



WASHINGTON  
**COURTS**

ADMINISTRATIVE OFFICE OF THE COURTS

*WASHINGTON STATE SUPREME COURT*  
**GENDER AND JUSTICE  
COMMISSION**

**MEETING**

**FRIDAY, MAY 13, 2011**

**AOC SEATAC OFFICE  
SEATAC, WASHINGTON**

**WASHINGTON STATE SUPREME COURT  
GENDER AND JUSTICE COMMISSION**

**2011-2012**

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Washington State Supreme Court

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Tacoma Municipal Court

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Retired, Attorney at Law

**Honorable Ann Schindler**  
Court of Appeals Division I

**Honorable Jane M. Smith**  
Colville Tribal Court of Appeals

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WASHINGTON  
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# GENDER AND JUSTICE COMMISSION

May 13, 2011, 8:45 a.m. – 12:30 p.m.  
AOC SEATAC OFFICE  
SEATAC, WASHINGTON

CHIEF JUSTICE BARBARA MADSEN, CHAIR

		TAB
8:45 a.m.	<b>CALL TO ORDER</b> <ul style="list-style-type: none"> <li>• Introductions and Approval of Minutes</li> </ul>	
	<b>COMMISSION BUSINESS</b> <ul style="list-style-type: none"> <li>• Introduction of Guests and New Staff</li> <li>• Staff Report</li> <li>• Chair Report</li> </ul>	1
	<b>COMMITTEE REPORTS AND PROJECTS</b> <ul style="list-style-type: none"> <li>• SJJ Immigration Grant Report – Judge Ann Schindler</li> <li>• Domestic Violence Initiative Task Force – David Martin and Bernie Ryan</li> <li>• Legislative Update – David Ward</li> <li>• DV Regional Meetings – Judge Chris Wickham</li> <li>• Guardian Ad Litem – Leslie Owen</li> </ul>	2
	<b>EDUCATIONAL PROGRAMS</b> <ul style="list-style-type: none"> <li>• SCJA Civil Hard Times Session – Myra Downing</li> <li>• DMCJA Elder Abuse Session</li> <li>• Annual Conference               <ul style="list-style-type: none"> <li>○ Diversity Session</li> <li>○ Sexual Orientation</li> <li>○ Risk Assessment</li> <li>○ Elder Abuse</li> <li>Girls in Trouble</li> </ul> </li> </ul>	
	<b>NEW BUSINESS</b>	
	<b>ADDITIONAL MATERIALS</b>	3
12:30 p.m.	<b>ADJOURNMENT</b>	



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**Washington State Gender and Justice Commission**  
**FY09 STOP GRANT TO THE COURTS**  
**QUARTERLY PROGRESS REPORT**

<b>Award No.</b> IAA10404	<b>Date Report Prepared:</b> 03/10/2011
<b>Project(s):</b> Pay for 4 months extension for the protection order clinic.	<b>Report No.:</b> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 4
	<b>Reporting Period:</b> Jan-Feb 2011
	<b>Final Report</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Grantee:</b> Grant County Clerk	<b>Subgrantee:</b> New Hope

**REPORT** (Attach additional pages if necessary.)

**(1) Project activities during the reporting quarter.**

The Grant County clerk sub-contracted with New Hope Domestic Violence and Sexual Assault Services to staff the Protection Order Clinic with 1 FTE advocate for the months of January and February, 2011.

**(2) Any significant problems that developed.**

None.

**(3) Activities scheduled during the next reporting period.**

N/A - grant has ended.

**Submitted by:** 

<b>Name:</b>	Kimberly A. Allen
<b>Title:</b>	Grant County Clerk
<b>Phone Number:</b>	509-754-2011 ext. 318
<b>e-mail address:</b>	kallen@co.grant.wa.us



# Washington State Gender and Justice Commission

## FY09 STOP GRANT TO THE COURTS QUARTERLY PROGRESS REPORT March 2011

<b>Award No. IAA10405</b>	<b>Date Report Prepared: March 9, 2011</b>
<b>Project(s): Staffing and Training for Implementation of the King County DV and Child Maltreatment Coordinated Response Guideline Project.</b>	<b>Report No.:</b> 1    2    3    √ 4
	<b>Reporting Period: 1/1/11 – 2/28/11</b>
	<b>Final Report</b> √ Yes            No
<b>Grantee: King County Superior Court</b>	<b>Subgrantee: Seattle &amp; King County Department of Public Health</b>

### REPORT and Report Attachments

#### (1) Project activities during the reporting quarter.

##### A. Project Oversight Committee:

The quarterly Oversight Committee meeting was convened by Judge Joan DuBuque on February 2, 2011. Committee members gave updates on DV agency funding changes and program reductions. The results of the project evaluation and planning for 2011 project activities were discussed. It was suggested that we continue our training focus and provide information on co-occurring DV experiences and mental health conditions, provide more information on supervised visitation considerations, and provide in checklists for assessing risk in DV cases. It was also suggested we make a plan to present DV training at the 2012 spring judicial conference.

The final agenda for the February 17, 2011 DV and Dependency Symposium was reviewed and discussed. Oversight members commented that the training was well organized and they approved the training content. Committee members that had participated in the planning of symposium were recognized for their valued contributions.

The Children's Administration (CA) DV training outline was reviewed and discussed. Committee members were given a background of the training pilot, how the training will be conducted, and the follow up consultations in the CA offices.

Deborah gave an update on the planning for the September 8 & 9, 2011 DV Symposium, which will be held again at Seattle University. Funding support for speakers to speak about DV in families was explored. It was also discussed that we should explore grant opportunities to fund judicial officers from our region to attend. It was also suggested we extend invitations to judges from other counties and inquire with the Gender and Justice Commission if their travel could be supported.

##### B. February 17, 2011 DV and Dependency Symposium:

The DV and Dependency Symposium planning committee met on January 12, 2011 to review and finalize the symposium agenda and training content. Members were queried on what should be included in the symposium evaluation. See attachment A for the symposium agenda. The project coordinator then developed an evaluation instrument and submitted to the committee members for further review and development. The UW Court Improvement Training Academy provided CLE credits for the training

The four-hour symposium was conducted on February 17, 2011. The symposium was well attended by 39 participants. See attachment B for a summary of the evaluation results. The participants were highly engaged and asked numerous questions throughout the symposium. It was clear during the symposium and the evaluation results that the participants were really trying to grapple with the presented information and how apply to their case experiences. As the participants

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have brought up so many areas for further training and support for their practice, it will be discussed with the symposium planning committee members on what follow up activities should be planned.

### **C. Project Best Practices Workgroup:**

Deborah Greenleaf convened two Best Practices meetings during this project period. A Best Practices meeting was held on January 26, 2011. The workgroup members gave updates on the reductions of DV service funding throughout the county. Updates were given on the planning for the September 2011 DV symposium. Best Practice members gave their ideas on potential speakers for the symposium.

The training outline for the CA DV training pilots with the King West CA Office and the Martin Luther King Jr. Office were reviewed and discussed. Best Practices members were encouraged to attend one of the pilot training so they could hear the information that was presented for follow up with the staff after the trainings. The meeting plan was discussed for the remainder of the year. As discussed at the prior meeting, the Best Practices meetings will be held on alternating months with each of the DV training pilot sites. It was planned the post-training follow up consultations would start with the King West CA Office on February 23, 2011. The structure and new function of the Best Practices meeting was planned. Those who completed the pilot CA DV training will be encouraged to participate in the follow up consultation meetings.

### **D. Children's Administration (CA) DV Training Pilot:**

Deborah Greenleaf and Jeff Norman from Children's Administration (CA) met with Dr. Anne Ganley on January 20, 2011 to finalize the pilot training outline, baseline survey tools, and training feedback form. See Attachment C for the training outline. The training team also met at each pilot site before the meeting to prepare for training implementation.

For the training pilot the project coordinator and training faculty developed a baseline CA social worker survey to gather information about their knowledge and comfort level on doing DV screening, assessments, interviewing DV perpetrators, and working with DV specialists. The survey will be repeated at the end of the year with those who participated in the training.

The four-hour trainings were conducted at the two pilot sites on February 8 and 11, 2011. The trainings were attended by 85 participants and 61 completed a training evaluation survey. See attachment D for a summary of the training pilot project and the initial pilot training survey results.

The Best Practices Workgroup conducted its first post DV training support and consultation meeting on February 23, 2011 at the King West Office. It was anticipated that the training participants would only meet with the Best Practices workgroup for the first hour of the meeting. The social workers were highly engaged in the discussion and stayed for the entire two-hour meeting. The training pilot goals and purpose was reviewed as well as the post-training consultation model. Participants discussed the training content and then began to raise issues in practice that has made it difficult to conduct DV screening and assessment. Solutions to barriers were discussed as well as how these new DV procedures can facilitate positive family outcomes and potentially reducing the incidence of re-referrals to CA. The CA social workers asked many questions to Best Members and Dr. Anne Ganley. One of the social workers also asked to discuss a case and this was accomplished at the end of the meeting.

### **(2) Any significant problems that developed.**

All project activities on the project work plan were completed as scheduled. In addition, two trainings for the CA DV training pilot were added to the work plan and were also completed. These DV trainings were made possible as the University of Washington, School of Law, Court Improvement Training Academy had supported the funding of the trainer costs for the February 17, 2011 DV and Dependency Symposium. These additional trainings were approved and supported through this STOP grant project.

Along with the activities of the STOP Grant project an additional \$5000.00 was added to support travel and meeting time for the project chair and project coordinator outreach and support to other regions. Deborah Greenleaf did meet with Ruth Gordon, County Clerk of Jefferson County on February 7, 2011. During this meeting it was discussed what DV services are being provided for in the community, current grant project within law enforcement, relationships among the courts and other systems-based providers, and DV training and support needs in their county. It was discussed that there are few opportunities for the members of the court, Children's Administration, law enforcement, and community DV providers to

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come together and discuss DV issues. It was identified that is not a current mechanism at this time to develop DV practice guidelines and training within the court and little opportunity to coordinate with other providers. First steps were explored to contact law enforcement about a grant project they are conducting to see if there is an opportunity to collaborate on DV. It was also discussed that this project coordinator schedules another time to meet with the court administrator and other court staff.

On January 11, 2011 the project chair and coordinator discussed a plan to conduct visits to other counties for this outreach work during April and May 2011. It was discussed that as King County was being re-organized with DSHS region three (Whatcom, Skagit, Island, and Pierce Counties) that we perhaps should focus outreach activities to these counties. This current STOP grant was unable to be extended past the February 28, 2011 contract date to do this work; and therefore, this outreach activity was not completed.

**(3) Activities scheduled during the next reporting period.**

No further activities. Project # IAA10405 is now concluded.

**Submitted by:**

Name:	<b>Deborah Greenleaf, RN, MN</b>
Title:	<b>Advanced Practice Nurse Specialist;/Project Coordinator</b>
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**FY09 STOP GRANT TO THE COURTS  
QUARTERLY PROGRESS REPORT  
February 2011 Report Attachments**

**Attachment A**



**King County**

**Domestic Violence and Child Maltreatment  
Coordinated Response Project**



**SCHOOL OF LAW**

**UNIVERSITY of WASHINGTON**

**Court Improvement Training Academy**

**Domestic Violence and Dependency Symposium\*  
Symposium Agenda:**

**1:00-1:05 Welcome - Honorable Judge Joan DuBuque:**

**1:05-2:25 CA Dept Shifts in DV Specific Policies and Practice**

**Dr. Anne Ganley, Psychologist, Private Practice:**

- Increasing Safety of Children by Partnering With DV Adult Victims
- Increasing Safety of Children by Engaging DV Perpetrators in Case: Accountability and Connection
- Universal Screening for DV at each Stage of Case
- Specialized DV Assessment of Risks to Children Posed by Identified DV
- Application of Specialized DV Assessment to DV Case Decision Making and Service Planning

**2:25-2:35: Break**

**2:35-3:50: Working with DV Cases in Dependency: Effective Case Service Planning**

**Dr. Anne Ganley;**

**Sarah Steininger, DV Survivors Advocacy Specialist & Program Manager, Eastside DV Program;**

**Mark Adams, DV Batterer's Intervention Specialist & Mental Health Clinician, Wellspring Family Services**

- Effective Visitation and Service Planning for DV Cases - Dr. Ganley
- Overview of King County DV Specific Programs for DV Survivors and their Children- Sarah Steininger
- Overview of King County Batterers' Intervention and DV Dads Programs- Mark Adams:
- Questions & Answers on Challenges in Services for DV Dependency Cases

**3:50-4:00: Break**

**4:00-5:00: Ethical Dilemmas in DV Dependency Cases: A "Fishbowl" Discussion**  
**Panel discussion moderated by Tim Jaasko-Fisher, UW Court Improvement Training Academy**

**Panel Participants:**

- **Beth Berris, Washington State Assistant Attorney General;**
- **Jana Heyd, Society of Counsel Representing Accused Persons;**
- **Rob Wyman, The Defender Association;**
- **Kathleen Martin, CASA Dependency Program Attorney;**
- **Dr. Anne Ganley**

\*The symposium is supported through the Washington State Supreme Court Gender and Justice Commission STOP Grant FFY09 # 1AA10405 for Court Related Purposes. The FFY09 STOP Grant was awarded by the Office on Violence Against Women, U.S. Department of Justice through Grant # 2009-WF-AX-0004

The symposium is also supported by the University of Washington, Court Improvement Training Academy through a Federal Health and Human Services Court Improvement Program Training Grant

## Attachment B



### **King County**

#### **Domestic Violence and Child Maltreatment Coordinated Response Project**

February 17, 2011

**DV and Dependency Symposium**

## **Symposium Overview and Participant Evaluation**

### **Symposium Overview, Purpose, and Implementation**

In 2009 the first DV and Dependency Symposium was developed and implemented by the King County DV and Child Maltreatment Coordinated Response Project's Oversight Committee. The symposium was designed to disseminate and implement the project's first coordinated response guideline and to provide DV training and support to attorneys who represent families in court dependency proceedings. As this was a well attended and a successful training, a second DV and Dependency Symposium was planned by the Oversight Committee to implement and disseminate the newly revised coordinated response guideline document, as well as present in-depth information on DV screening and assessment in dependency cases.

A symposium planning committee was convened in 2010 with Oversight Committee members, the trainer, and the symposium's partnering agency, the University of Washington, School of Law, and Court Improvement Training Academy. The symposium committee met during October 2010 through January 2011 to plan the event. The planning committee developed the content, agenda, outline, and participant evaluation forms. The Court Improvement Training Academy provided funding for the symposium trainer and also provided CLE and ethics credits.

The purpose of the training was to review the revised King County DV and Child Maltreatment Coordinated Response Guideline document and changes in CA DV policy and practice for families who are involved with court dependency processes. This included discussing routine DV screening and assessment in dependency cases and how these assessments should inform case decision, case plans, and services. An overview of visitation in DV cases, DV survivor services, and DV perpetrator services were also presented. The second purpose of the symposium was also to discuss and debate ethical challenges that attorneys encounter when working with DV clients who are in dependency processes.

The DV and dependency symposium was conducted on February 17, 2011. Participating attorneys included those who represent parents, public defenders, attorney general representing the department, and CASA dependency attorneys. The DV and Child Maltreatment Coordinated Response Guideline and CA Social Worker Practice Guide to DV were disseminated and reviewed.

The training faculty for DV screening, assessments, case decisions, and services section included: Dr. Anne Ganley, Sarah Steininger from Eastside Domestic Violence Program, and Mark Adams, Batterer's Intervention

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Specialist from Wellspring Family Services

The ethics panel included Beth Berris of Attorney General Office, Jana Heyd of Society of Counsel Representing Accused Persons, Kathleen Martin of CASA, Rob Wyman of The Defenders Association, and Dr. Ganley. Each of the panel attorneys met first with their constituent group to discuss ethical questions regarding DV. The panel members then sat together to discuss the ethical questions while the audience observed. The audience members were able to contribute to the discussion by writing their questions or comments onto index cards that were passed onto the panelists.

## Symposium Evaluation

There were 39 participants and 21 or 54% of the participants completed an evaluation survey. Seven questions were rated about the training content and trainers. Questions were rated on a scale of 0-4 points as follows:

- 0 = Not at all
- 1 = Minimally
- 2 = Moderately
- 3 = Mostly
- 4 = Exceptionally

For those participants who completed the surveys, they rated symposium as meeting its training objectives in the moderate range. The participants rated the lead trainer as mostly meeting the training objectives. The table below describes the evaluation questions and the average score given by participants.

<b>How well did the symposium meet its objective of increasing your understanding of shifts in CA practice related to DV?</b>	<b>2.67</b>
<b>How well did it meet its objective of how to apply specialized DV assessments to DV case decision-making and service planning?</b>	<b>2.38</b>
<b>How well did Dr. Anne Ganley present her training topics?</b> Comments: Dr. Ganley does not understand legal issues in dependency. Dr. Ganley's information was too general and too much background information up front	<b>3.1</b>
<b>How well did Mark Adams present on engaging DV batterers into assessments &amp; services?</b> Comment: Mark Adams' presentation was very informative	<b>2.7</b>
<b>How well did Sarah Steininger present on partnering with DV survivors</b> Comments: Sarah Steininger was most dynamic speaker Sarah Steininger's advice was appropriate for DV survivors but not for survivors with dependent children. Presentation regarding victims' services was confusing	<b>2.8</b>
<b>How well did the symposium meet its objective of providing information on ethical challenges attorneys encounter in DV cases?</b>	<b>2.56</b>
<b>How well did the ethics faculty present on ethical challenges for attorneys?</b>	<b>2.69</b>

**Participants were asked based on this CA DV training what you think that you will be doing differently in your practice.** The comments below reflect that these participants did gain information on CA social work practice regarding DV, and new social work procedures for DV screening, assessment, and service planning. Participants stated they will be:

- Using/referring to the practice guidelines

- Knowing what a CA social worker has to comply with in DV assessment
- Making sure social workers aren't overstepping their roles
- Looking at the specialized DV assessment
- Going over assessment with my clients and use referrals
- Asking about DV protocol and assessment
- Speaking to victims about available services
- Resisting temptation to ask for an order for DV services

**Participants were asked: was there DV information you wanted that was not covered today, and please describe? They were also asked if they had any other comments.**

Three of the participants reported that the symposium topics were highly relevant, and one made a comment to please bring the symposium to Snohomish and Island Counties. Another found the ethics and services section was very valuable.

One respondent stated that there was not enough time to adequately cover the topics. Others reported that they were left with more questions than answers, needed more answers, and more direction in ethical challenges as illustrated with this remark *"we are all court based and dealing with cases that have few solutions."*

One attorney remarked that the symposium content was more helpful for criminal defense attorneys rather than dependency attorneys. During the symposium there were many questions and comments about how this information would be applicable for attorneys who work in dependency cases.

It was clear during the symposium and the evaluations that the participants were really trying to grapple with the presented information and how apply to their case experiences. They commented that they needed more guidance on what they should do about DV, what should happen with DV in dependency orders (particularly if there had been no acts of physical violence in the case), what best practices should they implement, and what to do about DV when the involved parties are not separating. Respondents also expressed difficulty in determining who the DV survivor is and who is a DV perpetrator, and what to do when the father is a DV survivor. They commented that the symposium did not address how to proceed with DV assessments when there is not a documented civil or criminal DV history for a case. One respondent also expressed a concern that by not ordering/mandating DV survivors into DV services, that it may actually hamper their ability to get their children back. As the participants have brought up so many areas for further training and support for their practice, it will be discussed with the symposium planning committee members on what follow up activities should be planned.

## Attachment C



### **King County**

#### **Domestic Violence and Child Maltreatment Coordinated Response Project**

**\*Children's Administration DV Training Pilot Project**

**February 8 and 11<sup>th</sup>, 2011**

**9 a.m. - 1:00 p.m.**

#### **"Using the 2010 Social Workers Practice Guide to Domestic Violence: Advanced DV Training for CA Supervisors and Social Workers" Training Agenda**

##### **9:00-10:15: Overview & DV in Child Welfare Cases**

**Deborah Greenleaf:** Overview of Training Project, Pre-Training Survey, and training follow-up Technical Assistance sessions

##### **Dr. Anne Ganley: DV in Child Welfare Cases**

###### **• Paradigm shift: Guiding Principles**

- Increasing safety of children by increasing safety of DV Survivors: Partnering with DV Victims/Survivors
- Increasing safety of children by engaging DV Perpetrators in changing: Accountability & Connection
- Cultural Competence: Collaborating with Community DV Specialists

###### **• Policy/ Practice Shift #1: Routine Screening for DV**

- At each stage of case; regardless of allegation
- Routine DV screening skills for CPS, FVS, & CFWS; interviews; and review of records

##### **10:15-10:30 Break**

##### **10:30-11:45 Policy/ Practice Shift #2: The Use of Specialized DV Assessments**

- Used only for cases with identified DV
- Interviewing DV survivors : increasing Safety for DV survivors & children
- Interviewing DV perpetrators: Accountability & Connection

##### **11:45- 11:55 Break**

##### **11:55-1:00 Policy/Practice Shift #3: Applying DV Assessment to Case Decision Making**

##### **Policy/Practice Shift #4: Applying DV Assessment to Service Planning**

**Next steps: For CA social workers and supervisors**

**Training Evaluation**

\* This training is supported through the Washington State Supreme Court Gender and Justice Commission STOP Grant FFY09 # 1AA10405 for Court Related Purposes. The FFY09 STOP Grant was awarded by the Office on Violence Against Women, U.S. Department of Justice through Grant # 2009-WF-AX-0004

## Attachment D



### **King County Domestic Violence and Child Maltreatment Coordinated Response Project**

#### **Children's Administration (CA) Domestic Violence (DV) Training Pilot Project**

#### **Summary of Pilot Training Project and Initial Training Participant Survey Results**

#### **Project Overview:**

##### **Planning Committee:**

Jeff Norman, Children's Administration, Deborah Greenleaf, Project Coordinator, Dr. Anne Ganley, and members of the Best Practices Workgroup

##### **Pilot Training Overview and Model:**

The revised 2010 King County DV and Child Maltreatment Coordinated Response guideline was released in August 2010 and the CA Social Worker DV Practice Guide was released in February 2010. The project coordinator and Best Practices Workgroup members conducted training from June – October 2010 to the CA offices and gave an overview of both practice guidelines. It was requested at these trainings that more advanced DV training and skill building training be provided to CA social workers who respond to families that experience DV.

The planning committee recognized that it is very difficult to gain needed skills and incorporate them into practice solely through training and guideline dissemination. It was purposed then that we implement a model of training that was augmented by a system of ongoing system of consultation and support to those who participated in DV training. The committee members, therefore, developed a model training pilot that included these critical components:

- *One*, to understand the effectiveness of the training model and social work practice needs with DV cases, a baseline survey was developed and implemented to gather information on social work practice before the training pilot was implemented. This baseline survey was implemented during the initial training sessions. The plan is to repeat the survey at the end of the twelve-month training project.
- *Two*, to implement the information in both guidelines, participants should have an understanding of how to effectively conduct screening and assessment procedures in DV cases. The initial training sessions were designed to give an overview of these procedures, what questions to ask, and how to incorporate these practices into daily practice.
- *Three*, to build DV knowledge and skills and incorporate them into daily practice, a system of support and consultation was developed. The planning committee designed post training DV consultation meetings to be held on alternating months over the twelve-month project period and invite anyone who participated in the initial training events to attend. All of the planning committee participants agreed to

participate in the post training consultation meetings. Dr. Anne Ganley agreed to participate in these meetings without any further compensation for her services.

It was anticipated that through the development and implementation of the pilot training model that a training system could be designed and implemented with the remaining CA offices throughout Washington State. The training pilot would be used to better understand the needs of CA social workers around DV, how best to impart information, and how best to support the implementation of DV guidelines into their practice.

### **Goal of Pilot Project:**

The goal of the project is to provide a system of DV training and support to CA social workers

### **Anticipated Project Outcomes:**

The project planning committee members anticipate that through this model of training the following long term outcomes would be possible:

1. CA social workers could incorporate routine DV screening and DV assessments, when indicated, into their practice.
2. CA social workers would better recognize and identify DV behaviors that affect the safety of DV survivors and their children.
3. CA social workers would have increased opportunities to consult with DV specialists on their cases
4. CA social workers would have a better ability to engage DV perpetrators into CA services and address the risk they pose to their family members.
5. CA social workers would understand and incorporate effective DV services into their case plans
6. CA social workers would have increased knowledge and collaboration for families in court proceedings so that DV survivors and their children would receive needed services/supports. This could reduce the numbers of children being removed from the care of non-abusing DV survivors

### **Training Participants and Initial Training Pilot Events:**

The training was designed to include participants from half of the six CA offices in King County so that the training groups could be kept at a reasonable number for project implementation. CA social workers from King West Office, Martin Luther King Jr. Office, White Center Office and Office of Indian Child Welfare Services were encouraged to participate. These offices were selected as they see families from diverse backgrounds and serve families who are African American, American Indian, and other minority families who are often over-represented in child welfare services. Participants were invited to attend one of the two initial pilot training events that were provided on February 8, 2011 and February 11, 2011.

The funding support of these two pilot training events was approved and secured through a FFY09 STOP Grant # 1AA10405 that was provided by the Washington State Supreme Court's Gender and Justice Commission. The funds were used to support the costs of the training faculty, Dr. Anne Ganley.

A total of 85 participants attended one of the pilot trainings. On February 8, 2011 at the King West CA Office there were 47 participants. On February 11, 2011 at the Martin Luther King Jr. Office training there were 38 participants.

## Initial Pilot Training Participant Surveys

Of the 85 training participants, 61 or 72% completed a training evaluation survey. Five questions were rated about the training content and trainer. Questions were rated on a scale of 0-4 points as follows:

- 0 = Not at all
- 1 = Minimally
- 2 = Moderately
- 3 = Mostly
- 4 = Exceptionally

The participants rated meeting the training content objectives as being moderate. The table below describes these evaluation questions and the average score given by participants and the comments made for these questions. The participants also rated the trainer as 2.95 or mostly meeting their needs.

<p><b>1. How well did this training meet its objective in increasing your understanding on how to conduct routine DV screening for all your cases?</b>  Comments: There are gaps between the guideline and social work practice  Need clearer definition of what DV screening is  Need examples to follow</p>	<b>2.64</b>
<p><b>2. How well did this training meet its objective in increasing your understanding on how to conduct specialized DV assessments in DV indicated cases?</b>  Comments: This is still confusing but need the information  Need case specific examples  Need more hands on practice in how to do it  Good overview but need more in-depth  Good assessment was taught</p>	<b>2.57</b>
<p><b>3. How well did this training meet its objective in increasing your understanding on how to apply specialized DV assessments to DV case decision making?</b>  Comments: Need to gain more confidence but will still study/and apply the information  Not enough time to do this part  Needed more time to talk about safety for children</p>	<b>2.26</b>
<p><b>4. How well did this training meet its objective in increasing your understanding on how to apply specialized DV assessments service planning?</b>  Comments: Not enough time to do this part  Not able to cover in-depth</p>	<b>2.12</b>
<p><b>5. How well did Dr. Anne Ganley present her training topics?</b>  Comments: Dr. Ganley is an interesting and effective teacher  She did a good job with the timing in the training  Excellent trainer  In the beginning she was dismissive to questions and comments but it improved near the end</p>	<b>2.95</b>

Participants were asked: **based on this CA DV training what do you think that you will be doing differently in your practice?**

A few participants commented that they did not learn anything new and the information was too basic. Several participants remarked that they did not know what they would do differently. For some it was too early understand how the training would affect them. Some did not have adequate time to have their questions fully

answered or needs addressed as illustrated by these comments: *"We just skimmed the surface."* *"We will need another training to be able to incorporate this information and critical thinking into our case planning."* *"What are we supposed to do? I honestly am unsure of how to work with DV cases."* A few mentioned that they were planning to attend the post-training DV support and consultation meetings to get more information.

Many others did make comments on what they learned about DV or would do differently such as how they would work with DV survivors:

- Refocusing on "safety" for the adult DV survivor
- Identifying more protective factors with DV survivors
- Viewing DV survivors differently
- Being more aware of the perpetrator's ways to control and what victims may have to do in response

Social workers remarked that they learned knowledge and skills in how to engage family members and conduct DV screening and assessments with family members:

- Knowing that DV screening is necessary
- Asking better questions to figure out if DV is relevant in the case
- Being more thoughtful – planning what questions to use
- Ensuring the initial DV screen is completed before transferring the case
- Establishing a clear process/procedure to screen
- Ensuring DV screening and assessments are conducted with CPS investigators
- Making sure initial DV screening is ongoing and documented
- Incorporating DV screening into my interview tools
- Completing assessments – Assessing for DV more intentionally
- Using the DV assessment as an outline for case notes

Social workers also learned how to document about DV in their case notes and how to better utilize the practice guidelines. They also were processing how they would integrate the training information into their practice, how to support co-workers in doing DV screening and assessment, and asking co-workers more often about their DV assessments.

**Participants were asked if they needed more DV information.** Fourteen participants checked that they did not need further DV information; however thirty-seven participants indicated they had additional DV training needs. They indicated needing more help in learning what to do about DV that they have learned about through DV screening and assessment procedures, what the social worker's role/response should be, how to keep survivors and children safe, how to do DV safety planning, and what should be detailed in case plans and service plans,

Others mentioned that they need more help with their legal questions and how to manage DV with families involved in court proceedings. Several indicated they need to know how to handle safety issues in court, when to file for dependency motions, how to manage discovery processes, how to make case plans for court ordered services, and steps to reunify dependent children when DV is a factor. Social workers also wanted more information on how to obtain a protection order on behalf of children to protect them from DV perpetrators.

Participants also indicated the need information on the following training topics:

- More case specific and resources given economic reality
- Dealing with youth batterers
- What to do when kids report DV and parents deny it
- What to do when children live with DV perpetrator and the victims do not live in the home

- What to do when violence is occurring by both parties and you can't quickly identify who is the victim and who is the perpetrator?
- What to do when victim/perpetrator is the same person
- More discussion on involving DV perpetrators
- What CA role is versus the community DV role is? It is different; we have more power or perceived power.
- Need a working tool for DV screening and assessment that can be used in the field

### Other comments about the CA DV Training:

Several social workers reported that it was a good presentation, they appreciated the handouts and practice guidelines, they learned new knowledge and skills, and they appreciated the dialogue. Several also remarked that it needed to be longer and one participant remarked: *"it should have been longer. It kept my attention and showed me new tools."* They also discussed the need to have ongoing DV training to reinforce the knowledge and incorporate it into practice. These comments reinforce the need to do more than one training activity to better integrate the information.

Others felt that there was not enough time to adequately address all the training content. They remarked that there was not enough time to have their questions listened to and responded to, or they felt their question was dismissed. There were comments that some people dominated in asking questions, and by allowing this that the training got off track and left some feeling overwhelmed. One participant also felt that they did not feel supported at times as illustrated by this comment *"The posture taken that we do not do a good job in keeping children safe and that we are solely responsible for the family's outcome. We re open to learning "best practice" and what is done or not done in keeping victims and children safe should not be seen as intentional."*

As the training was developed in a very short time span, there was not adequate time to survey and include social workers with the training development. Some of the social workers also made remarks that they would have wanted to have more information or input about the training before they attended it as reflected in these comments:

- Social workers need to know how new procedures will effect them and their clients before doing the training.
- We were not told that this was a pilot or that there would be post-training sessions
- The training was clearly developed based on what CA/whoever wants to see DV cases being handled and did not consider how this information could actually be applied to our jobs
- It needs to be more realistic for our practice

There were a number of participants that gave feedback on how the training could be strengthened in its format. It would also be helpful to better address their barriers and fears in doing the work.

- It would helpful to have a video of a sample interview done by Dr. Ganley or someone else that has a lot of experience doing these screening/assessments
- The training was too regimented and needed to be more interactive
- Needed not to be such a lecture format, and would have preferred it to be more of a workshop with more case examples and scenarios.
- Referred too much to the guideline which we could read on our own
- Need a working screening and/or assessment tool
- Need to address that time constraints are a big problem and safety issues for social workers
- Is it realistic for workers to gather DV information, are they required to, do they do it, how complete is it?

- Needed to address fears of what will happen to victims/children safety from not intervening or the potential danger posed by intervening about DV

Some of the participants also felt that men can be overlooked as being a victim of DV such as *“Interesting that victims were commonly referred to as mother and fathers automatically the perpetrators”* and *“DV perpetrators aren’t just men.”*

Participants gave the following suggestion to be presented during the monthly post-training consultation sessions:

- Case consultation and troubleshooting cases
- Practical application-actually going through and demonstrating with a case scenario from initial screen to the case plan
- Examples of effective use of screening tools
- Ramifications for clients who disclose DV
- Develop new strategies and skills
- Discuss social worker biases and judgmental aspects that affect decision and engagement of family members
- What is working and what is not
- More on engaging abusers safely
- Interaction with DV providers
- Community resources for our clients including DV services for adult/teen survivors and perpetrators
- The resources available to workers and to what extent they are really available and obtained.
- I don’t know. I don’t plan on attending

There was a range of responses from the participants from these pilot trainings. With these evaluations we found that some social workers feel they have enough information to do this work and yet others report they have many training and support needs. The early findings from the social workers’ baseline surveys about their knowledge, comfort, and skills regarding DV responses indicate that social workers could benefit from ongoing DV support and consultation.

## Attachment D

### **MATCH Time for Project Activities**

#### Match Time for Honorable Judge Joan DuBuque, Project Chair

- January 12, 2011: 1 hour for DV and Dependency Symposium Planning Meeting
- January 18, 2011: .50 hour coordination with STOP grant manager on out-of-county coordination
- January 27, 2011: .5 hour to plan and finalized Oversight Committee Meeting Agenda
- February 2, 2011: 2 hours to facilitate Project Oversight Committee Meeting
- February 17, 2011: 1.5 hours to participate in the DV and Dependency Symposium
- February 18, 2011: .5 hour to plan future project activities

#### Match Time for Commissioner Jeske

- February 2, 2011: 2 hours to participate in Project Oversight Committee Meeting

# Washington State Gender and Justice Commission

## FY09 STOP GRANT TO THE COURTS QUARTERLY PROGRESS REPORT

<b>Award No.</b> IAA10473	<b>Date Report Prepared:</b> 04/04/2011
<b>Project(s):</b> Providing funding for judicial process assistant.	<b>Report No.:</b> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 4
	<b>Reporting Period:</b>
	<b>Final Report</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Grantee:</b> Snohomish County Clerk	<b>Subgrantee:</b>

**REPORT** (Attach additional pages if necessary.)

**(1) Project activities during the reporting quarter.**

The STOP Grant-funded employee works in a triage capacity at the main customer service counter and handles all information and resource inquiries, provides telephone coverage, and prepares forms, statistical counts, and other work. This allows the division to provide an increased number of domestic violence-related intakes, because this position frees up other staff resources to be dedicated to one-on-one interactions with victims/survivors. Additionally, we have seen an increased response time in the entry of orders into the State law enforcement data bases, an improved ability to provide community resource information to victims and increased coordination between services and courtroom activities.

Early this year, Myra Downing at the AOC indicated that there were additional unspent STOP grant funds available. She provided approval for the Snohomish County Clerk's Office to do some additional DV-related activities. While we were unable to get our DV brochures translated into several additional languages, we were, however, able to get our existing Domestic Violence and Anti-Harassment Petition Packets re-printed (\$1,072.00 total cost). We have attached copies of the invoices, as well as a completed Goods & Services form.

**(2) Any significant problems that developed.**

The grant-funded employee who we had recruited, and who had worked on DV STOP grant-related activities since the fall of 2009, took a permanent position within the Snohomish County Clerk's Office. We hired a replacement in mid-December 2010, who did not work out (she departed 2/1/2011), and then hired a second replacement the first of February, who also stayed until 3/10/11. Therefore, we have been unable to expend all of the allotted grant funds for # IAA10473.

**(3) Activities scheduled during the next reporting period.**

No additional activities are scheduled at this time. Contract #IAA10473 has ended and we did not receive additional grant funding for this position for the 2011-2012 grant period, so we cannot recruit for another Judicial Process Assistant.

**Submitted by:**

<b>Name:</b>	Mary Albert
<b>Title:</b>	Judicial Finance/Budget and Records Manager
<b>Phone Number:</b>	425-388-3544
<b>e-mail address:</b>	Mary.albert@snoco.org



**National Criminal History Improvement Program Grant Summary and Budget Information**

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**Agency Name:** Thurston County Superior Court

**Project Manager Name:** Myra Downing

**Project Manager Contact Information:** 360-705-5290

**Project Title:** Domestic Violence No Contact Order Display System

**Grant Amount Request:** \$49,400.00 vendor costs – all in/ flat fee

**Agency Match Contribution**

- Administration Support - 80-100 hours
- Judicial Support and Review – 20-40 hours
- IT Department Support -Thurston Cty. Sheriff's System – 30-40 hours
- IT Department – Liberty Thurston County Clerk
- Process review and query testing – 20-40 hours
- Roll-out and training – 30-40 hours (supported by NASOR & Documentation)

**Project Summary**Outcome:

Develop a software program that will interface with outside and third party data sets for the purpose of allowing State of Washington Court Judges to access in real-time, respondent or petitioning parties pending or filed no contact (NCO) and protection orders (PO). This will be done by creating a Web based reporting system with secure user level access and authentication to request a query regarding an open NCO or PO from the intended systems through a secure connection from host server running query request to intended data storage system via XML aggregation with X AWARE middle ware interface and offering "View Only Results" to querying party in a secure browser session.

Problem Statement:

Domestic violence cases appear in both criminal and civil courts, and in superior, district, and municipal courts. In criminal court, no-contact orders are issued when a person is charged with domestic violence and are used to protect the victim and prevent the defendant's contact with the victim. The order exists while the criminal case is open and can be extended past sentencing. At times, civil protection orders are sought as an additional safety tool for a person who is

at risk of being harmed by a partner or family member or to ensure that an order is in place if a criminal case is resolved.

No-contact and protection orders have been found to be an effective tool in helping to protect victims of domestic violence. This protection can be eroded, though, by the existence of multiple orders for the same parties. Law enforcement officers sometimes find themselves having to decipher the orders when there are conflicting restrictions or modifications, both because of different dates on the orders and because they are issued out of different courts. As a result, law enforcement can have difficulty trying to determine which order to enforce. This can result in no enforcement of such orders.

The current judicial information system allows judicial officers to know if another order exists. It does not allow a judge to "see" the order so they know the specific restrictions noted in the order. This is a significant reason for duplicative and conflicting orders.

The Washington State Legislature identified the seriousness of this problem and the need for a resolution by directing the Administrative Office of the Courts to establish a process to reconcile duplicate or conflicting orders. We believe "seeing" the order would greatly assist in solving the problem.

Resolution Approach:

Use a secure web-based, application that will allow the review and read only access of no contact and protection orders. The judicial officer can make a query of this new software program that will access this third-party dataset (Laser Fiche and Liberty and return a set of results for "Read-Only" access to include all data about existing no contact and protection orders including a scan and PDF view of the order itself. After the review, and within a 24 hour period, this new system will "DUMP" the NCO and PO data and PDF attachments. In addition to allowing a Judge to access the NCO and PO files, the inquiring Judge also wishes to add "Additional Notes" to his/ her query list for later review by he/she only and not to be shared with other users (Judges). This saved subset of data (Additional Notes) will be archived and tied to the user profile with up to a 1-2000 character "Free-Form" comment string and associated to a NCO and PO case or file number and if the user (a Judge) wishes to re-access the NCO and PO file, he/she will need to request another file review and these files will not be stored on any server other than new NCOJRS systems for the purposes of date integrity.

NOTE: THE NEW SOFTWARE PROGRAM WILL NOT ALLOW THIS REQUESTED DATA TO BE MODIFIED OR DELETED IN ANY WAY BY A USER OF THIS NEW SYSTEM AND ALL DATA REQUESTED AND ACCESSED BY THIS NEW SYSTEM WILL ONLY BE HELD WITHIN THE SYSTEM FOR A MAX OF 24 HOUR PERIOD

AND IN A TEMPORARY FILE AND ALL FILES FROM THE PREVIOUS DAY WILL BE DUMPED AND DELETED AUTOMATICALLY BY THIS NEW SYSTEM FROM ITS DATABASE AND NOT AFFECT THE LASER FICHE SYSTEMS.

**Requirements:**

- Develop a unique user interface that will allow a user (a Judge) to access from a secured computer, access to remote datasets regarding details about NCO files pertaining to a case or respondent or petitioner.
- Access the Laser Fiche and Liberty database and allow for real-time and "Read Only" access for a user ( a Judge).
- Query time must be prompt and less than 10 seconds unless larger files attached
- System must be easy for users to access and query.
- "Read Only" access to this files will be allowed.
- Addition of User Notes to a NCO and PO can only be accessed by the same user and NOT shared with other users.
- System must be hosted in a secure hosting facility and staffed by skilled and trained staff for at least for one year.
- System and its use and operation must be fully documented in writing by contractor.
- Contractor must provide reasonable user training on systems and its features.
- System must be completed in less than 9 months from start to end to include staff training and documentation.
- Access to the Laser Fiche system must be made using XAware software and this project must include a supported and licensed version of the XAware product and include XAware support for 1 year.

**Expected Outcomes:**

The expected outcome is to have successfully defined and developed a query tool that will rapidly access critical data in secure third-party systems and offer a Judicial officer immediate access to the data they need to successfully reside over a trial or hearing and use all data and resources available to protect Petitioners and families as well as protect the rights of the Respondent in accordance with how NCO/PO documents are issued and validated. This intended system will be a starting point to build upon and is foreseen to allow for additional access to similar systems, counties and their respective data to continue to allow greater transparency in these cases and matters.

**Project Activities**

- Phase 1- Define and develop Query User Interface that will allow a Judicial Officer to access core data needed from third party data sets.
- Phase 2 will be to take this query tool and develop initial interface with the Thurston County Sheriff's Laser Fiche system.
- Phase 3 will be to interface with a secondary data set ( the Thurston County Liberty System) and calling data from the same Phase 1 Query system.
- Phase 4 will be the documentation and training of Judicial staff on the use of this new system (NCOPO JRS) as well as technical documentation as to network design issues and well as software query and database definitions for later review for further development.

Please provide the specific tasks will your agency complete during this project.

The Agency will be the champion as well as help to define Usability requirements as well as how data is viewed and accessed as well as the oversight regarding development support between all parties and departments to include Agency, State, County and Vendor assets.

**Performance Measures**

- Access to no-contact and protection orders through Laser Fiche system operated through the Thurston County Sheriff's Office.
- Access to no-contact and protection orders through Liberty System operated through the Thurston County Clerk's Office
- New system to make initial queries in under 10 seconds from query call to "View" of the request.

System interface will need to be easy to access for Judicial officers and have Client based "Jump Off" point (desk top Icons) to start query processes

**Project Deliverables and Completion Dates**

<b>Deliverable (contractor will)</b>	<b>Date</b>
Create a design to support the needs of the judges' query request – the way the screen will look to the users to include process from logging into the system to reviewing the query results and how to access attachments and add notes.	1-2 weeks
Create a database model for the systems – the engine for the intended software.	1- 2 weeks
Develop security model with roles access to this system (initially 2 roles: Admin and Judge)	1- 2 weeks
Map the Laser Fiche database and data to the new system.	2-3 weeks
- Liberty System integration to this new system	4-6 weeks
Develop a network diagram of how the new software will be supported by remote host and also how the software will access the laser Fiche system securely and account for required security protocols by Thurston County Sheriff's Department and Laser Fiche staff.	1 week
Write final code, test and deploy o a production server hosted off site by Contractor.	4-6 weeks
Provide a CD Rom with final code base to AOC along with database schema database copy.	1 week
Full user manual on use of the system as well as training materials <ul style="list-style-type: none"> <li>o Full diagram to include network and system details to include:</li> <li>o User name and passwords for servers and third-party products as may/ may not apply.</li> <li>o One year hosting and server and software support for this system to include: <ul style="list-style-type: none"> <li>▪ System outages on new system host servers.</li> <li>▪ Daily system back-ups to include code base and record level data – in this case a Judge's comments.</li> <li>▪ Contractor will warranty all final code for this new system for one year from completion. All third party products will be supported by their own warranties and support agreements to include Laser Fiche and XAware.</li> </ul> </li> </ul>	2 weeks

**Project Budget Narrative, Budget Detail and Match Activities**

Please provide an explanation of how the project funds relate to the project deliverables, provide the dollar amounts for the following budget categories:

	<b>Description</b>	<b>Computation</b>	<b>Total</b>
<b>Personnel</b>	PM Coordinator Developers Documentation XAWARE development and integration -	50 hours @ \$100 160 hours @\$115	\$5,000 18,400 \$4,000 \$10,000
<b>Benefits</b>			
<b>Equipment</b>	Network Admin/IT Security Support XAWARE License and Support Hosting NCOPO JRS system		\$2,500  \$4,500 \$500
<b>Supplies</b>			
<b>Travel</b>	Vendor Travel to onsite meetings	50 hours at \$100	\$5000.00
<b>TOTAL</b>			\$49,400

**MATCH**

	<b>Description</b>	<b>Computation</b>	<b>Total</b>
<b>Personnel</b>	<ul style="list-style-type: none"> <li>- Administration Support - 80-100 hours</li> <li>- Judicial Support and Review – 20-40 hours</li> <li>- IT Department Support -Thurston Cty. Sheriff’s System – 30-40 hours</li> <li>- IT Department – Liberty Thurston County Clerk</li> <li>- Process review and query testing – 20-40 hours</li> </ul> Roll-out and training – 30-40 hours (supported by NASOR & Documentation)	Using the minimum hours for each person and an average of \$30/hour, the match would be \$5,400	
<b>Benefits</b>			
<b>Equipment</b>			
<b>Supplies</b>			
<b>Travel</b>			
<b>Indirect</b>			

# NCO Judges Review System - Thurston County Concept Drawing designed by NASOR February 24th 2011

**Admin**  
No Contact Order Judge's Review System - Thurston County Sheriff's Department

Please enter your user name

**User name**

**Password**

Keep me logged in

Lost password?

Welcome Judge Wickham

NCOJRS

No Contact Order Judge's Review System - Thurston County Sheriff's Department

**Recent Searches**

John Smith 08-29-1966 // 02-24-2011  
 John Smith 08-29-1966 // 02-24-2011  
 John Smith 08-29-1966 // 02-24-2011  
 John Smith 08-29-1966 // 02-24-2011

**Recent Comments**

John Smith // 02-24-2011...  
 - Mr. John Smith was seen by myself...

Select action

**NCO Search**

THIS IS A WARNING MESSAGE INSIDE A BOX

**1 Step One: Search**  
Start Search Here:

First Name:  Last Name:  MI:

DOB:  SSN:

Address:  City:  State:  Zip:

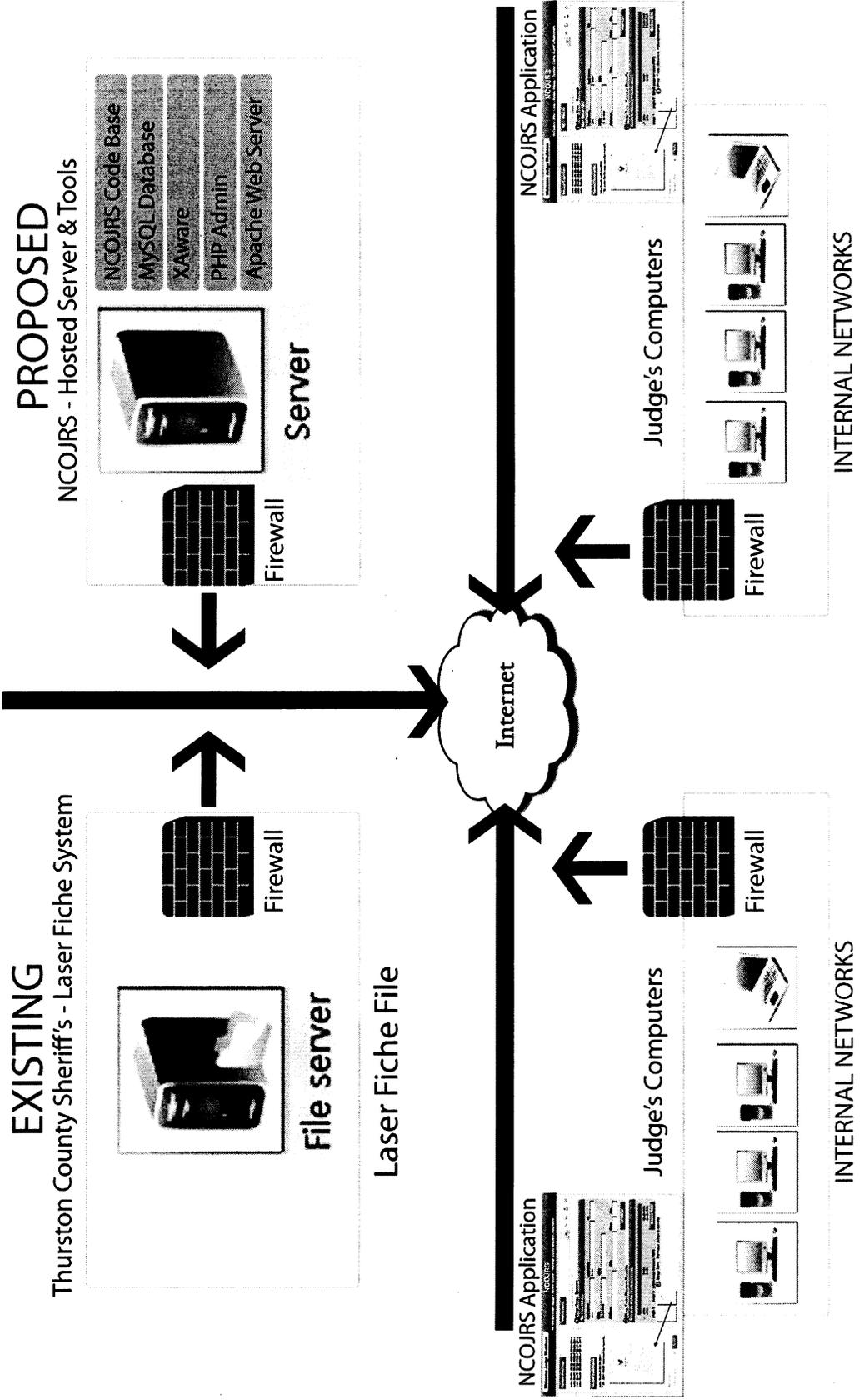
**2 Step Two: Review Results**  
Results for Search (2 matches found)

<input checked="" type="checkbox"/>	John Smith	03-29-1966	<a href="#">Review NCO</a>
<input type="checkbox"/>	John Smith	03-29-1966	

page 1 page 2 (click page to open PDF)

**3 Step Two: Review Attachments**

# NCOJRS Network Architecture Plan



**PROJECT NARRATIVE – COMPLETING THE CIRCLE**  
**Washington State Judicial and Court Personnel Training Project**

**A. Purpose of Application**

In many ways, Washington State stands as a leader in addressing domestic violence, sexual assault, and stalking. The Supreme Court’s Gender and Justice Commission (Commission) is the statewide point of contact for the state’s STOP Violence Against Women with 5 percent set-aside funds for the courts. Most of these funds have gone to develop programs within the courts to more effectively address domestic violence and sexual assault issues. In addition to these programs, the Commission provides domestic violence educational programs for all newly-elected or appointed judicial officers. The *In Her Shoes* simulation exercise is included in the training and affords the judicial officers the opportunity to see domestic violence from another perspective. Judicial officers’ feedback has been overwhelmingly positive, stating how meaningful the experience was for them.

The Commission has sent 147 Washington State judicial officers to advanced training offered by the National Council for Juvenile and Family Court Judges. In addition, the Commission offers trainings at regional and statewide educational conferences for judges and court personnel. Some of the courses have been *Best Practices when Sentencing Batterers*, *Cyberstalking*, *In Her Shoes*, *Collateral Consequences of Domestic Violence in Immigration Cases*, and *Sexual Assault: Myths and Actions*.

The Washington State Coalition Against Domestic Violence (WSCADV), our partner for this application, works closely with the Commission. The WSCADV is a non-profit coalition of 68 domestic violence shelter and community advocacy programs, founded in 1990. Its mission is to end domestic violence through advocacy and action for social change. The Coalition provides training, technical assistance, public policy advocacy, community-based research, and education. Over its 21-year history, the WSCADV has developed a number of interactive teaching tools for various audiences, including *In Her Shoes: Living with Domestic Violence*.

*In Her Shoes* is a learning tool in which participants assume and experience the roles of domestic violence victims from many backgrounds as they seek assistance. The experience demonstrates that an individual victim's escape from abuse is complicated, unpredictable, and may, in some cases, be impossible. The experience and debriefing discussion engage participants in identifying their important role in supporting victim safety and batterer accountability - and not just refer victims to shelter or a crisis line. It is the hands-on nature of *In Her Shoes* that allows participants to understand the severe challenges and closed doors faced by domestic violence victims.

The WSCADV also has a domestic violence legal advocacy project that provides ongoing technical assistance to domestic violence advocates who work with survivors in the legal system, and a public policy program which takes a leadership role in advancing legislation, administrative, and court policies that support domestic violence victims.

The WSCADV has played a key role in advancing legislation protecting victims of domestic violence, sexual assault, and stalking in the context of employment. House Bill (HB) 2602, passed in 2008, protects victims who need to take time off from work to address domestic violence, sexual assault, and stalking, including taking time off to participate in criminal proceedings or to obtain protective orders. The WSCADV is also currently working with the Legislature in clarifying the standards that a court must consider in terminating or modifying a permanent or long term domestic violence protection order.

To date, Washington State has learned a lot and taken positive action, but we want to do better. We know that during 2006-2009, 60 percent of the assaults that occurred during were domestic violence related. We know that in Thurston County alone, there were 14 fatalities associated with domestic violence last year. We also know that there is a 60 percent recidivism rate among stalkers. The work that has been accomplished prepared the Commission, WSCADV, and other court partners to begin to look more broadly from a “statewide” perspective and assess what should be the next focus of our work.

As in any evolution, the Commission began to question the effectiveness of their current problem-solving approach. In November of 2008, the Commission held a strategic planning session to review their practices and determine their course of action for the next few years. They reviewed work that had been accomplished, and it became apparent that similar challenges across local jurisdictions began to surface. At the same time, other members of the court community – prosecutors, victim advocates, elected county clerks, law enforcement, defense and family law attorneys – started discussing some of the same issues.

These discussions turned into the formation of task forces and community meetings that produced proposed legislation to address the problems. Several clear problems emerged from these meetings. For example, the lack of uniformity creates problems for all parties. One of the major findings from the statewide meetings and task forces was that there wasn’t a means to connect the dots – to complete the circle – that would ensure that someone who needs the services of the courts isn’t accidentally left outside of that circle from a break in the line.

Victims of domestic violence and sexual assault approach court staff and volunteer advocates for help with such things as determining the appropriate order that needs to be filed, where to go to get the order, and how to get the order served. At times, questions may need to be asked and information may need to be given that can increase the safety of those entering our courts. We also know that the court staff and volunteers may not have received the training to assist them in the assessment of these situations.

One of our state legislators held community meetings with all groups represented, and crafted legislation that was passed directing courts to develop policies, protocols, and procedures that will more efficiently and effectively create an easier path for a victim to maneuver through the court system. The Dissolution Task Force was formed and mandated to develop curriculum to ensure that those interacting with victims of domestic violence understand the dynamics of domestic violence and learn appropriate responses.

The Commission contracted with the National Council for Juvenile and Family Court Judges (NCJFCJ) to develop the curriculum for specific audiences: court staff, courthouse facilitators, guardians ad litem, and parenting evaluators. This ensured us a link between the training received by judicial officers and court personnel, because the NCJFCJ developed and provides the judicial training. This meant the new curriculum would use the same definitions and similar content so all parties in the court would be using the same language, thus increasing clear communication.

The NCJFCJ worked with a committee comprised of representatives from the target areas, members of the Commission, and representatives from the WSCADV to ensure the training addressed specific job responsibilities. The problem is that while there were funds to develop the training, there were no funds to deliver the training.

Since the development of the curriculum, another major event has occurred. Legislation was passed in 2010 that mandated the development of model policies and protocols for addressing domestic violence and sexual assault issues within our courts. The Commission held 15 statewide meetings with representatives from the courts, victim advocates, prosecutors, law enforcement, defense and family law attorneys, and elected County Clerks to discuss ways to reduce duplicative and conflicting court orders and find solutions to other domestic violence or sexual assault issues that overlap entities. It became clear a lot of the problem was due to lack of education.

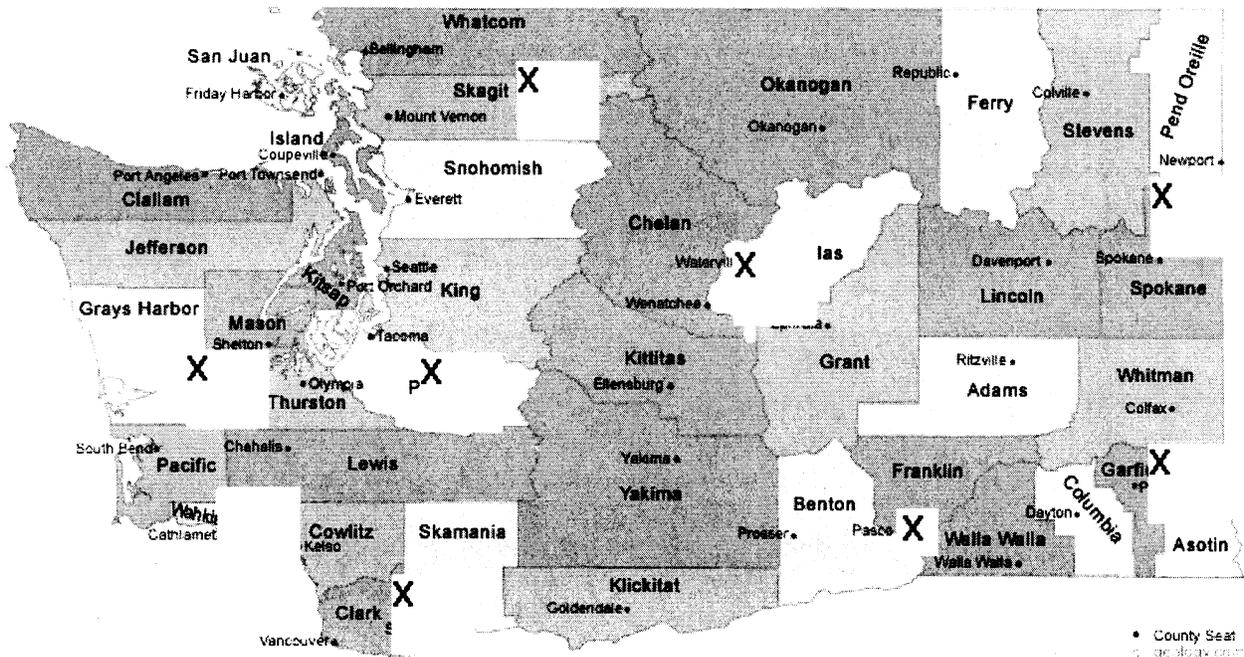
Also, since the development of the curriculum, cyberstalking has become more prevalent. The WSCADV took the initiative to develop curriculum and provide an expert in this field to deliver training on this topic. Their trainer is nationally recognized and offers a vivid and riveting training, one that clearly identifies the problem and workable solutions.

The work of the courts in addressing domestic violence, sexual assault, and stalking comes together under the umbrella of the Gender and Justice Commission and in their partnership with the WSCADV. They have created a collaborative model for developing a coordinated statewide response to serving victims of domestic violence and sexual assault. The 5 percent set-aside is being used to develop the statewide policies and protocols and fund collaborative programs offered within the courts. But Washington State has not had enough funds to train all of the people who come into daily contact with those entering our courts and looking for help. Obtaining these grant funds would enable us to train them, in their community, so they can work with victims and complete the circle of services and responses.

## **B. What Will Be Done**

This grant will provide funding to offer eight (8) regional trainings. Unlike the east coast, many of the Washington State county populations are spread over very large areas. The major metropolitan areas are Seattle, Tacoma, and Vancouver, commonly referred to as the I-5 corridor. Of the 39 counties in Washington, 23 are considered rural. In addition to being rural, resources are very limited to these counties. This funding would allow us to come to them and thus increase participation in the trainings.

As we learned from our other statewide meetings, if we come to them, they will come to us. The map below identifies the proposed locations for the trainings.



### Training Team

There are three separate training sessions that will be offered during the day:

1. Domestic Violence Training (all participants).
2. Job Specific Domestic Violence Training (participants will be divided by job responsibilities).
3. Cyberstalking Training (all participants).

We will have a team of trainers at each event because we will be breaking participants into job specific groups and because we will be offering *In Her Shoes*, which requires several people to conduct. Our training team will be comprised of WSCADV staff, including Ms. Mette Earlyvine, Ms. Grace Huang, and Ms. Teresa Atkinson. Ms. Atkinson is currently contracted through a cooperative agreement by the Office on Violence Against Women, to work with nine western states offering technical assistance and training on technology related stalking and safety to OVW grantees. The NCJFCJ will provide technical assistance, as needed, and may provide trainers. Commission members and staff will also be involved. Ms. Myra Downing, Executive Director, Gender and Justice Commission, currently facilitates *In Her Shoes* for judicial officers.

In addition, Commission members and Myra will hold a lunch meeting with local judicial officers and court partners to discuss issues of common interest and continue the dialogue involving the development of common statewide policies and protocols addressing domestic violence, sexual assault, and stalking court issues.

**Training Schedule**

8 – 11:30am	<p>Domestic Violence training that includes <i>In Her shoes</i> simulation exercise. Objectives for the training are:</p> <ul style="list-style-type: none"> <li>• Develop skills in assessing cases for domestic violence based upon victim behavior; perpetrator behavior; and an understanding of the domestic violence process as it occurs between the parties.</li> <li>• Determine the impact of domestic violence and safety threats it poses to the victim.</li> <li>• Develop an understanding of the challenges faced by victims in such areas as housing, finances, health care, child care, and day to day safety.</li> </ul>
12 – 1pm	Lunch meeting with judicial officers and court partners.
1 – 3 pm	<p>Participants will be divided by job classifications. Here are the learning objectives for three audiences.</p> <p>Court Staff—participants will:</p> <ul style="list-style-type: none"> <li>• Assess “red flag” behaviors that present a danger to all persons in the court.</li> <li>• Define your role in the domestic violence services continuum.</li> <li>• Identify to the extent possible what has brought individuals seeking services to court, and refer them to the appropriate resources in the court and community.</li> <li>• Initiate action to promote safety of victims, other family members, and court staff and other professionals.</li> <li>• Promote access to justice for consumers of court services.</li> </ul> <p>Custody Investigators—participants will:</p> <ul style="list-style-type: none"> <li>• Determine whether the circumstances of the case call for immediate safety interventions and, if so, what actions you should take consistent with your role in the case.</li> <li>• Perform specialized domestic violence assessments that use safe, effective interviewing and other investigative strategies in all cases where routine screening detects the presence of domestic violence.</li> <li>• Incorporate the results of the screening and specialized domestic violence assessments into recommendations for parenting plans that are consistent with the requirements of state law.</li> </ul> <p>Guardians Ad Litem—participants will:</p> <ul style="list-style-type: none"> <li>• Conduct investigations that uncover and incorporate the dynamics of domestic violence present in the subject family.</li> <li>• Determine whether the circumstances of the case call for immediate safety interventions and, if so, what actions you should take consistent with your role in the case.</li> </ul>

	<ul style="list-style-type: none"> <li>• Make recommendations about parenting plans to the court that are consistent with the law, the dynamics of domestic violence, and safety considerations that meet the best interests of the child.</li> </ul>
3:30 – 5:30pm	<p>Cyberstalking. Participants will:</p> <ul style="list-style-type: none"> <li>• Identify the ways a person can use technology to stalk a victim.</li> <li>• Identify the tools that can reduce the ability to cyberstalk.</li> </ul>

**Timeline, Task, and Responsible Party**

October 2011	Develop a list of contacts for each training site.	Project Coordinator
October 2011	Meet to review proposed training schedule.	DV Oversight Committee
November 2011	Review and confirm curriculum.	Project Coordinator, Oversight Committee, Trainers
November 2011	Meet with AOC Research and Evaluation Staff to develop evaluation plan.	Project Coordinator, Oversight committee, and trainers
December 2011	Contract with trainers.	Project Coordinator
December 2011	Contact training site coordinators.	Project Coordinator
December 2011	Make arrangements for training site, equipment and schedule dates for 4 trainings.	AOC staff
January 2012	Advertise training through AOC listservs, courts, and associations.	Project Coordinator, AOC staff
February – June 2012	Offer four training courses.	Trainers
February – August 2012	Evaluate training and make adjustments.	Trainers, Project Coordinator, and Oversight Committee
July – August 2012	Make arrangements for training site, equipment, and schedule dates for last four trainings.	AOC Staff
September 2012	Advertise training through AOC listservs, courts, Washington Courts Web site, and associations.	Project Coordinator, AOC staff
October 2012 – February 2013	Offer four training courses.	Trainers
Ongoing and completed by April 2014	Evaluate training and measure impact.	Trainers, Project Coordinator, Oversight Committee, Evaluation staff

### **C. Who Will Implement the Project**

This project will be implemented through the Washington State Supreme Court Gender and Justice Commission. One of the primary goals of the Commission is to educate and coordinate. A list of their members is included in **Appendix A**.

Ms. Myra Downing, the Executive Director of the Commission, will serve as the Project Coordinator. Myra works for the Washington State Administrative Office of the Courts (AOC) and has access to administrative and secretarial support. As is noted in her resume located under **Appendix B**, Myra has over 25 years of experience. Most of her career has been in position requiring staff support to Commissions, Coordinating Councils, and Boards. She has led numerous statewide efforts, both policy and training projects. Most recently, she spearheaded the statewide Domestic Violence protocol effort which has created a link with all the courts in Washington as well as those working within the court community. She has spent many years conducting training of trainers and facilitation courses. Myra worked on the curriculum for judicial college and added "In her Shoes" to the course. She also facilitates the simulation at the college and for court personnel. Myra manages numerous projects for the Commission requiring her to be effective in time and resource management.

The WSCADV is the Commission's collaborating partner for this grant. WSCADV have committed three staff people, to work on this project. They will work with the Commission's DV Oversight Committee and the NCJFCJ to review and update the curriculum, deliver portions of the training, provide ongoing communication and support, and assist in evaluating the effectiveness of the training.

The NCJFCJ has agreed to be available for reviewing and working with the Commission to update the curriculum and where necessary, providing technical assistance.

### **D. Sustainability Plan**

The Washington State Supreme Court Gender and Justice Commission has been in existence for over 15 years and is chaired by Chief Justice Barbara A. Madsen.. The most recent statewide project has cemented the Commission as the leader for the courts in developing and implementing statewide domestic violence protocols and practices. The Commission works with judicial and court manager associations in supporting their ongoing educational needs. The Commission will make this training available for regional and statewide conferences. In addition, the Commission will commit to supporting individual court requests for the training.

Additionally, the AOC offers new employee training for court personnel. The Commission will work to ensure the information is included in those programs.

As importantly, the trainings provide the Commission and the WSCADV the opportunity to learn from court personnel. This information will be used to determine appropriate next steps and possible solutions to systemic problems.

## Budget Detail Worksheet

The Washington State Judicial and Court Personnel Training Project will be managed through the Gender and Justice Commission. Planning will be conducted during regular meetings so there will be no additional charges to this grant other than those that follow. There are regularly scheduled monthly and bi-monthly meetings, both in person and through conference calls.

The costs to offer the training:

### A. Personnel

Name/Position	Computation	Cost
Project Coordinator	.10 x 71,496	\$7,149.60
Secretary	.10 x \$41,508	\$4,150.80
		<b>Sub Total\$</b>

### B. Fringe Benefits

Name/Position	Computation	Cost
Project Coordinator	19.800 x .10	\$1,980
Secretary	15913 x .10	\$1591.30
		<b>Sub Total</b>

**Total Personnel & Fringe Benefits    \$14871.70**

### C. Travel –

Federal Mileage, and State per diem and lodging rates were used.

Purpose of Travel	Location	Item	Computation	Cost
Conducting Training	Benton/Franklin Co.	2 commission members or other faculty and project coordinator	492 miles round trip from Olympia x .51	\$250.92
		3 hotel rooms	\$77/night plus 8% tax x 3	\$249.48
		Per diem	1 breakfast (\$11), 1 lunch *\$14), and 2 dinners (\$21 x 2) x 3	\$201
Conducting Training	Stevens Co.	2 commission members or other faculty and	754 miles round trip from Olympia x .51	\$384.54

<b>Purpose of Travel</b>	<b>Location</b>	<b>Item</b>	<b>Computation</b>	<b>Cost</b>
		project coordinator		
		3 hotel rooms	\$77/night plus 8% tax x 3	\$249.48
		Per diem	1 breakfast (\$11), 1 lunch *\$14), and 2 dinners (\$21 x 2) x 3	\$201
Conducting Training	Pacific Co.	2 commission members or other faculty and project coordinator	140 miles round trip from Olympia x .51	\$280
		3 hotel rooms	\$77/night plus 8% tax x 3	\$249.48
		Per diem	1 breakfast (\$11), 1 lunch *\$14), and 2 dinners (\$21 x 2) x 3	\$201
Conducting Training	Skagit Co.	2 commission members or other faculty and project coordinator	240 miles round trip from Olympia x .51	\$122.40
		3 hotel rooms	\$90/night plus 8% tax x 3	\$291.60
		Per diem	1 breakfast (\$15), 1 lunch (\$18) and 2 dinners \$28 each) x 3	\$267
Conducting Training	Pierce Co.	2 commission members or other faculty and project coordinator	60 miles roundtrip from Olympia x .51	\$30.60
		Per diem	1 lunch (\$18) x 3	\$54
Conducting Training	Chelan/Douglas Co.	2 commission members or other faculty and project coordinator	376 miles round trip from Olympia x .51	\$191.76
		3 hotel rooms	\$77/night plus 8% tax x 3	\$249.48

Purpose of Travel	Location	Item	Computation	Cost
		Per diem	1 breakfast (\$11), 1 lunch *\$14), and 2 dinners (\$21 x 2) x 3	\$201
Conducting Training	Clark Co.	2 commission members or other faculty and project coordinator	212 miles roundtrip from Olympia x .51	\$108.12
		3 hotel rooms	\$113/night plus 8% tax x 3	\$366.12
		Per diem	1 breakfast (\$14), 1 lunch (\$17) and 2 dinners (\$25each) x 3	\$243
Conducting Training	Garfield Co.	2 commission members or other faculty and project coordinator	632 miles round trip from Olympia x .51	322.32
		3 hotel rooms	\$77/night plus 8% tax x 3	\$249.48
		Per diem	1 breakfast (\$11), 1 lunch *\$14), and 2 dinners (\$21 x 2) x 3	\$201
			Sub Total	\$5164.78
Travel for technical assistance and capacity building activities sponsored by OVC				\$10,000
			<b>Total</b>	<b>\$15,164.78</b>

**D. Equipment –**

Laptops, LCD players, and other training equipment will be provided by AOC.

**E. Supplies –**

Supply Items	Computation	Cost
Training Materials	40 participants x 8 sessions x \$15	\$4800
Supplies for In Her Shoes	\$60 x 8 sessions	\$480
	<b>Total</b>	<b>\$5280</b>

**F. Construction NA**

**G. Consultants/Contracts**

<b>Name of Consultant</b>	<b>Service Provided</b>	<b>Computation</b>	<b>Cost</b>
Teresa Atkinson WSCADV Trainer	Preparation Time	6 days @\$450/day x 2	\$5,400
	Travel days	8 days @\$225/day x 2	\$3,600
	Training	8 training days @450/day x 2	\$7,200
		<b>Sub Total</b>	<b>\$16,200</b>

**Consultant Expenses:**

<b>Item</b>	<b>Location</b>	<b>Computation</b>	<b>Cost</b>
Travel – airfare for 2 people	Benton County and Stevens County	\$250/per person x 2	\$500
Car Rental	Benton and Stevens County	2 days	\$165
Lodging	Benton and Stevens County	\$77/night plus 8% tax x 2 people	\$166.32
Per diem	Benton and Stevens County	1 breakfast (\$11), 1 lunch *(\$14), and 2 dinners (\$21 x 2) x 2	\$134
Mileage	Pacific County	200 miles round trip x .51	\$102
	Skagit County	150 miles round trip x .51	\$76.50
	Pierce Co.	60 miles round trip x .51	\$30.60
	Chelan/Douglas	326 miles round trip x .51	\$166.26
	Clark County	312 miles round trip x .51	\$159.12
	Garfield	572 miles round trip x .51	\$291.72
Lodging	Pacific County	\$77/night plus 8% tax x 2	\$166.32
	Skagit	\$90/night plus 8% x 2	\$194.40
	Chelan/Douglas	\$77/night plus 8% tax x 2	\$166.32
	Clark	\$113/night plus 8% tax x 2	\$244.08

Item	Location	Computation	Cost
	Garfield	\$77/night plus 8% tax x 2	\$166.32
Per Diem	Pacific County	1 breakfast (\$11), 1 lunch *\$14), and 2 dinners (\$21 x 2) x 2	\$114
	Skagit	1 breakfast (\$15), 1 lunch (\$18) and 2 dinners \$28 each) x 2	\$178
	Pierce	1 lunch (\$18) x 2	
	Chelan/Douglas	1 breakfast (\$11), 1 lunch *\$14), and 2 dinners (\$21 x 2) x 2	\$114
	Clark	1 breakfast (\$14), 1 lunch (\$17) and 2 dinners (\$25each) x 2	\$162
	Garfield	1 breakfast (\$11), 1 lunch *\$14), and 2 dinners (\$21 x 2) x 2	\$114
		<b>Sub Total</b>	<b>\$3410.96</b>

**Total Consultant Costs \$19,610.96**

**Contracts:** NA

Item	Cost
	Sub Total

**TOTAL \_\_\_\_\_**

H. **Other Costs** NA. Will use government buildings (courthouses) to conduct the trainings.

Description	Computation	Cost
		Total

**I. Indirect Costs** NA

**Budget Summary-**

<b>Budget Category</b>	<b>Amount</b>
<b>Personnel</b>	<b>\$14871.70</b>
<b>B. Fringe Benefits</b>	
<b>C. Travel</b>	<b>\$15,164.78</b>
<b>D. Equipment</b>	<b>NA</b>
<b>E. Supplies</b>	<b>\$5200</b>
<b>Construction</b>	<b>NA</b>
<b>G. Consultants/Contracts</b>	<b>\$19,610.96</b>
<b>H. Other</b>	<b>NA</b>
<b>Total Direct Costs</b>	
<b>I. Indirect Costs</b>	<b>NA</b>
<b>TOTAL PROJECT COSTS</b>	<b>\$54,847.44</b>
<b>FEDERAL REQUEST</b>	<b>\$50,282.64</b>
<b>NON-FEDERAL AMOUNT</b>	<b>\$4,564.80</b>
<b>.05 of Project Coordinator and benefits</b>	



## Financial Accounting Practices

Each applicant must prepare a response to the following questions. OVW will review the applicant's responses to assist in evaluating the adequacy of the organization's financial management system and to identify areas of need for training and technical assistance. This section of your application should be no more than two pages and should be a separate attachment to the online application in Grants.gov and a separate section in the hard copy.

- Will all funds awarded under this program be maintained in a manner that they will be accounted for separately and distinctly from other sources of revenue/funding?

*Yes, upon receipt of a new grant award the Administrative Office of the Courts (AOC) creates a new budget code to clearly track all disbursements separate from other funding sources.*

- Does the applicant have written accounting policies and procedures? OVW may request a copy for review during the application/award process or as part of the grant monitoring process.

*Yes, AOC's accounting department has a manual with written policies and procedures for accounting functions within our agency.*

- Is the applicant's financial management system able to track actual expenditures and outlays with budgeted amounts for each grant or subgrant?

*Yes, with the use of budget codes, contracts numbers and budget allotments our Agency Financial Reporting System (AFRS) allows AOC to accurately track actual expenditures with the budgeted amounts of the award for each grant or subgrant.*

- Does the applicant have procedures in place for minimizing the time elapsing between transfer of funds from the United States Treasury and disbursement for project activities?

*Yes, AOC disperses state funds for project activities and then draws down federal funds each month or quarter depending on the grant requirements and award amounts.*

- Does the applicant have effective internal controls in place to adequately safeguard grant assets and to ensure that they are used solely for authorized purposes? Please provide a brief description.

*Yes, AOC has an extensive Asset Management Policy and Procedures document that is used to safeguard all assets. In addition it is the collective responsibility of the fiscal office, grant manager and contract office to ensure funds are used solely for purposes outlined in the grant award.*

- Does the applicant have a documented records retention policy? If so, briefly describe the policy.

*Yes, AOC has an internal records retention schedule. Most accounting documents are held for six years. Grant files are held by our agency for six years following the close of the grant.*

- Is the individual primarily responsible for fiscal and administrative oversight of grant awards familiar with the applicable grants management rules, principles, and regulations? If not, the applicant must contact OVW's Grants Financial Management Division at [OVW.GFMD@usdoj.gov](mailto:OVW.GFMD@usdoj.gov) or 1-888-514-8556 immediately after the organization is notified of their award to coordinate training.

*Yes, all of AOC's employees primarily responsible for grant administration are familiar with grant management rules, principles and regulations and continue to stay up to date on these issues.*

## APPENDIX A

### Washington State Supreme Court Gender and Justice Commission

**Honorable Barbara A. Madsen, Chair**  
Washington State Supreme Court

**Ms. Barbara L. Carr**  
Jefferson County Juvenile Court

**Honorable Vickie I. Churchill**  
Island County Superior Court

**Ms. Mirta Laura Contreras**  
Columbia Legal Services

**Honorable Sara Derr**  
Spokane County District Court

**Honorable Joan DuBuque**  
King County Superior Court

**Honorable Ruth Gordon**  
Jefferson County Clerk

**Ms. Margaret Hobart**  
WSCADV

**Honorable Cynthia Jordan**  
Coeur d'Alene Tribal Court

**Ms. Jennie Laird**  
Attorney-at-Law

**Ms. Judith A. Lonquist, P.S.**  
Attorney-at-Law

**Professor Natasha T. Martin**  
Seattle University School of Law

**Honorable Craig Matheson**  
Benton County Superior Court

**Honorable Alicia H. Nakata**  
Chelan County District Court

**Ms. Leslie W. Owen**  
Northwest Justice Project

**Ms. Yvonne Pettus**  
Tacoma Municipal Court

**Mr. Bernard Ryan**  
Attorney-at-Law

**Honorable Ann Schindler**  
Court of Appeals Division I

**Honorable Jane M. Smith**  
Colville Tribal Court of Appeals

**Mr. David Ward**  
Legal Voice

**Honorable Chris Wickham**  
Thurston County Superior Court



## APPENDIX B

MYRA WALL DOWNING, MPA  
2806 33<sup>rd</sup> Trail NE  
Olympia, WA 98506  
MyraWDowning@aol.com  
(360) 584-6886

### EDUCATION

Masters in Public Administration, Planning, Public Policy, and Management Program  
University of Oregon, Eugene, OR (June 2005)

Graduate Student, Organization Development (ABT)  
Central Washington University, Ellensburg, WA

Bachelor of Arts in Human Services  
Western Washington University, Bellingham, WA (August 1976)

### PROFESSIONAL EXPERIENCE

09/07 – present      Executive Director  
Gender and Justice Commission, AOC, Olympia, WA

Work with the judicial branch in ensuring gender equity by adopting best practice approaches that are reflected in their policies and programs in the courtroom and in the court community through education, collaboration, and partnerships.

10/05 – 8/07      **Senior Educator**  
WA State Administrative Office of the Courts, Olympia, WA

Develop, coordinate, and deliver judicial education programs and products. Act as liaison in an advisory role between the Administrative Office of the Courts, Board for Court Education, and various assigned advisory committees in planning, developing, conducting, delivering, and evaluating education programs and products.

11/02 – 10/04 **Visiting Practitioner Fellow**  
National Institute of Justice, Washington, DC

Selected to conduct a study that examined the degree of change associated with collaborative problem solving. The study identified the relationship between factors and conditions that may have affected jurisdictions' efforts to collaborate. The study examined each of these factors in four different projects, assessing the strength of each, and then a cross-site comparison was conducted to determine which factors, or combination of factors, seemed to be the most critical for collaboration.

4/97 – 10/02

**Program Manager, Community Safety Division**  
**Principal Planner, Public Safety Coordinating Council**  
Lane Council of Governments – Eugene, OR

Responsible for identifying and evaluating current and emerging issues, conducting research and evaluation of current and proposed changes, making recommendations to policy makers that enhance system efficiencies and effectiveness, securing grant funding and technical assistance for program development, and facilitating increased communication between partners in the system.

10/94 – 2/97

**Assistant to the Secretary, Federal Relations**  
Washington State Department of Corrections, Olympia, WA

Responsible for liaison activities between state and local governments to keep them informed of federal funding grant announcements and partnership possibilities within the state. Responsible for establishing and maintaining contact with Federal Agencies to assure access to federal funding, working with local jurisdictions in developing partnerships to work on issues of mutual concern, and providing information pertinent to developing policies and guidelines.

7/92 – 9/94

**Chief, Corrections Division**  
Pierce County Sheriff's Department, Tacoma, WA

Responsible for the operation of a 1,000-bed county detention facility that employed over 300 people. Responsibilities included providing policy direction for the agency, establishing and maintaining external relationships with partners and stakeholders, and insuring the safety and security of staff and inmates.

1/83 – 6/92

**Training Administrator (9/85 – 6/92)**  
**Academy Coordinator (1/83 – 8/85)**  
WA State Criminal Justice Training Commission, Burien, WA

Responsible for providing basic, in-service, and management training for city, county, and state criminal justice employees and the supervision of Commission training and support staff. Established policies, conducted needs assessments, developed curriculum, supervised contract trainers, evaluated training programs and trainers, and evaluated students.

11/75 – 12/82 **Manager, Inmate Services (1/78 – 12/82)**

**Counselor (11/75 – 12/77)**  
Snohomish County Sheriff's Department, Everett, WA

Established policies and procedures, designed and developed programs, and worked directly with inmates in developing treatment programs and release plans, crisis intervention, and liaison work with custody staff.

## **PROFESSIONAL AND COMMUNITY ACTIVITIES AND ACCOMPLISHMENTS**

- Instructor, The Evergreen State College Reservation-Based Program
- Board member, SafePlace, Olympia Washington
- Commodore, South Sound Sailing Society
- Member of the National Association of Women Judges
- Member of the National Association of State Judicial Educators
- Presenter and Facilitator for Bureau of Justice Assistance Community Corrections Forum
- Peer Reviewer for grant proposals and articles submitted for national publication
- Facilitator for Regional Workshops on Corrections and Law Enforcement Family Stress Initiative
- Facilitator and Presenter at National Sentencing and Corrections Conference
- Facilitator and Presenter for Regional Workshops on Law Enforcement and Corrections Partnership
- Awarded the Commissioner's Award for Outstanding Public Service
- Helen B. Radcliff Award for outstanding efforts toward enhancing and supporting the professional growth of women in corrections
- Chair of Women in Criminal Justice, Washington Correctional Association
- Member of Community Oriented Policing Resource Board
- Developed a nationally recognized "Cultural Diversity Facilitator's Course"
- Professional Development Task Force member for the American Correctional Association
- Fellow of the American Leadership Forum
- Corrections Option Sub Committee member for the Washington Association of Sheriff's and Police Chiefs
- President of the International Association of Correctional Training Personnel
- Chair of the International Criminal Justice Training Conference
- Regional Field Coordinator for the National Institute of Corrections
- President's Award for the Washington State Jail Association
- Award of Excellence for the development and delivery of two national teleconferences





CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1565**

Chapter 137, Laws of 2011

62nd Legislature  
2011 Regular Session

DOMESTIC VIOLENCE PROTECTION ORDERS--TERMINATION AND MODIFICATION

EFFECTIVE DATE: 07/22/11

Passed by the House March 1, 2011  
Yeas 97 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Passed by the Senate April 6, 2011  
Yeas 48 Nays 0

BRAD OWEN

**President of the Senate**

Approved April 20, 2011, 2:13 p.m.

CHRISTINE GREGOIRE

**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1565** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

**Chief Clerk**

FILED

April 20, 2011

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1565**

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Passed Legislature - 2011 Regular Session

**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Frockt, Rodne, Pedersen, Eddy, Goodman, Roberts, Walsh, Green, Jacks, Fitzgibbon, Reykdal, Kenney, Stanford, Billig, and Kelley)

READ FIRST TIME 02/17/11.

1            AN ACT Relating to the termination or modification of domestic  
2 violence protection orders; amending RCW 26.50.130; and creating a new  
3 section.

4            BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that civil domestic  
6 violence protection orders are an essential tool for interrupting an  
7 abuser's ability to perpetrate domestic violence. The legislature has  
8 authorized courts to enter permanent or fixed term domestic violence  
9 protection orders if the court finds that the respondent is likely to  
10 resume acts of domestic violence when the order expires. However, the  
11 legislature has not established procedures or guidelines for  
12 terminating or modifying a protection order after it is entered.

13            The legislature finds that some of the factors articulated in the  
14 Washington supreme court's decision in *In re Marriage of Freeman*, 169  
15 Wn.2d 664, 239 P.3d 557 (2010), for terminating or modifying domestic  
16 violence protection orders do not demonstrate that a restrained person  
17 is unlikely to resume acts of domestic violence when the order expires,  
18 and place an improper burden on the person protected by the order. By

1 this act, the legislature establishes procedures and guidelines for  
2 determining whether a domestic violence protection order should be  
3 terminated or modified.

4 **Sec. 2.** RCW 26.50.130 and 2008 c 287 s 3 are each amended to read  
5 as follows:

6 (1) Upon (~~application~~) a motion with notice to all parties and  
7 after a hearing, the court may modify the terms of an existing order  
8 for protection or may terminate an existing order for protection.

9 (2) A respondent's motion to modify or terminate an order for  
10 protection that is permanent or issued for a fixed period exceeding two  
11 years must include a declaration setting forth facts supporting the  
12 requested order for termination or modification. The motion and  
13 declaration must be served according to subsection (7) of this section.  
14 The nonmoving parties to the proceeding may file opposing declarations.  
15 The court shall deny the motion unless it finds that adequate cause for  
16 hearing the motion is established by the declarations. If the court  
17 finds that the respondent established adequate cause, the court shall  
18 set a date for hearing the respondent's motion.

19 (3)(a) The court may not terminate an order for protection that is  
20 permanent or issued for a fixed period exceeding two years upon a  
21 motion of the respondent unless the respondent proves by a  
22 preponderance of the evidence that there has been a substantial change  
23 in circumstances such that the respondent is not likely to resume acts  
24 of domestic violence against the petitioner or those persons protected  
25 by the protection order if the order is terminated. In a motion by the  
26 respondent for termination of an order for protection that is permanent  
27 or issued for a fixed period exceeding two years, the petitioner bears  
28 no burden of proving that he or she has a current reasonable fear of  
29 imminent harm by the respondent.

30 (b) For the purposes of this subsection, a court shall determine  
31 whether there has been a "substantial change in circumstances" by  
32 considering only factors which address whether the respondent is likely  
33 to commit future acts of domestic violence against the petitioner or  
34 those persons protected by the protection order.

35 (c) In determining whether there has been a substantial change in  
36 circumstances the court may consider the following unweighted factors,

1 and no inference is to be drawn from the order in which the factors are  
2 listed:

3 (i) Whether the respondent has committed or threatened domestic  
4 violence, sexual assault, stalking, or other violent acts since the  
5 protection order was entered;

6 (ii) Whether the respondent has violated the terms of the  
7 protection order, and the time that has passed since the entry of the  
8 order;

9 (iii) Whether the respondent has exhibited suicidal ideation or  
10 attempts since the protection order was entered;

11 (iv) Whether the respondent has been convicted of criminal activity  
12 since the protection order was entered;

13 (v) Whether the respondent has either acknowledged responsibility  
14 for the acts of domestic violence that resulted in entry of the  
15 protection order or successfully completed domestic violence  
16 perpetrator treatment or counseling since the protection order was  
17 entered;

18 (vi) Whether the respondent has a continuing involvement with drug  
19 or alcohol abuse, if such abuse was a factor in the protection order;

20 (vii) Whether the petitioner consents to terminating the protection  
21 order, provided that consent is given voluntarily and knowingly;

22 (viii) Whether the respondent or petitioner has relocated to an  
23 area more distant from the other party, giving due consideration to the  
24 fact that acts of domestic violence may be committed from any distance;

25 (ix) Other factors relating to a substantial change in  
26 circumstances.

27 (d) In determining whether there has been a substantial change in  
28 circumstances, the court may not base its determination solely on: (i)  
29 The fact that time has passed without a violation of the order; or (ii)  
30 the fact that the respondent or petitioner has relocated to an area  
31 more distant from the other party.

32 (e) Regardless of whether there is a substantial change in  
33 circumstances, the court may decline to terminate a protection order if  
34 it finds that the acts of domestic violence that resulted in the  
35 issuance of the protection order were of such severity that the order  
36 should not be terminated.

37 (4) The court may not modify an order for protection that is  
38 permanent or issued for a fixed period exceeding two years upon a

1 motion of the respondent unless the respondent proves by a  
2 preponderance of the evidence that the requested modification is  
3 warranted. If the requested modification would reduce the duration of  
4 the protection order or would eliminate provisions in the protection  
5 order restraining the respondent from harassing, stalking, threatening,  
6 or committing other acts of domestic violence against the petitioner or  
7 the petitioner's children or family or household members or other  
8 persons protected by the order, the court shall consider the factors in  
9 subsection (3)(c) of this section in determining whether the protection  
10 order should be modified. Upon a motion by the respondent for  
11 modification of an order for protection that is permanent or issued for  
12 a fixed period exceeding two years, the petitioner bears no burden of  
13 proving that he or she has a current reasonable fear of imminent harm  
14 by the respondent.

15 (5) Upon a motion by a petitioner, the court may modify or  
16 terminate an existing order for protection. The court shall hear the  
17 motion without an adequate cause hearing.

18 (6) A court may require the respondent to pay court costs and  
19 service fees, as established by the county or municipality incurring  
20 the expense and to pay the petitioner for costs incurred in responding  
21 to a motion to terminate or modify a protection order, including  
22 reasonable attorneys' fees.

23 (7) Except as provided in RCW 26.50.085 and 26.50.123, ((personal  
24 service shall be made upon)) a motion to modify or terminate an order  
25 for protection must be personally served on the nonmoving party not  
26 less than five court days prior to the hearing ((to modify)).

27 (a) If a moving party seeks to modify or terminate an order for  
28 protection that is permanent or issued for a fixed period exceeding two  
29 years, the sheriff of the county or the peace officers of the  
30 municipality in which the nonmoving party resides or a licensed process  
31 server shall serve the nonmoving party personally except when a  
32 petitioner is the moving party and elects to have the nonmoving party  
33 served by a private party.

34 (b) If the sheriff, municipal peace officer, or licensed process  
35 server cannot complete service upon the nonmoving party within ten  
36 days, the sheriff, municipal peace officer, or licensed process server  
37 shall notify the moving party. The moving party shall provide

1 information sufficient to permit notification by the sheriff, municipal  
2 peace officer, or licensed process server.

3 (c) If timely personal service cannot be made, the court shall set  
4 a new hearing date and shall either require an additional attempt at  
5 obtaining personal service or permit service by publication as provided  
6 in RCW 26.50.085 or service by mail as provided in RCW 26.50.123.

7 ~~((b))~~ (d) The court shall not require more than two attempts at  
8 obtaining personal service and shall permit service by publication or  
9 by mail unless the moving party requests additional time to attempt  
10 personal service.

11 ~~((e))~~ (e) If the court permits service by publication or by mail,  
12 the court shall set the hearing date not later than twenty-four days  
13 from the date of the order permitting service by publication or by  
14 mail.

15 ~~((3))~~ (8) Municipal police departments serving documents as  
16 required under this chapter may recover from a respondent ordered to  
17 pay fees under subsection (6) of this section the same fees for service  
18 and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

19 (10) In any situation where an order is terminated or modified  
20 before its expiration date, the clerk of the court shall forward on or  
21 before the next judicial day a true copy of the modified order or the  
22 termination order to the appropriate law enforcement agency specified  
23 in the modified or termination order. Upon receipt of the order, the  
24 law enforcement agency shall promptly enter it in the law enforcement  
25 information system.

Passed by the House March 1, 2011.  
Passed by the Senate April 6, 2011.  
Approved by the Governor April 20, 2011.  
Filed in Office of Secretary of State April 20, 2011.

CERTIFICATION OF ENROLLMENT  
**SUBSTITUTE SENATE BILL 5579**

62nd Legislature  
2011 Regular Session

Passed by the Senate April 19, 2011  
YEAS 45 NAYS 1

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**President of the Senate**

Passed by the House April 6, 2011  
YEAS 96 NAYS 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5579** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5579**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

**State of Washington                      62nd Legislature                      2011 Regular Session**

**By Senate Judiciary (originally sponsored by Senators Kline and Pflug)**

READ FIRST TIME 02/17/11.

1            AN ACT Relating to harassment; amending RCW 10.14.150, 10.14.020,  
2 10.14.080, 9A.46.040, and 9A.46.080; adding a new section to chapter  
3 10.14 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 10.14.150 and 2005 c 196 s 1 are each amended to read  
6 as follows:

7            (1) The district courts shall have original jurisdiction and  
8 cognizance of any civil actions and proceedings brought under this  
9 chapter, except the district court shall transfer such actions and  
10 proceedings to the superior court when it is shown that (a) the  
11 respondent to the petition is under eighteen years of age; (b) the  
12 action involves title or possession of real property; (c) a superior  
13 court has exercised or is exercising jurisdiction over a proceeding  
14 involving the parties; or (d) the action would have the effect of  
15 interfering with a respondent's care, control, or custody of the  
16 respondent's minor child.

17            (2) Municipal courts may exercise jurisdiction and cognizance of  
18 any civil actions and proceedings brought under this chapter by  
19 adoption of local court rule, except the municipal court shall transfer

1 such actions and proceedings to the superior court when it is shown  
2 that (a) the respondent to the petition is under eighteen years of age;  
3 (b) the action involves title or possession of real property; (c) a  
4 superior court has exercised or is exercising jurisdiction over a  
5 proceeding involving the parties; or (d) the action would have the  
6 effect of interfering with a respondent's care, control, or custody of  
7 the respondent's minor child.

8 (3) Superior courts shall have concurrent jurisdiction to receive  
9 transfer of antiharassment petitions in cases where a district or  
10 municipal court judge makes findings of fact and conclusions of law  
11 showing that meritorious reasons exist for the transfer. The municipal  
12 and district courts shall have jurisdiction and cognizance of any  
13 criminal actions brought under RCW 10.14.120 and 10.14.170.

14 **Sec. 2.** RCW 10.14.020 and 2001 c 260 s 2 are each amended to read  
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in  
17 this section apply throughout this chapter.

18 (1) "Unlawful harassment" means a knowing and willful course of  
19 conduct directed at a specific person which seriously alarms, annoys,  
20 harasses, or is detrimental to such person, and which serves no  
21 legitimate or lawful purpose. The course of conduct shall be such as  
22 would cause a reasonable person to suffer substantial emotional  
23 distress, and shall actually cause substantial emotional distress to  
24 the petitioner, or, when the course of conduct would cause a reasonable  
25 parent to fear for the well-being of their child.

26 (2) "Course of conduct" means a pattern of conduct composed of a  
27 series of acts over a period of time, however short, evidencing a  
28 continuity of purpose. "Course of conduct" includes, in addition to  
29 any other form of communication, contact, or conduct, the sending of an  
30 electronic communication, but does not include constitutionally  
31 protected free speech. Constitutionally protected activity is not  
32 included within the meaning of "course of conduct."

33 **Sec. 3.** RCW 10.14.080 and 2001 c 311 s 1 are each amended to read  
34 as follows:

35 (1) Upon filing a petition for a civil antiharassment protection  
36 order under this chapter, the petitioner may obtain an ex parte

1 temporary antiharassment protection order. An ex parte temporary  
2 antiharassment protection order may be granted with or without notice  
3 upon the filing of an affidavit which, to the satisfaction of the  
4 court, shows reasonable proof of unlawful harassment of the petitioner  
5 by the respondent and that great or irreparable harm will result to the  
6 petitioner if the temporary antiharassment protection order is not  
7 granted.

8 (2) An ex parte temporary antiharassment protection order shall be  
9 effective for a fixed period not to exceed fourteen days or twenty-four  
10 days if the court has permitted service by publication under RCW  
11 10.14.085. The ex parte order may be reissued. A full hearing, as  
12 provided in this chapter, shall be set for not later than fourteen days  
13 from the issuance of the temporary order or not later than twenty-four  
14 days if service by publication is permitted. Except as provided in RCW  
15 10.14.070 and 10.14.085, the respondent shall be personally served with  
16 a copy of the ex parte order along with a copy of the petition and  
17 notice of the date set for the hearing. The ex parte order and notice  
18 of hearing shall include at a minimum the date and time of the hearing  
19 set by the court to determine if the temporary order should be made  
20 effective for one year or more, and notice that if the respondent  
21 should fail to appear or otherwise not respond, an order for protection  
22 will be issued against the respondent pursuant to the provisions of  
23 this chapter, for a minimum of one year from the date of the hearing.  
24 The notice shall also include a brief statement of the provisions of  
25 the ex parte order and notify the respondent that a copy of the ex  
26 parte order and notice of hearing has been filed with the clerk of the  
27 court.

28 (3) At the hearing, if the court finds by a preponderance of the  
29 evidence that unlawful harassment exists, a civil antiharassment  
30 protection order shall issue prohibiting such unlawful harassment.

31 (4) An order issued under this chapter shall be effective for not  
32 more than one year unless the court finds that the respondent is likely  
33 to resume unlawful harassment of the petitioner when the order expires.  
34 If so, the court may enter an order for a fixed time exceeding one year  
35 or may enter a permanent antiharassment protection order. The court  
36 shall not enter an order that is effective for more than one year if  
37 the order restrains the respondent from contacting the respondent's  
38 minor children. This limitation is not applicable to civil

1 antiharassment protection orders issued under chapter 26.09, 26.10, or  
2 26.26 RCW. If the petitioner seeks relief for a period longer than one  
3 year on behalf of the respondent's minor children, the court shall  
4 advise the petitioner that the petitioner may apply for renewal of the  
5 order as provided in this chapter or if appropriate may seek relief  
6 pursuant to chapter 26.09 or 26.10 RCW.

7 (5) At any time within the three months before the expiration of  
8 the order, the petitioner may apply for a renewal of the order by  
9 filing a petition for renewal. The petition for renewal shall state  
10 the reasons why the petitioner seeks to renew the protection order.  
11 Upon receipt of the petition for renewal, the court shall order a  
12 hearing which shall be not later than fourteen days from the date of  
13 the order. Except as provided in RCW 10.14.085, personal service shall  
14 be made upon the respondent not less than five days before the hearing.  
15 If timely service cannot be made the court shall set a new hearing date  
16 and shall either require additional attempts at obtaining personal  
17 service or permit service by publication as provided by RCW 10.14.085.  
18 If the court permits service by publication, the court shall set the  
19 new hearing date not later than twenty-four days from the date of the  
20 order. If the order expires because timely service cannot be made the  
21 court shall grant an ex parte order of protection as provided in this  
22 section. The court shall grant the petition for renewal unless the  
23 respondent proves by a preponderance of the evidence that the  
24 respondent will not resume harassment of the petitioner when the order  
25 expires. The court may renew the protection order for another fixed  
26 time period or may enter a permanent order as provided in subsection  
27 (4) of this section.

28 (6) The court, in granting an ex parte temporary antiharassment  
29 protection order or a civil antiharassment protection order, shall have  
30 broad discretion to grant such relief as the court deems proper,  
31 including an order:

32 (a) Restraining the respondent from making any attempts to contact  
33 the petitioner;

34 (b) Restraining the respondent from making any attempts to keep the  
35 petitioner under surveillance;

36 (c) Requiring the respondent to stay a stated distance from the  
37 petitioner's residence and workplace; and

38 (d) Considering the provisions of RCW 9.41.800.

1       (7) The court in granting an ex parte temporary antiharassment  
2 protection order or a civil antiharassment protection order, shall not  
3 prohibit the respondent from exercising constitutionally protected free  
4 speech. Nothing in this section prohibits the petitioner from  
5 utilizing other civil or criminal remedies to restrain conduct or  
6 communications not otherwise constitutionally protected.

7       (8) The court in granting an ex parte temporary antiharassment  
8 protection order or a civil antiharassment protection order, shall not  
9 prohibit the respondent from the use or enjoyment of real property to  
10 which the respondent has a cognizable claim unless that order is issued  
11 under chapter 26.09 RCW or under a separate action commenced with a  
12 summons and complaint to determine title or possession of real  
13 property.

14       (9) The court in granting an ex parte temporary antiharassment  
15 protection order or a civil antiharassment protection order, shall not  
16 limit the respondent's right to care, control, or custody of the  
17 respondent's minor child, unless that order is issued under chapter  
18 13.32A, 26.09, 26.10, or 26.26 RCW.

19       (10) A petitioner may not obtain an ex parte temporary  
20 antiharassment protection order against a respondent if the petitioner  
21 has previously obtained two such ex parte orders against the same  
22 respondent but has failed to obtain the issuance of a civil  
23 antiharassment protection order unless good cause for such failure can  
24 be shown.

25       (~~(8)~~) (11) The court order shall specify the date an order issued  
26 pursuant to subsections (4) and (5) of this section expires if any.  
27 The court order shall also state whether the court issued the  
28 protection order following personal service or service by publication  
29 and whether the court has approved service by publication of an order  
30 issued under this section.

31       **Sec. 4.** RCW 9A.46.040 and 1985 c 288 s 4 are each amended to read  
32 as follows:

33       (1) Because of the likelihood of repeated harassment directed at  
34 those who have been victims of harassment in the past, when any  
35 defendant charged with a crime involving harassment is released from  
36 custody before trial on bail or personal recognizance, the court  
37 authorizing the release may require that the defendant:

1 (a) Stay away from the home, school, business, or place of  
2 employment of the victim or victims of the alleged offense or other  
3 location, as shall be specifically named by the court in the order;

4 (b) Refrain from contacting, intimidating, threatening, or  
5 otherwise interfering with the victim or victims of the alleged offense  
6 and such other persons, including but not limited to members of the  
7 family or household of the victim, as shall be specifically named by  
8 the court in the order.

9 (2) An intentional violation of a court order issued under this  
10 section or an equivalent local ordinance is a misdemeanor. The written  
11 order releasing the defendant shall contain the court's directives and  
12 shall bear the legend: Violation of this order is a criminal offense  
13 under chapter 9A.46 RCW. A certified copy of the order shall be  
14 provided to the victim by the clerk of the court.

15 **Sec. 5.** RCW 9A.46.080 and 1985 c 288 s 8 are each amended to read  
16 as follows:

17 The victim shall be informed by local law enforcement agencies or  
18 the prosecuting attorney of the final disposition of the case in which  
19 the victim is involved. If a defendant is found guilty of a crime of  
20 harassment and a condition of the sentence restricts the defendant's  
21 ability to have contact with the victim or witnesses, the condition  
22 shall be recorded and a written certified copy of that order shall be  
23 provided to the victim or witnesses by the clerk of the court. Willful  
24 violation of a court order issued under this section or an equivalent  
25 local ordinance is a misdemeanor. The written order shall contain the  
26 court's directives and shall bear the legend: Violation of this order  
27 is a criminal offense under chapter 9A.46 RCW and will subject a  
28 violator to arrest.

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.14 RCW  
30 to read as follows:

31 Before granting an order under this chapter, the court may consult  
32 the judicial information system, if available, to determine criminal  
33 history or the pendency of other proceedings involving the parties.

--- END ---





# Domestic Violence/Sexual Assault



# STRATEGIES

*The Prosecutors' Newsletter on Violence Against Women*

Æ ÆQUITAS

Issue # 2 ♦ July 2010



## **Educating Juries in Sexual Assault Cases**

### **Part I: Using Voir Dire to Eliminate Jury Bias**

**By Christopher Mallios, JD and Toolsi Meisner, JD<sup>1</sup>**

Crimes of sexual violence continue to be misunderstood even though there has been significant research surrounding the dynamics of sexual assault and its impact on victims during the last three decades.<sup>2</sup> We now understand much more about these crimes, the people who commit them, and the way victims respond to trauma. Unfortunately, we cannot assume that the results of this research have infiltrated the minds of the average layperson, juror, or judge.

Too many people still believe the outdated and disproved mythology that surrounds sexual violence.<sup>3</sup> Rape myths shift the blame for the crime from the rapist to the victim.<sup>4</sup> When a fact-finder in a sexual assault case accepts a rape myth as true, the prosecutor faces tremendous barriers to achieving justice for victims and holding offenders accountable for their crimes.

This article is the first in a series that will explain strategies to educate juries about sexual violence facts and overcome common misconceptions. In addition to providing data-driven information about sexual assault

based on research, journal articles, and authoritative publications, this article will suggest ideas to improve jury selection techniques. Future articles in this series will provide additional material to provide prosecutors with information and strategies to educate, dispel common misconceptions, and convey the truth to fact finders through other aspects of trial practice, including opening statements, direct examination, calling expert witnesses, and closing arguments.<sup>5</sup>

To be effective in prosecuting crimes of sexual violence, prosecutors must understand the research and statistics about sexual assault in order to educate judges and juries about sexual assault dynamics and common victim responses. Although much of the data in this area is not generally admissible in a criminal case, prosecutors can benefit from a thorough understanding of the dynamics of sexual assault because it will aid them when devising trial strategies, anticipating defenses, preparing victims, and developing effective cross-examinations and arguments.

Further, prosecutors who truly understand sexual violence can better identify jurors who might harbor mistaken beliefs and accept false mythology about sexual assault and poison the rest of the jury with misinformation. When the prosecution selects jurors who have a more realistic understanding of the dynamics of sexual assault, they are more likely to be fair and perhaps even help educate other jurors during deliberation.

### **VOIR DIRE PRACTICE AND LEGAL AUTHORITY**

Voir dire practice can differ depending on what state, county, and judge has jurisdiction over the case. Most jurisdictions have appellate case law addressing the defendant's right to conduct voir dire of jurors regarding their ability to be fair and follow the law. Appellate courts, however, have few opportunities to address the prosecutor's right to question jurors about the mistaken beliefs about rape they possess that would interfere with their ability to follow the law.<sup>6</sup> Prosecutors can make a persuasive argument that jurors with firmly held but mistaken beliefs about rape are unlikely to be able to follow the court's instructions in the law<sup>7</sup> and that specific questioning in this area is the only way to determine the prevalence of rape myths in the jury panel.<sup>8</sup> "Despite considerable research and publications in professional and popular journals concerning rape, [rape] myths continue to persist in common law reasoning."<sup>9</sup>

Traditional voir dire questions regarding jurors' abilities to follow the law, assess witness credibility, understand the burden of proof, and other common areas of inquiry might not sufficiently address potential jurors' emotional reactions to sexual assault cases. An increasing number of jurisdictions are curtailing the ability of prosecutors and defense attorneys to conduct meaningful voir dire of jurors in the name of "judicial economy." The prevalence of rape myths, however, weighs in favor of judges creating exceptions to the general rule of strictly limiting juror voir dire in sexual assault cases.<sup>10</sup>

### **GOALS OF VOIR DIRE IN SEXUAL ASSAULT CASES**

In the general sense, the goal of voir dire is to select a jury that can be fair to both sides and render a verdict based on an application of the facts as the jury finds them and the law as the judge instructs them. Through a process where

each side questions potential jurors and strikes jurors that appear to be biased against them, a fair jury emerges. In sexual assault cases, however, there are additional goals. For example, jurors do not harbor "robbery myths" that stand in the way of justice for robbery victims. In a sexual assault case, another goal of jury selection is to delve into juror rape myth acceptance and begin to redefine these problematic beliefs into juror competence. Jury selection should also begin to prepare the jury for the evidence, touch on difficult facts, and prepare the jury for the use of graphic terminology and evidence. Another goal, when possible, is to use a jurors' life experiences to educate the other jurors about friends or family members who have been victims of sexual assault and discuss their reactions to being victimized. This can set the stage for later evidence and arguments about victim behavior.

### **SUGGESTIONS FOR VOIR DIRE IN SEXUAL ASSAULT CASES**

**A victim is more likely to be sexually assaulted by someone s/he knows – friend, date, intimate partner, classmate, neighbor, or relative – than by a stranger.<sup>11</sup>**

Sexual violence can occur at any time and there is no way to adequately predict who might be a perpetrator. Unfortunately, non-strangers and familiar places are often the most dangerous to victims. According to a large study of women who were raped or sexually assaulted during 2002, sixty-seven percent identified the perpetrator as a non-stranger.<sup>12</sup> Another study found that 8 out of 10 victims know the people who raped them.<sup>13</sup> Another study found that nearly 6 out of 10 sexual assault incidents occurred in the victim's home or at the home of a friend, relative, or neighbor.<sup>14</sup> These studies, which are all based on statistics compiled by the U.S. Department of Justice, conclusively support the fact that most rapists are non-strangers.

There is no racial, socio-economic, professional, or other demographic profile that typifies a rapist. This type of criminal is not physically identifiable and often appears friendly and non-threatening.<sup>15</sup> Researchers and sexual violence experts spend considerable time attempting to educate the public about the danger of stereotyping rapists, but their messages are often undermined by the images perpetuated by popular media coverage of sexual assault cases. It is understandable, therefore, that jurors are commonly reluctant to convict attractive and sociable sexual assault defendants who are known to their victims.

Sexual assault defendants commonly appear in court well groomed and well dressed. They might also be married and have children. Jurors confronted with this image may be reluctant to convict without a constant reminder that the defendant is purposeful and dangerous. When the defendant is also a friend or family member of the victim and uses that relationship to gain, and then betray the victim's trust, jurors may need to be informed in order to recognize and understand the defendant's predatory behavior.<sup>16</sup>

In jurisdictions where prosecutors are permitted to ask questions of potential jurors during voir dire, it might be appropriate to ask whether a potential juror would be less likely to convict a defendant of rape if that defendant were a partner, friend, or acquaintance of the victim. The answer to this question provides insight into whether the juror knows that the majority of rapists are non-strangers and whether they view non-stranger rapes as seriously as those committed by strangers. A juror who understands the prevalence of non-stranger sexual assaults can also educate ill-informed jurors on the panel.

Another question to pose to jurors deals with their abilities to follow the judge's instructions regarding the definition of rape regardless of their personal beliefs. If the victim and defendant were in a relationship prior to or during the rape, tell prospective jurors that they will hear evidence about that relationship and ask whether the existence of a prior relationship would concern them when deciding the case. As always, follow-up questions regarding whether the juror expects rapists to be strangers and whether they can follow the law in this area would be useful to probe the beliefs behind the jurors' answers.

**Sexual violence is never the victim's fault.** No other crime victim is looked upon with the degree of blameworthiness, suspicion, and doubt as a rape victim. Victim blaming is unfortunately common and is one of the most significant barriers to justice and offender accountability.

Victim blaming can be expressed in several themes: victim masochism (e.g., she enjoyed it or wanted it), victim precipitation (e.g., she asked for it or brought it on herself), or victim fabrication (e.g., she lied or exaggerated).<sup>17</sup> In a criminal trial, the defense might appeal to some or all of these common victim-blaming biases to help the defendant avoid accountability. Further, it can translate into jurors blaming victims for their choices in an attempt to distance

themselves from the victim and the crime thereby preserving the perception that they are safe if they do not make the same choices as the victim.

When allowed, prosecutors may consider asking questions to determine whether potential jurors understand the importance of holding the offender and not the victim accountable for crimes of sexual violence. For example, prosecutors could ask jurors whether they believe that a victim can be raped even if that victim consented to some other measure of intimate contact before the rape occurred.

In some cases it may be important to gauge whether jurors will still follow the law when the facts do not present the most sympathetic victim. Prosecutors may need to ask questions to determine whether jurors believe that a defendant can commit the crime of rape even if the victim was drinking, using drugs, dressed in a way that the jurors perceive as provocative, being prostituted, or engaged in any other behavior that may inappropriately cause victim blaming. Prosecutors should directly address victim behavior that jurors might consider problematic by preparing them for such behavior during the voir dire process. Through certain voir dire questions, prosecutors can also inform jurors that they will hear evidence regarding the victim's behavior before or after the assault that might cause jurors concern. For example, prosecutors may consider asking whether certain behaviors would cause the jurors unease and interfere with their ability to follow the court's instructions and render a fair verdict.

Prosecutors can counter victim-blaming myths throughout the trial by stressing that without consent, "No" means "No," no matter what the situation or circumstances. It doesn't matter if the victim was drinking or using drugs, out at night alone, gay or lesbian, sexually exploited, on a date with the perpetrator, or if the jurors believe the victim was dressed seductively. No one asks to be raped. The responsibility and blame lie with the perpetrator who took advantage of a vulnerable victim or violated the victim's trust to commit a crime of sexual violence.

**Rape is an act of violence and aggression in which the perpetrator uses sex as a weapon to gain power and control over the victim.** It is a common defense tactic in rape trials to redefine the rape as sex and try to capitalize on the mistaken belief that rape is an act of passion that is primarily sexually motivated. It is important to draw the

legal and common sense distinction between rape and sex.

There is no situation in which an individual cannot control his sexual urges.<sup>18</sup> Sexual excitement does not justify forced sex and a victim who engages in kissing, hugging, or other sexual touching maintains the right to refuse sexual intercourse. Rapists do not rape because they want to have sex and many rapists also may have partners with whom they engage in consensual sex. Sexual deviance and character traits form the motives for rapists' behaviors.<sup>19</sup> Their sexual deviance may cause them to be aroused by exploiting the physical and/or psychological vulnerabilities in their victims, whether they result from intoxication or physical or mental disabilities. Rapists are also motivated by character traits common to many criminals.

When an offender has a criminal, narcissistic, or otherwise interpersonally and socially compromised personality, he can be motivated to offend for a variety of reasons. He may lack the internal barriers that prevent offending, like guilt, remorse, empathy, or compassion. He may maintain a belief system, which devalues the rights of others and over-values his rights. He may be indifferent to, or aroused by, the pain, suffering, injury, or humiliation of others. The offender also may feel that the rules of society do not apply to him.<sup>20</sup>

When conducting voir dire, prosecutors should look out for any answers that indicate that a potential juror might confuse sex with sexual violence and aggression. If a juror harbors attitudes that excuse sexual violence as something that men "simply can't control", they will not be able to deliberate fairly.

**There is no "typical" sexual assault victim.** Sexual violence can happen to anyone, regardless of sex, race, age, sexual orientation, socio-economic status, ability, or religion. Prosecutors might come across jurors who think that "real" sexual assault victims are attractive, young or sexually inexperienced. This particular stereotype of sexual assault victims is often related to the mistaken belief that rape is about sex, rather than violence, and that the attractiveness of the victim is one of the "causes" of the assault.

Although there is no typical sexual assault victim, studies indicate that certain groups are victimized at higher rates than others. One study found that people with disabilities have an age-adjusted rate of rape or sexual assault that was more than twice the rate for people without disabilities.<sup>21</sup> For individuals with psychiatric disabilities, the rate of violent criminal victimization including sexual assault was two times greater than in the general population.<sup>22</sup> American Indian and Alaska Native women and girls are victims of rape or sexual assault at a rate that is double that of other racial groups.<sup>23</sup>

The elderly, boys and men, sexually exploited women, or persons with disabilities challenge many jurors' beliefs about rape. Questioning potential jurors about their expectations of rape victims and whether they would be able follow the law and render a verdict of guilty, even if the victim does not fit their idea of what a "typical" rape victim should be, will help identify misinformed jurors who may need to be eliminated or educated.

**Most victims do not incur physical injuries from sexual assaults.** Many of the unwanted and forced acts that take place during a sexual assault do not result in visible non-genital injuries. Most adult rape victims do not have any non-genital injuries from sexual assaults. According to a study examining the prevalence of injuries from rape, only 5 percent of forcible rape victims had serious physical injuries and only 33 percent had minor injuries.<sup>24</sup> This study also showed that most victims of rape, attempted rape, and sexual assault do not receive medical treatment for their injuries. Furthermore, the presence or absence of genital injuries following a rape is not necessarily significant when evaluating a case. Early studies of rape examinations found that most rape victims did not have any genital injuries.<sup>25</sup> Those initial studies, which relied on direct visualization without any magnification or staining techniques, found genital injury rates between 5 and 40 percent.<sup>26</sup> In jurisdictions where forensic sexual assault examiners use only direct visualization techniques without magnification or staining, injury rates would be expected to fall within the range of those studies.

Using the latest examination techniques, including direct visualization, colposcopy, staining techniques, and digital imaging, studies indicate the occurrence of genital injury after rape to be between 50 and 90 percent.<sup>27</sup> These newer examination techniques allow examiners to document

many more minor injuries; however, more research is necessary to determine the prevalence of genital injuries after consensual sexual activity and the relevance, if any, of injury patterns in sexual assault examinations.

Jurors must understand that rape is a life-threatening event and victims make split-second decisions about how to react to sexual violence in order to survive. Some victims respond to the severe trauma of sexual violence through the psychological phenomenon of dissociation, which is sometimes described as “leaving one’s body,” while some others describe a state of “frozen fright,” in which they become powerless and completely passive. Physical resistance is unlikely in victims who experience dissociation or frozen fright or among victims who were drinking or using drugs before being assaulted.<sup>28</sup> To a rape victim, a threat of violence or death is immediate regardless of whether the rapist uses a deadly weapon. The absence of injuries might suggest to some jurors that the victim failed to resist and, therefore, must have consented. The fact that a victim ceased resistance to the assault for fear of greater harm or chose not to resist at all does not mean that the victim gave consent. Each rape victim does whatever is necessary to do at the time in order to survive. The victim’s decisions about whether to resist during a sexual assault can lead to jurors victim-blaming or perceiving the victim as less credible and must therefore be directly addressed by prosecutors.

In conducting voir dire, prosecutors may be able to ask questions to probe potential jurors’ expectations that sexual assault victims must have suffered serious injuries. In cases involving a victim who has minor or no injuries, prosecutors may consider asking potential jurors whether they would not believe that a victim had been raped if the rapist did not use a deadly weapon or inflict serious injuries. To gain additional insights into the beliefs of potential jurors in this area, prosecutors may even consider asking whether jurors believe that a certain level of resistance is necessary for the crime of rape to occur. Furthermore, if the prosecution intends to call an expert to explain the lack of injuries, it may be important to ask whether potential jurors might be inherently distrustful of expert testimony.

A related issue pertains to jurors’ unrealistic expectations and demands for other types of forensic evidence such as fingerprints and scientific testing such as criminalistics and DNA tests. Many prosecutors believe based on first-hand

experience that the “CSI Effect” is one of the most significant barriers to justice in sexual assault cases.<sup>29</sup> In cases in which jurors might have heightened expectations regarding the availability of scientific evidence, it might be appropriate during voir dire to inquire into those expectations and begin to educate the jurors about why such evidence might not be available or probative based on the facts of the case.

**Most rape victims delay reporting their victimization to law enforcement or never report at all.** Victims of sexual assaults respond in various ways, including the manner in which they report incidents, if at all. Many victims choose not to report their victimization because they believe that it is a private or personal matter, fear the defendant, or believe the police are biased against them.<sup>30</sup> Some victims may be embarrassed or distrust law enforcement or the court process. The same reasons cause many victims who do file police reports to do so after some time has passed.

Studies show that sexual assault is one of the most underreported crimes, with 60 percent still being unreported.<sup>31</sup> The closer the relationship between the victim and the perpetrator, the less likely the victim was to report the crime to the police.<sup>32</sup> When the perpetrator is a current or former husband or boyfriend, that rate of reporting drops to approximately 25 percent.<sup>33</sup> Males are the least likely to report a sexual assault, though males make up approximately 10 percent of all victims.<sup>34</sup>

Victims may exhibit a range of emotional responses to assault: calm, hysteria, laughter, anger, apathy, or shock. Each victim copes with the trauma of the assault in a different way. Victims of sexual assault are three times more likely than the rest of the population to suffer from depression, six times more likely to suffer from post-traumatic stress disorder, thirteen times more likely to abuse alcohol, twenty-six times more likely to abuse drugs, and four times more likely to contemplate suicide.<sup>35</sup>

Depending on the facts of the case and how the victim acted after the assault, prosecutors may need to question jurors to ascertain whether specific victim behaviors would concern them and cause them to make adverse prejudgments about victim credibility. Additional questions about whether jurors could fairly consider expert testimony regarding victim behavior might be appropriate in cases in which the prosecution will introduce expert testimony.

Victim credibility is often the primary issue in sexual assault prosecutions and this is especially so in non-stranger cases. Some people are so skeptical of sexual assault allegations that they assume that most victims are lying when they report their victimization to law enforcement. The mistaken belief that most sexual assault allegations are false is unfortunately common. Significantly, methodologically reliable research indicates that only 2 to 8 percent of sexual assault cases involve false reporting.<sup>36</sup> This research conclusively disproves a common myth that most rape victims lie about being raped; nevertheless, defense attorneys may design a defense strategy to appeal to jurors who believe the oft-repeated myth that most rape victims lie. Expert testimony about the credibility of a witness is inadmissible and prosecutors will unlikely be allowed to ask potential jurors about their pre-conceived ideas about the credibility of a witness. Nevertheless, to the extent that the court will permit the prosecution to explore whether potential jurors harbor a general belief that most rape allegations are false, some questioning in this area could reveal anti-victim biases that could interfere with the juror's ability to be fair. Questions about whether a juror will wait until hearing all of the evidence – including expert testimony regarding common victim reactions to sexual assault – to decide the credibility of a witness can help reveal biased potential jurors and identify those who may be able to educate other members of the jury.

## CONCLUSION

The jury selection process is the first opportunity for a prosecutor to begin educating jurors in a sexual violence case and allows prosecutors to identify and strike jurors whose biases will interfere with their ability to follow the law and render a fair verdict. Using deliberate and thoughtful language when explaining the facts of the case, providing context for victim behavior, and inquiring about jurors' life experiences can help prosecutors dispel myths and counter the defense strategies that seek to exploit them.

Successful juror education begins with voir dire, continues throughout the entire trial, and culminates with a strong closing argument. An appreciation of the facts about sexual violence is key to that success. A skillful jury selection is only the initial step in an effective prosecution strategy that will yield the best possible result in prosecuting these difficult cases. An effective strategy in these cases must continue with the collection and presentation of all corroborating

evidence, application of solid trial advocacy skills, and the use of expert witnesses, when appropriate, to maximize offender accountability, and achieve justice.

Forthcoming articles in this series will further discuss the topic of juror education. In the meantime, please visit [www.aequitasresource.org](http://www.aequitasresource.org) for additional information and resources related to the prosecution of sexual assault and other violence against women related cases.■

## UPCOMING TRAINING EVENTS

National Institute on the  
Prosecution of Sexual Violence II  
November 16-19, 2010  
in Washington, DC

This Institute is presented in partnership with the Pennsylvania Coalition Against Rape and the U.S. Department of Justice, Office on Violence Against Women. Seating is limited, so please apply early. This course is open to all prosecutors and attendance is free of charge; however, priority will be given to OVW grantees who have previously attended NIPSVI. There is no limit to the number of attendees from any jurisdiction.

National Institute on the  
Prosecution of Sexual Violence I  
January 11-14, 2011  
in Washington, DC

This Institute is presented in partnership with the Pennsylvania Coalition Against Rape and the U.S. Department of Justice, Office on Violence Against Women. Seating is limited, so please apply early. This course is open to all prosecutors and attendance is free of charge; however, priority will be given to OVW grantees. There is no limit to the number of attendees from any jurisdiction.

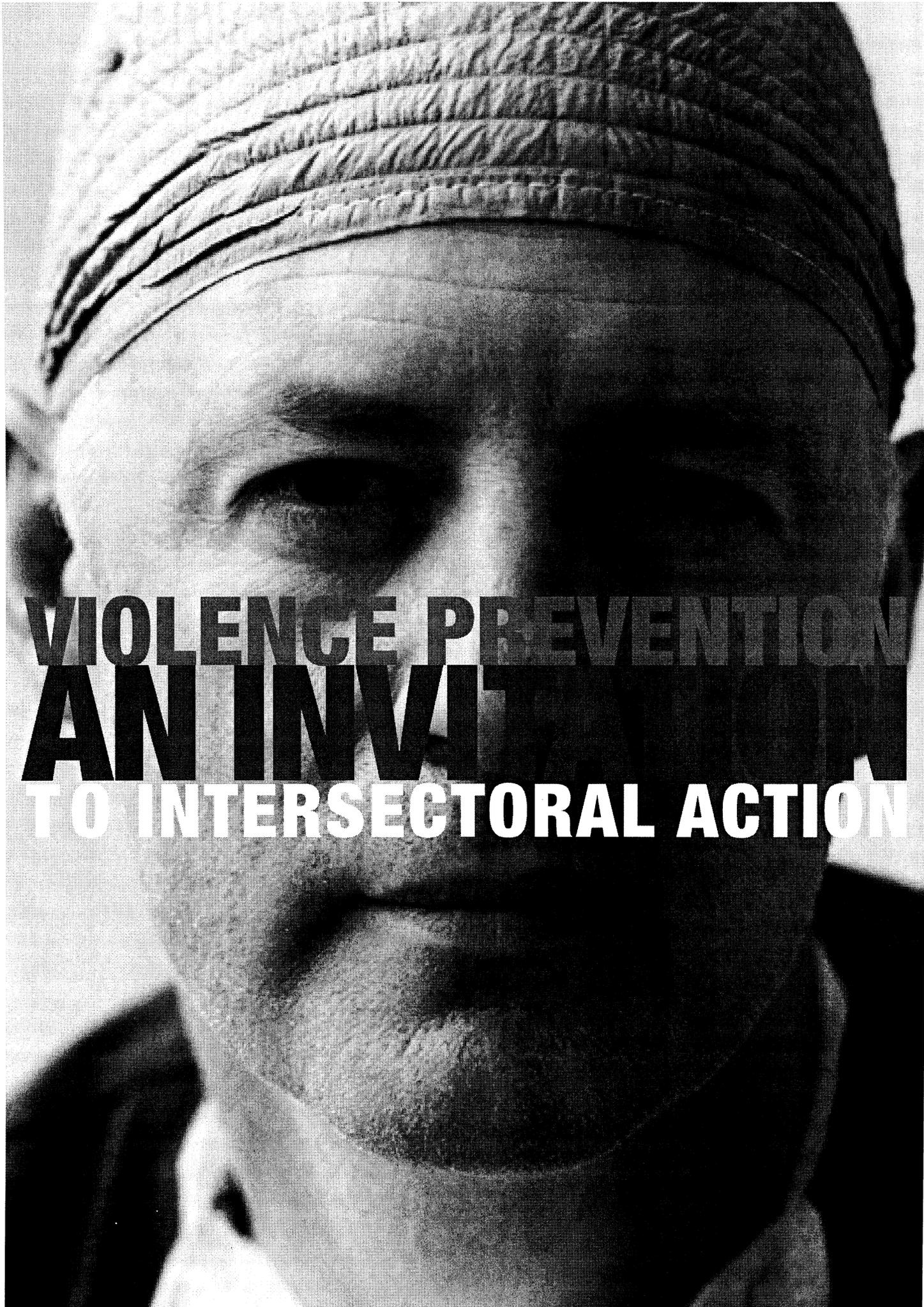
For additional information please visit:  
<http://www.aequitasresource.org/training.cfm>

## (Endnotes)

- 1 Christopher Mallios and Toolsi Meisner are Attorney Advisors at AEquitas: The Prosecutors' Resource on Violence Against Women.
- 2 See e.g. William L. *Assessment, Treatment, and Theorizing about Sex Offenders: Developments during the Last Twenty Years and Future Directions*, 23 CRIM. JUST. & BEHAV. 162 (1999); EDNA B. FOA & BARBARA OLASOV ROTHBAUM, *TREATING THE TRAUMA OF RAPE: COGNITIVE BEHAVIORAL THERAPY* (The Guilford Press 1998); SUSAN ESTRICH, *REAL RAPE* (Harvard University Press 1987).
- 3 See generally, Sarah Ben-David & Ofra Schneider, *Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance*, 53 SEX ROLES 385, (2005).
- 4 See generally Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review* 18 PSYCHOL. OF WOMEN Q. 133 (1994).
- 5 More information and resources are available at [www.AEquitasResource.org](http://www.AEquitasResource.org), and at [http://www.pcar.org/about\\_safqa\\_sa.html.a](http://www.pcar.org/about_safqa_sa.html.a) (Pennsylvania Coalition Against Rape).
- 6 Following a conviction, the defendant in a criminal case can raise numerous claims, including legal challenges to the manner in which the trial court conducted jury selection; however, the Double Jeopardy Clause of the United States Constitution prevents the prosecution from filing an appeal after an acquittal in a case in which the trial court permitted biased jurors to be seated.
- 7 "Many jurors bring to the courtroom the myths about rape which had long influenced [the] courts as they applied 'special' rules of evidence only to rape cases." *Commonwealth v. Gallagher*, 547 A.2d 355, 360 (Pa. 1988) (Larsen, J., dissenting).
- 8 "[R]ape mythology persists, and recent studies reveal that rape myths insidiously infect the minds of jurors, judges, and others who deal with rape and its victims." *State v. Robinson*, 431 N.W.2d 165, 173 (Wis. 1988) (quoting Toni M. Massaro, *Experts, Psychology, Credibility, and Rape: The Rape Trauma Syndrome Issue and Its Implications for Expert Psychological Testimony*, 69 MINN. L. REV. 395, 402-10 (1985)).
- 9 Sarah Ben-David & Ofra Schneider, *Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance*, 53 SEX ROLES 385 (2005).
- 10 More information and resources are available at <http://www.pcar.org> (Pennsylvania Coalition Against Rape), and <http://www.nsvrc.org> (National Sexual Violence Resource Center).
- 11 See generally Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review* 18 PSYCHOL. OF WOMEN Q. 133 (1994).
- 12 Callie Rennison, *National Crime Victimization Survey: Criminal Victimization 2000, Changes 1999-2000 with Trends 1993-2000*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST.
- 13 Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey*, NAT'L INST. OF JUST., U.S. DEPT. OF JUST. (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf> (last visited June 28, 2010).
- 14 Lawrence Greenfeld, *Sex Offenses and Offenders*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (1997).
- 15 See Veronique N. Valliere, *Understanding the Non-Stranger Rapist*, 1 THE VOICE, NAT'L DISTRICT ATTORNEYS ASS'N NEWSLETTER, 4 (2007), available at [http://www.ndaa.org/publications/newsletters/the\\_voice\\_vol\\_1\\_no\\_11\\_2007.pdf](http://www.ndaa.org/publications/newsletters/the_voice_vol_1_no_11_2007.pdf) (last visited June 28, 2010) ("Another powerful tool [sex] offenders use to groom and manipulate their audience is to be nice. A 'nice' offender does not fit society's image of a rapist...Most non-stranger rapists use their social skills to gain control of and cooperation from the victim with little effort.").
- 16 *Id.* ("Nice comes through to juries and judges, as well as to the victim. Offenders often produce character witnesses to testify that they are good citizens/fathers/workers/church members. The defendant is counting on society to perpetrate the belief that niceness cannot coexist with violence, evil or deviance; consequently, the 'nice' guy must not be guilty of the alleged offense.")
- 17 See Sarah Ben-David & Ofra Schneider, *Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance*, 53 SEX ROLES 385, 386 (2005).
- 18 See Barbara E. Johnson, Douglas L. Kuch & Patricia R. Schander, *Rape Myth Acceptance and Sociodemographic Characteristics: A Multidimensional Analysis*, 36 SEX ROLES 693, 696 (1997).
- 19 Veronique N. Valliere, *Understanding the Non-Stranger Rapist*, 1 THE VOICE, NAT'L DISTRICT ATTORNEYS ASS'N NEWSLETTER, 2 (2007), available at [http://www.ndaa.org/publications/newsletters/the\\_voice\\_vol\\_1\\_no\\_11\\_2007.pdf](http://www.ndaa.org/publications/newsletters/the_voice_vol_1_no_11_2007.pdf) (last visited June 28, 2010).
- 20 *Id.*
- 21 Michael Rand and Erika Harrell, *National Crime Victimization Survey, Crime Against People with Disabilities*, BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE (2007), available at <http://www.nsvrc.org/sites/default/files/Crimes-against-people-with-disabilities-2007.txt>
- 22 Virginia Aldigé Hiday, et al., *Criminal Victimization of Persons with Severe Mental Illness*, 50 PSYCHIATRIC SERVICES 62 (1999).
- 23 Steven W. Perry, *American Indians and Crime: A BJS Statistical Profile, 1992-2000*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (2004), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/aic02.pdf> (last visited June 28, 2010).
- 24 Callie Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (2002) (assuming that every rape victim suffers injury from the commission of the rape and referring to victims who suffered additional injuries in addition to the rape itself).
- 25 Marilyn Sawyer Sommers, *Defining Patterns of Genital Injury from Sexual Assault: A Review*, 8 TRAUMA, VIOLENCE & ABUSE 270, 271 (2007).
- 26 *Id.*
- 27 *Id.*
- 28 Kimberly Lonsway, Joanne Archbault & David Lisak, *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, 3 THE VOICE, NAT'L DISTRICT ATTORNEYS ASS'N NEWSLETTER, 8 (2009) available at [http://www.ndaa.org/publications/newsletters/the\\_voice\\_vol\\_3\\_no\\_1\\_2009.pdf](http://www.ndaa.org/publications/newsletters/the_voice_vol_3_no_1_2009.pdf) (last visited June 28, 2010).
- 29 See generally, Donald Shelton, *The "CSI Effect": Does it really exist?*, 259 NAT'L INST. OF JUST. 1, (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/221500.pdf> (last visited June 28, 2010).
- 30 Callie Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (2002).
- 31 Michael Rand & Shannan Catalano, *Criminal Victimization, 2006*, BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE (2007), available at <http://www.rainn.org/pdf-files-and-other-documents/News-Room/press-releases/2006-ncvs-results/NCVS%202006-1.pdf> (last visited June 28, 2010).
- 32 Callie Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (2002).
- 33 *Id.*
- 34 *Id.*
- 35 *Rape-Related Posttraumatic Stress Disorder*, National Center for Victims of Crime (2009), available at [www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32366](http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32366) (last visited June 28, 2010).
- 36 Kimberly Lonsway, Joanne Archbault & David Lisak, *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, 3 THE VOICE, NAT'L DISTRICT ATTORNEYS ASS'N NEWSLETTER, 2 (2009) available at [http://www.ndaa.org/publications/newsletters/the\\_voice\\_vol\\_3\\_no\\_1\\_2009.pdf](http://www.ndaa.org/publications/newsletters/the_voice_vol_3_no_1_2009.pdf) (last visited June 28, 2010).

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**VIOLENCE PREVENTION  
AN INVITATION  
TO INTERSECTORAL ACTION**



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# Purpose

This paper is an invitation to enter into a new way of thinking about violence and about how it is addressed. It may not be an easy invitation to accept: we have grown accustomed to working in certain ways; changing those ways can be difficult, but change we must if we are ever to make any headway in reducing violence.

Many individuals and organizations across the world have already taken this step. They have realized that the keys to achieving short-term violence reductions lie in interventions that successfully reduce immediate causes such as alcohol misuse, carrying of guns and knives in public, and retaliatory violence. They have also realized that more sustained long-term reductions require interventions that reach down to the root causes of violence within society, communities, and families. Fundamental to this realization is an acknowledgment of the need for all agencies involved to work together more effectively. Accustomed to working within our own areas, the idea of collaboration and information sharing on a permanent basis can seem unfamiliar. But, as long as this mindset persists, we will never make significant progress in reducing violence. Success requires meaningful alliances founded on positive and specific agreed outcomes – such as decreased rates of homicide and of non-fatal injury and emergency room visits due to violence in the urban and rural communities across our countries.

**This invitation, like any other, can be rejected. But turn it down and our agencies turn down the opportunity to make a real difference to the problem of violence.**

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Violence is often viewed as an unshakeable and inevitable part of the human condition. The police see manifestations of this every day.

## Introduction

Using everything at their disposal – forensic science, investigative techniques, and their own experiences – they try to fight it. They cannot cure it by themselves; they can merely try to limit it, including by incarcerating perpetrators. Incarceration, however, does not address the affliction. And offenders, released from jail or prison into the environments they left behind, find themselves again surrounded by the people, places and circumstances in which violence erupts. With no new opportunities to improve their lives, they return to what they know best – which includes violence.

The problem of violence begins early. A child born into a household where violence is used to resolve conflict will copy that behaviour. The child carries these violent behaviour patterns into adolescence and adulthood, where he or she encounters others who grew up in the same blighted places with the same propensity to engage in violent and anti-social behaviours, to misuse alcohol or illicit drugs, and to carry weapons. Wherever it has been studied, the true extent of violence is shown to be much greater than suggested by the statistics that politicians use to demand action.

Many instances of violence never come to the attention of the police or medical personnel who could attend to those involved and perhaps direct them to services to change their lives.

Violence in some communities is so rife that it has become a normal way of life. Victims and perpetrators often come from the same communities, and one family will end up in the prison visiting room, while the other is at the graveside.

Yet violence is not inevitable. A growing body of scientific studies shows that it can be prevented. Law enforcement and criminal justice agencies cannot achieve this alone. They cannot be in every home where a child witnesses domestic violence; they cannot be in every room where someone is self-harming; they cannot be on every street corner to stop a fatal stabbing or a gun being fired. To affect real change, we need to increase our proactive efforts and tackle the root causes of the problem, the issues that turn a child into an adolescent or adult perpetrator or victim.

### Definition of violence prevention

**Violence prevention refers to the reduction in the frequency of new cases of violent victimization or perpetration through direct efforts to remove or reduce the underlying causes and risk factors, and by harnessing the indirect effects of other policies and programmes that may contribute to reducing exposure to underlying causes and risks.**

**Violence prevention can only be achieved fully by uniting police and public safety professionals with professionals from healthcare, education, welfare, liquor licensing authorities, and other sectors who can take the actions needed to remove or reduce the underlying causes and risk factors. In addition to actions that can have immediate violence reduction effects, a commitment to longer-term initiatives is imperative, initiatives that will show results in five, 10 or 15 years.**

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# Background

In 2002, the World Health Organization (WHO) published *The world report on violence and health* that described violence as a public health issue. This report is a powerful tool to show how big a challenge violence presents to communities and countries worldwide. It also spotlights opportunities for working on prevention that involve collaborative activities across different sectors. This report is the foundation for the WHO-led Violence Prevention Alliance (VPA), a network of WHO Member States, international agencies and civil society organizations working to prevent violence. Alliance members are committed to promoting the uptake and implementation of an evidence-based public health approach that targets the risk factors leading to violence and promotes cooperation across all fields.

The VPA has a number of working groups, including the Criminal Justice Liaison Group made up of members from law enforcement, criminal justice and health. This group argues that in many sectors, violence has been defined only in terms of law-breaking, implying that the responsibility for dealing with it is solely that of the criminal justice, police, and public safety sectors.

However, alongside the criminal justice, police and public safety sectors, the public health approach brings to the table expertise in developing and evaluating evidence-based programmes that address the root causes of violence. Public health, criminal justice, police and public safety are therefore natural partners, and the VPA's Criminal Justice Liaison Group argues that:

- Law enforcement and criminal justice agencies should work in partnership with health agencies to identify a shared violence prevention agenda, common values, and a single vision.
- The focus should be on prevention by delivering strategies that address the immediate risk factors for and root causes of violence.
- There should be a commitment to policies, strategies, programmes and actions that are based on scientific evidence for their effectiveness.
- Further research is needed to continue finding out what works to prevent violence, developing and evaluating new interventions, and defining priorities for action.

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## Familiar stories?

Where a woman is physically attacked, this will "typically" be at the hands of someone intimately acquainted with or well known to the victim, such as a spouse, lover or friend. For instance, in Johannesburg, South Africa, a woman told how: "It was the festive season and I was in a very happy mood, so I had gone to the local shebeen (tavern) to enjoy myself and had quite a lot to drink. I was sitting with this other guy who was my friend from another place. Then my boyfriend with whom I have a child came there and didn't ask any questions. He assumed that it was my boyfriend I was sitting with, so he grabbed me from there, he took me back to our place, and then he started hitting me with the handle of a pick". This is not the first time she is beaten, and will not be the last. She depends on her boyfriend for money and a place to live, and does not even think of reporting the incident to the police. On the contrary, she tells the local clinic nurse where she goes for help that she was attacked by a stranger, and hopes that no one else will ever know the truth.

The "typical" murder on the street in Glasgow will be committed by a young man. The weapon will be a lock knife, which he carries because he feels he has to for his own protection - he thinks that most of his peers carry knives too. He will have left school and he will likely be unemployed. He will meet with friends, and, with them, will consume alcohol. At this point, he will meet another young man of a similar background. There will be some disagreement, a perceived insult, or a breach of territorial boundary. A fight breaks out, which, but for the weapons, would amount to little more than fisticuffs. However, knives are drawn and a stabbing occurs. One of these young men becomes the victim, the other an offender who took a life and who will receive a mandatory life sentence.

The scenarios described in Box 2, or events very similar to them, are repeated in communities around the world every second of every day – different protagonists, different locations, identical outcomes. Those involved make choices before the violence unfolds. They choose to drink alcohol; they choose to act aggressively; they choose to carry weapons; and, in the end, they choose to use weapons or act with violence. These are not good choices, neither well reasoned nor carefully considered. The choices draw upon the experiences and the lessons learned in environments where violence is accepted, and where the possession, carrying, and use of weapons and harmful use of alcohol are all considered the norm.

Both the police and medical professionals respond to the outcomes of such incidents repeatedly, day in, day out. Both have their dedication, skill and knowledge that can help them to achieve great things. But in only responding to these incidents, each is for the large part only a passive actor in these scenarios, exercising little influence over the behaviours and choices that first lead individuals to resort to violence or the circumstances that foster such behaviour.

# The case for doing it differently

Science has proven that violence is preventable. Therefore, instead of waiting for something to happen, we can begin to build robust strategies to prevent violence before it occurs and increase the wellbeing and safety of individuals, communities and societies. Yet in most countries, agencies including health, criminal justice, law enforcement, and voluntary groups continue to spend their limited budgets on responding to violence after it has occurred. Nonetheless, despite these often hugely expensive programmes, in many areas levels of violence remain unacceptably high, health poor, educational attainment low, and prisons full of violent offenders. Persistence of violence despite these investments has led more and more criminal justice and law enforcement professionals to question the continuing reliance on systems of justice founded primarily on the principle of punitive reaction to individual behaviour.

Instead, many now believe that collective energies and resources should be dedicated far more to prevention, along the lines of the homicide prevention programme carried out in Diadema, Brazil (see Box 3). The focus is broadening, with increasing emphasis on addressing the root causes of violence. In successfully tackling violence, the benefits of investing in violence prevention will be far-reaching: they will improve national image, enhance the well-being of communities, and significantly reduce costs of violence that can drain public resources. Scientific evidence provides some important lessons about preventing violence and mitigating its consequences.

Fig.1

From Dualibi Set al., *The effect of restricting opening hours on alcohol-related violence*. *Am J Public Health*. 2007; 97:2276-2280

NOTE. Homicide rate for July 2005 is on the basis of a half-month of data.

## Preventing homicides by reducing alcohol sales times in Diadema, Brazil

Crime data in the city of Diadema, Brazil, indicated that 60% of murders and 45% of complaints regarding violence against women occurred between 23:00 and 06:00. Many murders took place in areas with high concentrations of drinking establishments, while violence against women was often linked to alcohol. In response, in 2002, a municipal law was implemented that prevented alcohol retailers from selling alcohol after 23:00. Adoption of the law was followed by a public information campaign informing residents about the law. Alcohol retailers received two visits by the municipal civil guard six months and three months prior to the implementation of the law, during which the law and its implications were discussed and retailers were asked to sign a declaration indicating their knowledge of the law and its legal consequences. Following implementation, the law was strictly enforced by a dedicated multi-agency unit supporting the municipal civil guard. These measures led to a 44% reduction in homicides and prevented an estimated 319 homicides over three years.

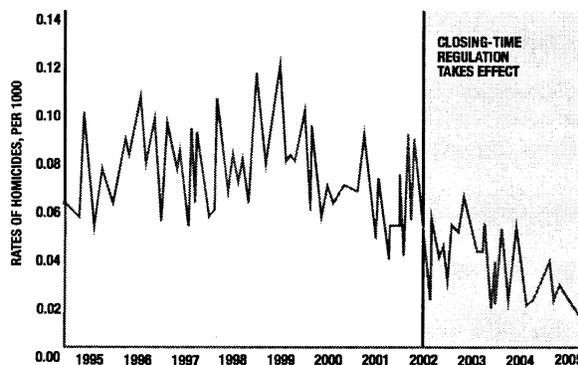


Fig.1 MONTHLY RATES OF HOMICIDES PER 1000 RESIDENTS BEFORE AND AFTER NEW BAR CLOSING-TIME REGULATIONS: DIADEMA, BRAZIL, JANUARY 1995-JULY 2005

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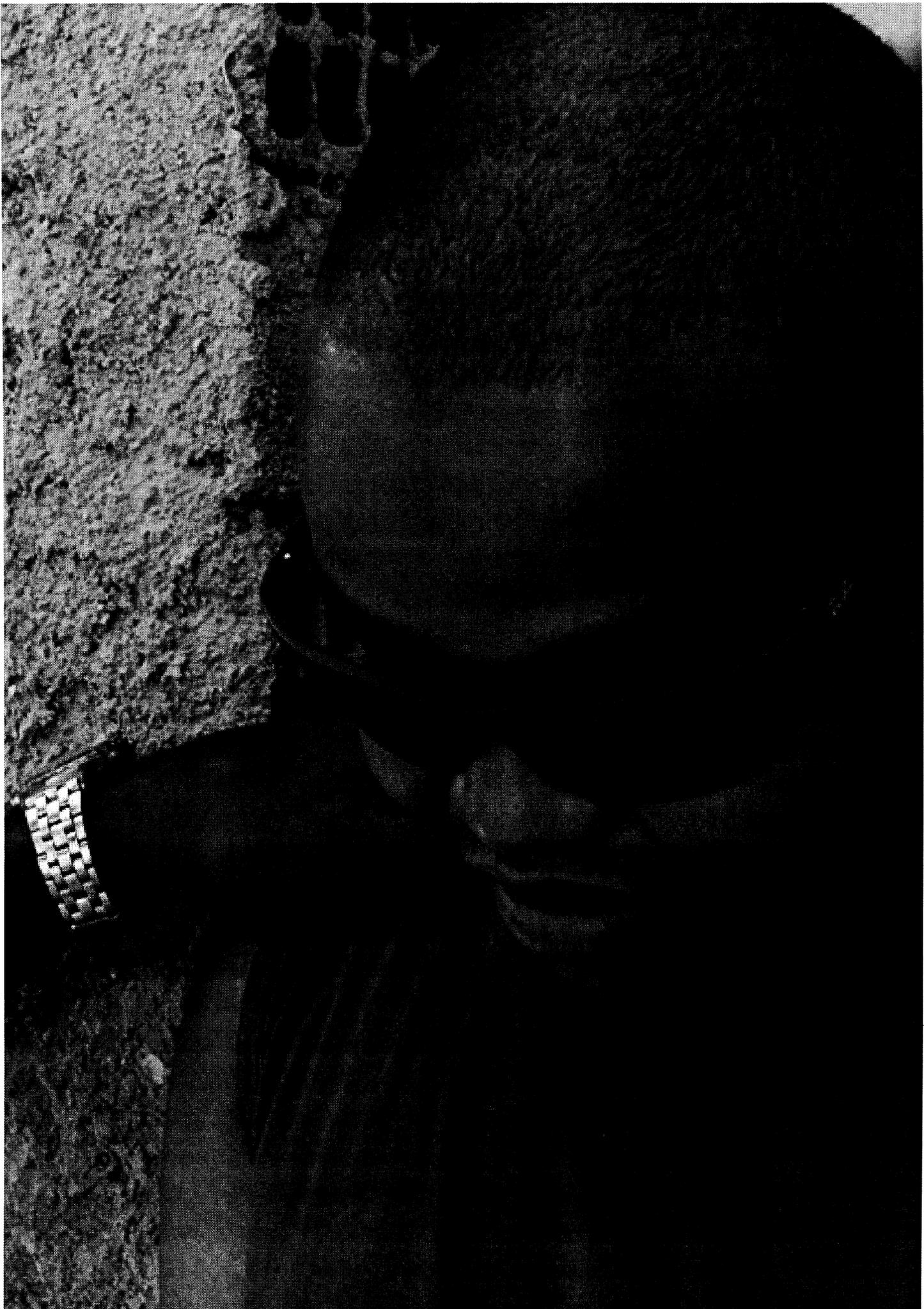
**1**  
**First,** science shows that violence is highly predictable when viewed at the population level of entire communities, cities and countries. Although it is unlikely we will ever be able to forecast which individuals will behave violently, statistical studies show that occurrences of almost every form of violence are highly patterned in respect of where and when they take place, the involvement of weapons, alcohol and drugs, the age and sex of the groups most likely to be involved, and indicators such as income, employment and education. Because they are so predictable, all forms of violence are therefore highly preventable.

**2**  
**Second,** upstream investment brings downstream results. Investing in prevention – especially primary prevention activities that operate “upstream” of problems before they occur – has been shown to be more cost-effective than responding to problems after they occur and to have large and sustained benefits.

**3**  
**Third,** resources should be focused on the most vulnerable groups in the most vulnerable places. While all social classes experience violence, research shows that people with the lowest socioeconomic status and higher rates of unemployment are at greatest risk.

**4**  
**Fourth,** political commitment to violence prevention is vital. While much can be achieved by grassroots organizations, individuals and institutions, the success of public health efforts ultimately depends on political commitment – including at the national level.

These and other key violence prevention lessons are captured in the public health model that the VPA and its Criminal Justice Liaison Group invite you to adopt.



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# What is the public health approach?

The focus of public health is on dealing with problems affecting health. But, by definition, it is not about individual people, but about populations. It aims to provide the maximum benefit for the largest number of people. This does not mean that public health ignores the care of individuals. Rather, the concern is to prevent health problems and to extend better care and safety to entire populations.

The public health approach is interdisciplinary and science-based. It draws upon knowledge from many disciplines, including medicine, epidemiology, sociology, psychology, criminology, education and economics. This has allowed the field of public health to be innovative and responsive to a wide range of diseases, illnesses and problem behaviours around the world.

The public health approach also emphasizes collective action. It has proved time and again that cooperative efforts from such diverse sectors as health, education, social services, justice and policy are necessary to solve what are usually assumed to be purely “criminal” problems. Each sector has a role to play in addressing the problem of violence and, collectively, the approaches taken by each have the potential to produce important reductions in violence.

In moving from the problem of violence to its solution, the public health approach comprises four key steps:

**1**  
**First,** Uncovering as much basic knowledge as possible about all the aspects of violence through systematically collecting data on the magnitude, scope, characteristics and consequences of violence at local, national and international levels.

**2**  
**Second,** Investigating why violence occurs – that is, conducting research to determine the causes and correlates of violence; the factors that increase or decrease the risk for violence; and the factors that might be modifiable through interventions.

**3**  
**Third,** Exploring ways to prevent violence, using the information from the above, by designing, implementing, monitoring and evaluating interventions.

**4**  
**Fourth,** Implementing interventions that appear promising, widely disseminating information and determining the cost-effectiveness of programmes.

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Above all, public health is characterized by its emphasis on prevention. Rather than merely reacting to violence, its starting point is the scientific fact that violent behaviour and its consequences can be prevented. Public health identifies three levels of prevention:

**Primary prevention** seeks to stop violent behaviours from occurring in the first place. Activities may be focused on children from pre-birth through school age to adolescence, and their parents or principal caregivers. Interventions may include parenting initiatives, life and social skills training for children, and efforts to harness the violence-reducing effects of policies that address wider causal factors such as social and economic inequality, social and cultural norms that support the use of violence, and access to guns, alcohol and illicit drugs.

**Secondary prevention** aims to halt the progression of violence once it is established. This is achieved by early detection followed by prompt, effective treatment. This may include a focus on children and young people aged between 10 and 21 years. Activities might include diversion from the criminal justice system and positive opportunities for young people, mentoring schemes and social education, or alcohol treatment.

**Tertiary Prevention** involves the rehabilitation of people with an established violent behaviour or affected as a victim. Activities might include programmes for violent offenders within prisons and with victims in the community to minimize the impact of violence on them.

## Ten credible evidence based strategies for preventing violence

1. Increase safe, stable, and nurturing relationships between children and their parents and caretakers;
2. Reduce availability and misuse of alcohol;
3. Reduce access to lethal means, such as guns, knives, and pesticides (often used to commit suicide, especially in low-and middle-income countries);
4. Improve life skills and enhance opportunities for children and youth;
5. Promote gender equality and empower women;
6. Change cultural norms that support violence;
7. Improve criminal justice systems;
8. Improve social welfare systems;
9. Reduce social distance between conflicting groups;
10. Reduce economic inequality and concentrated poverty.

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**In designing and implementing violence prevention programmes, the public health approach organizes the causes of violence into four levels of influence, each of which is also an entry point for interventions.**

### **Individual level influences**

are biological and personal factors that increase the likelihood of an individual becoming the victim or perpetrator of violence. These include factors such as alcohol and drug use, impulsive behaviour, a childhood history of maltreatment or witnessing domestic violence. Proven individual prevention strategies include pre-school enrichment programmes during early childhood (ages 3-5 years) and life skills training and social development programmes for children aged 6 to 18 years.

### **Relationship level influences**

are factors within the family, and in friendship and peer networks that increase the risk of violence. Proven family prevention strategies include providing training for parents on child development, non-violent discipline and problem-solving skills and mentoring programmes to develop attachments between high risk youth and caring adults in order to build social skills and provide a sustained relationship.

### **Community level influences**

include factors at school, in neighbourhoods and in workplaces that increase risk. They include a lack of education, a lack of vocational opportunities, and cultural norms that legitimize violence. Proven and promising community prevention strategies include increasing the availability and quality of childcare facilities and increasing the availability and quality of pre-school enrichment programmes.

### **Societal level influences**

are the larger, macro level factors that influence violence such as gender equality, societal norms, economic or social conditions that support general inequalities. In society, strategies that are proven and promising include reducing alcohol availability and misuse through enactment and enforcement of liquor licensing laws, taxation and pricing; reducing access to lethal means, including firearms, sedatives and pesticides; and promoting gender equality through strategies such as supporting the economic empowerment of women.

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# Working together to prevent violence – what we can do now

For some time now, recognizing that they complement each other, the criminal justice and public health approaches to addressing violence have been converging. For instance, the criminal justice system has taken an increasing interest in preventing violence before it occurs. Much of community and problem-oriented policing aims to reduce crime and violence by altering the conditions that foster it – and not to increase the number of arrests. Juvenile justice systems – an important component of criminal justice systems – are largely based on the belief in prevention and rehabilitation.

These two sectors also converge in the increasing importance they attach to evidence-based programmes and interventions. Since its inception, evidence-based practice has been a fundamental tenet of the public health approach to violence prevention. In the criminal justice system, evidence-based approaches have in the last decade been rapidly gaining in prominence. Evidence-based policing and crime prevention is rapidly gaining ground in Australia and New Zealand, Germany, North America, Scandinavia and the United Kingdom. Their aim is more effective efforts to reduce crime in the community – including violent crime – by using scientific evidence about what works, what doesn't and what's promising.

To enhance collaboration between criminal justice, health, and other sectors with a role to play in preventing violence and to build on the existing convergence between these sectors, we suggest the following strategies – which have proven useful in establishing other existing collaborative prevention programming:

## The Cardiff Model

**Developed by Professor Jonathan Shepherd in Cardiff in Wales, the Cardiff model has shown that emergency departments can contribute distinctively and effectively to violence prevention by working with Crime and Disorder Reduction Partnerships (CDRPs) and by sharing, electronically wherever possible, simple anonymized data about precise location of violence, weapon use, assailants and day/time of violence. These data, and the contributions of doctors in CDRP meetings, enhance effectiveness of targeted policing significantly and have resulted in reductions in violence in drinking establishments and on the street and in overall accident and emergency violence-related attendances – in Cardiff, by 40% since 2002. The city has moved from the middle to the very top of safety rankings for similar cities, a position it has maintained for over three years.**

**The health sector was included in UK legislation which mandated the formation of CDRPs because research found that a great deal of violence which results in emergency department treatment was not known to the police (mainly because it is not reported, or picked up on public space CCTV). Hence, there is much to be gained from pooling emergency department and police data to get a true picture of all violence which results in serious harm and, more importantly, from organising violence prevention on the basis of this more complete picture.**

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# 1

## Identify existing

and potential areas of collaboration between these sectors at local, national, regional and international levels, and draw attention to them via means such as conferences, talks, the media, journal articles, schools, and parental support systems.

# 2

## Establish partnerships

between health and international law enforcement /criminal justice agencies and organizations so that each group of agencies can learn from one another.

# 3

## Establish demonstration projects

which showcase successful examples of collaboration between the law enforcement /criminal justice, health and other sectors at national and municipal levels.

# 4

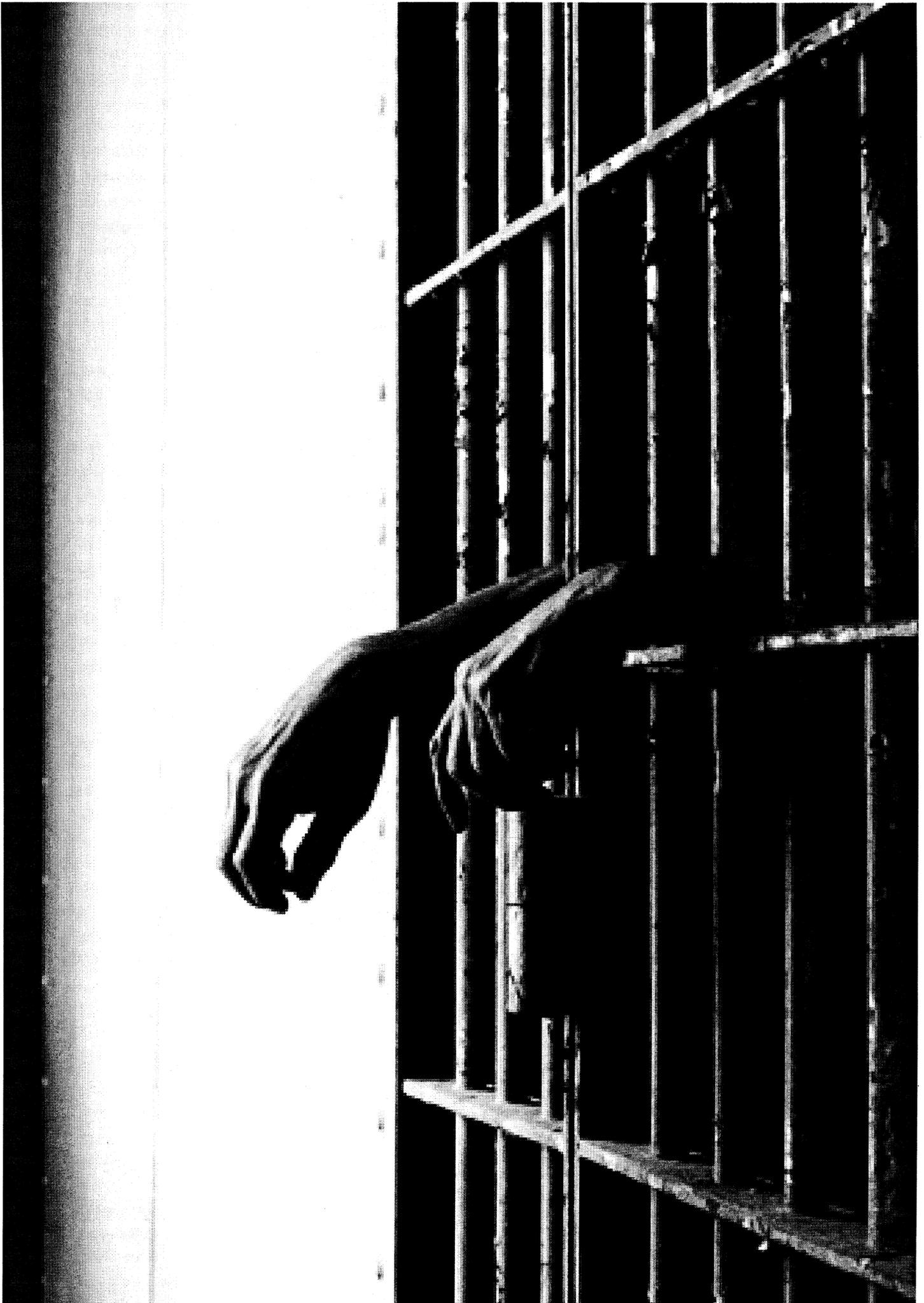
## Engage with key decision- and policy-makers to:

- Raise awareness of the shared agenda that exists between public health and law enforcement/criminal justice approaches to violence prevention;
- Raise awareness of evidence-based approaches to preventing violence and reducing its consequences;
- Obtain a commitment from decision - and policy-makers to formulate policy jointly in areas of violence prevention where the public health and law enforcement/criminal justice sectors can collaborate.

# 5

## Increase cooperation between the sectors by encouraging, facilitating, and/or organizing:

- Joint meetings of public health and law enforcement/criminal justice professional organizations;
- Theme issues of specialist periodicals on collaboration between the public health and law enforcement/criminal justice sectors;
- Joint training and cross-fertilization in training, i.e. incorporating public health approaches to violence prevention in the curriculum of police academies and including law enforcement/criminal justice approaches in public health training.



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# Conclusion

Violence is not an intractable social problem, nor is it an inevitable part of the human condition. We can do much to address and prevent it. The largest part of the burden of violence falls upon the law enforcement/criminal justice and health sectors. Enhanced collaboration between these sectors could make a critical contribution towards reducing the violence-related burden on communities and reducing the number of victims of violence, thus improving the lives of individuals and families and strengthening communities and societies.

An evidence-based and multi-sectoral approach – in which the law enforcement/criminal justice and public health sectors play leading roles – can go a long way towards preventing all forms of violence and mitigating their consequences. So please accept this invitation to participate in a new collaborative approach to the prevention of violence. Changing from the path of reaction to the road of prevention will not be easy, but change we must if we are ever to make any headway in reducing violence.

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## Additional information

-The World Report on Violence and Health (WHO,2002)  
[http://www.who.int/violence\\_injury\\_prevention/publications/violence/en/index.html](http://www.who.int/violence_injury_prevention/publications/violence/en/index.html)  
-The Violence Reduction Unit, [www.actiononviolence.org.uk](http://www.actiononviolence.org.uk)  
-Cardiff Crime and Disorder Reduction Partnership (CDRP)  
[www.cardiff.ac.uk/dent1/contactsandpeople/academicstaff/shepherd-jonathan-prof.html](http://www.cardiff.ac.uk/dent1/contactsandpeople/academicstaff/shepherd-jonathan-prof.html)

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# STRATEGIES

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**E** ÆQUITAS

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## **DOMESTIC VIOLENCE AND FIREARMS: A DEADLY COMBINATION**

**BY JOHN WILKINSON AND TOOLSII GOWIN MEISNER<sup>1</sup>**

### **INTRODUCTION**

On September 22, 2010, a woman was shot to death by her husband in Richland County, South Carolina in front of her eighteen-year-old son. At the time, the husband was on bond pending a criminal hearing for an earlier domestic violence incident involving a firearm against his wife. The Court issued a protective order for the wife but the Sheriff's office had been unable to locate and serve the husband or seize his firearms.<sup>2</sup> This case illustrates the grave risk that armed abusers represent. While prosecutors may often think of the firearms charges as something tacked on to a case that can be negotiated away, in domestic violence cases, prosecutors must vigorously pursue these exact firearms violations to promote safety for victims of abuse.

Nearly two-thirds of all women killed by firearms were killed by an intimate partner. Firearms are the most frequently used weapons in intimate partner homicide, eclipsing all other weapons combined.<sup>3</sup> In 2005, 1182 women

were reported murdered by an intimate partner -- more than 3 women each day<sup>4</sup> -- accounting for approximately 30 percent of all women murdered.<sup>5</sup> Additionally, the presence of a firearm in a home increases the risk of homicide for women by five times.<sup>6</sup> Because of startling statistics like these, Congress made several amendments to the Gun Control Act of 1968.<sup>7</sup> In 1994, the Gun Control Act was amended to prohibit anyone who is subject to a domestic violence protective order from possessing a firearm.<sup>8</sup> In 1996, Congress further passed the Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence, commonly referred to as the Lautenberg Amendment,<sup>9</sup> prohibiting anyone who has been convicted of a misdemeanor crime of domestic violence from possessing a firearm. In passing the Lautenberg Amendment, Congress recognized that "anyone who attempts or threatens violence against a loved one has demonstrated that he or she poses an unacceptable risk, and should be prohibited from possessing firearms."<sup>10</sup> The Lautenberg Amendment prevents individuals who have shown a propensity for domestic violence from obtaining a



firearm and enables federal prosecution of certain domestic violence offenders for weapons offenses where state criminal justice alternatives have failed.<sup>11</sup> Similar to this federal legislation, many states have also enacted laws that place restrictions upon or prohibit the possession of firearms by domestic violence offenders.<sup>12</sup> The federal law and most state laws create categories of prohibited persons, some examples of individuals who may not possess a firearm are: convicted felons,<sup>13</sup> persons with mental illnesses,<sup>14</sup> persons subject to a protective order,<sup>15</sup> persons convicted of a misdemeanor crime of domestic violence,<sup>16</sup> and persons illegally in possession of drugs.<sup>17</sup> The federal law and some states also prohibit possession of ammunition by prohibited persons. When employed and enforced, these provisions can be effective tools to increase the safety of women at risk for this violence.<sup>18</sup> This article will discuss some of the fundamentals of prosecuting the possession of firearms by prohibited persons generally, while focusing on issues involved in prosecuting domestic violence related firearms charges specifically, from both a state and federal perspective. The article will also examine the impact of the most recent United States Supreme Court firearms decisions on prosecuting domestic violence related firearms charges.

## THE ELEMENTS

In all possession of firearms by prohibited persons prosecutions, the defense will challenge the basic elements of the crime: whether the weapon is a firearm, whether the defendant was in fact in possession of the firearm, and whether the defendant is properly categorized as a prohibited person. In order to successfully prosecute charges of firearms possession by individuals prohibited from possessing firearms because they are domestic violence misdemeanants or are subject to protective orders, the government must first prove these basic elements, discussed in greater detail in the paragraphs below:

**Is it a firearm?** Most states and the federal government define a firearm as “any weapon...which will or is designed to or may readily be converted to expel a projectile by action of an explosion.”<sup>19</sup> The federal definition of a firearm does not require proof that the firearm is operable.<sup>20</sup> In some states, however, operability of the weapon must be proved.<sup>21</sup> If the firearm is recovered, as a best practice, it should be sent to a lab for examination by a firearms expert, who can test the weapon and certify that it is operable. Operability also can

be proved through the testimony of a police officer with some expertise in firearms or by having the firearm tested at the police department firing range, if it can be done so safely. In some instances where the firearm is not recovered or there is no scientific evidence or expert available to testify, the Court will accept circumstantial evidence that the firearm was real and operable. This can include witness statements describing the weapon, presence of ammunition, odor of gunpowder, or threats by the defendant to use the gun.<sup>22</sup> Proving that the weapon possessed was a firearm should not be a significant hurdle even where the firearm is not recovered. The Courts have been open to proof of this element through a variety of both direct and circumstantial evidence.

**Was there possession?** To prove possession of a firearm by a prohibited person, the government must also prove that the individual actually or constructively possessed the firearm. For *actual* possession the government must show that the weapon was on the defendant’s person. *Constructive* possession requires that the defendant knew of the presence and character<sup>23</sup> of the firearm and was exercising dominion or control over the weapon.<sup>24</sup> A defendant who is not in actual possession of a firearm but exercises a measure of control over it, such as keeping a firearm under a bed or in a gun box in a closet, is legally in possession of the firearm. “Constructive possession exists if an individual knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons.”<sup>25</sup> Dominion and control need not be exclusive, but each must be established by something more than “[m]ere proximity.”<sup>26</sup> A firearm also may be constructively possessed solely or jointly with another or others.<sup>27</sup> Circumstantial evidence is critical in cases where the weapon is not on the defendant’s person. Investigators should be encouraged to take photos of where and how a firearm was discovered. Often, inferences can be drawn from the position of a firearm recovered in an automobile, either under a seat or in a glove box. For weapons recovered in a room inside a residence, documents, bills, photographs, personal items, and clothing can determine who controlled the room or residence and who possessed or controlled the weapon. Additionally, investigators should submit firearms for fingerprint and DNA analysis, and trace<sup>28</sup> every firearm recovered. This evidence can prove actual possession or an inference of possession based upon actual ownership of the firearm. While finger-

print or DNA evidence on a recovered firearm may demonstrate actual possession at some point in time, additional evidence may be necessary to show that the possession occurred after the imposition of the prohibition. In addition to these basic elements, federal prosecutors must also prove that the firearm was "in and affecting interstate commerce" to establish federal jurisdiction over the case.<sup>29</sup>

**Was the defendant a prohibited person?** The government must also prove that the person who possessed the firearm, was in fact prohibited from such possession. In domestic violence cases the two primary prohibited persons are those convicted of a domestic violence misdemeanor and those subject to a domestic violence protective order. The Federal law, 18 USC 922 (g) (8) & (9), makes both a crime. Proof of this status is based on producing a certified copy of the court and establishing that the defendant on trial for unlawful possession of a firearm is that same defendant that was the subject of the protective order or criminal conviction. Misdemeanor convictions of domestic violence typically occur in state courts, which are often not courts of record. It is, therefore, important for prosecutors to obtain a certified copy of the defendant's conviction and examine it closely to make sure the language used in the document demonstrates that the offense was a qualifying domestic violence conviction. To qualify, the offense must have as an element the use or attempted use of physical force or the threatened use of a deadly weapon.<sup>30</sup> For federal prosecution, the force must be violent and intentional.<sup>31</sup> Because some state statutes list a series of acts in a single statute, the record of conviction must be explicit as to which theory or act the prosecution proceeded under, or at least describe the type of physical violence. For example, in Hawaii, the domestic abuse statute can be satisfied with an intentional use of force or a reckless use of force.<sup>32</sup> In *United States v. Nobriga*,<sup>33</sup> because the court record was silent as to which prong of the domestic abuse statute the defendant was convicted under, the court held that the predicate offense did not qualify as a misdemeanor conviction of domestic violence for purposes of 18 USC § 922(g)(9). In courts not of record, usually the document will be a standard warrant with some added language from the state code section on it. The Court may amend that language or may make notations on the conviction section as to the specific charge. But often just a series of boxes, such as "Guilty", are checked. It is incumbent on the prosecution to proactively charge these misdemeanor domestic violence cases with specificity to preserve the record for potential

future prosecution, either at the state level or federally. The language on the court record should also include an accurate description of the act, thus demonstrating whether or not an intentional act of violence took place. The record of conviction should also clearly show that the defendant was not only charged with an intentional act of violence but was also convicted of an intentional act of violence.<sup>34</sup>

Additionally, as a best practice, it is important to make the domestic relationship clear on the face of the court document as well. A lack of specificity could affect future prosecution at the state level. In *United States v. Hayes*,<sup>35</sup> however, the court allowed prosecution under section 922(g) (9) where the prior conviction was silent as to the domestic relationship. The court held that the relationship was an element of the federal offense and did not need to be part of the underlying state conviction. The language of 18 U.S.C. § 921(a)(33)(A), defines a misdemeanor crime of domestic violence as an offense that "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." The court reasoned that because the word "element" is in the singular, it only modifies the language concerning physical force or deadly weapon and not the language concerning the domestic relationship.<sup>36</sup> This interpretation was consistent with the purpose of the law, to keep firearms out of the hands of domestic abusers, whether they were specifically charged under a domestic abuse statute or not.<sup>37</sup> Thus, the prosecution could prove the domestic relationship with extrinsic evidence, beyond what was stated in the underlying conviction. Additionally, the defendant must have been represented by an attorney -- or knowingly and intelligently waived representation -- and the defendant must have had a trial by jury or knowingly and intelligently waived that right. This information is typically listed on the record of conviction.

For a protective order to give rise to a federal firearm prohibition, the prosecution must demonstrate several things. First, the government must show that the order was issued after a hearing of which the defendant had actual notice and in which the defendant had an opportunity to participate. Ex parte preliminary protective orders would not qualify



under this standard for federal prosecution. In Virginia and California, however, preliminary protective orders issued after an *ex parte* hearing are included in their respective statutes prohibiting possession of a firearm and do qualify for prosecution for possession of firearms by prohibited persons at the state level.<sup>38</sup> Personal service of the hearing notice should always be requested to prove actual notice if the defendant fails to appear. If the defendant is present, the Court order should reflect this and provide the defendant an opportunity to be heard. For federal prosecution, the person must be subject to an order that “restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.”<sup>39</sup> In *United States v. Reese*,<sup>40</sup> the defendant had a protective order entered against him in Hawaii protecting his first wife. While he denied her allegations of abuse, Reese nonetheless agreed to the issuance of the protective order. The Court entered the order without hearing evidence or making a finding but prohibited Reese from “(a) threatening or physically abusing [his wife] or their minor children, (b) contacting [his wife] or their minor children, and (c) possessing, controlling, or transferring ownership of any firearm, ammunition, firearm permit or license”<sup>41</sup> The order had an effective life of fifty years. Thereafter, Reese remarried and moved to New Mexico. During an investigation of domestic abuse committed against his second wife, the police discovered the existence of the protective order and several firearms possessed by Reese. Reese was prosecuted and convicted federally and sought to challenge the conviction based on the adequacy of the underlying protective order. The court held that the order satisfied the requirements of the statute and a collateral attack on the order itself was impermissible in the federal prosecution. While the issuing court did not make a finding it did expressly prohibit Reese from physically abusing his wife and satisfied that prong of section 922(g)(8). The best way to avoid these challenges is to create an appropriate record and order from the issuing Court. Unfortunately, the prosecutor is often not a party to, or present at, these hearings and so the ability to create an

adequate record for future prosecution is limited. It may be helpful for prosecutors, however, to meet with their Juvenile and Family Court judges and clerks to discuss creating a model order that includes appropriate language of protection, prohibits defendants from possessing firearms as part of the order and that puts defendants on notice that they may be subject to federal prosecution for possessing a firearm after being issued the protective order. These measures would enhance the ability to prosecute offenders at both the state and federal level in the future.

## OTHER TOOLS

Many states have enacted additional laws to help increase the safety of victims by reducing perpetrators’ access to firearms. California has many additional provisions such as prohibiting a person convicted of stalking from possessing a firearm,<sup>42</sup> requiring officers to seize firearms at the scene of a domestic violence complaint,<sup>43</sup> surrender or sell firearms within a specified period of time upon service of a protective order,<sup>44</sup> and the California Department of Justice is required to maintain a Prohibited Armed Persons File database.<sup>45</sup> This online database maintains information about all persons in California who are prohibited from purchasing or possessing firearms. Its access is limited to certain public and private entities such as police and prosecutors. These provisions can help keep firearms out of the hands of dangerous domestic abusers and increase victim safety. Awareness of all the tools afforded by state and federal criminal codes and partnering with the local United States Attorneys’ Office can greatly increase the effective prosecution of these cases. United States Attorneys’ Offices have a Project Safe Neighborhoods prosecutor who is tasked with firearms prosecution and a prosecutor who oversees the domestic violence caseload, each of whom may be able to help with these cases. The federal system sometimes can provide a pathway to conviction that the state system cannot and often the federal system will have tougher penalties for firearms offenses.

## *Heller and McDonald*

The Supreme Court’s recent landmark decisions that have broadly interpreted the U.S. Constitution’s Second Amendment “right to keep and bear arms” have brought the constitutionality of the federal Lautenberg Amendment into question and may give rise to similar challenges of state and

local laws that prohibit the possession of firearms by individuals convicted of crimes of domestic violence.

In 2008, the Supreme Court in *District of Columbia v. Heller*<sup>46</sup> held that the Second Amendment protects an individual's right to possess a firearm in the home for self-defense. The *Heller* Court only addressed Second Amendment rights regarding federal firearm regulations because that case dealt with the District of Columbia's ban on handgun possession and the District of Columbia is not a state. *Heller* did not address whether these rights extended from federal enclaves to the states. In 2010, the Supreme Court clarified the application of the *Heller* rationale to the states in *McDonald v. Chicago*,<sup>47</sup> holding that an individual's right to keep and bear arms is incorporated by the Due Process Clause of the Fourteenth Amendment and applies to state laws and local ordinances as well. While these decisions do not appear to disturb the Lautenberg Amendment, prosecutors should be aware of the post-*Heller* Second Amendment challenges being brought by defendants attempting to appeal their federal convictions under 18 U.S.C. § 922(g)(9) and anticipate analogous state challenges that may be brought following the *McDonald* decision.

In *Heller*, the Court stated that the Second Amendment does not afford an unlimited right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."<sup>48</sup> The Court went on to explain that its decision, "should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."<sup>49</sup> The Court noted that its list of "presumptively lawful" regulations was not exhaustive, but did not establish a standard of review under which firearm regulations should be evaluated.

Since *Heller*, several defendants have used that opinion to challenge previous convictions under 18 U.S.C. 922(g)(9), arguing that the law is unconstitutional. However, in all of these cases, courts have upheld the constitutionality of 18 U.S.C. § 922(g)(9), finding that this categorical exception is the kind of regulation that passes constitutional muster.<sup>50</sup> The courts have rejected these Second Amendment challenges to the law on the grounds it falls within the category of "presumptively lawful" regulations set forth in *Heller*.<sup>51</sup>

For example, in *United States v. White*, the court held that, "[o]n its face, then, *Heller* did not disturb or implicate the constitutionality of section 922(g), and was not intended to open the door to a raft of Second Amendment challenges to section 922(g) convictions."<sup>52</sup>

So far, every federal court to hear a constitutional challenge to 18 U.S.C. § 922(g)(9) on these grounds has agreed, as evidenced by the recent decision in *United States v. Skoien*,<sup>53</sup> in which the court held that there is a substantial relationship between the law's goal of reducing domestic violence and a lifetime ban on firearm possession by domestic violence offenders.<sup>54</sup>

Although federal courts have upheld 18 U.S.C. § 922(g)(9), prosecutors must also look at how state courts will handle the issue of the constitutionality of state laws and local ordinances that prohibit domestic violence offenders from possessing firearms. Because *McDonald* is such a recent decision, state courts have not yet had the opportunity to hear many cases challenging the constitutionality of these laws under *McDonald*.<sup>55</sup> However, in *McDonald*, the Court reiterated its dicta supporting reasonable handgun regulation originally set forth in the *Heller* decision.<sup>56</sup> By doing so, the Court reiterated its intention to extend *Heller's* rationale to the states with the same firearm regulation exceptions to the Second Amendment. Because federal courts have interpreted the language in *Heller* to uphold 18 U.S.C. § 922(g)(8),<sup>57</sup> state courts are likely to interpret this reasonable regulation dicta to uphold state and local laws prohibiting domestic violence offenders' from possessing a firearm.

## CONCLUSION

Given the dangerous combination of firearms and domestic violence it is critical to be aware of both state laws and federal laws when confronting these offenders. Possession of a firearm by a person convicted of a misdemeanor assault may seem to be a relatively minor charge on its face. But in the context of a domestic violence relationship, these seemingly insignificant cases can prevent deadly consequences so common in domestic violence cases. Every partner in the criminal justice system -- prosecutors, police, judges, and clerks -- should be aware of the danger these cases represent and should coordinate their responses to the increased threat posed by domestic violence abusers who have access to firearms. When a protective order is issued or served,



or when someone is convicted of a misdemeanor crime of domestic violence, inquiries about their access to firearms should be routine. Further, individuals who may no longer legally possess a firearm should be disarmed. Notice of the firearms prohibition should be provided to those affected and service of that notice should be documented. By creating an accurate record of charges and convictions through a proactive approach in misdemeanor courts, and by partnering with their United State Attorneys' Office, state and local prosecutors can help disarm dangerous individuals and hold violent offenders accountable thereby greatly enhancing victim safety.

### (Endnotes)

- 1 John Wilkinson and Toolsi Gowin Meisner are both Attorney Advisors with AEQuitas: The Prosecutors' Resource on Violence Against Women.
- 2 Gina Smith, *Sad Tale Marks Domestic Violence Walk*, THE STATE, Oct. 10, 2010, available at <http://www.thestate.com/2010/10/10/1505800/i-hope-this-opens-everybodys-eyes.html>.
- 3 Violence Policy Center, *When Men Murder Women: An Analysis of 2008 Homicide Data* (2010) available at <http://www.vpc.org/studies/wmmw2010.pdf>.
- 4 BUREAU OF JUSTICE STATISTICS, HOMICIDE TRENDS IN THE U.S.: INTIMATE HOMICIDE (1976-2005), <http://bjs.ojp.usdoj.gov/content/homicide/tables/intweaptab.cfm>.
- 5 BUREAU OF JUSTICE STATISTICS, HOMICIDE TRENDS IN THE U.S.: INTIMATE HOMICIDE (1976-2005), <http://bjs.ojp.usdoj.gov/content/homicide/tables/intweaptab.cfm>.
- 6 Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (2003).
- 7 See generally, 18 U.S.C. §§ 921-931.
- 8 18 U.S.C. §922(g)(9).
- 9 18 U.S.C. §922(g)(9) is commonly referred to as the Lautenberg Amendment, after its sponsor, Senator Frank Lautenberg.
- 10 See, 142 CONG. REC. S11, 878, (daily ed. Sept. 30, 1996) (Statement of Sen. Lautenberg).
- 11 Announcement from the Criminal Division to the United States Attorneys' Offices upon the passage of 18 U.S.C. §922(g)(9), 1117 Criminal Resource Manual available at [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm01117.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm01117.htm).
- 12 See LEGAL COMMUNITY AGAINST VIOLENCE, *REGULATING GUNS IN AMERICA: AN EVALUATION AND COMPARATIVE ANALYSIS OF FEDERAL, STATE AND SELECTED LOCAL GUN LAWS* (2008), available at [http://www.lcav.org/publications-briefs/regulating\\_guns.asp](http://www.lcav.org/publications-briefs/regulating_guns.asp) (Providing a compilation of the state and local laws regulating the possession and purchase of firearms by individuals charged with and/or convicted of domestic violence offenses or subject to domestic violence protective orders. For example, Arizona, California, Colorado, Delaware, Illinois, Iowa, Minnesota, Montana, New Jersey, New York, Texas, Virginia, and Washington have statutes that exceed the Federal Law in prohibiting misdemeanor domestic violence offenders from purchasing or possessing firearms and/or ammunition).
- 13 See, e.g. 18 U.S.C.A. § 922(g)(1)
- 14 See, e.g. 18 U.S.C.A. § 922(g)(4)
- 15 See, e.g. 18 U.S.C.A. § 922(g)(8)
- 16 See, e.g. 18 U.S.C.A. § 922(g)(9)
- 17 See, e.g. VA Code Ann. § 18.2-308.4 (2004).
- 18 Elizabeth R. Vigdor et al., *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?* 30 EVALUATION REV. 313, 332 (June 2006).
- 19 18 U.S.C. at § 921(a)(2) (2006).
- 20 See 18 U.S.C. § 921(a)(3) (2006) (Possession of a "frame or receiver" (i.e., the basic shell of a gun) qualifies as possession of a firearm. "Accordingly, because the definition of 'firearm' includes the frame, proof that the frame was 'in and affecting interstate commerce' would be sufficient for a conviction under this indictment." United States v. Broadnax, 601 F.3d 336 (5th Cir. 2010)); "We have recognized that, in order to convict, 'the gun must be real, but it need not be prove[d] to be loaded or operable.'" United States v. Taylor, 54 F.3d 967, 975 (1st Cir. 1995) (quoting United States v. Kirvan, 997 F.2d 963, 966 (1st Cir.1993), United States v. Ford, 548 F.3d 1 (1st Cir. 2008)).
- 21 In Ohio, for example, the state must not only demonstrate that the weapon is a firearm but also that it was operable or readily capable of being made operable. "In State v. Gaines, 46 Ohio St.3d 65, 545 N.E.2d 68 (1989), the Supreme Court of Ohio held that before a defendant can be convicted of a firearm specification pursuant to R.C. 2929.71(A), the state must prove beyond a reasonable doubt that the firearm was operable or could readily have been rendered operable at the time of the offense." State v. Koren, 100 Ohio App.3d 358, 654 N.E.2d 131 (1995).
- 22 State v. Dickess, 174 Ohio App.3d 658, 884 N.E.2d 92 (Ohio Ct. App. 2008).
- 23 "Establishing constructive possession requires proof "that the defendant was aware of both the *presence* and *character* of the [item] and that it was subject to his dominion and control." Powers v. Commonwealth, 227 Va. 474, 316 S.E.2d 739, 740 (1984). A person's ownership or occupancy of premises on which the subject item is found, proximity to the item, and statements or conduct concerning the location of the item are probative factors to be considered in determining whether the totality of the circumstances supports a finding of possession." Teal v. Angelone, 54 Fed.Appx. 776 (4th Cir. 2003) (quoting Archer v. Commonwealth, 26 Va.App. 1, 492 S.E.2d 826, 831-32 (1997)).
- 24 Atkins v. Commonwealth, 57 Va.App. 2, 698 S.E.2d 249 (Va. Ct. App. 2010).
- 25 United States v. Iafelice, 978 F.2d 92, 96 (3d Cir. 1992)(internal quotations omitted).
- 26 United States v. Introcaso, 506 F.3d 260, 270-71 (3d Cir. 2007).
- 27 United States v. Gunn, 369 F.3d 1229 (11th Cir. 2004).
- 28 "A firearms trace is conducted when a law enforcement agency recovers a firearm at a crime scene and requests information regarding its origin to develop investigative leads. That information is used to link a suspect to a firearm in a criminal investigation, to identify potential traffickers, and when sufficient comprehensive tracing is undertaken in a given community, to detect interstate, intrastate and international patterns regarding the sources and types of crime guns." Pursuant to the Gun Control Act of 1968, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the sole federal agency authorized to conduct

firearms tracing. The National Tracing Center [NTC] is authorized to trace a firearm for a law enforcement agency that is involved in a bona fide criminal investigation. Bureau of Alcohol, Tobacco, Firearms and Explosives, Fact Sheet: Etrace: Internet-Based Firearms Tracing and Analysis (2010), available at <http://www.atf.gov/publications/factsheets/factsheet-etrace.html>.

29 United States v. Broadnax, 601 F.3d 336 (5th Cir. 2010).

30 18 U.S.C. § 921(a)(33)(A)(ii) (2006).

31 United States v. Belless, 338 F.3d 1063 (9th Cir. 2003).

32 State v. Eastman, 81 Hawai'i 131, 139, 913 P.2d 57, 66 (1996).

33 United States v. Nobriga, 474 F.3d 561, 564 (9th Cir. 2006).

34 Memorandum from Margaret S. Groban, Executive Office of US Attorneys Office of Legal Programs and Policy on the Effect of United States v. Nobriga on 922(g)(9) prosecutions to the Department of Justice.

35 United States v. Hayes, 337 Fed.Appx. 285 (4th Cir. 2009).

36 *Id.*

37 *Id.*

38 CAL. CIV. PROC. CODE § 527.6(k) (2007), VA CODE § 18.2-308.1:4 (2004).

39 18 U.S.C. § 922(g)(8)(b-c).

40 United States v. Reese, 627 F.3d 792 (10th Cir. 2010).

41 *Id.*

42 CAL. PENAL CODE § 12021(c)(1) (2009).

43 CAL. FAM. CODE § 6389 (2007).

44 *Id.*

45 CAL. PENAL CODE § 12010(b) (2009).

46 District of Columbia v. Heller, 554 U.S. 570 (2008).

47 McDonald v. Chicago, 130 S.Ct. 3020 (2010).

48 Heller, 554 U.S. at 626.

49 *Id.*

50 See, e.g. United States v. Holbrook, 613 F.Supp.2d 745 (W.D. Va. 2009) (The Western District of Virginia found that, "the Heller opinion itself does not 'cast doubt' on the limitation on firearm possession set forth in § 922(g)(9), and [defendant] makes no other argument that her convictions are violative of the Second Amendment."); United States v. Booker, 570 F.Supp.2d 161, 162 (D. Me. 2008) (The United States District Court in Maine concluded that, "persons who have been convicted of crimes of domestic violence must be added to the list of 'felons and the mentally ill' against whom the 'longstanding prohibitions on the possession of firearms' survive Second Amendment scrutiny."); United States v. Chester, 2010 U.S. App. LEXIS 3739 (4th Cir. Feb. 23, 2010) vacated on reh'g by United States v. Chester, No. 09-4084, 2010 5396069 (4th Cir. Dec. 30, 2010) (The Fourth Circuit found that the prohibition by Congress as embodied in Section 922(g)(9) of the possession of a

firearm by a misdemeanor who has committed a crime of domestic violence is a lawful exercise by the government of its regulatory authority notwithstanding the Second Amendment.)

51 See, e.g. Holbrook, 613 F.Supp.2d 745, Booker, 570 F.Supp.2d 161 (finding that 18 U.S.C. § 922(g)(9) is constitutional because it falls into the category of exceptions set forth in Heller).

52 United States v. White, 593 F.3d 1199 (11th Cir. 2010).

53 United States v. Skoien, 614 F.3d 638 (7th Cir. 2010).

54 In 2009, the 7th Circuit had previously vacated Skoien's convictions for possessing a shotgun while on probation for domestic violence and remanded the case for additional hearings on the constitutionality of the law. United State v. Skoien, 587 F.3d 803 (7th Cir. 2009), vacated by United States v. Skoien, No. 08-37770, 2010 WL 126726 (7th Cir. Feb. 22, 2010), reh'g granted en banc, Skoien, 614 F.3d 638 (The 7th Circuit, ordered rehearing en banc and reinstated the defendant's convictions, holding that there was no need for remand).

55 At least two lawsuits challenging the constitutionality of state gun restriction laws have been filed since the McDonald decision. The Second Amendment Foundation (SAF) has filed a federal lawsuit against Westchester County, New York and its permit licensing officers, arguing that NY Penal Code § 400.00 (which requires that handgun carry permit applicants "demonstrate good cause for the issuance of a permit") violates the Second Amendment. Complaint available at [http://saf.org/legal.action/ny.lawsuit/kachalsky\\_complaint.pdf](http://saf.org/legal.action/ny.lawsuit/kachalsky_complaint.pdf). Additionally, the ACLU is petitioning the Broward Circuit Court to get an 85 year old man's guns back after they were seized by Broward County, Florida Sheriff's Office when the man threatened to kill himself. See, Linda Trischitta, Robert Weinstein's Petition Hearing Postponed, SUNSENTINEL.COM, <http://blogs.sun-sentinel.com/crime-and-safety/2010/07/19/robert-weinsteins-petition-hearing-postponed/>.

56 McDonald, 130 S.Ct. 3020 (reiterating the dicta from the Heller decision that explains that the Second Amendment does not grant the right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," and that its decision, "should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." Heller, 554 U.S. at 626.)

57 Reese, 627 F.3d at 804.

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## Remote testimony by boy reverses rape conviction

By JESSIE STENSLAND

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A 37-year-old Oak Harbor man accused of raping a small boy in 2007 faces a third trial after the Court of Appeals reversed his conviction.

Deputy Prosecutor Colleen Kenimond said she decided to go forward with the third trial against Bryon Koeller after speaking to the victim and his family, but she still holds out hope for an agreement that would save the child from having to testify yet again.

Two years ago, a jury convicted Koeller, a former member of the Navy, of first-degree child rape. It was the first case in the county in which a judge allowed remote testimony in order to protect the victim from having to face the accused. The boy, who was 5 years old then, testified from another room via closed-circuit TV.

The conviction followed a first trial that ended in a mistrial after the jury deadlocked.

After the second trial, Island County Superior Judge Vickie Churchill sentenced Koeller to an indeterminate sentence of 123 months to life in prison.

Koeller, however, asserted his innocence and his attorneys aggressively — and successfully — appealed the conviction.

The Court of Appeals ruled that while remote testimony is allowed for child victims in certain limited conditions, the prosecution in the Koeller case didn't present strong enough evidence that "the victim would suffer serious emotional distress if required to testify in Koeller's presence."

Coupeville attorney Craig Platt represented Koeller in the sentencing phase and asked the trial court judge for a new trial based on a number of issues. While his motion was denied, he's satisfied with the Court of Appeals decision.

"The ability to properly question witnesses before a jury is a fundamental aspect of our constitution," he said.

Koeller is accused of raping a boy when the child was 4 years old. Koeller's wife took care of the child in an informal daycare arrangement.

During the trial, Koeller's biological daughter testified that he had sexually assaulted her more than a decade ago, when she was 4 years old. He was never charged in the case investigated by the Navy.



# Immigration



## **As Barriers to Lawyers Persist, Immigrant Advocates Ponder Solutions**

More than two years ago, a federal judge in New York began a crusade to find lawyers for the many immigrants who are detained or deported because they lack representation. Powerful figures, including Attorney General Eric H. Holder Jr. and Mayor Michael R. Bloomberg, heard the call and helped draw attention to the issue.

But the problem persists in immigration court, where defendants have no right to a court-appointed lawyer, forcing many to go without and drastically raising their chances of being deported. Although Mr. Bloomberg promised \$2 million to train lawyers in immigration issues, the city has not produced the money.

On Tuesday, about 200 leaders from legal, governmental and immigration circles gathered in Manhattan to discuss the barriers that deny many immigrants proper legal counsel. Robert A. Katzmman, the federal judge who started the effort and organized the symposium, called the problem a "substantial threat to the fair and effective administration of justice."

John Paul Stevens, the retired Supreme Court justice, who galvanized immigrant advocates with a decision last year that said lawyers must tell their clients about the deportation consequences of pleading guilty, delivered the keynote address.

"The need for legal representation for immigrants is really acute," Mr. Stevens said. He urged the audience to push for Congress to grant state and federal judges discretion in deportation cases because, he said, "the consequences are just so drastic." Immigrants' fate in deportation cases often comes down to whether they can afford a lawyer. Immigrants with legal representation are at least five times as likely to win their cases as those without, yet in New York only 40 percent of detained immigrants have lawyers, according to research by Judge Katzmman's group that was released Tuesday.

More than a quarter of immigration defendants who have not been detained do not have lawyers either, the study showed.

"The fact that so many can face such dire results at the hands of our legal system without the benefits of competent counsel is one of the blatant injustices of our time," said Matthew Diller, dean of the Benjamin N. Cardozo School of Law at Yeshiva University, where the conference was held.

The problem only gets worse when immigrants are sent to distant detention centers in places like Texas or Louisiana, as happens to nearly two-thirds of those taken into immigration custody in New York. Nearly 80 percent of those immigrants are unrepresented, according to the study, which examined Justice Department data from 2005 to 2010.

"If they don't have a lawyer, it's because they don't have anything," said Lynn M. Kelly, executive director of the City Bar Justice Center. "People beg, borrow and pass the hat around the community to hire attorneys."

But simply hiring a lawyer is not necessarily a solution. Lazy and unprepared lawyers fill immigration courts, bungling cases at grave costs to their clients, experts say.

"The too-often-poor quality of representation continues to undermine the effective administration of justice," said Judge Katzmann, who sits on the Court of Appeals for the Second Circuit.

More than 50 New York lawyers who have been expelled or suspended by the Justice Department have cases pending before the immigration courts or the Board of Immigration Appeals, the new research says.

People posing as lawyers are another common problem for vulnerable immigrants, many of whom cannot speak English. "Across New York, fraudulent legal service providers are making huge profits by defrauding immigrant communities," said Janet Sabel, an official in the state attorney general's office.

It is highly unusual for a federal judge to embrace a public issue with such vigor, but Judge Katzmann said his background — he is the grandson of Russian immigrants and the son of a refugee from Nazi Germany — had granted him a special sympathy "for those who come to this country and want to make it great."

His study group, which draws more than 50 immigration experts, has made some progress since it began work in 2008.

The Legal Orientation Program, a Justice Department project that advises immigrants on their rights, opened a New York City branch last year. The ranks of pro bono lawyers working on immigration cases have grown, and the authorities have stepped up efforts to crack down on fraudulent lawyers.

But with much work remaining, many advocates looked to Mr. Bloomberg to fulfill his 2009 campaign promise to spend \$2 million to train lawyers. Fatima A. Shama, the city's immigrant affairs commissioner, said the mayor had not forgotten.

"We will do what we need to do, not only to maintain our commitment around a campaign promise, but around what's right," Ms. Shama told the crowd.

At the session Tuesday, many acknowledged that there were no quick fixes to the challenges of immigrant representation.

"These problems have been around for a long time," said Claudia Slovinsky, a veteran immigration lawyer. She said that only a sweeping solution ensuring representation to all immigrants would address the fundamental inequalities.

"Everything we're doing in the meantime is short-term improvements of a weak system," Ms. Slovinsky said.