of domestic violence.	√	√		√	√	√	√	√
3.7 Establish policies for Justice Sanctions’ staff regarding victim contact and input in domestic violence, taking into account the need for training, experience, and links with community-based advocates related to understanding domestic violence and danger assessment.	√		√	√	√	√	√	√
3.8 Examine whether the identified victim in the case and agencies such as DART could be part of the Justice Sanctions’ release of information.	√			√	√		√	
3.9 Provide further training for staff of intervening agencies involved in processing domestic violence cases and expand community education related to the purpose and intent of advocacy resources (i.e., the focus of advocacy should not be to convince or encourage a victim to leave the relationship).	√	√		√		√	√	
4.1 Increase awareness between intervening agencies about how linkages between them can better enhance victim safety and offender accountability.	√			√		√	√	√
4.2 Establish or refresh policies and/or guidelines related to linkages between agencies working with victims and offenders.				√		√	√	
4.3 Review the process for distributing the DART active cases list and provide education to recipients on how it can be used and for what purposes.				√		√	√	
4.4 Ensure that a process is in place for all intervening agencies to have law enforcement reports available at the time of pretrial release				√	√	√	√	

	Mission, purpose, & function	Concepts and theories	Rules & regulations	Administrative Practices	Resources	Education & training	Linkages	Accountability
assessments and/or prior to the offender's initial appearance.								
4.5 Explore how agencies in multiple jurisdictions within close proximity can improve communication, documentation, and overall linkages related to victim and offender involvement.				√	√	√	√	√
4.6 Explore how linkages with Family Court can be strengthened.	√			√			√	
4.7 Review and assess processes related to victim notification when offenders violate pretrial release conditions in domestic violence cases.				√	√		√	√
4.8 Explore how conditions of Justice Sanctions and diversion agreements could reach intervening agencies, including law enforcement and the jail.				√	√	√	√	
4.9 Review processes for victim notification related to an offender's release from custody, paying particular attention to the time line of the release and notification attempts.	√			√	√		√	√
4.10 Survey all intervening agencies to assess current data collection practices and capacity for tracking domestic abuse cases and response at each point of case processing.				√	√	√	√	
4.11 Explore options for discovering victim/witness intimidation in domestic violence cases, including monitoring offender phone calls while incarcerated.	√			√	√		√	√
5.1 Conduct training for law enforcement on assessing predominant aggressor and articulating those decisions in incident reports.		√		√		√		√
5.2 Explore establishing a case review process in prosecution of dual arrest cases that more fully accounts for predominant aggressor considerations and safety for victim defendants.		√		√	√			√
5.3 Explore establishing a dedicated position to review and monitor domestic violence cases, particularly where there are instances of multiple violations of pretrial release and/or new domestic-related offenses.	√			√	√			√
5.4 Review the use of domestic abuse assessments in case dispositions.	√	√		√	√			√
5.5 Review the process for reaching plea agreements particularly related to safety and accountability, including improving victim input and documentation of dangerousness factors.	√			√	√			√
5.6 Reexamine the purpose, function, and agency representation and participation in the weekly domestic violence case review meeting convened by the District Attorney's Office.	√	√		√			√	√
5.7 Review the protocols related to and the diversion review process and contracts with offenders.		√		√	√		√	√
5.8 Explore options for dispositions involving offenders with multiple open domestic violence cases.				√	√	√	√	√
5.9 Utilize the Coordinated Community Response Task Force to define <i>accountability</i> and establish how accountability should be incorporated into domestic violence case processing [including offender to victim; intervening agency to victim; and practitioner to practitioner].	√	√		√	√	√	√	√
5.10 Conduct further training on battering as a pattern crime for agencies intervening in domestic violence cases.		√				√	√	

La Crosse County Domestic Violence Statistics

Compiled by the District Attorney’s Office

<u>Type referrals</u>	<u>2005</u>	<u>2006</u>
Total # DV referrals/cases	2087	2115
# referrals declined	253	253
# referrals dismissed by DA	142	196
# referrals dismissed by court	72	9
# referrals dismissed & read in	631	587
# referrals convicted by plea	804	728
# violations DA injunction	28	31

Compiled by the Domestic Violence Intervention Project

	2005	2006
Calls (Domestic Related)	1903	2111
Arrests	875	886
Non Arrests	191	244
Dual Arrests	66	48
Female Arrests	241	252
Verbals	685	765

Grant #2005WEAX0043

**Statistics based on information provided to the Domestic Violence Intervention Project (DVIP) by La Crosse County Law Enforcement

From 2005 Wisconsin Domestic Abuse Incident Report²⁰

Disposition	Total Incidents
Dismissed	226
Amended	71
Guilty Plea	46
No Contest	14
Read In / Consolidated	1
Total Incidents	*313

* 313 is the total published in the DOJ report; the column total is 358

²⁰ Under [Wis. Statutes 968.075 \(9\)](#), each county is required to provide data regarding domestic abuse incidents to the Department of Justice. The report tracks incidents, arrests, prosecution and sentencing of crimes related to domestic violence.