

What Criminal Justice Practitioners Can Do To Make a Difference

- ◆ **Require training for all criminal justice personnel on sexual assault, dating and domestic violence, and stalking.** Train the bench, bar, court staff, and law enforcement personnel to recognize victim concerns and work with victims to investigate cases involving violence against women.
- ◆ **Adopt protocols for law enforcement response to violence against women.** Use standard investigation and evidence collection tools, specialized response units, staff training, checklists, and other strategies to process cases.
- ◆ **Coordinate justice system efforts to prevent or intervene in violent crime.** Collaborators include law enforcement, prosecution, judges, probation/parole, victim/witness specialists, advocacy groups, shelters, and community organizations.
- ◆ **Require prompt completion of detailed incident reports; make them available to victim advocacy agencies and victims as appropriate.** Reports aid victims in pursuing protection orders, civil remedies, immigration petitions, insurance benefits, and compensation claims.
- ◆ **Educate members of the bench and bar about victims' struggles in deciding to participate in prosecution.** Victims benefit most from the criminal justice system when they can avoid contact with the perpetrator, achieve some personal and economic restoration, and increase their personal safety.
- ◆ **Encourage prosecutors to build a case even when a victim cannot or will not testify.** Avoid requiring victims to risk their safety to testify.
- ◆ **Invest in victim/witness programs and expanded community-based advocacy.** Counselors and advocates can provide needed services to victims and coordinate legal system efforts to prevent or intervene in violent crime.
- ◆ **Provide women victims of violence facing criminal charges or in prison access to quality legal representation.** Access to competent legal counsel and expert witnesses is critical for women defendants at trial, on appeal, through postconviction procedures, at parole, and during clemency hearings.
- ◆ **Determine whether women victims of violence are being inappropriately arrested.** If so, make changes needed to reduce such arrests. Train police on effective responses to domestic violence, including identifying the primary aggressor.
- ◆ **Support intervention efforts for batterers and sex offenders.** Intervention programs and policies play a critical role in ending violence against women.

Chapter 4

Enhancing the Response of the Justice System: Criminal Remedies

Law Enforcement: Gatekeeper to Justice for Victims

Profound changes in law enforcement response to sexual assault, dating and domestic violence, and stalking have occurred in the past two decades. Many of these reforms implement key recommendations put forward by the President's Task Force on Victims of Crime in 1982,¹ the Attorney General's Task Force on Family Violence in 1984,² and the President's Task Force on Victims of Crime in 1986.³

Like other sectors of the criminal justice system, law enforcement has made victim safety and offender accountability priorities in its efforts to enhance its response to violence against women. Specialized units, extensive training, protocols, checklists, and other strategies are being employed to address the unique characteristics of cases involving violence against women and ensure that victims' rights are honored. Because a victim's first contact with the criminal justice system is typically via law enforcement, that interaction often has a significant impact on how victims view the criminal justice system and whether they believe perpetrators will be held accountable. The law enforcement officer's response can influence a victim's decision to report the incident to or participate in the criminal justice system.

Momentum in favor of the arrest of domestic violence offenders gained prominence after release of the Minneapolis Police Study in 1984.⁴ Successful litigation against police departments for failure to intervene on behalf of domestic violence victims

ignited reform efforts to create a policing environment in which arrest is preferred or required upon a probable cause determination that a crime of violence has been committed by a suspect.⁵ Codes in every state now authorize or mandate warrantless arrest for most misdemeanor and felony assaults related to domestic violence, and in many states, statutes authorize or mandate arrest for violation of protection orders.⁶

Crimes involving sexual assault pose unique challenges to law enforcement agencies. For many years, the false assumption that most sexual assault perpetrators are strangers to their victims defined law enforcement's response to sexual assault cases. Today, there is increased understanding that many sexual assault victims know their offenders. Consequently, investigation strategies have begun to move beyond establishing the offender's identity to building a case that will challenge consent-based defenses and jury biases against common actions by victims, such as reporting the crime some time after it occurred and engaging in what is perceived to be unsafe activity prior to the assault. Law enforcement agencies are urged to apply appropriate resources and existing laws to all sexual assault cases that meet the statutory requirements, regardless of the victim-offender relationship, the victim's behavior preceding the crime, or other factors that have historically characterized these cases as difficult.

Despite improvements in the law enforcement response to violence against women, many challenges still remain. Law enforcement efforts in rural communities are often hampered by distance and lack of resources, and the capacity of both

police personnel and community members to aid victims are often limited. Many police departments are just now developing the protocols necessary to address sexual assault, dating or domestic violence, or stalking committed by law enforcement officers themselves. The arrest rate of victims of domestic violence for assaults on their abusive partners or spouses has increased dramatically in some communities in the past 5 years.⁷ Many believe that this is an unintended consequence of less-than-careful implementation of mandatory arrest policies. Rather than fully investigating incidents in which both parties allege violence by the other or in which both parties have sustained injuries, responding officers have short-circuited the assessment of probable cause by arresting and charging both parties.

The Violent Crime Control and Law Enforcement Act of 1994 (which authorizes funds to promote community policing and created the Violence Against Women Act) provided an infusion of federal resources—both grants and technical assistance—to help address some of these challenges. Legislatures and executive agencies in many states have supplemented these federal resources. Support from both federal and state levels will maintain the momentum and expand the ability of law enforcement to intervene effectively to end violence against women.

Police officers are the gatekeepers of the criminal justice system. Law enforcement has offered powerful leadership efforts around the country to end violence against women. Experience has demonstrated that vigorous policing, when coordinated with efforts by prosecution, probation, the judiciary, sexual assault and domestic violence advocacy groups, shelters, and other community organizations, can deter sexual assault, dating and domestic violence, and stalking and avert life-imperiling injuries and homicides.

Outlined below are specific actions that law enforcement personnel can take to end violence against women.

The Role of Law Enforcement Agencies

1. Institute aggressive arrest policies against perpetrators of sexual assault, dating and domestic violence, and stalking.

- ◆ Encourage or mandate arrests of offenders based on probable cause that an offense has been committed.

2. Implement comprehensive protocols for law enforcement response to violence against women.

- ◆ Include in such protocols a statement of purpose and guiding principles; a policy statement; procedures for dispatch, initial response, investigation, incident reports, followup investigation, arrest, and requests for bail increases or conditions of release; and responses to violations of protection orders.
- ◆ Consider developing specialized units or specially trained personnel to respond to incidents of sexual assault, dating and domestic violence, and stalking.
- ◆ Develop and implement specific training protocols related to violence against women.
- ◆ Develop and implement procedures to deter and respond to violence against women committed by law enforcement officers.
- ◆ In sexual assault protocols, prohibit specific actions that treat sexual assault victims differently from other crime victims and may discourage victims from participating in the investigation of a case, such as routine questioning about prior sexual partners (unless the offender's identity is a legitimate issue in the case) and requiring that victims undergo a polygraph test.
- ◆ Develop and implement specific protocols for responding to stalking.⁸

3. Implement standardized, comprehensive guidelines and tools for collecting evidence in cases of sexual assault, domestic violence, and stalking.

- ◆ Address the following in evidence collection guidelines: 911 tapes; victim and crime scene photos⁹; taped interviews with all witnesses (including children); excited utterance statements; inquiry of victims and databases that may include perpetrators' criminal histories; identification of outstanding protection orders,

warrants, or unexecuted judgments and probation or conditions on release; completion of a body chart to record a victim's injuries and areas of pain; collection of forensic evidence from a victim's body; taking of a urine sample if "rape drugs" are suspected; collection or photographs of crime scene physical evidence, including property destroyed or damaged; seizure and storage of firearms; and documentation of corroborative evidence.

- ◆ Establish clear guidelines for warranted drug screens. Increase the ability of investigating officers to detect surreptitious drugging of the victim involving flunitrazepam (Rohypnol), gamma hydroxybutyrate (GHB), ketamine, and other over-the-counter or prescription medications commonly known as "rape drugs." Fully inform victims who are supplying urine for drug screens that full drug screens might detect illegal substances.
- ◆ Conduct followup contacts with victims for investigative purposes, to provide victim support, and to further engage victims in the criminal legal process.

4. Join forces with the health care community to maximize evidence collection in sexual assault cases using specialized forensic medical examination programs.

- ◆ Participate in the development or expansion of SANE (sexual assault nurse examiner) programs, also known as SAE (sexual assault examiner) and SAFE (sexual assault forensic examiner) programs.
- ◆ As appropriate, participate as presenters and participants in SANE training programs.

5. Establish specialized approaches, staffing, and units to respond to violence against women.

- ◆ Participate in locally organized sexual assault response teams (SARTs) to improve the experience of sexual assault victims in the criminal justice and health care systems and enhance evidence collection for sex offender prosecution. In many jurisdictions, SARTs include crisis counselors and advocates, prosecutors, forensic nurses, patrol officers, sex crimes investigators, and mental health professionals. Some teams deploy several members to a crime scene.

- ◆ Consider assembling rapid response teams that address domestic violence while maintaining strict victim confidentiality. Although these teams typically establish a partnership between police agencies and domestic violence programs for intervention, investigation, and victim support, they also may link with other agencies to promote prosecution and victim safety.

6. Require the prompt completion of detailed incident reports and ensure their availability to victim advocacy agencies and victims as appropriate.

- ◆ Use supplemental reporting forms or expanded incident report forms to more fully document acts of violence against women. Expanded reporting forms should include data elements used by the Federal Bureau of Investigation's (FBI's) National Incident-Based Reporting System (NIBRS),¹⁰ and many departments are now flagging sexual assault, domestic violence, and stalking cases. These reports help victims pursue protection orders, civil legal remedies, immigration self-petitioning, insurance benefits, and crime victim compensation claims.
- ◆ Provide special domestic violence supplemental report forms, currently used by many departments, to guide officers to consider critical evidence and circumstances as they investigate cases.

7. Act affirmatively to prevent violence against women committed by and against law enforcement personnel.

- ◆ Adopt policies to both prevent violence against women by law enforcement personnel and effectively investigate reports of such violence. Initiate programs that begin in the prehire screening process, include spouse and partner prehire education components, and continue throughout the careers of officers. Develop internal investigation procedures, both criminal and administrative, and develop guidelines for prosecuting police who commit violence against women.¹¹

8. Provide extensive assistance to victims of violence against women and comply with all laws protecting victims' rights.

- ◆ Train law enforcement officers on laws that require victim notification of rights, legal options, and services available to them.
- ◆ As required by statute or department policy, provide victims with officer names and contact information.
- ◆ Consider providing cellular telephones, tape recorders, transportation to hearings, and health or victim advocacy services, which are particularly helpful in rural areas.
- ◆ Create or expand victim assistance units within police departments. In some of these programs, victim assistance providers accompany law enforcement personnel on calls so that they can assist victims at the earliest stage of the case.
- ◆ Advise victims at the outset of a criminal investigation of their privacy rights, including their right to not reveal personal information that is not directly related to the investigation. Explain to each victim, however, that refusing to proceed may affect the investigation or law enforcement's ability to initiate the prosecution of a case.
- ◆ Advise victims that they may, but are under no obligation to, talk to the perpetrator's defense attorney or an investigator working for the defense attorney. Also inform them that they do not have to speak to members of the media.

9. Design procedures to ensure the confidentiality of information related to victims of sexual assault, dating and domestic violence, and stalking.

- ◆ Ensure that a victim's identity, address, and other contact information are kept confidential. Share this information with the prosecution only—not with the media, counsel for the accused, or any third party. The disclosure of confidential victim information to unauthorized persons should be grounds for disciplinary action.
- ◆ Ensure that investigative procedures do not compromise safety strategies used by victims of sexual assault, dating and domestic violence, and stalking. Recognize that victims of these crimes may frequently relocate or reside in emergency shelters, change telephone numbers or e-mail addresses, alter work schedules or find new employment, open new bank accounts, or

replace cars, all in an attempt to limit perpetrator contact and the chance of further violence.

10. Use current technology in the service of victim protection and offender accountability.

- ◆ Continue to expand and update uses of technology, including (but not limited to) sophisticated computer systems for dispatch, case tracking, and review of protection order and sex offender registries and to ascertain criminal histories and outstanding warrants and facilitate firearms instant checks for offenders; further development of electronic monitoring systems, pendant alarm programs, crime mapping, and incident report writing; expansion of Telecommunications Device for the Deaf (TDD) access; and coordination of emergency cell phone distribution to victims.

11. Require ongoing training of all sworn and civilian personnel on issues related to sexual assault, dating and domestic violence, and stalking.

- ◆ As a matter of policy, ensure that patrol officers, investigators, members of specialized units, supervisors, and all department personnel who have contact with the public receive training on issues related to violence against women. Recognize that in many jurisdictions, it is the patrol officer who conducts an initial interview that sets the tone for the victim's subsequent interaction with law enforcement.
- ◆ Involve criminal justice system personnel and victim advocates in the delivery of all department training on violence against women issues, and base training on current research about offenders and victims.

12. Provide law enforcement personnel training on sexual assault that enables them to work well with victims and conduct effective investigations of incidents of nonstranger sexual assault.

- ◆ Use training to address misconceptions about sexual assault that can affect the response to and investigation of particular cases.
- ◆ Include discussions of marital rape in all sexual assault trainings.
- ◆ Teach law enforcement personnel how the trauma associated with sexual assault affects victim behavior and explain victim fears about participating in the criminal justice process.

- ◆ Ensure that investigators are skilled in substantiating victim statements. Teach evidentiary considerations in consent versus identity cases and strategies for building a strong case when an assault is reported long after it occurred.

13. Evaluate the rate of arrest of victims and implement strategies to eliminate inappropriate victim arrest.

- ◆ In every case in which both parties to a domestic violence incident allege violence, undertake a primary or predominant aggressor analysis¹² and evaluate claims of self- or third-party defense. Train officers to determine the primary aggressor by considering factors such as which person is determined to be the most significant, rather than the first, aggressor; the comparative extent of any injuries; assessment of injuries as offensive, defensive, or self-inflicted; whether one person is threatening or has threatened future harm against the other or toward another household or family member; the relative sizes and apparent strength of each person; the apparent fear or lack of fear between the parties involved; whether either person has a prior history of domestic violence; and statements made by witnesses.

14. Gather, analyze, and disseminate comprehensive data about reported sexual assaults and the outcome of such cases, including cases in which no suspect has been identified.

- ◆ In response to the underreporting of sexual assault cases, consider establishing methods for victims to report sexual assaults anonymously, and maintain a database of both formal and anonymous reports of sexual assault.

15. Continue and expand efforts for community education on sexual assault, dating and domestic violence, and stalking.

- ◆ Bring the credibility and authority of the law enforcement profession to bear on community outreach and education efforts that challenge misconceptions about violence against women.

16. Establish procedures for collaboration with federal law enforcement agencies and the local U.S. Attorney.

- ◆ Refer appropriate cases to U.S. Attorneys when federal crimes have been committed, including

interstate stalking, interstate domestic violence, and interstate violation of a protection order.

- ◆ Encourage effective use of procedures for referring and investigating felonies committed on Indian land, and encourage collaboration between local, state, tribal, and federal law enforcement agencies.

Prosecution of Crimes of Violence Against Women

Much has been learned about how to effectively prosecute perpetrators of violent crimes against women. Experience and research have led many prosecutors to participate in training on issues related to violence against women, develop specialized units to address sexual assault and domestic violence, share case information with other criminal justice and community entities, and establish protocols that address sexual assault, dating and domestic violence, and stalking. Additionally, because prosecutors have contact with all participants in the criminal justice system—victims, witnesses, judges and court staff, members of the defense bar, law enforcement personnel, advocates, probation/parole staff, and juries—they are in a position to provide significant leadership and expertise to efforts of the legal system and the community at large to address violence against women.

Lawsuits involving violence against women often challenge prosecutors to build cases without a victim's testimony, as in many domestic violence and stalking cases, or to corroborate the victim's testimony, as in sexual assault cases. Two decades of experience handling domestic violence cases have revealed that a significant number of women victims do not want to testify as witnesses against their assailants. There are several reasons for this reluctance. Victims of domestic violence may fear alienation from their families, faith communities, and other support networks if it is perceived that they assisted in the prosecution. Many victims fear that their testimony will result in the perpetrator retaliating against them, their children, or other family members and friends.

Similarly, sexual assault victims may consider testifying a traumatic process, fearing retaliation or that they will not be believed or will be blamed for the assault. Such fears are often compounded if the victim engaged in behavior that is inconsistent with traditional ideas about how women should act, such as going out alone late at night or using drugs or alcohol before the assault, or if the assailant enjoys social standing within the community. Stalking victims may have serious and justified concerns about their safety when perpetrators are released on bail. Immigrant women may fear that conviction will result in their or their partner's deportation. Many victims are still not accorded the requisite protections and services that make participation as witnesses safe.

These realities compel prosecutors to make victim safety, dignity, and well-being priorities along with offender accountability to ensure effective prosecution in these cases. Such priorities are best attained through an individual evaluation and assessment of each case involving sexual assault, domestic violence, or stalking to understand and address the safety requirements of the victim as the prosecutor builds his or her case against the defendant.

Redefine Success for Prosecutors

Vigorous prosecution plays an important role in a coordinated community response to violent crimes against women. Responding with serious criminal sanctions communicates to perpetrators that their behavior is not acceptable and to victims and the community that the abuse is not the victims' fault, the perpetrators' actions are criminal, and help is available from the criminal justice system.

Prosecutors often function as one of the barometers for a community's tolerance of violence against women. Although a case involving violence against women may meet the statutory definition of a crime, it may still be declined for prosecution in anticipation of jury bias against the victim due to the victim's relationship with the perpetrator (as in marital sexual assault), victim behavior prior to or after the assault, or other inappropriate factors, including gender, racial bias, or stereotyping.

Sexual assault cases in particular often depend on the jury believing the victim and, by definition, are difficult cases to win. When local prosecutors pursue even these difficult cases, their actions send the message that no one deserves to be physically or sexually abused.

Victims benefit most from participation in the criminal justice system when they can avoid assaultive or intimidating contact with the perpetrator, achieve some personal and economic restoration, and increase their personal safety. Prosecutors who understand the struggles faced by victims in deciding whether to participate in prosecution are adjusting their practice in important ways—they are increasing early contact with victims and listening to victim fears about testifying. In some cases, prosecutors may be able to try cases without the testimony of the victim. This may be possible if there is sufficient additional corroborative evidence. Prosecutors are also developing relationships with community-based advocates and supporting in-house victim/witness specialists to coordinate other services that victims may need.

Goals in cases involving violence against women must include restoring the victim's sense of dignity and safety by validating her decision to participate in prosecution, informing the victim of significant decisions about the case, and taking steps to connect her with community resources that can provide followup assistance.

Outlined below are specific actions that local, state, tribal, and federal prosecutors and law enforcement agencies; courts; and victim advocacy organizations can take to end violence against women.

Enhance Prosecution of Violence Against Women

1. Undertake specific projects with local, state, tribal, and federal law enforcement agencies to enhance efforts to protect victims and end violence against women.

- ◆ Collaborate with law enforcement agencies to develop guidelines for investigation and

evidence collection in cases involving sexual assault, dating and domestic violence, and stalking.

- ◆ Collaborate with law enforcement agencies, courts, and community-based advocacy organizations to examine the protection order enforcement process in each jurisdiction. Ensure that orders are entered into state registries and violations of protection orders are investigated and prosecuted.
- ◆ Collaborate with law enforcement agencies to develop curriculums to train dispatchers, line officers, supervisors, and law enforcement executives in investigation and evidence collection for cases involving violence against women. Curriculums should include training on the Violence Against Women Act (VAWA).
- ◆ Offer technical assistance to law enforcement agencies on issues of law related to violence against women, including but not limited to arrest and charging questions, evidence issues, weapons confiscation, victim protection, and provisions of VAWA.

2. Ensure that all prosecutors who work with cases involving sexual assault, dating and domestic violence, and stalking receive comprehensive training.

- ◆ Provide training on the nature, scope, and impact of sexual assault, dating and domestic violence, and stalking; how victims' experiences and circumstances affect their ability or willingness to participate in prosecution; applicable rules of evidence; relevant sentencing laws; effective prosecution strategies; and approaches to ensuring victim safety and offender accountability.
- ◆ Reinforce in training of prosecutors that most sexual assaults are committed by people known to the victim, involve little physical force, and are not reported immediately. Address the myth that women routinely falsely accuse men of rape. Address the difference between unfounded cases and false reports of sexual assault.
- ◆ Use multidisciplinary teams to deliver training. Include representatives from law enforcement, court-based victim/witness programs, and

community-based sexual assault and domestic violence advocacy programs.

3. Establish or strengthen vertical handling of sexual assault, domestic violence, and stalking cases.

- ◆ Organize vertical prosecution units that include prosecutors with advanced training in handling sexual assault, domestic violence, and stalking cases. Vertical case management, in which a prosecutor handles a case from initial intake or filing of charges through trial, ensures that prosecutors have maximum understanding of victims, and victims benefit by having to deal with only one prosecutor throughout their cases.

4. Promote the use of physical evidence and expert testimony in cases involving domestic violence and stalking.

- ◆ Train prosecutors to use physical evidence, expert witnesses, and other trial strategies to strengthen cases in which a victim is unavailable to testify or when it might be dangerous for her to do so.
- ◆ Before making the difficult decision to force a victim to testify, consider carefully all the factors underlying the victim's decision to not testify, including cultural and religious beliefs.

5. File motions to address victim privacy rights, personal rights, and evidentiary issues.

- ◆ File motions to poll the jury for beliefs that might raise concerns of gender bias.
- ◆ File motions to exclude unreliable expert/scientific evidence.

6. Design policies to maximize victim safety and dignity.

- ◆ Facilitate early contact with victims to review their legal rights and their role in the criminal justice process.
- ◆ Inform victims of charges against perpetrators, conditions of release, and the procedure for enforcing those conditions. Give victims a copy of the conditions of release whenever possible.
- ◆ Fully explain and, when possible and appropriate, involve victims in decisionmaking regarding charges, bail decisions, preparation for trial and plea negotiations, dangerousness hearings,

sentencing, and pre- and posttrial conditions of release.

- ◆ Fully explore the reasons a victim is hesitant or unwilling to testify and initiate charges for witness intimidation and obstruction of justice when appropriate.
- ◆ Protect victims against intrusive or embarrassing questions unless the questions are necessary and the reasons for asking them are explained.

7. Eliminate allocation of resources based on an office's or unit's conviction rate for cases involving violence against women.

- ◆ Allocate resources based on the number of cases reporting violence against women, not the number of cases in which charges are filed. Avoid predication of funding on conviction rates.

8. Engage in community outreach practices to engender the community's trust and increase the accessibility of the prosecutor's office.

- ◆ Participate in efforts to coordinate multidisciplinary responses to violence against women in the community.
- ◆ Team with law enforcement and advocacy organizations to provide information on services and laws relating to violence against women at public events, including street or county fairs and block parties, or at events organized by community organizations such as Rotary or Lions' Club organizations, parent-teacher associations, homeowners associations, and religious and faith-based organizations.
- ◆ Consider efforts to educate the community on crimes of violence against women as efforts to increase the knowledge base of the jury pool.

9. Create a process for victim advocacy and support by investing in the establishment of victim/witness programs and the expansion of community-based advocacy.

- ◆ Support victim/witness specialists to
 - Keep victims informed of the status of their cases.
 - Educate victims, family members, and others about the criminal justice process.

- Facilitate the submission of crime victim compensation claims and the identification of restitution claims.
- Explain and help file civil protection orders.
- Perform other services mandated by "victims' rights" statutes in many states.
- Provide information about community-based services victims may need.
- Explain to victims that they may need community-based services to assist them with safety planning.

◆ Support advocates from community-based sexual assault or domestic violence programs to

- Work specifically with victims of sexual assault, domestic violence, and stalking to provide a full range of services such as emergency housing, crisis counseling, legal advocacy, systems advocacy, safety planning, court and agency accompaniment, and emotional support.
- Educate victims about the civil and criminal legal processes and assist victims in meetings with criminal justice or human service agency personnel.
- Help women develop strategic plans related to emotional and psychological recovery, personal safety, and economic survival.
- Ensure privileged communications where provided by law.

10. Examine office practices and procedures to evaluate whether they inadvertently precipitate adverse outcomes for victims. These policies may include

- ◆ *"No drop" or presumptive prosecution practices that do not adequately consider victim safety:* "No drop" prosecution policies were implemented to remove perpetrators' control over cases by reducing their ability to intimidate victims into "dropping charges" and to take the responsibility for prosecution out of victims' hands by informing victims and perpetrators that the decision about whether to prosecute a case is based on the evidence of a crime and not dependent on victim cooperation. Prosecutors should recognize that prosecution can affect victims' safety or have other adverse consequences

(for immigration or financial status) on their families, and take these factors into consideration when deciding whether to proceed.

- ◆ *Calendaring of cases:* Delays in prosecution create significant disincentives to victim participation. “Fast track” prosecution policies can improve victim satisfaction and case outcomes because delays nearly always operate to the advantage of the defendant.
- ◆ *Criteria for prioritizing resources:* Criteria for prioritization may lead some prosecutors to direct resources to felony prosecutions, thereby compromising attention to misdemeanor crimes. Misdemeanor crimes often foreshadow or co-occur with more severe and dangerous assaults. Adequate prosecutorial resources should be assigned to misdemeanor crimes.
- ◆ *Measurements of successful disposition:* Conviction and plea rates, recidivism rates, and rates of victim participation are not the only measures of success. Victim safety, recovery, and sense of dignity must be factored in when evaluating criminal justice interventions, and public education may be necessary to support the prosecutor’s reevaluation of priorities.

11. Collect and disseminate data about the office’s or unit’s activity regarding sexual assault, domestic violence, and stalking cases.

- ◆ Regularly evaluate data on charging decisions, rates of dismissals, plea bargains, and sentencing recommendations related to cases involving violence against women.

Enhance Response to Federal Crimes Involving Violence Against Women

12. Cooperate in investigating and prosecuting federal crimes related to sexual assault, domestic violence, and stalking.

- ◆ Develop creative strategies to address cases involving violence against women and share information and promising practices with other professionals in the field.
- ◆ Emphasize cooperation in any interstate or firearm case that could potentially be prosecuted under federal domestic violence, stalking, or firearms laws. Evaluate the viability of

prosecution in any of the available jurisdictions to best achieve victim safety and offender accountability.

- ◆ Identify resources to address the onerous travel obligations for the victim caused when a case is prosecuted in several states.
- ◆ Coordinate schedules of concurrent prosecutions in state and federal courts to avoid scheduling conflicts.

13. Given the high rates of sexual assault and stalking of American Indian women reported in recent government studies, continue to strengthen the prosecution of felony sexual assault, domestic violence, and stalking on tribal land.

- ◆ Strengthen collaborative efforts among federal, tribal, state, and local law enforcement and prosecutors to ensure that crimes of violence against Indian women are more effectively addressed.
- ◆ Allocate adequate resources to vigorously prosecute sexual violence and other crimes of violence against Indian women.

The Courts and Judiciary: Innovations and Challenges

Until reforms in law enforcement and prosecution practice took hold over the past 15 years, criminal courts rarely heard cases of sexual assault, domestic violence, or stalking. When cases involving violence against women came forward, some criminal courts were not prepared to handle them. Cultural tolerance of violence toward women may have influenced some judicial attitudes that trivialized the harm to women and often blamed victims for assaults against them. Recent legal reforms have led to burgeoning caseloads and challenged resources.

The increase in caseloads has been complicated by the time and expertise required to ensure a fair hearing of the evidence. Tailoring individual sentences to safeguard and restore a particular victim and rehabilitate and deter a specific offender is also complex and time consuming. Increased or reallocated resources and innovative thinking have

been required to bring about the necessary expansion of information systems, reorganization of dockets, and specialization of personnel that have enabled some courts to implement processes that advance victim safety and offender accountability. Also, perpetrators of violence against women have been identified among those defendants who pose the most danger for judges, court personnel, victims, and the public. Hence, courthouse security has been upgraded in many jurisdictions to address the corresponding risks.

New judicial approaches are also being developed for stalkers who do not respond to intervention or who attempt to regain control over their victims. Most stalkers target female partners or acquaintances; four of five stalking victims are women.¹³ Women are stalked both while relationships are intact and afterwards.¹⁴ Stalkers are highly likely to continue pursuing victims absent unequivocal intervention. There also is elevated risk that men who persist in stalking will severely injure or kill intimate partners.

In the early 1990s, the State Justice Institute (SJI) began to fund education initiatives focused on improving court responses to sexual assault and domestic violence. SJI's commitment brought private funders and federal and state grantmakers to the table as well. The judicial education awards¹⁵ made by SJI and the U.S. Department of Justice's Violence Against Women Office, among others, have significantly increased opportunities for courts to access education on appropriate criminal court response to violence against women. These education initiatives have emphasized judicially led, interactive, action-planning training. All stress the importance of leadership by judges and court administrators in creating court systems that efficiently and effectively deliver justice—promoting victim safety and offender accountability. Currently, a few states, by statute or administrative rule, require judicial education on matters related to violence against women.¹⁶ Some codes and rules also require such education of court administrators and other court personnel.

Judges may look beyond the courthouse in their justice-making endeavors. Recognizing that justice is not achieved through the courts singularly, some judges and court administrators are participating in multidisciplinary task forces to improve the legal system's responses to domestic violence. Although the canons of judicial ethics clearly require judges to be actively involved in the fair and efficient administration of justice, some questions have been raised regarding whether judicial participation in these justice reform activities is appropriate. Other opinions have found that judicial participation is ethical and appropriate.¹⁷

What is clear is that judges can play an important leadership role in their public or private lives to positively affect how violence against women is viewed and treated by others in the community.

Outlined below are specific actions that judges, court administrators and personnel, bail commissioners, probation staff, victim/witness specialists, community-based advocates, and federal and state grantmakers and Congress can take to end violence against women.

The Role of Judges and Court Administrators

1. Design and manage courts to protect victims, court personnel, and the public from violence.

- ◆ Implement security measures to ensure that court processes are safe for all involved. Provide victim waiting rooms that are secured by law enforcement personnel. Make adherence to security procedures a condition of employment for all court staff.
- ◆ Manage courtrooms to promote the safety of victims, witnesses, jurors, court staff, and the public. Develop explicit guidelines for emergency response to violence and train all staff accordingly. Threats or acts of violence in the courthouse should result in detention of suspects, criminal prosecution, enhanced victim protection, and swift and public disposition of charges to promote confidence in the safety of the legal process.

2. Promptly hear cases involving violence against women.

- ◆ Evaluate and consider implementing mechanisms designed to increase victim safety such as the immediate issuance of protection orders, enhanced warrant systems, accelerated docketing, limitations on delays or continuances, and restitution.¹⁸
- ◆ Understand the extent to which time is a critical factor in criminal cases involving violence against women. Delays and continuances are likely to dissuade victims from participation in prosecution because they entail both danger and inconvenience for victims. Without intervention, perpetrators pose ongoing danger to victims. Unprotected victims are often targeted by perpetrators with threats and intimidation, and perpetrators may try to coerce victims to recant or resist testifying.
- ◆ Understand that numerous court appearances can adversely affect victims' economic stability, through lost income and even lost jobs. Victims of domestic violence who are financially dependent on their incarcerated perpetrators may suffer extreme economic hardship. Speedy resolution of cases helps victims obtain needed restitution or compensation.

3. Consider implementing specialized docketing or dedicated courts to handle cases involving sexual assault, domestic violence, and stalking.

- ◆ Establish specialized dockets and dedicated courtrooms as a response to the high volume of domestic violence criminal cases. Specialization allows judges to acquire knowledge about violence, risk assessment, recidivism, effective perpetrator intervention, community resources, information systems, and the protective and restorative requirements of victims. Special dockets and courts can be coordinated with specialized investigators, prosecutors, and probation officers.
- ◆ Explore the benefits of specialized handling of sexual assault and stalking cases.

4. Make warrants a priority for violent crimes against women.

- ◆ Issue bench warrants when perpetrators of sexual assault, domestic violence, and stalking fail

to appear at any legal proceeding in a criminal case involving violence against women.

- ◆ Establish procedures that provide for issuance of warrants around the clock.
- ◆ Issue warrants immediately for arrest and search and seizure of firearms when an offender has not complied with firearms prohibitions or has used violence in contravening any court order related to criminal matters involving violence against women.
- ◆ Invite but do not compel victims to provide information about offenders—their likely whereabouts, identifying features, employment, and other details that might assist in their location and arrest.

5. Develop administrative systems that preserve the confidential addresses of victims of violence and any name-change information.

- ◆ Hold victim contact, location, and name-change information confidential in secured databases or files, accessible only to authorized court personnel. Sexual assault survivors, battered women, and stalking victims frequently relocate, go to temporary shelters, or change telephone or e-mail addresses in attempts to limit perpetrator contact and opportunities for further violence. Victims sometimes change their names to reduce perpetrators' ability to track them and reoffend. It is imperative that courts not compromise these safety strategies.

6. Establish mechanisms for assessing the dangers posed by perpetrators.

- ◆ Initiate risk assessment at bail or arraignment proceedings and continue it throughout the legal process and for the full period of any sentence imposed.
- ◆ Evaluate the risk posed by the perpetrator to the victim, the victim's family, and the community when making a judicial decision.
- ◆ Invite victim input into risk assessment.
- ◆ Employ standardized instruments for risk assessment to ensure consistency and facilitate evaluation.

7. Retain qualified persons to translate and provide communication services for those victims and offenders who require language assistance.

- ◆ Ensure that interpreters are available and that they have been trained to work with victims of sexual assault, domestic violence, and stalking. Victims, witnesses, and defendants who do not speak English, who cannot read, or who are deaf, hard of hearing, or visually impaired require assistance for full and fair participation in the criminal court process. Language and communication services are increasingly important as this country becomes more diverse.
- ◆ Ensure that interpreters are qualified to help victims and offenders understand the sentences imposed, the conditions and potential consequences for violating those conditions, the process for surrendering firearms, compliance procedures, and methods for enforcing sentences.
- ◆ Ensure that posters, brochures, forms, videos, and other informational material provided by courts are culturally and linguistically appropriate.

8. Encourage advocates and victim/witness specialists to participate in civil and criminal legal processes.

- ◆ The court should involve community-based advocates and victim/witness specialists in educating victims on victims' rights, protective orders and their enforcement, the civil and criminal legal processes, victim input or participation in court processes, scheduling and appearances at hearings, security procedures in the courthouse, and crime victim compensation claims and restitution.
- ◆ Some advocates and victim/witness specialists provide support during proceedings and help survivors communicate more effectively with bail commissioners, arraignment magistrates, prosecutors, and probation staff.
- ◆ In some judicial districts, advocates offer "court schools" for victims and witnesses to acquaint them with court processes and help them participate most effectively in the civil and criminal justice systems.

- ◆ Consider including the costs of victim advocates and victim/witness specialists in court budgets.

9. Develop information systems that enhance judicial access to relevant information about perpetrators of violence against women.

- ◆ Maintain information systems that permit judges and other court personnel to learn about perpetrators' criminal histories, outstanding warrants, current conditions on release, probation or parole, existing protection orders, and other family or juvenile court orders that may be in effect.
- ◆ To support informed decisionmaking, give bail commissioners, magistrates, judges, and other court personnel and probation staff access to legal databases and other information to assess risk, draft orders, review compliance, pursue revocation, and otherwise preside fairly over cases involving violence against women.
- ◆ Bear in mind that the criminal history of violent perpetrators is relevant to risk assessments and development of sentencing conditions.
- ◆ Enter all conditions of release,¹⁹ no-contact or protection orders, sentences, and conditions of probation or parole into court and appropriate law enforcement databases.

10. Develop information systems that enhance law enforcement access to relevant information about perpetrators of violence against women.

- ◆ Devise systems to enter data about sex offenders into state sex offender registries.
- ◆ Create failsafe systems to export protection orders to state protection order registries, including data such as perpetrator identifiers that can be passed on to the FBI's National Crime Information Center (NCIC) Protection Order File,²⁰ Brady identifiers to be eligible for entry into the federal instant check system related to firearms prohibitions,²¹ and conditions on release and probation or parole.

11. Ensure the physical accessibility of courthouses and the judiciary.

- ◆ Consider the use of telephone, fax, video, or Internet technology to give victims who live in rural areas and those who cannot afford or access public transportation the ability to

participate in interviews, protection order or bail proceedings, preliminary hearings, and postdispositional matters.

- ◆ Work with the state to reimburse victims for transportation costs for trial and make arrangements for transportation from remote areas. Cover the costs of housing and food for those victims who live too far away to commute to hearings.

12. Use judicial selection and assignment processes to ensure that judges presiding over violence against women cases are well informed.

- ◆ Ensure that judges assigned to handle domestic violence cases are adequately trained to assess issues that are unique to these cases.
- ◆ In so far as is practicable, assign judges who demonstrate familiarity with violence against women and the range of judicial and community interventions that advance victim safety and offender accountability to cases and dockets involving violence against women.
- ◆ Recognize that bureaucratic handling that trivializes cases of violence against women vindicates offenders, discourages victims from seeking justice, and undermines the court's authority.

13. Exempt criminal cases related to violence against women from mediation.

- ◆ Avoid the use of mediation or other conciliation processes in violence against women cases.²² The use of mediation or conferencing between the parties can be dangerous and highly debilitating to victims.
- ◆ Consider victim-offender mediation or other practices designed to teach the offender the full impact of his criminal acts inappropriate for use with batterers, sex offenders, or stalkers.

14. Undertake evaluation research on the process and outcomes of court reforms.

- ◆ Evaluate the efficacy of court practices in cases involving violence against women. Identify the strengths and weaknesses of court systems and practices through research on the judicial process and its outcomes.

What Judges Can Do in Response to Violence Against Women

15. Impose conditions of bail or release that promote offender accountability and prevent reoffense.

- ◆ Consider additional factors beyond risk of flight when making recommendations to courts related to bail and conditions of release in cases of violence against women.²³ Numerous state codes authorize or mandate that magistrates and bail commissioners examine the dangers posed by perpetrators of violence against women and delineate conditions designed to stop the violence.²⁴
- ◆ Include restrictions on access to other potential victims as part of conditions for sex offenders.

16. Avoid penalizing victims for refusing to testify or participate in criminal cases involving violence against women.

- ◆ Judicial compulsion to penalize victims who refuse to participate in the criminal case against their batterer may revictimize survivors, jeopardize their safety, and deter them from seeking help in the future.

17. Review court and law enforcement databases before issuing orders in criminal cases involving violence against women.

- ◆ Review databases to identify all court orders issued against the perpetrator.
- ◆ Avoid issuing conflicting orders that place the perpetrator at risk of penalty for violating one order while complying with another. Conflicting orders also place enforcing police officers in the untenable position of choosing between court orders.

18. Carefully scrutinize negotiated pleas and sentences in criminal cases involving violence against women.

- ◆ Scrutinize pleas in sexual assault, domestic violence, and stalking cases. Reject pleas that do not provide for offender accountability or may jeopardize the victim's safety.
- ◆ Invite victim input in devising "criminal protection orders." Judges are authorized by common and statutory law to impose conditions on sentences. State legislation enumerates the elements of these conditions. Some state codes explicitly

allow judges to protect victims or witnesses from intimidation or recurring violence.

19. Incarcerate violent offenders as appropriate.

- ◆ Continue to confine sex offenders, and continue civil commitments of recidivist sex offenders. Exercise judicial authority to remove serial sex offenders from the community.
- ◆ Incarcerate batterers who are recidivists or who pose a high risk of continuing danger to victims. Research confirms that batterers often use escalated and more injurious violence at and after the time that the victim separates from the abuse and when the victim seeks assistance from law enforcement or the court.²⁵

20. During sentencing hearings, inform offenders and victims about the terms and conditions of a sentence and the possible consequences of noncompliance.

- ◆ Discuss all terms and conditions of sentences imposed in violence against women criminal cases and the potential consequences of non-compliance. Offenders in intimate violence and stalking cases often exhibit denial and cognitive distortions of their behavior. Because they blame others for limitations on access to their victims or the provisions in their sentences that circumscribe their behavior, it is essential that judges inform offenders of all the conditions of their sentences and the consequences of noncompliance.
- ◆ Inform convicted offenders when, where, and how they are to surrender all firearms and ammunition.
- ◆ Help victims understand the mandates of a sentence so that they can accurately assess whether a perpetrator's conduct violates those prescriptions. Provide victims with information about the processes for enforcing court orders and what to do if they feel in danger of recurring violence.

21. Conduct compliance reviews and, in locations where courts retain the authority to modify a sentence, modify conditions to respond to a significant change in risk or circumstances.

- ◆ Where appropriate, enhance scrutiny and supervision of perpetrators of sexual assault, domestic violence, and stalking. Judges and court

personnel in jurisdictions that invest time in compliance reviews find that scrutiny and supervision are useful prevention strategies. In some judicial districts, requiring regular written reports of providers (such as batterer intervention programs) to whom perpetrators are mandated for services has minimized the time invested by probation and courts.

- ◆ Require regular reports to the court about mandated attendance, participation, and completion of counseling, drug or mental health treatment, batterer intervention, or sex offender treatment programs, as well as immediate reports to probation and/or the police about recurring violence.
- ◆ Modify conditions of release or sentence to address any threat or danger that perpetrators of violence against women pose to victims or the community. Enter any modification into the appropriate law enforcement and court databases.

22. Make enforcing restitution awards a priority.

- ◆ Ensure that victims, especially those who experience significant economic losses related to violent crimes, benefit from restitution in payments made pursuant to sentencing. Often, crime victims have received funds paid by offenders only after court costs, counseling fees, fines, and penalties were paid.
- ◆ Mitigate adverse effects of victimization by broadly conceiving restitution. For example, consider allowing victims to claim not just medical or counseling reimbursement, but property replacement, lost wages or tuition, relocation costs, and funds expended for participation in legal processes. The restitution paid to victims helps them reestablish their economic viability and move toward recovery.
- ◆ Tightly monitor repayment schedules.
- ◆ Pursue other collection strategies permitted by statute or case law, including wage attachment, asset forfeiture or judgments, and asset attachments, when restitution is not made in a timely fashion. Offender work release programs that carefully use mechanisms to protect victims may be a strategy for fulfilling restitution requirements.

23. Continue and expand education for judges and other court personnel on sexual assault, domestic violence, and stalking.

- ◆ Support ongoing judicial education and training that emphasizes the risks posed to victims and the community, the recidivism of offenders absent swift and predictable interventions, the impact of violence on victims and their children, and the potential contributions that judges can make to promote victim and community safety and offender accountability.

How Judges and Court Administrators Can Contribute to Coordinated Community Responses

24. Participate in state and local councils or task forces on violence against women.

- ◆ Organize and serve on coordinating bodies designed to improve practice and policy throughout local and state legal systems. Judges bring significant personal and institutional power to these justice-seeking efforts. Models of coordinated community response are numerous.²⁶

25. Initiate or participate in fatality reviews.

- ◆ Help develop and implement domestic violence and stalking fatality reviews.²⁷ Modeled on child death review initiatives, these efforts have permitted the legal system, advocacy community, and medical field to examine community systems to assess whether domestic violence homicides might have been prevented had various institutions throughout the community responded differently.

26. Participate in community education of professionals and the general public.

- ◆ Implement standards for intervention and community service programs affiliated with courts and charged with providing rehabilitative, monitoring, or educational services to offenders.
- ◆ Educate professionals in related fields on the law and the workings of court processes. Provide ongoing instruction for colleagues in the legal and human services systems as new statutes and court rules are promulgated.
- ◆ Teach community-based victim advocates how they can assist victims in the legal process.

The Role of Federal and State Grantmakers and Congress

27. Increase funding available to courts to expand and upgrade their responses to violence against women.

- ◆ Redeploy judicial resources to help jurisdictions accomplish the recommendations in this *Toolkit*.
- ◆ Set aside substantial funding to develop and manage information systems to enhance court responses related to violence against women. Automation of the courts and development of information systems requires significant, sustained resources. Protecting these information systems from unauthorized access and ensuring the confidentiality of victim information is essential but can be costly.

Pretrial Release, Presentence Investigation, and Probation

Agencies facing burgeoning sexual assault, domestic violence, and stalking caseloads are struggling to tailor the traditional approaches of pretrial release, presentence investigation, and probation to the unique requirements of these criminal defendants.

Pretrial release agencies, on which the criminal justice system has historically relied to assess defendants' risk of flight and danger to the public, are now asked to consider additional factors in cases of violence against women. This supplementary investigation usually considers the risk of further harm to or intimidation of the crime victim; risk of harm to the victim's children, family, or supporters; amenability of the perpetrator to specialized sex offender management or batterer intervention programs; and, when feasible, supervision of the offender pending trial.

Agencies that draft presentence reports for court consideration were not traditionally asked to investigate and make recommendations on misdemeanor cases. People who commit crimes of sexual assault, domestic violence, and stalking often recidivate during the pendency of prosecution and escalate the severity and frequency of their criminal

conduct, making early and appropriate intervention critical. Misdemeanor intervention may, in fact, be effective in terms of long-term resistance. Today, resources are being directed at increasing presentence investigations in misdemeanor cases involving violence against women.

Probation offices have begun to establish programs for sex offender and batterer supervision, management, and intervention. Practices include specific conditions on probation issued by courts or by probation offices; assessment systems that set the level of supervision based on the risk posed by offenders; intensive and specialized probation and field supervision; and routine feedback to courts regarding perpetrator compliance.

Although pretrial service and probation agents have not always considered regular contact with victims as appropriate or necessary components of their work, the nature of intimate partner crimes is that reoffenses usually occur against the same victim within the 6 months following the presenting charge. Sex offenders who target nonpartner or acquaintance victims may not reassault the same victim but are likely to assault another during the pendency of prosecution. Victims may be the best source for information about the defendant's compliance with some release and probation terms. Victim safety can often be assessed only by regular contact. Ensuring victim safety and offender accountability requires reaching out to victims.

Innovative policies, supervision styles, and management systems can greatly enhance oversight of probationers and parolees and increase offender accountability. They must also advance the safety and restoration interests of victims. Evaluation of all probation approaches should carefully examine the efficacy and efficiency of policies and practices from the perspective of victim and community safety and restoration.

Outlined below are specific actions that court personnel, victim/witness staff, community-based victim advocates, law enforcement personnel, and pretrial release, presentence investigation, probation, and related agencies can take to end violence against women.

The Role of Pretrial Release, Presentence Investigation, Probation, and Related Agencies

1. Conduct prerelease assessments for those accused of misdemeanor and felony sexual assault, domestic violence, and stalking. Make these assessments available electronically to all bail commissioners and arraignment judges.

- ◆ Increase bail commissioners' and arraigning judges' access to protection order registries, sex offender registries, databases containing conditions on release or probation, risk assessments conducted by various sectors of the criminal justice system, and victim feedback on potential risk and protective conditions on release.
- ◆ Create an electronic network of databases for bail commissioners or judges to help them evaluate whether bail should be denied, the appropriate amount of any cash bail granted, and conditions to be imposed on bail for victim protection and offender restraint.
- ◆ Develop assessment tools to enhance both the quality and speed of pretrial release data gathering.
- ◆ Overcome judicial resistance to pretrial detention by educating judges and court administrators on the risks posed by certain offenders. Pretrial services staff might consider submitting memos delineating how the profile of a particular perpetrator matches the risk markers for lethality or heightened dangerousness as revealed in current research literature.

2. Submit a presentence investigation report to the court in every sexual assault, domestic violence, and stalking case.

- ◆ Report to sentencing courts on the history of prior convictions for a defendant accused of sexual assault, domestic violence, or stalking crimes; records related to intimidation or threats against this or other victims; substantiated findings or convictions for child abuse; history of protection orders issued against the defendant; listing of the defendant in any sex offender registry; history of firearms ownership or possession and use; abuse of pets or animals; personal

history of the defendant; history of addictions; defendant treatment needs and amenability to treatment; compliance with prior probation or other intervention; and victim impact statement.

- ◆ When preparing presentence reports on sex offenders, perpetrators of dating and domestic violence, and stalkers, consider their elevated rates of recidivism and the likelihood that the defendant will attempt to exert control over the victim and perhaps people associated with the victim.
- ◆ Recommend conditions to the sentencing judge that will limit perpetrator access (directly or through third parties) to victims and provide safeguards for all those at risk.
- ◆ Adopt a crime-specific assessment form to use in preparing presentence investigations and reports. Use standard forms to help court or probation staff identify and assess all of the relevant and available information. If during the course of assessment it appears that the offender has committed other crimes of interpersonal violence, include this information in the presentence report.
- ◆ Ensure that all sentences include detailed, special conditions on probation or parole related to the specific profile of the offender and the safety requirements of direct and indirect victims, such as the stalked woman and her family members.
- ◆ Assess the level of threat that is posed by the offender to the victim, her family, or the community, using one of the several risk assessment tools currently available. Ask victims whether they consider themselves to be at risk of violence, abuse, or coercive controls from the perpetrator. Craft sentences and modify probation or parole conditions based on the risks posed.

3. Develop new models of probation supervision and management of offenders. Such models could include

- ◆ Assessing defendants for dangerousness to the victim, her children, and others in the community, including separate assessment tools for sex offenders and perpetrators of dating and domestic violence. Usually, this assessment is a supplement to the standard evaluation instrument. It is crucial that probation agencies make supervision decisions based on these assessments. (See

assessment factors listed above in recommendation 2, presentence investigation.)

- ◆ Automatically classifying sex offenders, perpetrators of domestic violence, and stalkers for maximum supervision and management.
- ◆ Building close, cooperative working relationships among probation and law enforcement, prosecution, courts, victim advocacy organizations, specialized sex offender and batterer treatment providers, mental health and addictions agencies, and children's services.
- ◆ Consistently sanctioning perpetrators for violations. Denial of their acts of violence, rationalization of the conduct acknowledged, and intimidation of victims are all exacerbated when offenders violate probation terms, however minor, with impunity.
- ◆ Expediting hearings on probation or parole violation charges related to intimate partner and sexual violence and using dedicated or specialized courts to enable swift, predictable, and effective penalty imposition.²⁸
- ◆ Enhancing the development and use of sex offender registries. Convicted sex offenders are required to register with the local police in any community in which they reside; the statutes often authorize community member access to registry information. Every state has enacted some form of sex offender registration law. At least 14 state codes authorize or require electronic posting of registration information on the Internet.²⁹
- ◆ Initiating programs for community volunteers or chaperones who help sex offenders reintegrate into communities.
- ◆ Providing specialized supervision of sex offenders and perpetrators of domestic violence. Such an approach requires light caseloads and much more contact with offenders, which can be very costly.
- ◆ Moving from court- or office-based supervision to field or community supervision. Proponents of community supervision believe it is more effective for monitoring compliance and promoting victim safety.

- ◆ Expanding use of technology-based supervision enhancements to help manage sexual assault, domestic violence, and stalking offenders. Two examples of such technology are electronic monitoring and automated check-ins, both of which have greatly improved in recent years and now provide more reliable data on compliance. Technology in the service of supervision and management achieves closer supervision at reduced costs.
- ◆ Adding victim advocates to the probation staff to help victims with safety planning and legal options assessment, information, and referral. In a few jurisdictions, probation staff rotate through the victim advocate position; in others, new staff are added to offer support and advocacy to victims of violent crimes. In most communities, however, advocacy and services for victims of sexual assault, domestic violence, and stalking are provided by community-based service organizations that partner with probation departments to offer assistance to crime victims.

4. Develop new strategies to ensure regular contact between probation offices and victims of sexual assault, dating and domestic violence, and stalking.

- ◆ Focus victim contact prior to arraignment on identifying risk and assessing whether that risk can be managed by conditions on release or if the accused should be detained pending prosecution. Ideally, conduct an initial victim interview prior to meeting with the offender.
- ◆ Focus victim contact in presentencing investigations on identifying risk of future escalated violence and safeguards to protect victims and the community from recurring violence. Solicit victim input regarding sentencing. Explore issues related to incarceration versus probation, rehabilitation, specialized offender intervention, monitoring, or community service, as well as victim losses and proposed restitution.
- ◆ Focus postdisposition victim contact on assessing risk of further violence. Inform victims of the sentence imposed and the conditions on probation or parole, and advise victims about ways to participate in compliance enforcement.

- ◆ In all types of risk assessments, address cultural barriers that victims may encounter when they attempt to obtain services and law enforcement response. Ensure that all risk assessment strategies are culturally and linguistically competent.
- ◆ Early in the process, disclose limits on the confidentiality of communication between the victim and victim/witness staff or community-based victim advocates who work in probation offices. Without such disclosures, many women are understandably confused about the roles of staff. Without an accurate understanding of the extent and limitations of confidentiality, victims cannot exercise informed choices related to how much information they want to disclose (and to whom) about themselves, their children, or their assailants.

An Emerging Issue: Victim-Offender Mediation

Victim-offender mediation, conferencing, or community justice initiatives should never address the issue of offender culpability for the crime(s) charged, particularly in cases of violence against women. Victim-offender mediation or other practices that are designed to give the offender insight into the full impact of criminal acts are also generally not appropriate for use with batterers, sex offenders, or stalkers, most of whom fully intend the impact of their actions.

One of the effects of sexual assault, domestic violence, and stalking is an extreme power imbalance between the parties; many victims are intimidated into silence and highly fearful of retaliatory or recurring violence from the perpetrator. The use of mediation or conferencing between the parties can be dangerous and highly debilitating to victims. Victim-offender mediation or conferencing should not be attempted in cases in which the offender has controlled and terrorized the victim. Mediation or conferencing should never be compelled by the court or encouraged by probation. Guidelines for facilitated encounters with offenders should be determined by victims in consultation with community-based victim advocates and probation staff.

For further discussion of mediation, see the “Alternative Dispute Resolution” section in Toolkit chapter “Enhancing the Response of the Justice System: Civil Remedies.”

Women Victims of Violence as Criminal Defendants

Many female offenders are victims of violence who have been arrested or convicted as a direct or indirect result of the abuse they experienced.³⁰ Those whose involvement in the criminal justice system results directly from their victimization include women who kill or assault their abusers in self-defense, women coerced into criminal activity by their abusers, women charged with failing to protect their children from an abuser’s violence, and women charged with parental kidnapping in their attempts to protect their children from abusers. For these women, information about their histories and experiences of abuse may be directly relevant to their defense. Other women might be charged with or convicted of a crime not directly related to abuse, but the path that led them into conflict with the law began with abuse.

An unintended consequence of some of the recently adopted domestic violence arrest policies has been an increasing number of arrests of women victims. Some battered women are being arrested after acting in self-defense, when their abusers level false charges against them, or when police officers fail to adequately investigate the alleged criminal conduct and identify the primary or predominant aggressor. The arrest of both parties or the singular arrest of victims is increasing significantly in some jurisdictions, particularly where policy and protocol development and training have been inadequate.

Women’s prisons in this country are filled with victims of violence. Studies indicate that the majority of women prisoners have experienced some form of abuse as an adult or child,³¹ and that most female prisoners are incarcerated for

nonviolent offenses.³² Limited appeal and postconviction options with very tight deadlines have prevented many women prisoners from challenging their convictions. Very few alternative sentencing programs are available, including specific programs for women with small children. Early release options, such as parole and clemency, have become more difficult for any prisoner to receive, including women victims of violence, and many of the latter are serving extremely long prison sentences.

Outlined below are specific actions that criminal justice system practitioners, community advocates, law enforcement agencies, state legislatures, and state, federal, and private funders can take to end violence against women.

The Role of Defense Counsel

1. Provide women victims of violence who face criminal charges or are in prison with access to quality legal representation.

- ◆ Give all women victims charged with crimes, including indigent defendants, access to competent legal counsel. When needed, provide for access to expert witnesses on abuse and its effects. Experts may be required at the trial, on appeal, through state and federal postconviction processes, at parole, and during clemency stages of the legal process.

The Role of Community Advocates

2. Develop programs and protocols to help identify women defendants whose abuse history is relevant to their current criminal charges.

- ◆ Implement protocols to identify, soon after arrest, women defendants who are victims of violence. Understand that women victim-defendants are often reluctant to discuss their victimization with defense counsel and may not understand the extent to which it is critical to their defense claims. As appropriate, help defense counsel explore the relevance of the abuse to legal claims.

3. Train defense counsel to understand the significance of any violence experienced by women victim-defendants.

- ◆ Develop the expertise needed to advocate effectively for victims of violence who are also defendants, including providing services for incarcerated women.
- ◆ Teach defense counsel about the possible dangers a victim-defendant faces during the trial process and help victims develop and implement safety plans.
- ◆ Understand the potential long-term consequences of conviction for victim-defendants. Work with defense counsel to fully inform each victim client about these consequences before the victim decides on a course of action, including making a plea.

4. Provide an array of services for women victim-defendants and incarcerated women who have disclosed histories of sexual assault, dating or domestic violence, or stalking.

- ◆ Seek funding to develop victim-centered, gender-specific, gender-relevant, and confidential services for women victims who are newly jailed, facing trial, out on bail, or serving sentences, as well as women who have completed their sentences and returned to their communities.
- ◆ Provide victim-defendants with advocacy and support services even when their abuse history is not directly related to their defense claims.

5. Safeguard the confidentiality of communication with women victim-defendants and incarcerated women.

- ◆ Diligently protect the confidentiality of communication with counsel of all women victim-defendants and incarcerated women who are victims of violence.
- ◆ Understand the limits of the confidentiality that can be offered to victim-defendants regarding their communication with advocates. The right of confidential communication may be detailed in a state statute or regulation or may be claimed as a matter of public policy, contract, or professional ethics. The right may derive from working under the supervision of attorneys or other professionals with whom victims have privileged communication.

- ◆ Work closely with defense counsel to ensure that all protected communications between the advocate and the victim-defendant remain confidential.

6. Work with other community organizations to establish bail funds for women victim-defendants.

- ◆ Consider developing bail funds so that women victim-defendants can be released on bail pending their trials. Bail funds enable victim-defendants to have regular access to their attorneys; parent and nurture their children; remain connected to friends, family, and their faith community; pursue victim assistance and advocacy; and obtain or maintain employment.

7. Broker civil legal assistance for women victim-defendants and incarcerated victims of violence.

- ◆ Work with other organizations to provide comprehensive civil legal services to women victim-defendants facing trial and incarcerated victims of violence to address the myriad civil legal issues that may arise during the pendency of their trial and/or their imprisonment, including their need for civil legal counsel to help them maintain relationships with and care for their children, obtain requisite health care, stop violence and harassment within the institution, acquire meaningful job training, pursue education, or file for bankruptcy.

The Role of Criminal Justice System Practitioners

8. Evaluate the experience of women defendants who are victims of crimes of violence when making recommendations or decisions.

- ◆ Consider the victim-defendants' histories and experiences of abuse when making charging and sentencing determinations. Direct victim-defendants to services and intervention options that will help them achieve safety from perpetrators.
- ◆ Help victim-defendants develop compliance strategies to enable them to adhere to the conditions of release or probation, free from the coercive controls and interference of perpetrators.

The Role of Public and Private Funders

9. Provide criminal justice and advocacy personnel with education and training on responding to women victims of violence who are defendants or prisoners.

- ◆ Increase the education and training available to defense counsel, prosecutors, judges, officers of the court, correctional officials, victim advocates, and others who work with women victims charged with crimes and imprisoned women. Justice system practitioners need quality education and training to understand violence, its impact on victims, and the relationship of a history of abuse to the legal claims of victims.
- ◆ Offer training to educate about the experiences of victims of abuse, the legal defense options available to women victims who become defendants, and the potential relevance of a victim's history of abuse to her defense claim.

The Role of State Legislators

10. In state codes, create affirmative defenses for parental interference with the custody of a child, refusing to disclose the whereabouts of a child to an abusive parent or partner, kidnaping of children based on previous violence inflicted against a partner or child, or other attempts to avert recurring violence.

- ◆ Recognize fleeing from a perpetrator of sexual assault, domestic violence, or stalking as an affirmative defense to parental interference with the custody of a child, refusing to disclose the whereabouts of a child to an abuser, or parental kidnaping. Protection of a child or oneself should be an enumerated defense to criminal charges.

11. Provide courts with the requisite funding for defense counsel and experts at all stages of the legal process.

12. Develop and fund programs that provide transitional assistance, including job training, education, and other related support, for women released from prison because of clemency or expiration of their sentence.

- ◆ Work with community-based sexual assault and domestic violence programs on the design and implementation of such programs.

The Role of Law Enforcement Agents

13. Review and evaluate arrest policies to determine whether innocent victims of violence are being inappropriately arrested.

- ◆ Work with advocates to determine whether women victims of violence are being inappropriately arrested and if they are, to identify the underlying cause for this practice.
- ◆ Make the changes needed to reduce the incidence of inappropriate arrests.

Interventions With Batterers

As the criminal justice system's response to domestic violence began to shift from the mediation of "domestic disputes" to arrest and prosecution of domestic violence, marital rape, and stalking, intervention strategies with batterers also began to change. Battering had been viewed as a problem derived from individual pathology or lack of impulse control and poor anger management. Corresponding responses were based in couples counseling, "fixing relationships," or building communication skills. In recent years, the intervention community began to identify the problem underpinning battering as the societal belief in the right of men to exercise power and control over intimate partners through violence or other coercive tactics. With this change, batterer intervention programs began to address the social context in which violence against women occurs. Practitioners asked the courts to combine safeguards for victims with legal penalties for abusers who continued to use violence, including requiring batterers to participate in educational programs addressing power and control issues. As practice evolved, the courts and the community recognized that intensive, specialized probation enhances the efficacy of legal sanctions and intervention.

Although many batterer intervention programs now exist, efforts to establish effective programs may be hampered by differences of opinion about which programs most successfully change offender behavior and enhance victim safety. There is disagreement about curriculum content, appropriate

program duration, the most effective program providers and settings, and the necessary qualifications and training of the people who provide these interventions. Another barrier to effective programming in some jurisdictions is that some programs have been developed without involving community-based victim advocacy agencies and the court system.

Criminal justice system practitioners and victim advocates agree that intervention programs have the potential to play an integral role in the continuum of criminal justice system and community interventions to end domestic violence. They also agree that batterer intervention programs, by themselves, will not protect women from further violence. These programs must operate as part of a larger strategy within a community that uses graduated sanctions to change the perpetrator's behavior and works with victim advocacy organizations, community groups, law enforcement, and the courts to create a climate of intolerance for violence against women.

Outlined below are specific actions that batterer intervention programs (working collaboratively with the courts and victim advocacy programs), law enforcement, and state and federal corrections can take to end violence against women.

Enhancing Batterer Intervention Programs

1. Build partnerships with courts and community-based advocacy programs and battered women to design, monitor, and evaluate programs.

2. Adopt program guidelines that address victim safety in the following ways.

◆ *Information.* Give victims information about the program, including the content of the curriculum, the name of a contact person who can answer victim questions, the limits of a program's ability to ensure victim safety, the program's policy on victim confidentiality, the program's duty to warn and protect victims about the foreseeable violence of batterers, the range of community resources available to victims, and the importance of victims developing a safety plan.

◆ *Compliance notification.* Share information with victims, advocates, and the court about perpetrator compliance with program requirements.

◆ *Partner contact.* Initiate contact between the batterer intervention program and the victim to provide the victim with information to base her decisions on and pursue partner contact only to ensure victim safety. Avoid viewing victims as informants for the batterer intervention program.

◆ *Monitoring.* Require monitoring of the batterer intervention program by a community-based domestic violence program to ensure that victims and their advocates have broad access to information so that advocates can advise victims about the impact that policies, procedures, and practices will have on the lives of battered women. Advocates can assist in formal and informal evaluations of whether the program is promoting the safety and well-being of victims. Develop an explicit agreement with the domestic violence program for monitoring, and provide compensation to help underwrite the costs of these monitoring activities.

3. Ensure that curriculums for batterer intervention programs reflect an understanding of battering as a pattern of behavior used to gain power and control over an intimate partner.

◆ Ensure that curriculums examine belief systems that underpin violent behavior in intimate relationships, identify and define controlling behaviors, develop perpetrator awareness of the effects of violence on adult victims and child witnesses, and teach and practice alternatives to violent behavior.³³

4. Develop curriculums that are culturally and linguistically appropriate for the diverse populations of batterers.

◆ Ensure that curriculums for batterer intervention programs respond to the diversity of individuals participating in the program. Address participant diversity in class, race, age, disability, ethnicity, culture, language, sexual orientation, and religious and spiritual beliefs in the curriculum design and implementation.

◆ Ensure that providers reflect the diversity of the community in which services are provided.

5. Incorporate material related to the impact of domestic violence on children in program curriculums.

- ◆ Teach nonviolent parenting skills, address child abuse, and educate batterers about the physical, emotional, and developmental effects of exposing children to violence.
- ◆ Use participants' hope for relationships with their children and their desire for reconciliation with children as reinforcements for some men to make behavioral changes.³⁴

6. Collaborate with responsible fatherhood initiatives to create consistent curriculums related to nonviolence and parenting.

- ◆ Recognize that there will be significant overlap between participants in batterer intervention programs and responsible fatherhood programs, and use both kinds of programs to provide consistent messages about battering as a pattern of behavior used to gain power and control over an intimate partner and children.
- ◆ Collaborate with responsible fatherhood programs to develop curriculums that encourage fathers to take financial and parental responsibility for their children and commit to nonviolence in their relationships with their children and their children's mothers.
- ◆ Encourage responsible fatherhood programs to consult domestic violence programs when designing, implementing, and evaluating their services.

7. Provide complementary substance abuse and mental health assessment services when needed.

- ◆ Screen program participants for substance abuse and mental health issues.
- ◆ Provide appropriate referral or coordinated services when necessary.

8. Implement batterer intervention programs within the context of a coordinated criminal justice system response.

- ◆ Implement coordinated community responses in a manner that clearly sets forth the role and responsibilities of batterer intervention programs in the criminal justice system and the community. Coordinate with the criminal justice system

so that batterers cannot take advantage of fragmentation, institutional bias, and community misconceptions about the underlying motivations for domestic violence. Eliminate the ability for perpetrators to avoid both formal and informal community sanctions for their actions.

- ◆ Judges and court administrators should give batterer intervention programs the authority to reject inappropriate referrals, including but not limited to perpetrators who fail to comply with program requirements, perpetrators who reoffend, and perpetrators with chronic mental illness or addiction problems who need complementary services. Develop effective alternative responses for these individuals. Limit referrals to programs that participate in the coordinated efforts of the criminal justice system and victim advocacy programs.
 - ◆ The criminal justice system should establish procedures to monitor the compliance of perpetrators with all requirements of the batterer intervention program. Regular feedback from batterer intervention programs to probation and court personnel can pinpoint any slippage in the coordination of efforts to hold perpetrators accountable. To maximize the formal controls available within the court system, develop agreements with the judiciary and probation that include swift and compelling consequences for program noncompliance, violation of protection orders, or new offenses.
- 9. Avoid ordering victims of domestic violence to participate in batterer intervention programs.**
- ◆ Women defendants should be evaluated individually to determine an appropriate sentence or service plan. If, after careful assessment, a woman defendant is determined to be a batterer—one who uses violence and other tactics of power and control—refer her to a women-only batterer intervention group.
 - ◆ Ensure that victims are not revictimized by being arrested inappropriately and required to attend batterer intervention programs, an unintended consequence of pro-arrest policies and inadequate training of law enforcement personnel.

10. Initiate specialized programming in state and federal correctional facilities for men who batter.

- ◆ Implement programming within correctional facilities that addresses male violence against women. Correctional facilities and programs should use the time perpetrators spend under correctional supervision to make such programming available and effective.
- ◆ Build stronger links among correctional facilities, community-based batterer intervention programs, sex offender treatment programs, and victim advocates to develop effective curriculums that promote victim safety.
- ◆ Provide correctional staff with training on interventions with juvenile and adult men who batter, commit sexual offenses, and stalk women and girls to help staff screen and identify offenders for specialized batterer programming.
- ◆ Build links between in-house batterer services and community services to support continuity of intervention, perpetrator accountability, and victim safety after the batterer is discharged from incarceration.

Other Trends and Issues

Specialized Intervention for Juvenile Perpetrators of Dating and Domestic Violence

Much like adults, some young men use violence to gain power and control in both dating and family relationships. By developing programs that work specifically with juveniles who batter, it may be possible to prevent the continued use of violence as juveniles enter adulthood. Crimes of violence against women perpetrated by juveniles require immediate attention, intensive intervention, and the coordinated services of batterer intervention programs, domestic violence victim advocacy agencies, and the juvenile justice system.

Most batterer intervention programs do not have specialized curriculums and program policies that address the needs of juveniles who batter. Specialized responses to these juveniles should include policies that make victim protection and access to services the highest priority. Juvenile

programs must employ facilitators who are specially trained in family and teen dating violence.

Curriculums should be developmentally appropriate and address sexual and physical assault, stalking, coercive controls, reproductive health issues, and same-sex relationship issues. Youth who use violence against family members will require additional intervention regarding responses to parental authority and modeling appropriate behavior for siblings. For many youth, a supplemental school plan or program should be introduced to reinforce the batterer intervention curriculum.

Evaluate Current Methods of Batterer Intervention

Research is needed to address controversies in the implementation of batterer intervention programs and to identify promising developments in the field. The following areas of inquiry are recommended for continued research and analysis:

- ◆ Examine coordinated community responses to determine which programs and sanctions most effectively maximize victim safety and sustain offender accountability.
- ◆ Compare the efficacy of different intervention models on different types of offenders.
- ◆ Identify culturally competent approaches that respond to the needs of diverse communities.
- ◆ Explore complementary programs for assessing and treating drug and alcohol addictions among perpetrators.
- ◆ Develop methods to more effectively assess a perpetrator's level of dangerousness.
- ◆ Evaluate the impact of state standards for batterer intervention programs that promote victim safety and improve monitoring of perpetrators.
- ◆ Evaluate the impact of parenting curriculums included in batterer intervention programs on the perpetrators' parenting behavior and relationships with their children.
- ◆ Research the effectiveness of current intervention strategies for juvenile perpetrators of dating and domestic violence.

Interventions With Sex Offenders

Sexual assault and sexual abuse of women and children persist as sources of constant fear in too many communities. The true extent of sexual violence remains hidden because these crimes are perpetrated most commonly within the context of relationships—by family members, friends, or acquaintances of the victim or her caretaker. Preventing these crimes requires many different strategies, but one critical component of any prevention effort must be intervention with those who have already been identified as sex offenders.

When framed by a central concern for victim and community safety, investing resources to supervise and manage sex offenders is an investment in sexual assault prevention. Research shows that sex offenders have a propensity to reoffend,³⁵ so it is essential that the dangers posed by this offender population be matched by interventions that employ a strategic, multidisciplinary model of offender management. To be most effective, carefully devised and strategically implemented interventions must begin while the offender is incarcerated.

Community concerns about sexual assault and sex offenders can be mobilized to build support for programs that combine meaningful controls on offender behavior with a central concern for victim safety and justice. Laws that require sex offender registration (often known collectively as “Megan’s Law”) and community notification of the presence of known sex offenders may offer some benefits, but they should not be viewed as offering much community safety by themselves. They are only one component of a comprehensive plan to prevent reoffending by sex offenders. The popularity of these laws reflects the public’s and policymakers’ mistaken belief that most sexual assaults are committed by strangers.

When implemented without strong offender supervision and intervention programs, and in the

absence of community education, notification laws may give communities a false sense of security. In some tribal communities, the false sense of security associated with community notification is potentially even more harmful because the law requires only Indian sex offenders to register; non-Indian offenders who live on tribal lands are exempt from registration requirements. Furthermore, programs that provide information about individual offenders may provoke revenge-motivated violence against those offenders.

Models emerging in communities around the country suggest that jurisdictions can effectively manage the danger posed by sex offenders and provide victims with a sense of safety and justice if they receive sufficient financial and other support. Where these promising practices are being implemented, significant changes in philosophy are taking place: providers of sex offender treatment and community supervision are working together and viewing the victim and the community, not the offender, as their primary “client”; advocates for survivors of sexual assault are concerning themselves with supervision options available to sex offenders; and judges and prosecutors are consulting with and listening to advocates, survivors, and providers when devising appropriate conditions of sentencing.

Implementing sex offender supervision and management programs that are truly concerned with victim and community safety requires significant work. It involves initiating and maintaining communication among disciplines that historically have not worked collaboratively, consulting current research, and educating the community.

Outlined below are specific actions that the courts, criminal and civil justice professionals, probation and parole agencies, departments of correction, sex offender management providers, public funders, sexual assault victim advocates, and federal, tribal, and state legislators can take to end violence against women.

A Comprehensive Approach to Managing Sex Offenders

1. Support the implementation of sex offender supervision strategies that are multidisciplinary and place the safety of the victim and the community at the center of their design.

- ◆ Implement policies that proactively support participation of the courts, the corrections system, victim advocates, and law enforcement in collaborative, multidisciplinary efforts.
- ◆ Invest the resources needed to develop effective supervision strategies that center on victim and community safety needs, increase the formal and informal controls on the sex offender, and emphasize offender accountability throughout intervention.
- ◆ Employ a comprehensive approach to managing sex offenders. Use a broad set of strategies including, but not limited to, supervision, work with employers and families, notification, and registration.
- ◆ Designate resources for the necessary participation, cross-training, and collaboration among probation and parole agencies, victim advocacy organizations, sex offender management programs, and other criminal and civil justice professionals.
- ◆ Institute collaborative efforts between law enforcement, the courts, and professional licensing agencies to exchange offender information while maintaining victim privacy and confidentiality. Enhance the revocation of licenses and certifications of professionals who are convicted of crimes of sexual violence or exploitation.
- ◆ Consider providing victims with the services of “witness-protection programs” when their safety or well-being requires confidential, protected, emergency housing. Protection should be available during criminal legal processes and beyond—for as long as necessary to ensure victim safety.

2. Implement sex offender registration and community notification laws in conjunction with community education programs about sexual assault.

- ◆ Conduct community education programs using a multidisciplinary group led by the community-based sexual assault program. This group should include sex offender management providers, probation and parole officers, and law enforcement officers.
- ◆ Ensure that community sexual assault education programs convey current information about the prevalence and nature of sexual assault, remind audiences that a small percentage of sex offenders are caught for their crimes, and provide guidelines for risk reduction.
- ◆ Ensure that information provided under notification laws is accurate, accessible, timely, free, and comprehensive.

3. Make intervention efforts with juvenile sex offenders a priority.

- ◆ Invest in early intervention with sexual offenders, particularly with juvenile sexual offenders, as an important component of efforts to decrease the possibility of multiple offenses over time.
- ◆ Educate relevant professionals to promote early intervention in response to violent behaviors.
- ◆ Design offender management programs in collaboration with advocates for victims of sexual violence. Evaluate all methodologies for their impact on the safety and well-being of victims and the community.

Improve Supervision of Sex Offenders in the Community

4. Establish specialized supervision for sex offenders.

- ◆ Recruit and hire experienced supervision staff who are committed to working with sex offenders, and designate staff to supervise sex offenders. Provide the training and resources necessary to enhance their ability to provide intensive supervision of sex offenders. Limit caseloads so that agents can spend a significant portion of their time in the field.
- ◆ Develop sex offender-specific policies and protocols for each collaborating agency, including conditions tailored to monitoring and placing limits on an offender’s activities. Involve

advocates and sexual assault survivors in the development and evaluation of sex offender management programs.

- ◆ Design, implement, and monitor community-based sex offender programs in consultation with victim advocates and agencies. Require these programs to work with local advocates and programs for victims of sexual violence.
- ◆ Require offenders released from correctional facilities or placed on probation to participate in community-based sex offender programs.
- ◆ Recognize the potential for sex offenders to assault adults as well as children, and restrict offenders' access to women and children.

Provide Comprehensive Sex Offender Intervention Programs

5. Make providing high-quality sex offender intervention programs within correctional institutions a priority.

- ◆ Develop corrections-based programs in consultation with victim advocates and providers who specialize in managing sex offenders.
- ◆ Focus on the offender taking responsibility for his behavior. Offenders must understand, acknowledge, and stop their violent behavior.
- ◆ Hire providers whose practices and approaches are guided by current research, who conform to state guidelines or certification procedures where available, and who adhere to high ethical standards in providing inmate treatment.
- ◆ Reflect costs of intervention programs in institutional budgets. Provide sufficient resources for well-trained staff, community monitoring by advocacy and probation services, and evaluation.
- ◆ Safeguard the privacy of those who seek sex offender treatment to encourage participation.
- ◆ Develop relationships with victim advocates, community-based parole or corrections agencies, service providers, and courts to ensure that offenders receive a continuum of intervention from institution to community.

6. Ensure that sex offender management program staff are well supervised and trained to work with sex offenders. Ensure that they conform to the highest ethical standards with regard to safety issues.

- ◆ Contract with or refer clients only to providers who demonstrate a knowledge of sex offenders that is informed by current research and promising practices, who agree to the primacy of victim and community safety, who are willing to work collaboratively with other agencies and individuals, and who share responsibility for supervising sex offenders.
- ◆ Establish state-level minimum standards, developed by a multidisciplinary group, for all sex offender management programs.
- ◆ Develop state-level partnerships with provider networks and other professional associations (e.g., state chapters of the American Psychological Association) to expand the pool of qualified providers.

Develop Policies That Promote a Comprehensive Response to Sex Offenders

7. Review all existing laws affecting sex offenders to ensure they are consistent with current research in the field.

- ◆ Consult with knowledgeable corrections officials, sex offender management providers, researchers, diverse sexual assault survivors, and victim advocates to create laws that most effectively promote community safety and justice for victims and the community and offender accountability.

The Defense Bar and Violence Against Women

Victims of violence against women come into contact with the defense bar both when counsel is defending abusers and when counsel is defending victims who have been charged with crimes. In each instance, the defense attorney has a professional and ethical obligation to vigorously defend his or her client.

The relationship between the defense bar and victim advocates has historically been adversarial. Advocates working with victimized women charged with crimes have often criticized the representation these women receive in criminal trials.

Many victim advocates also have watched defense attorneys defending clients accused of crimes of violence against women using strategies that blame the victim, exploit gender bias, and compromise victim safety. Conversely, defense counsel often describe victim advocates as indifferent to the due process rights of defendants and as volunteer investigators for the prosecution.

Despite this historical adversity, battered women's advocates are forging working relationships with members of the defense bar at the local, state, and federal levels. Many of these relationships have developed because of the increased prosecution of women victims of crime in the past 10 years. Among other crimes, women have been charged with crimes of violence against their perpetrators, with crimes committed while escaping from assailants, or with crimes coerced by batterers. Both victim advocates and defense counsel have begun to realize that they could better assist battered women defendants if they worked more collaboratively.

Outlined below are specific actions that members of the defense bar, victim advocates, and related professionals can take to end violence against women.

The Role of the Defense Bar

1. Carefully screen women defendants for domestic violence to build an appropriate defense and provide appropriate referrals.

- ◆ Understand that many victims of domestic violence will not discuss with counsel the abuse they have experienced unless the crime charged implicates domestic assault. Most batterer-defendants blame victims for their violence. In contrast, many victim-defendants will not blame their abusive partners, preferring to plead to avoid confrontation with the perpetrator at trial.
- ◆ Explore the relationship between victim-defendants' experiences of abuse and the crimes with which they have been charged. Battered women victims may be charged with a variety of crimes as a result of attempting to escape or separate from their perpetrators or because they

were coerced into crime by the perpetrators. Batterers sometimes set up victims to take responsibility for crimes the batterers have committed and threaten retaliation if the victims reveal abuser culpability. Battered women defendants may not volunteer this information in their defense.

- ◆ Provide clients who disclose a history of abuse with appropriate referrals and resources. For some clients, a message from their attorney, coupled with good resources and referrals, will make a difference in their understanding of their options, including seeking civil protection orders and other legal options, developing more effective safety plans, and securing advocacy and support services.

2. Refer clients charged with or disclosing crimes of violence against women to appropriate community resources.

- ◆ Recognize that the likelihood that a client who commits violence against women or children will reoffend without intervention is extremely high. Prepare to discuss with clients why acts of violence against women are inappropriate and unequivocally wrong.
- ◆ Provide clients with appropriate referrals and resources. For some clients, a message from their attorney, coupled with good resources and referrals, will make a difference in their future choices, including the use of violence, coercion, or stalking and seeking intervention services.

The Role of Victim Advocates

3. Reaffirm a commitment to advocate for and on behalf of all battered women, regardless of their criminal legal status.

- ◆ Ensure that close relationships between victim advocates and prosecutors do not put battered women defendants or battered women who might be facing criminal charges at risk. It is unethical for domestic violence victim advocates at community-based organizations to decline advocacy services to battered women charged with crimes because of their legal status.

4. Consider the rights of defendants and the due process implications of any action contemplated.

- ◆ Evaluate programs, protocols, and legislation to determine their impact on the rights of defendants or due process. Avoid taking any position that compromises these rights. Routinely evaluate whether any program or protocol might be used against a woman victim of violence who becomes a defendant in a criminal case.

Emerging Issues

Defense Bar Participation in Coordinated Community Responses and Fatality Review Teams

Given the adversarial nature of the criminal legal system, many members of already established coordinated community response teams are not eager to involve the defense bar in their process. Defenders are very involved in dealing with violence against women, however, by representing both clients who commit the violence and victims who are arrested. Each community must ascertain the goals of the coordinated community response team and seriously consider inviting members of the defense bar to participate.

In particular, defense counsel may have some very important insights to contribute to fatality review teams. When appropriate, they should be included as members of such teams. Unquestionably, the timing of the reviews will make a difference in terms of participation by prosecution and defense.

For related recommendations, see Toolkit chapter “Strengthening Community-Based Services and Advocacy for Victims.”

Resources

American Probation and Parole Association

2760 Research Park Drive
P.O. Box 11910
Lexington, KY 40578-1910
Phone: 859-244-8203
Fax: 859-244-8001
Web site: www.appa-net.org

The American Probation and Parole Association (APPA) is the voice for probation and parole practitioners, educators, and concerned citizens. The Web site provides information on training and technical assistance opportunities, publications and resources, grants and special projects, and an “Information Clearinghouse” that provides users with APPA staff contacts for each of several dozen topics.

Battered Women’s Justice Project—Criminal

4032 Chicago Avenue South
Minneapolis, MN 55407
Phone: 1-800-903-0111, ext. 1
Fax: 612-824-8965

The Battered Women’s Justice Project’s (BWJP’s) mission is to promote systemic change within community organizations and governmental agencies engaged in the civil and criminal justice response to domestic violence that creates true institutional accountability to the goal of ensuring safety for battered women and their families. To this end, BWJP undertakes projects on the local, state, national, and international levels.

Center for Sex Offender Management

8403 Colesville Road, Suite 720
Silver Spring, MD 20910
Phone: 301-589-9383
Fax: 301-589-3505
Web site: www.csom.org

The Center for Sex Offender Management works to enhance public safety by improving the management of adult and juvenile sex offenders who are in the community. Center efforts facilitate information exchange in the field, training and technical assistance for probation and parole agencies and officers, and a grant program to help state and

local jurisdictions establish or enhance their strategies to manage sex offenders under community supervision.

**Family Violence Department
National Council of Juvenile and Family Court Judges**

University of Nevada
P.O. Box 8970
Reno, NV 89507
Phone: 1-800-52-PEACE
Fax: 775-784-6160
Web site: www.nationalcouncilfvd.org

The National Council of Juvenile and Family Court Judges' Family Violence Department addresses court responses to family violence and offers resources including publications, national conferences, trainings, and technical assistance to practitioners in social services and the justice system.

Institute for Law and Justice

1018 Duke Street
Alexandria, VA 22314
Phone: 703-684-5300
Fax: 703-739-5533
Web site: www.ilj.org

The Institute for Law and Justice (ILJ) is a nonprofit organization that provides consulting, research, and evaluation services to criminal justice practitioners. ILJ also provides management and strategic planning training on a range of topics including community policing, corrections, courts and prosecution, advanced technology, economic studies, emergency response, and related public safety issues.

International Association of Chiefs of Police

515 North Washington Street
Alexandria, VA 22314
Phone: 703-836-6767 or 1-800-THE-IACP
Fax: 703-836-4543
Web site: www.theiacp.org

The International Association of Chiefs of Police (IACP) fosters cooperation and the exchange of information and experience among police administrators throughout the world and advocates high professional standards of police performance and conduct. The IACP Web site provides information

on training opportunities, conferences, awards, and campaigns, as well as links to *Police Chief Magazine* and other publications, information on international activities and outreach, and legislative and policy updates.

**Judicial Education Project
Family Violence Prevention Fund**

383 Rhode Island Street, Suite 304
San Francisco, CA 94103-5133
Phone: 415-252-8900
Fax: 415-252-8991
Web site: www.fvpf.org/programs/justice

The Family Violence Prevention Fund (FVPPF) works to end domestic violence and help women and children whose lives are affected by abuse. The FVPPF Judicial Education Project provides materials for educational programs that give justice system personnel a foundation for assessing domestic violence cases. Training includes domestic violence information as it applies to criminal, civil, custody, and visitation cases.

**Mending the Sacred Hoop
STOP Violence Against Indian Women Technical Assistance Project**

202 East Superior Street
Duluth, MN 55802
Phone: 218-722-2781 or 1-888-305-1650
Fax: 218-722-5775
Web site: www.msh-ta.org

Mending the Sacred Hoop (MSH) is a Native American Women's organization that helps tribal governments and agencies improve their response to Native American victims of violence against women by crafting strategies at local levels that reflect available resources and cultural perspectives. MSH publishes a newsletter, provides assistance and advocacy, coordinates public education events and conferences, and hosts an online discussion forum.

National Association of Criminal Defense Lawyers

1025 Connecticut Avenue NW., Suite 901
Washington, DC 20036
Phone: 202-872-8600
Fax: 202-872-8690
Web site: www.criminaljustice.org

The National Association of Criminal Defense Lawyers (NACDL) is a professional bar association that works to ensure justice and due process for persons accused of crime or other misconduct. Web site resources include updates on criminal justice news and legislation, information on programs and projects in the field, descriptions of NACDL publications and upcoming events, and links to online legal research.

National Center for State Courts Research Division

300 Newport Avenue
Williamsburg, VA 23185
Phone: 757-253-2000 or 1-800-877-1233
Fax: 757-220-0449
Web site: www.ncsc.dni.us/RESEARCH/index.html

The National Center for State Courts (NCSC) works to improve the administration of justice in the United States and abroad through research, education, consulting, and information services. The NCSC Research Division identifies trends, shapes future developments, and fosters adaptation to change. The Research Division Web page provides information about current and recently funded projects and Research Division publications.

National Clearinghouse for the Defense of Battered Women

125 South Ninth Street, Suite 302
Philadelphia, PA 19107
Phone: 1-800-903-0111, ext. 3, or 215-351-0010
Fax: 215-351-0779

The National Clearinghouse for the Defense of Battered Women provides technical assistance, support, resources, networking, and training to help battered women who are forced to defend themselves when faced with life-threatening violence from their abusers.

National District Attorneys Association

99 Canal Center Plaza, Suite 510
Alexandria, Virginia 22314
Phone: 703-549-9222
Fax: 703-836-3195
Web site: www.ndaa.org

The National District Attorneys Association (NDAA) promotes the interests of prosecutors across the Nation, in major metropolitan areas as

well as rural communities. NDAA provides government advocacy and a forum for prosecutors to share their knowledge, skills, and influence. Resources include centralized training facilities (at the National Advocacy Center complex), conferences, and publications.

**National Judicial Education Program
NOW Legal Defense and Education Fund**

395 Hudson Street, Fifth Floor
New York, NY 10014
Phone: 212-925-6635
Fax: 212-226-1066
E-mail: njep@nowldef.org
Web site: www.nowldef.org/html/njep/index.htm

The NOW Legal Defense and Education Fund pursues equality for women and girls in the workplace, the schools, the family, and the courts—through litigation, education, and public information programs. The National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP) works to create a fair and equitable judicial system through judicial and legal education. NJEP offers model judicial education curriculums that cover such topics as gender fairness, sexual violence, child custody and sexual abuse, and racial bias.

National Jury Project/Midwest

322 First Avenue North, Suite 500
Minneapolis, MN 55401
Phone: 612-338-2244
Fax: 612-338-2607
E-mail: njpmidwest@njp.com
Web site: www.njp.com

The National Jury Project (NJP) is a trial consulting agency that uses social science techniques to help attorneys develop effective strategies for trial preparation, case presentation, and jury selection. NJP services include case analysis, focus group and trial simulations, community attitude surveys, witness assessment and preparation, courtroom visuals, and posttrial juror interviews.

National Legal Aid and Defender Association

1625 K Street NW., Eighth Floor
Washington, DC 20006
Phone: 202-452-0620
Fax: 202-872-1031
Web site: www.nlada.org

The National Legal Aid and Defender Association (NLADA) advocates equal access to justice for all Americans, with emphasis on delivery of legal assistance to the poor (including civil legal services and indigent defense services). NLADA provides legislative advocacy, public education, workshops and training events, and publications including a quarterly newsletter, research and evaluation reports, training materials, management and administration resources.

National Sexual Violence Resource Center

123 North Enola Drive
Enola, PA 17025
Phone: 1-877-739-3895 or 717-909-0710
Fax: 717-909-0714
E-mail: resources@nsvrc.org
Web site: www.nsvrc.org

The National Sexual Violence Resource Center (NSVRC) is a clearinghouse for resources and research about all forms of sexual violence. NSVRC works with its partner agency, the University of Pennsylvania, to provide new policies for establishing sexual violence intervention and prevention programs.

National Training Center on Domestic and Sexual Violence

2300 Pasadena Drive
Austin, TX 78757
Phone: 512-407-9020
Fax: 512-407-9022
Web site: www.ntcdsv.org

The National Training Center on Domestic and Sexual Violence provides consultation and training (including national and regional conferences), helps government decisionmakers develop and evaluate policies and programs, and promotes collaboration among government agency staff, victim advocates and service providers, university researchers, and related professionals in working to end domestic and sexual violence. The Web site

includes a calendar of training sessions throughout the United States.

**National Training Project
Minnesota Program Development**

202 East Superior Street
Duluth, MN 55802
Phone: 218-722-3942
Fax: 218-722-5775
Web site: www.duluth-model.org/ntpmain.htm

The National Training Project helps communities develop and implement policies to protect victims of domestic abuse and offer rehabilitation opportunities for offenders. The project offers seminars, trainings, workshops, and resource materials for staff of domestic violence and community agencies.

PRAXIS International

202 East Superior Street, Suite 100
Duluth, MN 55802
Phone: 218-722-4820
Fax: 218-722-1053
E-mail: ruralta@aol.com
Web site: www.praxisinternational.org

Praxis is a nonprofit research and training organization that works to end violence against women and promotes autonomy, integrity, and safety for women and their children. Praxis analyzes criminal justice and human service agency responses to abused women, provides technical assistance to programs receiving rural grants from VAWO, and promotes social change through community organizing.

Sacred Circle**National Resource Center to End Violence Against Native Women**

722 St. Joseph Street
Rapid City, SD 57701
Phone: 605-341-2050 or 1-877-733-7623
Fax: 605-341-2472

Sacred Circle promotes the sovereignty and safety of women and works to change individual and institutional beliefs that oppress Native women.

**Stalking Resource Center
National Center for Victims of Crime**

2000 M Street NW., Suite 480
Washington, DC 22036
Phone: 202-467-8700 or 1-800-FYI-CALL
Fax: 202-467-8701
Web site: www.ncvc.org

The National Center for Victims of Crime's mission is to help victims of crime and their families rebuild their lives. The Stalking Resource Center provides resources, training, and technical assistance to criminal justice professionals and victim service providers to support locally coordinated, multidisciplinary antistalking approaches and responses.

Vera Institute of Justice

233 Broadway, 12th Floor
New York, NY 10279
Phone: 212-334-1300
Fax: 212-941-9407
Web site: www.vera.org

The Vera Institute of Justice works with government agencies to design and implement programs that encourage just practices in public services and improve the quality of urban life. Projects in progress address issues such as police accountability, crime and victimization, youth and violence, sentencing and corrections, and the judicial process. The Web site includes information on current work, research, and planning; a catalog of publications; and links to related criminal justice agencies and organizations.

**Violence Against Women Unit
American Prosecutors Research Institute**

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The American Prosecutors Research Institute provides resources including research, program development, and an information clearinghouse to prosecutors at all levels of government. Its Violence Against Women Unit is a national resource for prosecutors and other criminal justice professionals working to stop violence against

women. The unit provides comprehensive and specialized training, research and technical assistance, and resource materials on domestic violence, stalking, cyberstalking, and sexual assault.

Endnotes

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The Minneapolis arrest study was replicated in several other cities (Atlanta, Georgia; Charlotte, North Carolina; Colorado Springs, Colorado; Metro-Dade, Florida; Milwaukee, Wisconsin; and Omaha, Nebraska), and the results of these studies suggest that arrest is uneven in terms of deterrence and that demographic factors, criminal history, and the coordination of the criminal justice response after arrest all have an impact on the deterrent

effect for domestic assault. However, no police intervention has consistently been shown to be more effective than arrest.

5. *Weinstein v. City of Santa Fe*, 121 N.M. 646, 650, 916 P.2d 1313, 1317 (1996) (sexual assault).

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7. John Jay College of Criminal Justice (2000). “Equal Opportunity? More Women Arrested for DV—But Why?” *Law Enforcement News* (January 15/31) 26(525/526): p. 3. www.lib.jjay.cuny.edu/len/2000/01.15

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8. The Dover, New Hampshire, police department has almost completed a law enforcement protocol on stalking. It will be posted on the City of Dover Web site (www.ci.dover.nh.us/police/anti_stalking.htm) on completion. The National Center for Victims of Crime is crafting a model police protocol on stalking to be implemented in Philadelphia, Pennsylvania: *Creating an Effective Stalking Policy* (forthcoming).

9. The Polaroid Corporation initiative related to violence against women has brought documentation through pictures within reach of many police agencies within the past 10 years.

10. The FBI’s National Incident-Based Reporting System was designed almost 15 years ago to provide criminal incident data well beyond that contained in the Uniform Crime Reporting System (which neither records relationships between offenders and victims nor enumerates all criminal acts of men who use violence against women, including multiple criminal acts during a singular incident).

11. See International Association of Chiefs of Police (1999). *Model Policy on Police Officer Domestic Violence and Concepts and Issues Paper*. Alexandria, VA: International Association of Chiefs of Police.

12. Los Angeles City Attorney’s Office, California Alliance Against Domestic Violence, and Los Angeles Police Department (1999). *Primary*

Aggressor: Domestic Violence Training Project. Los Angeles, CA: Los Angeles City Attorney's Office, California Alliance Against Domestic Violence, and Los Angeles Police Department.

13. Most of the men who are stalked are stalked by other men.

14. Tjaden, P., and Thoennes, N. (1998). *Stalking in America: Findings From the National Violence Against Women Survey* (National Institute of Justice Research in Brief). Washington, DC: U.S. Department of Justice and Centers for Disease Control and Prevention. NCJ 169592

15. See curriculums and other materials developed by the Family Violence Prevention Fund, the National Association of Women Judges, the National Center for State Courts, the National Council of Juvenile and Family Court Judges, the NOW Legal Defense and Education Fund, the STOP Violence Against Women Grants Technical Assistance Project, the VERA Institute, and the Women Judges Fund for Justice.

16. Related codes and rules:

Domestic Violence

- ◆ Alaska Stat. § 18.66.310 (requires the administrative director for the Alaska Court System to provide domestic violence training to judicial officers and court clerks).
- ◆ Cal. Gov't Code § 68555 (requires the Judicial Council to establish judicial training programs).
- ◆ Fla. Stat. Ann. § 25.385 (requires the Florida Court Educational Council to establish standards for instruction of circuit and county court judges who have responsibility for domestic violence cases).
- ◆ Ky. Rev. Stat. Ann. § 21A.170 (requires the Supreme Court to provide, at least once every 2 years, inservice training programs for circuit judges, district judges, and domestic relations and trial commissioners).
- ◆ Minn. Stat. Ann. § 480.30 (requires the supreme court's judicial education program to include ongoing training for district court judges).

- ◆ N.J. Stat. Ann. § 2C:25-20 (requires the Administrative Office of the Courts to ensure that judges and judicial personnel attend an initial training within 90 days of appointment or transfer and annual inservice training).
- ◆ Okla. Stat. tit. 10, § 1211 (requires all judges having juvenile or domestic docket responsibility to attend training relating to domestic abuse issues; requires the Administrative Office of the Courts to monitor attendance at such training).
- ◆ Tenn. Code Ann. §§ 38-12-102, -107, -109 (requires development of domestic violence training course and curriculum; requires all state and local court administrators, court clerks, and judges to adopt policies regarding domestic violence and provide initial and continuing education; requires the Administrative Office of the Courts to establish and provide continuing education on domestic violence to all judges and court personnel).
- ◆ Tex. Gov't Code Ann. §§ 22.011, .110 (requires the Supreme Court to provide judicial training; requires rules to be adopted to require each district judge and each judge of a statutory county court to complete 8 hours of training within the judge's first term and provide a method of certification of completion).
- ◆ W. Va. Code § 48-2A-13 (allows all judges and requires family law masters to receive a minimum of 3 hours of training by 10/1/93 and 3 hours per year each year thereafter on family violence issues).

Sexual Violence

- ◆ In California, New Jersey, and Texas, judicial education on sexual violence is mandatory.

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See also Gray, C. (1997). *A Judicial Survival Guide to Balancing Social Commitments With the Code of Judicial Ethics*. Washington, DC: American Bar Association.

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19. In Michigan and Oregon, statutes direct that conditions of bail must be entered into the state's law enforcement information network.

20. See section on full faith and credit in *Toolkit* chapter "Enhancing the Response of the Justice System: Civil Remedies."

21. See section on firearms in *Toolkit* chapter "Additional Justice System Responses."

22. The Texas Code of Criminal Procedure was amended in the 1999 legislative session to prohibit judges from referring family violence criminal cases to mediation or other alternative dispute resolution. § 5.08.

23. Supplementary investigation includes risk of further harm to or intimidation of the victim; risk of harm to the children, family, or supporters of the victim; amenability to specialized sex offender management or batterer intervention services; and the need for highly intensive supervision pending trial. Source: Lovik, M.M. (1998). "Conditional Pretrial Release in Criminal Proceedings." In *Domestic Violence: A Guide to Civil and Criminal Proceedings*. East Lansing, MI: Michigan Judicial Institute.

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29. See Institute for Law and Justice at www.ilj.org.

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