



Pretrial Release Conditions in Domestic Violence Cases: Issues and Context

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Introduction

What would you do?

Here is an exercise to frame the discussion of pretrial release that follows in this paper. Put yourself in the position of the decision-maker who must determine whether to release the suspect and what conditions, if any, to put in place.

Options available to you	<ul style="list-style-type: none"> a. Release on own recognizance, no bail b. Release on own recognizance, cash bail or bond c. Detain pending trial d. Cash bail or bond e. No contact with victim f. No firearms g. No possession or consumption of alcohol or drugs h. Random urinalysis i. Alcohol and/or drug assessment j. Pretrial supervision 	
The case		Your decision
1	<p>Charge: Domestic Assault (DASLT)5¹; interference w/911 call, disorderly conduct Criminal history: None Police report: Punched victim in head and body, tore phone off wall. Injuries documented (bruises and marks; bloody nose). Threatened to kill her in front of police. Victim reported history of assaults and fear of retaliation.</p>	
2	<p>Charge: DASLT 5 Criminal history: None Police report: Suspect was drinking and threatened to assault wife; witness intervened and suspect hit witness. Victim said she was afraid of what he would do.</p>	
3	<p>Charge: DASLT 5 Criminal history: 3 prior DASLT5 with same victim in 4 years Police report: While in a bar, suspect threatened to beat her. Victim and suspect (ex-boyfriend) now separated; she reported stalking behavior.</p>	
4	<p>Charge: DASLT 5 Criminal history: Drug possession, trespassing Police report: Suspect pushed victim; no injuries. Arguing over suspect's failure to attend drug treatment. Victim reported he uses drugs and is a gang member.</p>	
5	<p>Charge: DASLT 5 Criminal history: No prior history Police report: Suspect pushed victim; fight ensued. Suspect took her car keys and chased her out of the house. Victim called police from a store.</p>	
6	<p>Charge: DASLT 5 Criminal history: 5 months ago with different victim, DASLT5 reduced to disorderly; pending. 2 assault charges in prior year, dismissed. Police report: While in car, in front of children, suspect grabbed victim in semi-choke hold, cut off her airway, and threatened to kill her. Victim said he has been arrested numerous times for DASLT5; said she is very fearful.</p>	

¹ Domestic Assault 5 in this jurisdiction means 1) an act with intent to cause fear in another of immediate bodily harm or death; or, 2) intentionally inflict or attempt to inflict bodily harm upon another.

Now, consider the outcome and conditions of release that were actually ordered in each case. How does your decision compare? Did you make similar or different decisions? What factors did you consider in making your decision? How difficult was it to make a decision? Did you find yourself wanting more information? The real-life decisions in these cases were:

- Case 1 Bail \$0; no contact
- Case 2 Bail \$0; no contact, random urinalysis, alcohol & drug assessment
- Case 3 Bail \$0; no contact
- Case 4 Bail \$5,000 after suspect refused conditions of release and asked for speedy trial
- Case 5 Bail \$500; no contact
- Case 6 Bail \$200; no contact

Every day in thousands of court rooms and jails and police stations across the country, decisions are made about pretrial release in domestic violence cases just like these, with no more information than you have had to work with in this brief exercise.² Every day decisions are made that affect the safety and well-being of thousands of victims of battering with no more information than you have had about the impact of the assault, the victim's level of fear, the suspect's dangerousness, and the impact of release conditions.

In some situations I thought I shouldn't call the police, but sometimes if I didn't call I knew it would be the death of me...Sometimes you do need the police, but a lot of times you're not strong enough for that involvement. The police get involved and there's all these consequences and he's still going to beat you up. Every time he'll blame you for sending him to jail.³

Over the past thirty years the criminal legal system has shifted many practices in response to changes encouraged by the battered women's movement and its allies. The mix of practitioners now gathered around the table in many communities would have seemed far-fetched if not impossible in 1976. Advocates, dispatchers, patrol officers, prosecutors, and probation agents routinely talk with one another and work together in an effort to best protect victims of battering and their children.

Among the questions in such discussions is what to do within the period between an arrest and the point at which a domestic violence case reaches a trial or other disposition. What "pretrial" conditions should be in place? Under what circumstances should the court deny pretrial release? Should a no-contact order be part of all pretrial release conditions? How should pretrial release

² The cases examples have been adapted from those reported in a Safety and Accountability Audit conducted by the Battered Women's Justice Project: *Case Processing of Misdemeanor Domestic Violence Cases: Arraignment to Sentencing*, March 2002, available at www.bwjp.org. For information about this method of community-based analysis, see www.praxisinternational.org. Praxis has partnered with the BWJP Criminal Justice Center to provide assistance in designing, conducting, and implementing Safety and Accountability Audits.

³ Quotes from battered women appear throughout this paper in *italics*. They are drawn from the author's notes of focus groups and case files across several communities and states. They are not meant to capture the experiences of every woman who has been battered, but to introduce the diversity and complexity of their lives into the discussion.

account for victims' interests, autonomy, and safety needs? How should pretrial conditions be supervised, and whose role is it to monitor and enforce them?

This paper explores the issues related to pretrial release, highlights the experiences of several communities that have been puzzling over these questions, and provides guidelines to communities for examining this aspect of criminal case processing in domestic assault cases.

A matter of balance

The question of pretrial conditions in domestic violence cases is one of balance, balance between constitutional rights of the accused and protection 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.

General process and standards for pretrial release

Unlike conditions of probation, which are set after adjudication and conviction, pretrial release conditions are framed by the presumption of innocence and grounded in the Eighth Amendment of the United States' Constitution: "Excessive bail shall not be required..." A judicial officer or other decision-maker has several paths open.⁴ Should this defendant:

1. Be released on his or her recognizance (or promise to return to court as required)?
2. Released with certain conditions or "bail"?
3. Be detained prior to trial?

Built on the platform of the Bail Reform Act of 1984 (18 USC Sections 3141-3150), both the American Bar Association (ABA) and the National Association of Pretrial Services Agencies (NAPSA) have defined standards for establishing conditions for pretrial release and detention. The expectation in legal precedent and practice is that the decision will be made according to "the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person" (ABA Standard 10-1.2). As one commentary explains:

"The presumption that an accused person should be released on a simple promise to appear for future court proceedings is one of the bedrock principles of [pretrial service] Standards. It is linked closely to the principle that an accused person is presumed innocent until proven guilty and to a basic notion of due process: a decision to restrict liberty should only be made after a fair hearing before a judicial officer, and must be supported by evidence and non-arbitrary conclusions" (NAPSA Standards, p. 33).

⁴ In some jurisdictions, under certain circumstances release authority is delegated to an entity other than a judicial officer. This includes a field release or field citation by the arresting officer, a police station release, jail release, and release by a court-linked pretrial services program (Mahoney et al. 2001).

In any case, judicial officers face the obligation to balance “the appearance of the person as required and the safety of any other person and the community” (18 USC 3142(g)) in making decisions about pretrial release and detention. How these decisions get made and who is involved varies from community to community and is shaped by state law. In some jurisdictions a person charged with a misdemeanor will be released by the arresting agency upon payment of a preset cash bond. Others require an appearance before a magistrate, commissioner, or judge. In some places a pretrial services officer or agency gathers information and makes recommendations to the court, while the prosecutor or arresting officer has that role in other locations.

Making the decision

There are several kinds of information that may be collected and considered by the court in the general decision-making process used to determine conditions of release or pretrial detention, for any criminal offense.⁵

- √ The nature and circumstance of the offense charged
- √ The weight of the evidence against the person, as it relates to considerations of danger to a person or the public
- √ The history and characteristics of the person, including:
 - Character
 - Age
 - Physical and mental condition
 - Family ties
 - Employment
 - Financial resources
 - Length of residence in the community
 - Community ties
 - Past conduct
 - History relating to drug or alcohol abuse
 - Criminal history
 - Record concerning appearance at court hearings
- √ Whether at the time of the current offense or arrest the person was on probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence
- √ The availability of persons who could agree to assist the defendant in attending court at the proper time
- √ Other information relevant to successful supervision in the community
- √ Facts justifying a concern that the defendant will violate the law if released without restrictions, fail to attend court, or pose a threat to the safety of any person or the community
- √ Factors that may make the defendant an appropriate candidate for condition release and supervision, e.g., participation in available medical, drug, mental health, or other treatment, diversion, or alternative adjudication release options

⁵ These factors in decision-making and the following section on conditions of release have been compiled from the ABA and NAPSA standards and 18 USC 3142.

Pretrial detention decisions carry the highest standard and require a determination that no conditions of release can provide reasonable assurance that the defendant will appear in court as required or protect the safety of any person or the public. In considering pretrial detention, the most consideration will go to the 1) nature and circumstances of the offense charged; 2) nature and seriousness of the danger to any person or the community; and, 3) weight of the evidence.

Conditions of release

Where a defendant does not qualify for release on his or her own recognizance, the court will consider a range of possible conditions for release, including:

- Not commit a crime
- Attend all court proceedings as ordered
- Remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court
- Maintain employment or actively seek employment
- Abide by specific restrictions on personal associations, place of abode, or travel
- Avoid all contact with an alleged victim of the crime and with a potential witness
- Report on a regular basis to a designated law enforcement agency, pretrial services, or other agency
- Comply with a specified curfew
- Refrain from possessing a firearm, destructive device, or other dangerous weapon
- Turn over all firearms and other dangerous weapons in defendant's possession or control to an agency or responsible third party designated by the court
- Refrain from excessive use of alcohol and any use of a narcotic drug or other controlled substance
- Undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose
- Execute an agreement to forfeit property of a sufficient unencumbered value, upon failing to appear as required
- Return to custody for specified hours following release for employment, schooling, or other limited purposes
- Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community, such as electronic monitoring, house arrest, or participation in an alternative adjudication program, such as drug, mental health or other treatment courts

Within this broad range of possible considerations in making decisions about pretrial release and conditions, judicial officers vary according to the particulars of state law, local practices, and judicial philosophy. For example, for many judicial officers the presumption of innocence for someone awaiting trial requires a minimum of pretrial conditions and resistance to the routine use of danger assessment tools, inquiry into the nature and circumstances of the offence, and mandatory pretrial monitoring programs.

Accounting for domestic violence

If I dwelt on how I really felt I'd be in [the state mental hospital]. 'Are you sure you're afraid?' they ask. How afraid do I have to be?

Inside, I'm always scared; I always have this knot in my stomach.

The police come: 'he's bad' – so they handcuff him and leave. They leave you with your kids, your experiences, your fears.

General standards and practices guiding decisions about pre-trial conditions and release have little to say about how such determinations should be made in the context of domestic violence cases. There is no bright-line test to tell a judicial officer which path to take. While there is a broad statement of “protecting victims,” the ABA and NAPSA standards, for example, say little about how to do that when the risk is to a victim of battering. Only recently have pretrial services programs explored distinct pretrial release evaluation and risk assessment procedures for defendants charged with a domestic violence crime (Clark and Henry 2003). This has meant changing roles for pretrial agents who traditionally may not have been asked to investigate and make recommendations on misdemeanor cases, or may not have considered contact with victims as an appropriate or necessary component of their work (Mahoney et al. 2001).

During the 1990s a best-practice approach characterized much of the attention to reform of the criminal legal system response to domestic violence cases. The emphasis on model policies and procedures extended to pretrial release practices as well as other points in criminal case processing. Table 1 compares three best-practice approaches to pretrial release conditions.

The influence of these model policy and practice discussions can be seen in the ways that state legislatures and judicial bench books have addressed bail conditions. Statutory requirements include requiring that a judge determine bail, identifying risk factors to be assessed before release, mandating no-contact orders, and imposing a minimum jail stay of several hours prior to release (Ham 2005). Appendix A compares domestic violence-specific bench books in four state courts and one tribal court.

Minnesota provides an example of melding specific domestic abuse bail guidelines with the traditional framework of pretrial release principles and conditions: assuring appearance at court proceeding and protecting the public. §629.72⁶ addresses “bail in cases of domestic abuse, harassment, violation of an order for protection, or violation of a domestic abuse or no contact order.” It provides that “an arresting officer may not issue a citation in lieu of arrest and detention,” but must bring the arrested person to the police station or county jail for review, “without unnecessary delay.” The statute grants the officer in charge of the station or jail authority to issue a citation “unless it reasonably appears” that release poses a threat to another person or the arrested person is unlikely to appear at later proceedings. The emphasis however, is on judicial review prior to release.

⁶ Minnesota Statutes 2005, <http://www.revisor.leg.state.mn.us>.

In making a decision concerning pretrial release conditions...the judge shall review the facts of the arrest and detention of the person and determine whether: (1) release of the person poses a threat to the alleged victim, another family or household member, or public safety; or (2) there is a substantial likelihood the person will fail to appear at subsequent proceedings. Before release...the judge shall make findings on the record ...[§629.72(2)].

Authorized conditions of release reflect the tactics that accompany battering and stalking behavior. For example, the court can prohibit the person from “threatening to commit or committing acts of domestic abuse or harassment against the alleged victim or other family or household members...harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly.”

The law also requires that “the agency having custody of the arrested person or its designee must make a reasonable and good faith effort to inform orally the alleged victim” of the conditions of release; time of release; time, date, and place of the next scheduled court appearance and the victim’s right to be present; and, the location and telephone number of the battered women’s shelter. The agency must also personally deliver or mail a copy of the written order to the victim.

Table 1

Approaches to pretrial release conditions		
<i>Toolkit to End Violence Against Women - 2001</i>	<i>Assessing Justice System Response to Violence Against Women - 1998</i>	<i>Model Code on Domestic and Family Violence – 1994</i>
<ul style="list-style-type: none"> ▪ Increase decision-makers’ access to information regarding protection orders, sex offenders, conditions of release or probation, risk assessments conducted in the criminal legal system, and victim feedback on potential risk and protective conditions of release. ▪ Create an electronic network of databases to help decision makers evaluate whether bail should be denied and bail conditions for victim protection and offender restraint. ▪ Develop assessment tools to enhance the quality and speed of pretrial release information gathering. ▪ Educate decision makers on the risks posed by certain offenders. Delineate how a particular perpetrator’s behavior and circumstances match risk markers for heightened dangerousness. 	<ul style="list-style-type: none"> ▪ Consider detention before arraignment, such as a 12-hour hold. ▪ Hold the defendant in protective custody during court proceedings where a systematic risk assessment shows significant risk to the victim. ▪ Set conditions of release according to the nature of the crime, danger to the victim, danger to the community, defendant’s criminal history, contacts with the community, and potential for maintaining contact with the defense attorney and court. ▪ Always consider no-contact orders (including third parties acting on the defendant’s behalf) and other conditions, e.g., confiscate weapons, prohibit alcohol/drug use, participate in alcohol/drug treatment. ▪ Determine whether mental health evaluation is appropriate. ▪ Notify victim when defendant is released and provide a copy of the conditions and orders. ▪ Use warrants (e.g., search or subpoenas) to expedite proceedings, protect the victim and secure pertinent information and evidence. ▪ Violations of release conditions result in swift and certain sanctions. 	<ul style="list-style-type: none"> ▪ Review the facts of the arrest and determine whether the person a) is a threat to the alleged victim or other family or household member; b) is a threat to public safety; and, c) is likely to appear in court. ▪ Make findings on the record ▪ Conditions of release orders may include: no threats or acts of violence; no harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, directly or indirectly; stay away from the home or other location; no use or possession of firearms or other weapon specified; no possession or consumption of alcohol or controlled substances; any other condition required to protect safety and ensure appearance in court. ▪ Issue a written order for conditional release. ▪ Immediately distribute a copy to the agency having custody of the arrested/charged person. ▪ Provide any available information concerning location of the victim in a manner that protects safety. ▪ Provide a copy of release conditions to the arrested or charged person. ▪ Use all reasonable means to immediately notify victim of arrested/charged person. ▪ Provide victim of alleged crime with a certified copy of any conditions of release.

Judicial role and resistance

Where judicial philosophy puts a premium on a defendant's rights, or where the defense bar is particularly influential with the bench, there is often resistance to specialized screening or pretrial conditions in domestic violence related cases. Inquiries into a defendant's behavior and past history of domestic violence are seen as unduly influencing the judge who may preside over the trial. Pretrial conditions requiring domestic violence screening or participation in a batterer's group or some form of pretrial monitoring, such as reporting regularly to a pretrial services officer, are seen as imposing a form of punishment on someone who has not been found guilty of a crime. For example, among the Judicial Oversight Demonstration Initiative sites, in Dorchester pretrial supervision is rarely used, in part because of inadequate court resources, but also because of the influence of the defense bar and strong defendants' rights laws in Massachusetts (Harrell et al. 2001).

While the general standards of pretrial release set a foundation that permits close attention to the safety of any person or the public, a judicial officer may be reluctant to invoke processes or conditions that account for the specific context of domestic violence crimes. Yet domestic violence is a pattern crime and research has increasingly identified key factors associated with dangerousness, including prior history of domestic violence; estrangement, separation or divorce; obsessive, extreme jealousy; escalating violence; access to guns; use of or threats with weapons; serious injury in prior incidents of abuse; threats of homicide and suicide; forced sex; stalking; prior police involvement; and, drug or alcohol use (Roehl et al. 2005; Websdale 2000). Satisfying the second prong of the purpose of bail – “protect the community, victims, witness, or any other persons” – is difficult without some level of inquiry into these aspects of dangerousness.

The Ohio Bench Book (see Appendix A) addresses judicial reluctance to inquire too deeply into the defendant's history and context of the crime by tipping the balance toward safety: “If a judge believes full disclosure of lethality information at arraignment will taint the judicial mind for future proceedings, the community is better served by a full-informed bond decision and a voluntary recusal.” The Michigan Bench Book addresses concerns about imposing penalties prior to conviction by specifically excluding batterer intervention programs from the kind of “specified treatment program for any physical or mental condition” included as potential pretrial conditions of release.⁷

States and tribal courts that have established bench book guidelines in domestic violence cases tend toward a more direct role for the court in “managing the violent behavior of offenders to ensure victim safety” (Little, Malefyt, et al., 1998), a role that extends to establishing pretrial release conditions. This may be even more the case with a tribal court that also considers custom

⁷“To protect the defendant's right against self-incrimination, do not order *pretrial* participation in a batterer intervention service.” It is inappropriate because it requires participants to admit responsibility for their violent acts. Batterer intervention is distinct from pretrial informational programs that explain court proceedings and provide general information about domestic violence without requiring participants to accept responsibility for a specific behavior. P.134

and tradition in defining the judicial officer’s role. To illustrate, here are examples of pretrial release conditions included in one state and one tribal bench book.⁸

Michigan Bench Book	Northwest Tribal Courts
Under court rule, judges have broad authority to impose conditions of release. Orders are entered into the state law enforcement information system.	“We recognize that each tribe is unique and has its own laws. We urge each tribal judge to be mindful of the tribe’s codified laws as well as its unwritten and unspoken tradition and customary laws and rules.”
√ Report to a court agency	<ul style="list-style-type: none"> ▪ Is your tribe a matrilineal or patrilineal tribe?
√ No use of alcohol or controlled substance	<ul style="list-style-type: none"> ▪ What are the tribe’s oral customs and traditional laws?
√ Participate in substance abuse testing or monitoring	<ul style="list-style-type: none"> ▪ In our community, do we presume innocence or guilt?
√ Participate in a specified treatment program for any physical or mental condition (excluding batterer intervention services)	<ul style="list-style-type: none"> ▪ What seasonal activities and culturally significant events should be considered in scheduling trials?
√ Comply with restrictions on personal associations, place of residence, employment, or travel	Pretrial options:
√ Surrender driver’s license or passport	√ No-contact order
√ Comply with specified curfew	√ “Set a large bail on the condition that the defendant not contact the alleged victim, and/or her family.”
√ Continue to seek employment	√ Schedule a time for the police to escort the defendant to retrieve his belongings from the residence, after notice to victim
√ Continue or begin educational program	√ Order to refrain from damaging the victim’s automobile or other property
√ Remain in custody of a responsible member of the community who agrees to monitor and report any violation of any release condition	√ Turn any guns over to the Tribal Police Department
√ No possession of firearms or other dangerous weapons	
√ Do not enter specified premises or areas	
√ Do not assault, beat, molest or would a named person or persons	
√ Satisfy any injunctive order made as a condition of release	
√ Comply with any other condition “reasonably necessary” to ensure appearance and safety of the public	

⁸ See Appendix A for additional information and citations.

Community practice

As communities and courts have become more proactive in shaping their responses to domestic violence cases, they have tried various approaches to pretrial conditions and monitoring. There is no single answer in any one community, but exploring the collective experience of several such efforts suggests how to think about pretrial release in domestic violence cases and contributes to identifying a continuum of sound practices that account for variations in resources and the complexities of risk and safety.

Hennepin County, MN

Hennepin County, Minnesota is an urban county with a population of over one million, including the city of Minneapolis. A pretrial screening unit in Hennepin County Community Corrections (HCCC) operates around the clock out of the jail. The unit has delegated release authority on misdemeanors, except for person crimes. A person arrested on a domestic violence related charge must appear before a judge. For city arrests that appearance occurs in a specialized domestic violence court.

The pretrial unit's role is to "gather information for the judge." Is the victim afraid of the defendant? Does the victim want contact with the defendant? Was the victim injured, and how seriously? Were weapons involved? Were children present or involved? As one member of the unit described it, "we want judges to make good decisions; we always err on the side of victim safety."

The pretrial screening process for domestic cases includes the following steps:

- ↻ Review electronic list of arrests
- ↻ Start criminal records check
- ↻ Read the police report (available online), which includes victim contact information
- ↻ Contact the victim as soon as possible
- ↻ Interview the arrested person
- ↻ Complete a Domestic Assault Impact Statement (victim impact)
- ↻ Complete the Hennepin County Pretrial Evaluation, including Point Scale

A pretrial officer is in felony and misdemeanor courts every day to present reports and recommendations and field questions. The prosecutor, defense attorney, and judge all receive copies of the bail evaluation. Judges do not use any grid or strict criteria for setting bail and release conditions, but "most of the time will adhere to our recommendations, or will reduce the amount of bail," as one pretrial agent described the process. Unless there is a recommendation to release without bail or other conditions, which is unusual in domestic violence cases, a no-contact order is likely to be in place while the case moves through the court process. Some defendants will also be subject to pretrial monitoring by a conditional release officer in the probation unit, plus random alcohol and drug testing.

The pretrial unit emphasizes timely contact with the victim and most contact happens within a couple of hours following the incident. Because they have ready access to arrest logs and police reports, a pretrial agent is often the first person to speak with a victim after the police have left, frequently reaching her before specialists from the prosecutor's office or advocates who also follow up on police calls. If the victim cannot be reached directly, the agent will leave a message with information about the unit's role, the kinds of information they are gathering, and how to contact them. Ordinarily, the evaluation will not recommend release on bail until a pretrial agent has spoken with the victim.

The Pretrial Services Point Scale is a key tool for the court in determining whether a defendant will be released with out bail, released with conditions, including pretrial monitoring, or detained pending trial. It is scored according to type of offense, residency, living situation, employment and income status, age, history of failure to appear, and prior criminal record. It is a validated instrument, but does not stand alone as a basis for determining pretrial release conditions or detention, particularly in domestic assault cases. The agent can override the score, to account for defendants who may "look good on paper" but whose actions suggest a greater danger.

Pretrial release recommendations are also guided by the Domestic Assault Impact Statement, which is designed to draw out information about factors associated with increased danger in domestic violence cases: injuries, threat or use of weapons, increasing violence, prior history of assaults and threats, separation or termination of the relationship, and involvement with orders for protection.⁹ Because agents have ready access to criminal history information and the incident report, they can address many of these factors regardless of whether they are able to make direct contact with victim. The impact statement also guides the pretrial agent to consider the victim's concerns about the defendant's release: "In what situations are you afraid of the defendant (name)? – What concerns do you have if the defendant (name) is released from custody? – Would there be consequences for you if the Court orders 'no contact' with you?" At the top of the form is a reminder of "important information that needs to be conveyed to the victim before the interview" regarding how the information will be used and the lack of confidentiality.

⁹ The unit previously used a lengthy scored interview, the Domestic Violence Screening Instrument (DVSI), to help guide pretrial release recommendations. The DVSI is now used in setting conditions of probation. As one agent described the shift, "the DVSI was taking about twice as much time as what we do now. We found that once the defendant got to the supervision level, information from the victim and defendant changed and probation supervisors ended up redoing the work we had done ... the pretrial process is right up front, immediate. The DVSI was too involved and judges were getting too much information." A unit supervisor noted that "while we don't use it formally, agents use many of the same factors in spelling out their rationale for pretrial recommendations." Apart from the use of the specific DVSI form and scale, the pretrial and probation officers' experience with it and its attention to dangerousness provides a framing device for their overall work on domestic violence cases.

Victim contact and the Domestic Assault Impact Statement

Approach is important: how you introduce yourself, your tone of voice, the first couple of questions. We all try to gather same information, but how we do it makes a difference. The introduction depends on information in the police report. If I know the victim had to go to hospital or see a doctor or there was a weapon involved, I'll change the order of questions or how they're asked. It doesn't make sense to start with 'are you afraid?' when she's just had her front teeth knocked out. Of course she's afraid ... I try to get as much info on the situation and history as possible before the call. I use the police report and criminal history check, arrests, convictions, police reports.

Hennepin County Community Corrections - Pretrial Unit Officer

Current pretrial screening practices have been influenced by the community's experience using the Safety and Accountability Audit to study case processing of misdemeanor domestic violence cases. In 1999 they examined initial police response to arraignment. The team interviewed pretrial release officers, prosecutors, crime victim specialists, and battered women's advocates. Over a three-week period they observed 67 arraignments, followed by analysis of information in the county's criminal justice database and the police reports for each case. The team made several recommendations to corrections, courts, and prosecution to strengthen bail-setting and release in domestic violence cases: 1) develop guidelines for bail and conditions of release that are related dangerousness (e.g., criminal history, pattern of violence, injuries, and severity of assault); 2) use all opportunities for the bench to directly address offenders about violence and its impact on the community and the victim; 3) reconsider the practice of imposing no-contact orders in all cases; and, 4) step up prosecution arguments for increased bail or special release conditions in cases that indicate heightened danger for the victim (Lee et al. 2000; Martinson et al.2002). Attention to these recommendations has become an ongoing aspect of Hennepin County's coordinated community response:

Jackson County, OR

Jackson County is a predominantly rural county of approximately 180,000 people, with eleven incorporated cities ranging in size from 440 to 68,080. In 2003 Jackson County also completed a Safety and Accountability Audit that examined prosecution response to misdemeanor domestic violence cases, including pretrial release practices.¹⁰ Its experience illustrates the ways in which decisions are often made within generally accepted pretrial release practices, but without a clear way to take account of the unique safety considerations in domestic violence crimes.

¹⁰ A description of Safety Audit methods and the Jackson County report are available at www.praxisinternational.org.

A release officer employed by the courts evaluates defendants, completes an Affidavit for Release Consideration, and appears at all arraignments to present recommendations for pretrial release. The release officer uses a matrix that incorporates common elements of standard release or bail considerations: arrest history, work history, and family and employment status. What is missing is attention to victim safety. The form “does not contain questions or space for victim input or information about her fear of future assaults.” The process does not include any victim interview or impact statement. The conditions of release reflect a narrow range of options. A no-contact order is automatically entered in every case and the release officer recommends a bail amount. Although it was not necessarily documented as a condition of release, when audit team members observed the arraignment process they saw some defendants ordered to report to a probation officer, avoid intoxicants, and/or submit to drug testing. The release officer presents the recommendations to the court and prosecutors typically do not appear at arraignment, or request specific conditions, “unless it is a unique, unusual, or particularly serious case.”

Jackson County discovered in its safety audit that “no one in the local criminal justice system routinely gives the victim a copy of the order outlining conditions of release,” and neither victims nor the district attorney’s office were routinely notified about a defendant’s release from jail. While defendant release information is entered in the state-run VINE system, information about the system and how to use it did not reach victims in a timely fashion.¹¹

They also learned that jail overcrowding was a significant factor influencing release decisions. As noted in their report, “the release officer is to be mindful of the jail population and not let it get above 190. If that is the case while reviewing releases, the release officer is to compare the seriousness of the offense with the seriousness of the offenses of others currently incarcerated.”

Part of the ongoing work within Jackson County’s coordinated community response is introducing and standardizing an awareness of victim safety within the pretrial release decision-making process.

If we could design pretrial release from the ground up, it would include:

- Prompt notice to the victim before a defendant is released from custody
- Copy of the release conditions to the victim, and contact with someone who can explain what they mean
- Timely notice of pretrial release conditions to dispatchers and officers
- Enforcement of pretrial conditions
- Pretrial supervision: regular reporting to a supervising authority, similar to what occurs with DUI (“drunk driving”) charges
- Video explaining pretrial conditions and consequences that defendants must watch before they are released from jail: “signing a paper is not enough”

- A Jackson County advocate

¹¹ VINE (Victim Information and Notification Everyday) is a free and anonymous telephone service that is designed to provide victims with information about custody, release, and probation status, 24 hours a day, 365 days a year. <http://www.oregon.gov/DOC/PUBAFF/vine.shtml>

Washtenaw County, MI

The City of Ann Arbor makes up almost one-third of Washtenaw County's population of 322,895. The county is one of the three national Judicial Oversight Demonstration Initiative (JODI) sites¹² and attention to pretrial release conditions has been a central and sustained part of its work under JODI.

The Washtenaw County pretrial release process includes the following features and steps, within the context of a dedicated domestic violence court docket that has a probation officer and a community-based victim advocate in the courtroom:

- ↻ Officers complete a Law Enforcement Domestic Violence Bond Information Form that accompanies the police report and goes to the court at the release hearing
- ↻ Judges and magistrates have available to them written guidelines on communicating release conditions at domestic violence arraignments and confirming defendants' understanding of the conditions
- ↻ Defendants receive a Domestic Violence Order of Conditional Release form and sign it in the presence of the judge or magistrate
- ↻ Release conditions are entered into the statewide Law Enforcement Information Network
- ↻ Defendants are required to attend one of two pretrial release groups scheduled each week
- ↻ The pretrial group facilitator explains each item on the release form and the consequences for violating each condition of release, answers questions, and obtains a second signature verifying that the defendant understands the conditions

The Bond Information Form (Appendix B) provides the court with a “mini danger assessment,” as one judge described it. Completed by the arresting officer, from information obtained on the scene and via a standard criminal history check, the form highlights factors associated with increased dangerousness, such as nature of injuries, threats, weapons, prior complaints, criminal record, a protection order, outstanding warrants, and probation/parole status. The form asks “Does victim request a no contact order?” and includes space for recommendations from the police agency and prosecutor.

Judges and magistrates in Washtenaw County have a sample script for domestic violence arraignments that they can consult and customize (Appendix D). It guides them through a process of advising the defendant of the charges, securing legal representation, setting and reviewing each bond condition, and reinforcing the consequences of violations. For example:

Address the Defendant: “You need to know that this bond and these conditions are placed on the Law Enforcement Information Network – that’s the computer system for the police. Should you come into contact with an officer in the future, that officer would easily be able to find out about the existence of this bond and the conditions. Under

¹² In addition to Washtenaw County, JODI sites included Milwaukee County (WI) and City of Boston/Dorchester District Court (MA) For information about the initiative and each site: <http://www.vaw.umn.edu/documents/1jod/1jod.html> (Violence Against Women Online Resources); or, http://www.vera.org/project/project1_1.asp?section_id=4&project_id=28 (Vera Institute).

Michigan law, if an officer has ‘reasonable cause’ to believe that a bond violation has occurred – even if no new crime was committed – they have the authority to immediately place you under arrest. Then you would be held for the purpose of a ‘bond revocation hearing’ to be held before a judge. As you might imagine, if it’s ever proven that someone has violated a condition of his or her release, it would be very difficult to get out of jail a second time. Your bond would be revoked and a new, stricter bond set. This is a ‘zero tolerance’ policy.”

Once the court has determined the conditions of release and reviewed them, the defendant signs and receives a copy of the order (Appendix C). The conditions are entered into the state law enforcement database and a copy faxed to the pretrial review group facilitator at Community Corrections. The form has evolved to include six conditions that are pre-checked:

- 1) report for a review of conditions of release;
- 2) do not leave the state without the court’s permission;
- 3) do not possess or purchase a firearm or other dangerous weapon;
- 4) do not assault anyone;
- 5) personally appear at all court hearings and other places as directed; and,
- 6) do not violate any criminal law.

The pretrial group facilitator describes the change this way: “The most important conditions are now pre-checked; we found that visiting magistrates were missing them. At first judges resisted pre-checked conditions because they didn’t want to seem to be prejudging, then realized that they were routinely checking certain ones.”

Domestic violence pretrial release practices in Washtenaw County were developed with the participation of the defense bar. A probation officer describes the significance of their involvement in these terms: “The judge purposefully brought the defense bar in to draft the [release] form. Defense attorneys had a lot to say about how the form and the group were formulated. We said they could come to all the pretrial group meetings with defendants they wanted to. They came to about three or four [groups] and saw that this was just educating defendants...we want everybody’s rights protected, and we’re most interested in safety for everybody.”

A defendant must report to a pretrial review group within the week following arraignment. Judges and magistrates set the date in the courtroom, choosing from a Monday morning or Thursday afternoon session. While the groups are one aspect of Washtenaw County’s broader fabric of protection and safety, the unit takes care to structure and conduct them as information groups, without any inquiry into the specifics of the charge and without naming any victims. “I tell [participants] the judges want you to understand the consequences of violations...the conditions are meant to keep people calm, quiet, and safe until we figure out what happened...you’re here because someone found enough probable cause for an arrest and complaint.” The facilitator goes through each condition of release listed on the form and explains what it means if a defendant has it checked. For example, regarding the no-contact provision, “I was asked by the judges to explain that if the named victim is on your speed dial or e-mail group,

remove it; they won't accept that you hit the button by accident or forgot her e-mail address was there."

Most of the defendant's ordered to the pretrial group are men. The facilitator is alert to the possibility that a female defendant may be a victim of battering. "I see one maybe every couple of weeks. I try to meet with [women] separately because of the risk that they might be a survivor, and there's also a different dynamic with ten men and one woman in a group. When I meet with women I'll say something like, 'research shows that in relationships between women and men, women who are arrested may be victims of violence. I don't know if that's the case in your situation, and I can't be confidential, but you might want to be in contact with Safe House.'"

Communicating pretrial release conditions: a consistent message

We say to defendants, 'no one wants you to violate the conditions ... but there will be consequences.' We're concerned for everyone's safety, and we want to be fair to everyone. – Judge

The shelter was saying, "these guys seem to think arrest is no big deal – 'I'll get an attorney, I'll make her recant.'" We wanted to have a batterer do something right away, to start holding them accountable, which meant giving them a heads-up. They need to know how we're going to hold them accountable." – Probation officer

A batterer recognizes that the court is watching. It's not just a matter of get out of jail and wait until the next court date...In the pretrial review group we talk about how violations have serious consequences and we want them to know what they are, and that a violation will be treated as a violation, that there are no "accidental" violations. – Pretrial review group facilitator

- The Washtenaw County experience

The puzzle of no-contact orders

I wish we could get no-contact orders. Judges here hardly ever give no-contacts, and you have to go in and ask for it.

They automatically assume that a woman wants to break away. It's not true; not everyone wants a divorce... he wasn't taking his medication and no one's taking this into account. Because the police were called he can't come back to our [elderly housing] apartment; he's not allowed to come back, and I want him back...it's so cold, impersonal. There's no compassion.

In order to “protect the community, victims, witnesses or any other person,” the context and pattern of domestic violence crimes requires that pretrial release decisions must be grounded in each victim’s perspective of actions intended to promote her safety and the danger the perpetrator poses to her, and perhaps to her children and other family members as well.

Criminal legal system intervention has tended to rely on no-contact orders as a primary avenue for protection. Yet the complexity of risk and safety for each victim of battering means that a universal, blanket provision for no-contact orders as a pretrial release condition in all cases does not necessarily protect, and may contribute to the vulnerability of some victims. For women who are left without income, child care, personal care, or a way to communicate, for example, a no-contact order can be more frightening than the actions that led to their partner’s arrest. It is common to find written requests to rescind a no-contact order that are similar to these: “I was in a car wreck last week and I can’t drive; I need his help to get to work,” or “this is a financial burden.” The challenge of determining when, whether, and how to craft no-contact provisions is at the center of many communities’ attention to pretrial release.

Accounting for the danger and/or promise of safety in any intervention requires attention to the danger posed not only by 1) a batterer to a victim, but to 2) the risks of life circumstances and aspects of culture, 3) the risks of intervention itself, and the ways in which these risks intertwine.¹³

¹³ This figure has been adapted from “Assessing Social Risks of Battered Women,” by Radhia A. Jaaber and Shamita Das Dasgupta, Domestic Abuse Intervention Project, 2002 (available at www.praxisinternational.org); *Safety Planning with Battered Women: Complex Lives/Difficult Choices*, Jill Davies, Eleanor Lyon, & Diane Monti-Catania, Sage Publications, 1998; and, work of the Battered Women’s Justice Project. This version was published in *The Praxis Safety and Accountability Audit Tool Kit*, Ellen Pence and Jane M. Sadusky, Praxis International, 2005. The BWJP Web site (www.bwjp.org) also has several resources to help in developing practices that better account for the complexity of risk and safety. For example: *Assisting Immigrant Victims of Domestic Violence: Advocate’s Guide*; by Gavin Kearney, *Literature Review: Structural Racism, the Criminal Justice System and Violence Against Women*; and, by Patricia E. Erwin, *Intimate and Caregiver Violence Against Women with Disabilities*.

- √ Consider each request individually.
- √ Prior to issuing a no-contact order, attempt to get the victim's feedback about whether she or he wants such an order, in a way that protects her comments from discovery by a defense attorney.
- √ Provide a non-judgmental, non-threatening explanation if issuing the no-contact order against the victim's wishes.
- √ Consider modifications to the order or other conditions in lieu of no-contact; for example, require compliance with batterer treatment, alcohol treatment, no firearms, and no further violence; or, intensive supervision. In some circumstances (e.g., type of violence, criminal history, use of firearms, law enforcement or military employment) jail might be the safest avenue to no-contact, and to protecting the public.
- √ Utilize crime victim support services to obtain more information about why the victim wants the order dropped and any concerns about the order and its conditions.
- √ Avoid requiring a victim to appear in open court in order to request that a no-contact order be dropped or modified.
- √ Provide timely referrals to community-based advocates, financial support, and other services.

Building sound practice

How can a community approach the issue of pretrial release in a way that addresses this complexity of victims' lives and the dangers posed by different batterers? How can it offer the broadest protection, while balancing defendants' rights and safety for victims and the wider community?

Among those consulted in writing this paper, several key elements kept reoccurring as they described their experiences with pretrial release and ideas for how it might be improved. Just as there is no single approach that works for every domestic violence case, there is no single approach to crafting pretrial release practices that meets the distinct characteristics of every community. From this discussion, however, a foundation is emerging, along with a continuum of practice and questioning that will support interagency efforts to promote victim safety and offender accountability at this point of intervention. Many aspects echo the best-practices approaches described earlier, tempered by community experiences and insights into the complexity of risk and safety.

If you got women together like this [focus] group, maybe the court could really tell how afraid women are, maybe it could understand our lives.

They just assume that every case is the same...we're people with feelings, reasons, ideas about what's happening, but no one wants to know.

Why can't that [prosecutor] call you up and talk about how this violence has affected you? What's the impact? The person that's doing the case needs to feel my fear.

Foundation

To begin, communities can examine their overall approach to intervention and the extent to which it is grounded in strategies that best counter the patterns of coercion and manipulation that characterize battering. At the pretrial stage, and throughout (Lee, et al. 2000):

1. Identify the context¹⁴ in which this incident occurred and the victim's perspective on case outcomes that could promote safety.
2. Attempt to match the intervention with the victim's goals for safety.
3. Solicit information from the victim in ethical ways that respect her level of fear and hold her safety as a prime consideration, and that allow her to make informed decisions about the impact of her disclosures on her safety.
4. Limit or deny the defendant's contact with or access to the victim, as appropriate (not automatic).
5. Craft release conditions that reflect the danger perpetrators pose to public safety, recognizing that the victim is part of the public.
6. Assist victims in developing safety plans and connect them with advocacy services that can help them address problems caused by the violence that the criminal legal system cannot.

Features

Building sound pretrial practices involves paying increased attention to safety at the front end of the judicial process. In addition to the specific features noted below, this includes expanding victim/witness support, expediting access to orders for protection (which can provide broader, longer-lasting restrictions than pretrial release conditions alone), promptly revoking pretrial release for new acts or threats of violence, and aggressively pursuing witness tampering and intimidation.¹⁵ The features are presented along a loose continuum, beginning with aspects of criminal or domestic violence case processing that are already in place in many communities and involve more adaptation of existing practices than creation of new ones. Other features involve broader or costlier changes.

- ↗ Obtain accurate victim contact information in police reports (and safeguard disclosure of that information to suspects).
- ↗ Contact a victim as soon as possible, in ways that respect her fear and circumstances. Is she afraid? Does she want a no-contact order? How would a no-contact order affect her? Provide information about likely pretrial conditions and answer her questions.

¹⁴Establishing context also requires examining practices on arrests of battered women. Practices intended to protect can increase vulnerability.

¹⁵ Among the JODI sites, Milwaukee County has paid particular attention to pursuing batterer manipulation and threats from in-custody telephone calls. Footage from a local television feature has been turned into a training and education video, *Batterer Manipulation from Behind Bars*. It records one batterer saying "'if you don't show up they can't press charges...no matter what they tell you...if the victim isn't there, they've got nothing.'" Another was recorded in his attempt to hire someone to break the victim's jaw: "If I'm doing time, she's going to get it ...I told him I want some teeth."

- ↗ Use all available sources of background information (e.g., police report, criminal history records and databases, OFP/restraining order registries) to develop an understanding of the context of the offense and the danger that a suspect poses to a victim.
- ↗ Provide an information sheet to the decision-maker, along with the arrest or incident report, that can function as a “mini-danger assessment.” Use the police report and any other sources of information that are readily-available, such as those noted above. (See Appendices B and E for examples of this type of form.)
- ↗ Consider each no-contact order individually; no automatic orders.
- ↗ Put conditions of release in writing; provide a copy to the victim as soon as possible.
- ↗ Notify a victim in person prior to an offenders’ release, with as much advance notice as possible. Be clear on whose responsibility it is to notify, and how it should happen.
- ↗ Do not ask a victim to appear in open court to request that a no-contact order be dropped or modified.
- ↗ Enter pretrial release conditions into law enforcement information systems and notify local agencies.
- ↗ Explain each condition of release and the consequences of violation to the defendant prior to release (e.g., Appendix D).
 - In addition, provide a video that explains conditions of release to those booked in the jail.
 - Or, require attendance at a group that reviews all conditions of release.
- ↗ Take prompt action on violations of release conditions.
- ↗ Require pretrial supervision of defendants where there is indication of escalating violence or serious concern by a victim and/or interagency partners about the probability of continued harassment and harm to the victim and/or children.
- ↗ Deny release to defendants with a serious and lengthy history of violence or where the incident involved extreme violence and injury or death.
- ↗ Utilize a dedicated domestic violence docket or court.

Like other aspects of intervention, building sound pretrial practices is not the responsibility of a single entity, but requires coordinated attention from many quarters. There is a role for advocates, law enforcement, jail personnel, pretrial services agencies, victim/witness specialists, prosecutors, defense attorneys and courts, grounded in the experiences of battered women. It requires ongoing consultation with victims of battering via surveys, focus groups, interviews, advisory groups and other avenues for learning about the ways in which criminal legal intervention can enhance or diminish safety and well-being.

Setting the stage

Whenever a pretrial release decision is made, someone somewhere has gathered information that provides the decision-maker with a basis for determining that a particular suspect will appear at subsequent proceedings and that the victim and wider public will be protected. Unless the law requires an automatic release on payment of a bond for the offense charged, someone is already reading reports, checking records, and compiling information that will support one decision or another. It may be a pretrial release agent, prosecutor, jail supervisor, judge, or magistrate. In

many communities, building sound practices in pretrial release for domestic violence cases may be primarily a matter of discovering who is generally responsible for this information-gathering and decision-making, and figuring out how that process can be modified to better account for domestic violence crimes and the context of battering. It might involve developing a form to accompany police reports and provide the decision-maker with a snapshot of key factors related to dangerousness and safety. Other communities may need to rethink the ways in which those who have initial contact with victims can talk with them about meaningful conditions of release, and a mechanism to relay that information to the court in a way that respects each victim's level of fear and perspective on what will improve her safety. It may mean tightening up the accuracy and type of victim contact information that officers include in their reports.

In other places, more fundamental discussions will have to occur first, about community response to domestic violence or the judicial officer's role in intervention, as well as in making pretrial release and detention decisions. A new approach to pretrial release might require more attention to safe ways of talking with victims and coordinating a more complete array of post-arrest victim services. In many communities it might require involving the defense bar in the discussion.

The foundation and features outlined above, and the community experiences described elsewhere, help set the stage in considering how this critical point of intervention can best strengthen victim safety and well-being, as well as batterer accountability.

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Appendices

- A. Domestic violence bench books and pretrial release considerations
- B. Law Enforcement Domestic Violence Bond Information Form
- C. Domestic Violence Order of Conditional Release
- D. Sample Script and Guidelines for Domestic Violence Arraignments
- E. Sample Bail Setting Information Sheet

Appendix A: Domestic violence bench books and pretrial release considerations

Bench Book	Purpose of bail	Considerations	Conditions of release
<p>Michigan</p> <p><i>Domestic Violence: A Guide to Civil and Criminal Proceedings (Third Edition)</i></p>	<p>“Ensure the appearance of the defendant” and “reasonably ensure the safety of the public”?</p> <p>“Subject to conditions reasonably necessary for the protection of 1 or more named persons.”</p>	<p>“The court in fixing the amount of bail shall consider and make findings on the record as to each of the following”:</p> <ul style="list-style-type: none"> √ Seriousness of the offense charged √ Protection of the public √ Previous criminal record and the dangerousness of the person accused √ The probability or improbability of the person accused appearing at the trial <p>To make findings regarding bail, MI Court Rules include these factors:</p> <ul style="list-style-type: none"> √ Prior criminal record √ Record of appearance or nonappearance at court proceedings √ History of substance abuse or addiction √ Mental condition, including character and reputation for dangerousness √ Seriousness of offense charged, presence or absence of threats, and probability of conviction and likely sentence √ Employment status and history and financial history as related to the ability to post money bail √ Availability of responsible members of 	<p>Under court rule, broad authority to impose conditions of release:</p> <ul style="list-style-type: none"> √ Report to a court agency √ No use of alcohol or controlled substance √ Participate in substance abuse testing or monitoring √ Participate in a specified treatment program for any physical or mental condition¹⁷ √ Comply with restrictions on personal associations, place of residence, employment, or travel √ Surrender driver’s license or passport √ Comply with specified curfew √ Continue to seek employment √ Continue or begin educational program √ Remain in custody of a responsible member of the community who agrees to monitor and report any violation of any release condition √ No possession of firearms or other dangerous weapons √ Do not enter specified premises or areas

¹⁶ The Michigan bench book includes a chapter on “Understanding the Abuse: The Potential for Lethality,” to assist courts in promoting the safety of all involved.

¹⁷ “To protect the defendant’s right against self-incrimination, do not order *pretrial* participation in a batterer intervention service.” It is inappropriate because it requires participants to admit responsibility for their violent acts. Batterer intervention is distinct from pretrial informational programs that explain court proceedings and provide general information about domestic violence without requiring participants to accept responsibility for a specific behavior. P.134

Appendix A: Domestic violence bench books and pretrial release considerations

Bench Book	Purpose of bail	Considerations	Conditions of release
		<p>the community who would vouch for or monitor the defendant</p> <ul style="list-style-type: none"> √ Ties to the community √ “Any other facts bearing on the risk of nonappearance or danger to the public.”¹⁶ <p>MI also has provision for release subject to protective conditions: “subject to conditions reasonably necessary for the protection of 1 or more named persons.” Recommends issuing pretrial release orders under this statute because it allows for warrant less arrest for violations.</p> <p>Restrict defendant’s access to information that would identify the witness’s whereabouts.</p> <p>Discourages ex parte responses to requests for modification by the protected individual. Advises court to refer concerns with bond conditions to the prosecutor.</p> <p>If court drops a no-contact provision, consider retaining prohibition on assaultive behavior.</p>	<ul style="list-style-type: none"> √ Do not assault, beat, molest or would a named person or persons √ Satisfy any injunctive order made as a condition of release √ Comply with any other condition “reasonably necessary” to ensure appearance and safety of the public. <p>Enter conditional release orders and modifications into state law enforcement information system.</p>
<p>Ohio <i>The Ohio Domestic</i></p>	<p>Impose “adequate restraints both to assure the defendant’s appearance and to protect others</p>	<p>“Consider all relevant information, including but not limited to”:</p>	<p>“The court may impose any of the following conditions of bail”:</p> <ul style="list-style-type: none"> √ Private supervision by

¹⁸ The Ohio bench book provides guidance on considerations in evaluating dangerousness.

Appendix A: Domestic violence bench books and pretrial release considerations

Bench Book	Purpose of bail	Considerations	Conditions of release
<p><i>Violence Benchbook: a Practical Guide to Competence for Judges & Magistrates</i></p>	<p>from harm, while inflicting the minimum necessary burdens on a person who has been charged but not convicted of a crime.”</p>	<ul style="list-style-type: none"> √ Nature and circumstances of the crime √ Weight of evidence √ Confirmation of the defendant’s identity √ Defendant’s family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or flight to avoid prosecution √ Whether on probation, a community control sanction, parole, post-release control, or bail √ “Lethality indicators”¹⁸ <p>Special DV bond considerations, if charged with related crime, <u>and</u> had a previous conviction, <u>or</u> was subject to a protection order at any time:</p> <ul style="list-style-type: none"> √ History of DV or other violent acts √ History of mental problems √ History of violating orders of any court or government entity √ Potential threat to any other person √ Whether setting of bail at a high level will interfere with any treatment or counseling that defendant or family is undergoing <p>Statutory provision for “mental evaluations” in cases of violation of protection order that caused a family or</p>	<p>designated person or organization</p> <ul style="list-style-type: none"> √ Movement restrictions: travel, association, residence √ Limited release (house arrest or work release) √ Regulate or prohibit contact with victim and witnesses √ Attend alcohol or drug treatment √ “Any other constitutional condition reasonably necessary to ensure defendant’s appearance or public safety.” <p>Other considerations in DV cases: “require defendant to reside apart from the victim.”</p> <p>Supervised release conditions:</p> <ul style="list-style-type: none"> √ Office visits to court supervisor √ Urinalysis √ Community-based referrals, e.g., drug/alcohol counseling √ Home visits √ Monitoring and verification of specific conditions, e/g/, TPOs, substance abuse treatment, employment √ Telephone contacts with court supervisor √ Electronic home detention √ Tracking and notification of court dates

Appendix A: Domestic violence bench books and pretrial release considerations

Bench Book	Purpose of bail	Considerations	Conditions of release
		<p>household member to believe the defendant would cause physical harm to person or property. Ohio law “requires the court to determine whether to order a mental evaluation.” If court orders evaluation, it must occur before bail is set. Court also authorized to order mental evaluation in stalking charge or defendant who has been released on bail.¹⁹</p> <p>Sources of information: “prosecution and defense counsel” or “court pretrial screening officer.” At minimum:</p> <ul style="list-style-type: none"> √ Victim input √ Residence √ Employment √ Education √ Previous mental health evaluation √ Substance abuse √ Law enforcement reports √ Criminal court records <p>“Criminal Rule 46...allows for consideration of all relevant information in setting types, amounts, and conditions of bail.”</p> <p>“If a judge believes full disclosure of lethality information at arraignment will taint the judicial mind for future proceedings, the community is better served by a full-informed bond decision and a voluntary recusal.”</p>	

Appendix A: Domestic violence bench books and pretrial release considerations

Bench Book	Purpose of bail	Considerations	Conditions of release
<p>New Mexico</p> <p><i>New Mexico Domestic Violence Benchbook</i></p>	<p>“To reasonably assure the appearance of the person as required and the safety of any person and the community.”</p> <p>“To strike an appropriate balance between two opposing interests: imposing adequate restraints both to assure the defendant’s appearance and to protection others from harm, while inflicting the minimum necessary burdens on a person who has been charged with – but not convicted of – a crime.”</p>	<p>Court rule “requires the court to take into account the available information concerning all of the following factors”:</p> <ul style="list-style-type: none"> √ Nature and circumstance of offense, including whether a crime of violence or involves a narcotic drug √ Weight of evidence against the person √ History and characteristics of the person: character, physical and mental condition, family ties, employment status and history, financial resources, past and present residences, time in the community. √ Any facts indicating that the person will commit new crimes if released. √ Past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearance at court proceedings. √ Whether person on probation, parole, or other conditional release pending trial, sentencing, or appeal. √ Nature and seriousness of the danger to the person or the community √ Any facts tending to indicate the person is likely to appear. <p>“Ascertain immediately whether the defendant is already under a conditional pretrial release order or a protection order,</p>	<p>“The court has broad authority to impose conditions of release...”</p> <ul style="list-style-type: none"> √ Not commit a crime √ Remain in custody of designated person who agrees to assume supervision and report any violation of a release condition √ Maintain employment or seek employment √ Maintain or begin an educational program √ Restrictions on personal associations, place of abode, and/or travel √ Avoid all contact with alleged victim and potential witnesses √ Report to a designated pretrial services agency or other supervising agency √ Comply with a specified curfew √ No possession of firearms or other dangerous weapons √ No use of alcohol or narcotic drugs √ Undergo available medical, psychological or psychiatric treatment, including drug or alcohol dependency √ Submit to random urinalysis and alcohol testing

Appendix A: Domestic violence bench books and pretrial release considerations

Bench Book	Purpose of bail	Considerations	Conditions of release
		<p>or is on probation or parole for similar offenses in any jurisdiction.”¹⁹</p> <p>Pay “careful attention to the need to separate the parties, to restrain the defendant’s conduct when risk factors of recurring violence are present, and to impose other conditions of release to protect the victim against recurring violence.”</p> <p>List of “lethality factors” that “can signal the need for extra safety precautions.”</p>	<p>√ Return to custody for specified hours following release for employment, schooling, or other limited purposes</p> <p>√ Satisfy any other condition “reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.”</p>
<p>Arizona</p> <p><i>Criminal Domestic Violence Cases Benchbook</i></p>	<p>“Release conditions in general are set to reasonably assure the defendant’s appearance at future court dates.”</p> <p>“The purpose of release conditions in domestic violence cases has been expanded by statute ...any order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other</p>	<p>“No bond until seen by the judge”</p> <p>“If law enforcement improperly cited and released instead of arresting the defendant, the court must require that the defendant be fingerprinted (10 print) so the Disposition Report is generated.”</p> <p>Factors to “consider in deciding conditions of release” and “to provide for the protection of the victim and others”:</p> <ul style="list-style-type: none"> √ What will reasonably assure defendant’s future appearance √ Failures to appear on this or other 	<p>“In addition to deciding whether bond should be posted and in what amount...additional conditions of release shall be considered.”</p> <ul style="list-style-type: none"> √ Counseling²¹ √ Not allow the defendant to return home except once with a police officer to obtain personal belongings √ Require that defendant not return to scene of the alleged crime √ No contact with the victim √ No possession or purchase of firearms; turn any over to law

¹⁹ “Since this would be incriminating information, the judge should not ask the defendant for this information unless defendant has knowingly waived his/her rights against self-incrimination...”

²⁰ “Judges must exercise discretion in hearing the victim’s input. Make sure the victim knows defense counsel has different ways to handle victim input and confrontation.”

²¹ “Many judges feel, however, that setting counseling as a condition of release violates the presumption of innocence... Ordering counseling as a condition of release presumes that the defendant is guilty.”

Appendix A: Domestic violence bench books and pretrial release considerations

Bench Book	Purpose of bail	Considerations	Conditions of release
	<p>specifically designated persons and may provide for additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.”</p>	<p>cases</p> <ul style="list-style-type: none"> √ Ties or lack of ties to the community √ If defendant tried to flee during arrest √ Dangerousness to the victim and others √ Victim’s input √ Whether the defendant is a threat to society <p>“The judge should consider all available information...by police... defendant’s release questionnaire...police report...prosecutor...victim.”</p> <p>“The victim has a constitutional and statutory right to be heard regarding conditions of release...[which] may be exercised, at the victim’s discretion, through an oral statement, submission of a written statement, or submission of a statement by audio or videotape.”²⁰</p>	<p>enforcement agency</p> <ul style="list-style-type: none"> √ No consuming alcoholic beverages √ Provide court with proof of current local address within 24-48 hours of release
<p>Northwest Tribal Courts</p> <p><i>Tribal Court Bench Book for Domestic Violence Cases</i></p>	<p>“The Tribal court’s role is to provide leverage to enhance victim safety and hold perpetrators accountable on behalf of the community... [DV] cases can be handled more effectively and efficiently if fact-finding and decision-making are based on an understanding of both societal and familial context in which domestic violence occurs and is reinforced.”</p>	<p>“In the case of a domestic violence charge, the court should consider the following”:</p> <ul style="list-style-type: none"> √ Is the defendant a threat to the alleged victim or other family or household member? √ Is the defendant a threat to public safety? √ Is the defendant reasonably likely to appear in court? <p>Consideration of custom and tradition: “We recognize that each tribe is unique and has its own laws. We urge each tribal</p>	<p>Options:</p> <ul style="list-style-type: none"> √ No-contact order √ “Set a large bail on the condition that the defendant not contact the alleged victim, and/or her family.” √ Schedule a time for the police to escort the defendant to retrieve his belongings from the residence, after notice to victim √ Order to refrain from damaging the victim’s automobile or other property

Appendix A: Domestic violence bench books and pretrial release considerations

Bench Book	Purpose of bail	Considerations	Conditions of release
	<p>“...the prosecutor raises the issue of bail. Bail is the opportunity for the court to decide whether to release the defendant pending trial, and how much bail amount to set for the defendant.”</p>	<p>judge to be mindful of the tribe’s codified laws as well as its unwritten and unspoken tradition and customary laws and rules.”</p> <ul style="list-style-type: none"> √ Is your tribe a matrilineal or patrilineal tribe? √ What are the tribe’s oral customs and traditional laws? √ In our community, do we presume innocence or guilt? √ What seasonal activities and culturally significant events should be considered in scheduling trials? 	<ul style="list-style-type: none"> √ Turn any guns over to the Tribal Police Department

Domestic Violence: A Guide to Civil and Criminal Proceedings, Mary M. Lovik, J.D., Michigan Judicial Institute, 3rd Ed., 2004.
Available at: <http://courts.michigan.gov/mji/resources/publications.htm>

The Ohio Domestic Violence Benchbook: a Practical Guide to Competence for Judges & Magistrates, Mike Brigner, J.D., Family Violence Prevention Center, Ohio Office of Criminal Justice Services, 2nd Ed., 2004.
Available at: <http://www.ocjs.ohio.gov/publication.htm>

New Mexico Domestic Violence Benchbook, New Mexico Judicial Education Center, Updated as of April 2005. Available at: <http://jec.unm.edu/resources/benchbooks/dv/index.htm>

Criminal Domestic Violence Cases Benchbook, Arizona Supreme Court, November 2004. Available at: <http://www.supremecourt.az.gov/cidvc/PDF/CrimDVBB.pdf>

Tribal Court Bench Book for Domestic Violence Cases, Northwest Tribal Court Judges Association, 1999. Available at: <http://www.tribal-institute.org/download/VAWA+Bench+Book.pdf>

**Washtenaw County Judicial Oversight Demonstration Initiative
Law Enforcement Domestic Violence Bond Information Form**

Defendant: _____ Police Agency _____ Report No. _____

Nature of injuries _____

Did victim require medical attention? Yes No Unknown

Threats made by Defendant? Yes No Unknown

If yes, explain _____

Are there weapons in the home? Yes No Unknown

Has Department previously responded to domestic violence complaints involving this Defendant? Yes No

If yes, explain _____

Does Defendant have criminal record? Yes No (attach CCH or summary)

Is there a Personal Protection Order? Yes No Unknown

Court _____ Case No. _____ Protected Person _____

Outstanding Warrant(s) Yes No

Is Defendant on probation/parole? Yes No Unknown _____

Does victim request a no contact order? Yes No Unknown _____

Other _____

Department recommends:

- No assaultive behavior against _____, or anyone else
- No use/possession of alcohol/illegal drugs
- No possession of any firearms, ammunition, or other dangerous weapons
- No contact with (name(s)): _____
- No going to (specify location(s)) _____
- Other: _____

PROSECUTOR RECOMMENDS	
<input type="checkbox"/> PR <input type="checkbox"/> Cash bond _____ 10% <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Additional condition(s): _____	Prosecutor Initials: _____

Defendant Description:

Height	Weight	Race	Sex	Date of Birth	Hair Color	Eye Color	Other identifying information

Officer (print): _____

Date: _____

Revised 7-18-00

STATE OF MICHIGAN _____ District Court ORI: _____	DOMESTIC VIOLENCE ORDER OF CONDITIONAL RELEASE	CASE NO. _____ Agency Name & No. _____
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PEOPLE OF THE STATE OF MICHIGAN
 PEOPLE OF THE TOWNSHIP OF YPSILANTI
 PEOPLE OF _____

VS

Defendant's name↑ _____	
Address↑ _____	
City, State, Zip Code↑ _____	Phone↑ _____
SSN: _____	CIN: _____

Offense: _____
 Arrest Date: _____
 Date & Time of next Court appearance: _____ Court: _____ Judge: _____ Event: _____

LEIN Item No.: _____ Bond Amount: \$ _____ Bond Type: Cash or Surety 10% Personal Recognizance

1. Report to Community Corrections at 4101 Washtenaw Ave., Ann Arbor, for review of conditions of release:
 Monday, _____ at 9:30 AM.
 Thursday, _____ at 2:30 PM.
2. No use and/or possession of alcohol or illegal drugs.
3. Submit to random drug/alcohol testing. **There is a \$20 fee for drug/alcohol testing. Bring the fee with you.**
4. Complete BTC 1 if test positive for illegal drug(s).
4. Participate in a substance abuse treatment program: _____
5. Do not leave the State of Michigan without permission of the court.
10. Remain in the custody of a responsible member of the community who agrees to monitor the defendant and who will report any violation of any condition to the court: _____
11. Do not possess or purchase a firearm, ammunition or other dangerous weapon.
12. Do not assault: _____ or anyone else.
14. Personally appear at all court hearings and other places as directed by the court.
15. No contact with: _____, except on civil standby with the police.
15. Do not go to: _____, except on civil standby with the police.
18. Do not violate any criminal law.
18. Other condition(s): _____

FAILURE TO APPEAR MAY RESULT IN A WARRANT FOR YOUR ARREST!
 BRING PROOF OF ATTENDANCE TO YOUR NEXT COURT HEARING!

I UNDERSTAND AND AGREE TO OBEY ALL THE CONDITIONS LISTED IN THIS ORDER. IF I DO NOT OBEY EACH AND EVERY CONDITION, I MAY BE ARRESTED IMMEDIATELY AND THIS BOND WILL BE REVOKED.

Date _____ Defendant _____

THE ABOVE CONDITIONS OF RELEASE AND IDENTIFYING INFORMATION SHALL BE PROMPTLY ENTERED ON THE LAW ENFORCEMENT INFORMATION NETWORK (LEIN).

IT IS SO ORDERED

Judge/Magistrate _____ Bar No. _____

Effective Date _____				Order Expires On _____			
Height	Weight	Race	Sex	Date of Birth	Hair Color	Eye Color	Other Identifying information

Original — Court File First Copy — Law Enforcement Agency Second Copy — Defendant Rev: 20 Dec 04

SAMPLE SCRIPT**and****GUIDELINES FOR DV ARRAIGNMENTS****ADVISE:**

Read the following items to D from the Complaint

- Charge, including date and location
- Penalty

ATTORNEY:

Ask D if she/he has an attorney. If “yes” ask if she/he has taken steps to retain this attorney for this charge. If “no” explain that you want to make sure she/he has legal representation now, so you will appoint an attorney (if Defendant is not indigent, Defendant may be asked to contribute to attorney fee). Tell her/him s/he is free to have her/his private attorney substitute at any time for the attorney appointed by the court, if one is appointed.

(If the Public Defender’s office is appointed, give the Defendant a copy of the Public Defender Information Sheet and advise the Defendant that this sheet explains the services offered by that Office and the method for contacting them.)

SET BOND AND CONDITIONS (USE THE “DOMESTIC VIOLENCE ORDER OF CONDITIONAL RELEASE”):

Tell Defendant about the information you are reviewing to set a bond. If present, ask the prosecutor or officer for a bond recommendation and the basis for it. Review with Defendant the facts alleged on the Judicial Information (bond recommendation) form submitted with the Complaint. If defense counsel is present, give her/ him the opportunity to read the document. Allow the D/defense counsel to say something about bond, explaining that the D does not have to say anything and that anything said may be used against the D later.

REVIEW EACH CONDITION WITH DEFENDANT:

Make sure s/he understands each condition. Offer an opportunity to ask any questions about any condition ordered:

“The conditions I’m about to set are very important. They will be entered on the police computer system (LEIN). Any officer who uses this system will know what these conditions are. If you violate any condition, even if you’re not doing anything else wrong, you may be arrested without a warrant and your bond revoked and you’ll go to jail. Please be sure to ask me if you have any questions.”

TELEPHONE THE DV PRE-TRIAL UNIT WITHIN 24 HOURS OF RELEASE:

“You are required to telephone the DV PRE-TRIAL Unit within 24 hours of your release from jail. The Unit is located at 3800 Packard Road in Ann Arbor. I will give you a map and the telephone number before you leave. You must call them right away and schedule an appointment to meet with a pretrial officer to go over the conditions of bond I’m setting. If you don’t call them within 24 hours of your release from jail, they will obtain a warrant for your arrest. If you fail to show up for your appointment a warrant will be issued for your arrest. Do you understand what you must do? Do you have any questions?”

NO USE/POSSESSION OF ALCOHOL/ILLEGAL DRUGS:

“You are not to use or possess any alcohol or illegal drugs. No beer, no wine, no hard liquor, no marijuana or other drugs. I want you to have a clear head while this case is pending. Do you understand?”

SUBMIT TO RANDOM TESTING (check this if you order “no use/possession of alcohol/illegal drugs” to ensure compliance):

You need to take \$10 with you to the PT meeting at the DV Unit. You will be asked to take a PBT to make sure you have not consumed any alcohol. The \$10 will be used to pay for a drug test you’ll take so we have a baseline. Is there any reason why you could not take \$10 with you to the meeting? [If Defendant is truly unable to pay, s/he needs to work out an arrangement with DV Pretrial/Probation. Lack of money is not an excuse for failure to appear.]

NO CONTACT WITH ALLEGED VICTIM (hereinafter referred to as “V” and “she”):

“You are not to have any contact with (name of V). Here’s what ‘no contact’ means: You cannot call her, you cannot write to her, you cannot e-mail her, you cannot send her anything, you cannot go to where she lives or works, if she works outside the home. You cannot have any contact of any kind. You cannot have someone else do any of these things for you, except your attorney.

If you go to a store, or a restaurant, or party, for example, and she is there, you must leave immediately. This is an order of the court. The victim in this case cannot change, alter or amend this order in any way. She can’t change it, only the judge can. If she were to invite you over, ask to meet you somewhere, or call you for any reason, you cannot violate the court’s ‘no contact’ order. If you do, you will go to jail.

Do you understand? Do you have any questions?

NO GOING TO SPECIFIED PREMISES:

“For now, pending further court order, you are not to go where the V lives or works. If you have personal property there that you need (such as clothing or work materials), you may get those items by calling the police to arrange what’s called a “civil standby”. The police will let you know when they can go with you, one time only, to pick up any items that are clearly yours (undisputed). If you go there without the police, you will be arrested.”

WEAPONS AND AMMUNITION:

*“You are not allowed to have any firearms, ammunition or other dangerous weapons pending further court order. You are not allowed to have any guns or ammunition of any kind, even if the guns are only used for hunting. This means no handguns, rifles, BB guns, shotguns, automatic weapons, etc. **(The following wording is intended to avoid any issues of self-incrimination if the Defendant has a prior felony conviction and cannot possess a weapon, or if the Defendant has a prior misdemeanor conviction which may disqualify him/her from possessing a weapon.)** If you have any guns, you need to tell me now so you will not be in violation of the conditions of your release from jail. Are there any guns in your home? What about in any vehicle? Have you “loaned” any guns to a friend or relative? [If “yes”, follow Weapons Protocol to have police seize and hold the weapons pending resolution of the case.]*

Don’t purchase, borrow or possess or get any of these items after you leave this courtroom.

IF ORDERED OUT OF THE RESIDENCE:

“Where do you plan to stay? Are there any guns or ammunition in that residence?” [If so, D must find a different place to stay or follow Weapons Protocol re: confiscation of weapons/ammunition.]

Do you understand? Do you have any questions?”

GIVE D COPY OF ORDER WITH CONDITIONS:

“Here is a copy of the conditions I have ordered. The police will also have a copy of these conditions. There is a place for you to sign if you understand what the conditions are and that if you fail to obey them, you know you will be arrested on the spot, go to jail, and your bond may be revoked. I have a zero (no) tolerance policy for any violation.

Do you understand what I mean by that? (if “no,” explain it)

Do you understand every condition?

Do you have any questions?

INFORMATON REGARDING LEIN ENTRY:

Address the Defendant: “You need to know that this bond and these conditions are placed on the Law Enforcement Information Network – that’s the computer system for the police. Should you come into contact with an officer in the future, that officer would easily be able to find out about the existence of this bond and the conditions. Under Michigan law, if an officer has ‘reasonable cause’ to believe that a bond violation has occurred – even if no new crime was committed – they have the authority to immediately place you under arrest. Then you would be held for the purpose of a ‘bond revocation hearing’ to be held before a judge. As you might imagine, if it’s ever proven that someone has violated a condition of his or her release, it would be very difficult to get out of jail a second time. Your bond would be revoked and a new, stricter bond set. This is a ‘zero tolerance’ policy.”

“Do you understand everything I have told you? Do you understand that if I choose to release you on a conditional bond, you will be required to sign a statement saying that you have been informed of each condition and that you agree to comply with each condition of your bond?”

“Do you have any questions?”

Sample Bail Setting Information Sheet

Case No.	Charges:
Today's date:	Judge Assigned:
Defendant Name(s):	DOB:
Relationship to victim (filed charges):	

ATTENTION County / District Court Judge:

The following information should be carefully considered when setting bail on this defendant:

Criminal History	
Prior number of domestic violence-related arrests	
Prior number of arrests for assault	
Prior number of protection order violations	
Prior number of domestic violence convictions	
Prior number of felony convictions	
Prior number of misdemeanor convictions	
Defendant is currently on probation (circle) YES / NO	
On probation for:	
NCIC Attached YES / NO	State/local criminal history attached YES / NO
Victim Injuries	
Victim taken for medical treatment YES / NO	
Nature of injuries:	
Prior physical injuries to this or any victim:	
Other variables in this incident specific to safety of a person or public:	
Threats to harm/kill	YES / NO
Children witnessed	YES / NO
Physical injury to children (describe)	YES / NO
Firearms used	YES / NO
Firearms in defendant's possession	YES / NO
Animals injured (describe)	
Property damaged (describe)	
Other:	