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REPORT

**Practical Implications of Current Domestic Violence Research:
For Law Enforcement, Prosecutors and Judges**

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**Practical Implications of Current
Domestic Violence Research:
For Law Enforcement, Prosecutors
and Judges**

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Preface

The purpose of this work is to describe to practitioners what the research tells us about domestic violence, including its perpetrators and victims, the impact of current responses to it and, more particularly, the implications of that research for day-to-day, real-world responses to domestic violence by law enforcement officers, prosecutors and judges.

Although many state and federal statutes define domestic violence broadly, for the purposes of this work, it is confined to offenses committed by and against current or former intimate partners, married or unmarried, with or without children.

Most but not all of the research reports discussed in this brief are from studies funded by the National Institute of Justice and/or published in a variety of refereed journals. For example, several studies of women seeking hospital emergency room treatment for injuries inflicted by intimate partners are included because, although of primary concern to the medical community, these studies underscore victim characteristics found in criminal-justice-related research, suggesting how representative the latter is.

Less rigorous research reports are also included because of the quality of their data collection or because they provide accurate examples of performance measures. For example, several performance evaluations of specific programs are included, not because they address program effectiveness in terms of preventing reabuse but because they provide concrete examples of what specific programs can achieve in terms of important program outputs such as arrest or successful prosecution rates. Some of the most extensive examinations of prosecution practices have been conducted by newspaper-initiated investigations in which reporters gained access to state court data tapes of thousands of cases.

Although some research findings may be questionable because researchers used less than rigorous research methodology, the research itself may be cited because it contains accurate data illustrating an important phenomenon. The data are unaffected by the research design used by the researchers. For example, although Jacobson and Gottman's findings regarding the typology of batterers [128] have been questioned, their reported observations, if not their conclusions, have been confirmed. [158] They are cited in support of the proposition that batterer reaction to their violence is not uniform but are not cited in support of their more controversial conclusion that all batterers fall into two distinct categories.

The policy and practice implications are based on the evidence provided by the research and are therefore confined to areas specifically addressed by researchers. Consequently, the implications described in this brief do not constitute a comprehensive listing of promising practices or even policies and procedures widely recognized to be effective. Whenever possible, policy implications are based on multiple studies. However, in some instances, where only one study examined an issue deemed to be important to practitioners, policy implications may be drawn from just that one study. In such cases, the narrative will alert readers that the research has not yet been replicated.

Performance Measures

The performance measures (featured in textboxes) include examples of specific programs, specific jurisdictions' achievements, or surveys of multiple departments. These measures are included to provide examples of what a specific, real-life program or jurisdiction can accomplish.

Because jurisdictions vary, these measures may not be replicable in all other jurisdictions but suggest what may be achieved in similar jurisdictions.

1. Overview of Domestic Violence

1.1 How widespread is nonfatal domestic violence?

According to the latest 2005 National Crime Victimization Survey (NCVS), during the period from 1993 to 2005, the average annual domestic violence rate per 1,000 persons (age 12 or older) for intimate partners and/or relatives was 5.9 for females and 2.1 for males. About one-third of the victims reported they were physically attacked; two-thirds were threatened with attack or death. A little more than half (50.5 percent) of the female victims suffered an injury, but only 4.5 percent were seriously injured. Slightly more than 3 percent were sexually assaulted. Fewer male victims — 41.5 percent — reported injuries, of which less than 5 percent were serious injuries. Those males or females who were separated (or divorced) experienced more nonfatal domestic violence than those who were together. [27]

Victimization rates vary among different subpopulations. The highest reported rates are for Native American women. [154]

1.2 What percentage of calls to police are to report domestic violence?

Domestic-violence-related police calls have been found to constitute the single largest category of calls received by police, accounting for 15 to more than 50 percent of all calls. [68, 114] Not all domestic violence calls are for activities that constitute crimes. Several New York studies, for example, found that 65 percent of such calls in upstate New York pertained to criminal conduct. In New York City, the police department found that 35 percent of reports pertained to specific chargeable index or other criminal offenses. [165, 184] In San Diego, approximately 25 percent of calls for service in domestic violence cases result in an arrest. [196]

Implications for Law Enforcement

Given the large numbers adversely affected by domestic violence and that victims' prime countermeasure — leaving their abusers — may not stop the abuse, law enforcement agencies must commit time, resources and attention to domestic violence as they do to confront any other major crime. For this reason, all law enforcement agencies should have a domestic violence policy that specifies, at a minimum, that written reports be completed on all domestic violence calls and, if no arrest is made, the reports fully explain the circumstances why not. (Research basis: Disparate national surveys, supplemented by local police department studies.)

Performance Measure: A total of 77 percent of police departments have written operational procedures for responding to emergency domestic violence calls, and larger departments are most likely to have such written procedures. Most procedures include requiring the dispatcher to ask about weapons, check for protection orders, and advise the caller to stay on the line until police arrive. [213] (Research basis: Representative sample of 368 drawn from 14,000 law enforcement agencies across the nation.)

Implications for Prosecutors and Judges

Given the large numbers adversely affected by domestic violence and that victims' prime countermeasure — leaving their abusers — may not stop the abuse, and given the amount of time committed to responding to domestic violence calls and arresting and prosecuting alleged

offenders, prosecutors and judges must commit sufficient resources and attention to ensure that domestic violence cases are handled efficiently and effectively. (Research basis: Disparate national surveys, supplemented by local police department and prosecution studies.)

1.3 What time of day does domestic violence occur?

According to the NCVS, most offenses (60 percent) occur between 6 p.m. and 6 a.m. at the victim's home. [27]

Implications for Law Enforcement

Although all potential responding law enforcement officers must be trained and prepared to deal with domestic violence, if the agency has only a limited number of victim advocates, related auxiliary personnel, or volunteers to assist on domestic violence calls, priority should be given to the 6 p.m. to 6 a.m. time period. (Research basis: National survey data from 1993 to 2004.)

1.4 How widespread is stalking?

Estimates of stalking vary, depending upon how it is defined. A 1995-1996 National Violence Against Women Survey (NVAWS) found that 5 per 1,000 females (18 and older) and 2 per 1,000 males report being stalked annually, using a conservative definition that requires victims to suffer a high level of fear. Eighty percent of stalking victims are women, and 87 percent of stalkers are male. Women were stalked by spouses or ex-spouses (38 percent), current or former intimates (10 percent), dating partners (14 percent), other relatives (4 percent), acquaintances (19 percent), and strangers (23 percent). The percentages add to more than 100 percent because some women reported being stalked by more than one person. Males were more likely than females to be stalked by strangers (36 percent) and acquaintances (34 percent). [131, 207] Furthermore, research suggests a close association between stalking and murders of women by intimate partners. One study, for example, found more than half (54 percent) of female intimate partner murder victims had reported stalking to police prior to their murders by the stalkers. [156]

Implications for Law Enforcement

It is important for law enforcement officers to correctly identify stalking behavior in order to accurately analyze victim risk and to use stalking laws appropriately. Even if the stalker is not charged, stalking constitutes a red flag for potential lethality. (Research basis: National study of 141 murders and 65 attempted murders of women, and confirmation in other stalking studies.)

Implications for Prosecutors and Judges

Whether stalkers are specifically charged or not, it is important for prosecutors and judges to correctly identify stalking behavior and recognize its significance in order to give victims maximum protection against potentially lethal abusers. (Research basis: National study of 141 murders and 65 attempted murders of women, and confirmation in other stalking studies.)

1.5 How widespread are sexual assaults of intimate partners?

If there is physical abuse in domestic violence, studies suggest that there is probably sexual abuse as well. A Texas study found that almost 70 percent of women seeking protective orders were raped, most (79 percent) repeatedly. [157] Although reporting a lower rate, an earlier Massachusetts study found 55 percent of female restraining order petitioners reported to interviewers that they had been sexually assaulted by their abusers, although **no one** had

included this in her affidavit requesting a protective order. [143] Female victims similarly underreported sexual abuse in a Colorado study. Although 20 to 50 percent of women seeking protective orders had been subjected to a variety of abuse, including forced sex within the preceding year, only 4 percent listed forced sex on the complaint form requesting the temporary restraining order. [105]

Implications for Law Enforcement

Investigators should be alert to possible sexual as well as physical abuse in interviewing or investigating domestic assaults. Judgment must be used as to how and when to approach potential victims of sexual assaults. (Research basis: National survey as well as disparate individual studies from multiple regions.)

Implications for Prosecutors and Judges

Prosecutors should be aware that sexual abuse is often part of domestic violence, although victims may not report it or be prepared to cooperate in its prosecution. Even if prosecutors cannot file or prosecute, evidence of sexual assaults should be taken into account when prosecutors and judges consider abuser risk and victim vulnerability in terms of filing other charges and making appropriate sentencing recommendations, bail decisions, issuing protective orders, and sentencing abusers after pleas or convictions. (Research basis: National survey as well as disparate individual studies from multiple regions.)

1.6 How widespread is fatal domestic violence?

According to the Supplementary Homicide Reports of the FBI's Uniform Crime Reporting Program in 2005, 1,181 females and 329 males were killed by their intimate partners. [27] The number of men killed has dropped by almost three-quarters since 1976, whereas the number of women killed has only dropped by a quarter. The number of white females killed has declined the least — only 6 percent. Intimate partner homicides constituted 11 percent of all homicides between 1976 and 2005, 30 percent of all female murders (1976-2004), and 3 percent of all male murders (1976-2005). The proportion of female homicide victims killed by an intimate partner is increasing. Unlike nonfatal domestic violence, most intimate partner homicides (54 percent) involve spouses or ex-spouses, although intimate partner homicides for unmarried couples are approaching the rate for married or divorced couples.

Intimate partner homicides may also involve third parties, including children, bystanders, employers and lawyers, among others. For example, according to the Washington State Domestic Violence Fatality Review, between 1997 and 2004, there were 313 domestic violence fatality cases in that state involving 416 homicides, including 23 children, 32 friends/family members of primary intimate partner victims, 19 new boyfriends of primary intimate victims, one co-worker of the primary intimate victim, three law enforcement officers responding to the intimate partner homicide, 9 abusers killed by law enforcement, and 10 abusers killed by a friend or family member of victims. Additionally, 93 abusers committed suicide after killing their victim(s). [199]

Implications for Law Enforcement

To reduce female homicides generally, law enforcement must give priority to the protection of female intimate partners. (Research basis: National data collected by the Federal Bureau of Investigation.)

Implications for Prosecutors and Judges

To reduce female homicides generally, prosecutors and judges must give priority to the protection of female intimates. Reduction of female intimate homicides will also reduce collateral homicides of children, other family members, and responding law enforcement officers as well as reducing abuser suicides. (Research basis: National data collected by the Federal Bureau of Investigation, and multiple state and local fatality reviews.)

1.7 How widespread are multiple forms of domestic violence against the same victims?

Analysis of NVAWS data revealed that 18 percent of the women who experienced abuse experienced **systemic abuse**, meaning they were likely to suffer physical attacks (with and without weapons) and strangulation; of these women, 24.4 percent also experienced sexual assault, and 47.8 percent experienced stalking. [\[153\]](#) A study of dating violence similarly found substantial overlap between physical and sexual victimization. [\[222\]](#)

Implications for Law Enforcement

A full investigation may indicate additional, even more serious incidents of domestic violence than the one to which the law enforcement officers respond. (Research basis: A national survey and a five-year longitudinal study of college students from schools considered representative of state colleges attended by 80 percent of all U.S. college students.)

Implications for Prosecutors

A post-arrest investigation by the prosecutor may indicate additional, even more serious incidents of domestic violence than the one specifically noted by law enforcement officers. Rarely does the reported abuse incident represent a single isolated, atypical act. Appropriate charges should be filed that cover the range of criminal behaviors of abusers. In light of the United State's Supreme Court case, *Crawford v. Washington*, 541 U.S. 36 (2004), and its increased demand for live victim testimony, prosecutors must work with law enforcement to uncover any evidence of abuser intimidation of victims that would inhibit the victim's testimony. Such evidence may also be used in preparing victim impact statements. (Research basis: A national survey and a five-year longitudinal study of college students from schools considered representative of state colleges attended by 80 percent of all U.S. college students.)

Implications for Judges

Although called upon to respond to discrete criminal charges, judges must insist that they receive sufficient information to reveal any pattern of systemic, abusive behaviors in order to accurately understand the victim's vulnerability. (Research basis: A national survey and a five-year longitudinal study of college students from schools considered representative of state colleges attended by 80 percent of all U.S. college students.)

2. Reporting and Arrests

2.1 To what extent is domestic violence reported to law enforcement and what percentage actually reaches the courts?

As with any crime, not all incidents of domestic violence are reported to law enforcement, not all incidents reported to law enforcement are forwarded to prosecutors, and even fewer are prosecuted.

Both the older NVAWS and the more contemporary NCVS reports agree that victims do not report all cases of their victimization to police. According to the NVAWS, only 27 percent of women and 13.5 percent of men who were physically assaulted by an intimate partner reported their assault to law enforcement. Less than 20 percent of women victims reported intimate partner rapes to police. Reporting rates for stalking were higher, with 52 percent of women and 36 percent of men reporting stalking incidents to law enforcement. A succession of NCVS surveys over the past several decades find much higher reporting rates (but for far fewer victimizations). According to these surveys, reporting to police of nonfatal partner victimization has increased for all victims (male and female) to more than 62 percent, with no gap between male and female victim reporting rates. The highest reporting rate is for black females (70.2 percent) and the lowest is for black males (46.5 percent). [27]

Comparing hundreds of police domestic violence incident reports with victim statements at four sites in three different states, researchers found that a proportion of victims deny abuse documented by police. Researchers found 29 percent of victims reported “no assault,” contradicting police findings. Ironically, their alleged assailants were more likely to admit to the assaults, with only 19 percent reporting “no assault.” However, suspects were more likely than victims to minimize the severity of the assaults. [63] Researchers also found that some victims do not report repeated incidents of abuse to police. A review of NCVS data from 1992 through 2002 found that, although 60 percent of the victims had been assaulted by their intimate partners before, only half of the latest survey assaults were reported to police, and these included reports made by persons other than the victim. Prior unreported domestic violence may be more serious than the incident actually reported. [63]

Reasons given in the 2005 NCVS for not reporting abuse incidents included a belief that the abuse was a private or personal matter (22 percent for females, 39 percent for males), fear of reprisal (12 percent for females, 5 percent for males), a desire to protect the suspect (14 percent for females, 16 percent for males), and a belief that police won’t do anything (8 percent for females and for males). [27, 63]

Once reported, police arrest rates vary, depending on the jurisdiction and how each defines domestic violence. Arrests for domestic violence per 1,000 persons ranged from 3.2 in Omaha, Neb. (2003), to 12.2 in Wichita, Kan. (2000). [135]

Prosecution rates similarly vary. A review of 26 domestic violence prosecution studies from across the country found prosecutions per arrest ranged from 4.6 percent in Milwaukee in 1992 to 94 percent reported in Hamilton, Ohio, in 2005. The average rate was 63.8 percent, and the median rate was 59.5 percent. [71]

Implications for Law Enforcement and Prosecutors

Performance Measure: On the basis of victim reporting rates to law enforcement alone, law enforcement officers should be responding annually to at least 4 to 5 incidents per 1,000 females (12 and older) and 1 to 2 per 1,000 males (12 and older). On the basis of actual rates as determined by victim surveys, law enforcement officers should be responding annually to 8 to 9 incidents per 1,000 females, and 2 to 3 per 1,000 males. Therefore, if the incidence of domestic violence reported in victim surveys is significantly above the level that victims actually report to law enforcement, greater community outreach and barriers to reporting must be addressed. Law enforcement officers must encourage the rest of the community to do its part, and prosecutors must work with law enforcement if incidents are not making it into the courts. (Research basis: Confirmed by multiple national surveys over past decades, although exact rates [as opposed to the national average] may vary by region, population density, ethnicity of population, and so on.)

Implications for Judges

Judges typically see only a small minority of domestic violence cases that actually occur. (Research basis: Multiple studies across the country based on victim surveys, police arrest records and court cases.)

2.2 At what point do victims report domestic violence?

Victims do not generally report their initial intimate partner victimization but typically suffer multiple assaults or related victimizations before they contact authorities or apply for protective orders. [63, 105, 133] A Texas protective order study, like others conducted across the country, found that 68 percent of the victims taking out orders had been physically abused by their partners in the two years before they took out orders. [26] A Massachusetts arrest study found that a majority (55 percent) of sampled intimate partner victims who called police reported that either the frequency or the severity of ongoing abuse was increasing in the period before the call. Another 11 percent reported no increases in either frequency or severity but increased controlling behaviors such as restrictions on freedom of movement, access to money, medical or counseling services, or social support. [23] The NCVS found that victims were more likely to report reassaults than initial assaults. [63]

Implications for Law Enforcement

In questioning victims, law enforcement officers should always inquire about unreported *prior* assaults for evidence of crimes that may be charged, depending on the jurisdiction's statute of limitations. These inquiries are also necessary to develop an accurate offender history to determine offender risk and to advise the victim. Prior abuse history may also be helpful in determining the primary or predominant aggressor. (Research basis: Both national studies and multiple, disparate individual-jurisdiction studies agree that battering that is likely to come to the attention of law enforcement constitutes repeated activity, much of it not reported to law enforcement initially.)

Implications for Prosecutors

In questioning victims, prosecutors should always inquire about prior unreported domestic violence for evidence of crimes that may be charged, depending on the jurisdiction's statute of limitations, and/or are necessary to develop an accurate offender history to determine appropriate prosecution and sentencing recommendations. (Research basis: Both national studies and multiple, disparate individual-jurisdiction studies agree that battering that is likely to come to the attention of law enforcement constitutes repeated activity, much of it not reported to law enforcement initially.)

Implications for Judges

Judges should not assume that the civil petition or criminal case before them represents isolated, unique behaviors on the part of the involved parties, particularly the abuser. Although this assumption may not be relevant until after the specific petition or case has been decided, it must be considered in terms of fashioning remedies and sanctions. (Research basis: Both national and multiple, disparate individual-jurisdiction studies agree that battering that is likely to come to the attention of the criminal justice system represents repeated activity.)

2.3 Which victims are likely to report domestic violence?

Some victims are more likely to report their victimization or revictimization than others. Research indicates that women who have more experience with the criminal justice system — especially those with protective orders or who have experienced more severe abuse histories — are more likely to call police. [\[23, 27, 120, 141\]](#)

The seriousness of injury may not increase victim reporting, however, because of incapacity, the increased likelihood that a third party will call in these cases, or the fact that seriously injured victims are less likely to have protective orders. [\[23\]](#) Younger women, those in dating relationships, and those with little prior contact with the criminal justice system are less likely to call police. [\[23, 27\]](#)

Implications for Law Enforcement

When a victim reports domestic violence, it probably indicates repeated prior abuse incidents. Law enforcement officers should be trained in how to assist victims and encourage them to secure protective orders if for no other reason than victims with protective orders are more likely than those without such an order to alert police to subsequent victimization incidents. Existence of protective orders adds to the body of evidence for future prosecution. (Research basis: Both national surveys and multiple local studies conclude that victim reporting is not uniform or consistent. Although one might argue that protective orders generate violations by criminalizing otherwise legal behavior, both national and multiple local studies found higher reporting rates of a variety of domestic violence crimes for victims with protective orders.)

2.4 Does the quality of the law enforcement response influence whether domestic violence is reported?

Research indicates that actions of law enforcement, such as follow-up home visits after incidents, can encourage victim reports of domestic violence. [\[37\]](#) It appears that victim confidence in police response leads to more reports of new violence. [\[41, 68\]](#) This is reinforced by a study of a police department domestic violence unit, which documented that repeated victim contact with law enforcement officers assigned to a specialized domestic violence unit significantly increased the likelihood of victim reports of revictimization. [\[130\]](#)

On the other hand, research also shows that victims who reported prior victimization and thought the criminal justice response was insufficient or endangered them are less likely to report subsequent victimizations. [23] However, even if the victim opposed the arrest of her abuser, she is generally just as likely to report revictimizations as are victims who did not oppose the initial arrest. [23, 130]

Implications for Law Enforcement

Law enforcement officers should not be deterred from arresting abuse suspects for fear of prejudicing future victim reporting of revictimization. Law enforcement responses can increase victim reports of reabuse (even as they decrease the likelihood of reabuse). Therefore, increased reporting of victimization does not necessarily mean that law enforcement efforts are failing to reduce actual domestic abuse, and decreased reporting may not indicate successful law enforcement efforts. (Research basis: An increase in reported findings, based on three experimental studies as well as multiple observational studies from disparate localities.)

2.5 Who else reports domestic violence?

Most domestic violence reports are called in by victims, with victim report rates ranging from 59 percent [228] to 93 percent. [68] The review of NCVS reassaults between 1992 and 2002 found that 72 percent of the reassaults were reported by the victims, and 28 percent by third parties. [63] Third parties include family members, relatives and sometimes the suspects themselves. In Chicago's domestic violence misdemeanor court, 26 percent of the calls were made by third parties on their own, and another 7.3 percent called at the direct behest of the victim. [107] Third parties are more likely to call police if the incident involved major injuries or a weapon. [23, 27] Other family members are significantly more likely to report abuse of elderly women (60 years and older) abused by other family members, usually sons, daughters or grandsons. [139]

Implications for Law Enforcement

Tapes of 911 domestic violence calls should be routinely maintained and accessible, as they may contain possible excited utterance evidence, because a majority of calls reporting incidents are made by victims (some of whom may be reluctant to testify later). In addition, the identities and contact information for third-party domestic violence callers should be elicited when possible in case they are potential witnesses. Dispatchers should be trained on these matters. (Research basis: Multiple national and local observational studies.)

Implications for Prosecutors

Prosecutors should ask law enforcement to catalog and maintain 911 tapes of domestic violence calls (since they may contain possible excited utterance evidence) because a majority of reported incidents are made by victims, some of whom may be reluctant to testify later. In addition, the identities and contact information for third-party domestic violence callers should be elicited when possible, in case they are potential incident witnesses. Dispatchers should be trained toward these ends, and this information should be forwarded to prosecutors. (Research basis: Multiple national and local observational studies.)

2.6 Are there other major sources for reports of domestic violence?

Unlike most crime victims, victims reporting domestic violence can use a parallel track, namely, civil courts where they can petition for protective/restraining orders. In many jurisdictions, more victims report intimate assaults and related crimes to civil courts than to law enforcement. [135] Research from both ends of the country, Massachusetts [32, 134] and the state of Washington

[121], however, indicates that the abuse reported in this civil setting is not significantly different from that reported to law enforcement.

Implications for Law Enforcement and Prosecutors

Civil protective order files offer law enforcement and prosecutors an essential tool in identifying domestic violence victims and perpetrators, gauging victim risk, and correctly calibrating appropriate charges and sentences. They may also indicate prior uncharged crimes that may be prosecuted along with more recent charges, particularly if the same victim and/or witnesses are involved in both sets of charges. They may also be used as evidence for violations of probationary sentences. Petitioner affidavits of abuse have been upheld as admissible evidence for probation violation in *Tweedie v. Garvey*, 94_CV_30139 (U.S. D. Springfield, MA, 1994). (Research basis: Disparate observational studies across the country as well as reported data from multiple states.)

Implications for Judges

Notwithstanding the court arena, civil or criminal, the abuse reported is typically as serious in one as in the other. The major differences are the responses courts can offer. For this reason, judges should inform or ensure that victims are informed that they may file criminal complaints in addition to petitioning courts for civil orders. Each process offers victims different benefits (and poses different challenges). (Research basis: Disparate observational studies across the country as well as reported data from multiple states.)

2.7 What kinds of domestic violence are reported to law enforcement and are prosecuted?

Notwithstanding varying numbers and types of crimes that constitute domestic violence in state codes and the U.S. Code, almost two-thirds to three-quarters of domestic violence cited in law enforcement incident reports are for assaults. [23, 68, 120, 196, 228] Although prosecutors screen cases, a study of domestic violence prosecutions in California, Oregon, Nebraska and Washington found that assaults constituted 59 to 81 percent of all prosecuted domestic violence cases. [196]

The percentage of felony assaults varies widely, reflecting specific state felony enhancement statutes. The highest percentage of felony assault domestic violence charges documented (41 percent) is in California, where injurious domestic assaults are classified as felonies. [228] However, most studies find much smaller percentages of felony assault charges — for instance, 13.7 percent in Charlotte, N.C. [68], and only 5.5 percent in Massachusetts [23] — as most physical injuries are minor and most cases do not involve the use of weapons.

These studies accord with the findings of the NCVS. [27] The NVCS, based on victim self-reports, not police characterizations, found simple assaults against female intimate partners to be more than four times greater (4.4) than aggravated assaults in 2005. Most assaults (80.5 percent) did not involve weapons. [27]

Implications for Law Enforcement

If the ratio of arrest reports for lesser offenses (such as disorderly conduct or breach of the peace) is significantly greater than that for assaults, it may indicate that patrol officers are not correctly identifying or assessing the underlying criminal behavior. Additional training or supervision may be required. (Research basis: Numerous observational studies from across the country as well as findings of national victim surveys, 1993-2004.)

Implications for Prosecutors

If the ratio of arrest reports for lesser offenses (such as disorderly conduct or breach of the peace) is significantly greater than that for assaults, it may indicate that local law enforcement is not correctly identifying the underlying criminal behavior. Prosecutors must work with officers to correctly determine the necessary elements of specific domestic violence crimes, including assault, stalking and marital rape. Alternatively, if the majority of domestic assaults are routinely pled down to lesser offenses by prosecutors, prosecutors may be endangering victims as well as failing to hold abusers fully accountable for their violence. Federal misdemeanor firearm prohibitions — 18 U.S.C. §922(g)(9), for example — only apply to assault convictions. Where enhancement statutes are available, prosecutors should carefully review prior convictions to charge defendants as repeat offenders where appropriate. (Research basis: Numerous observational studies from across the country as well as findings of national victim surveys, 1993-2004.)

Implications for Judges

Reducing assault charges to nonassault charges allows convicted abusers to retain firearms otherwise prohibited pursuant to federal law, 18 U.S.C. § 922(g)(9), which prohibits abusers convicted of misdemeanor assaults from possessing firearms or ammunition. Qualifying offenses must include the use or attempted use of physical force or the threatened use of a deadly weapon. Judges can facilitate application of the federal prohibition by making specific findings of these necessary elements required in the federal law. (Research basis: Numerous observational studies from across the country as well as findings of national victim surveys, 1993-2004.)

2.8 Do arrest rates correspond to actual rates of domestic violence and stalking based on victim surveys?

Domestic violence arrest rates as a percentage of written incident reports vary greatly because incident report writing practices vary across jurisdictions. A better, more consistent measure is the **arrests per capita** over the course of a year. At least one study documents that actual per capita arrests for domestic violence across an entire (albeit small) state exceeded the national estimates of domestic violence as determined by the NCVS. A Rhode Island study found in 2004 that per capita domestic violence arrests were 10.5 per 1,000 females (including both male and female suspects of female victims) and were 2.9 per 1,000 males (including both male and female suspects of male victims), higher than the national estimated incidence rates of 8.6 per 1,000 females and 2.5 per 1,000 males. [136] Other, disparate jurisdictions have similarly demonstrated high per capita arrest rates: Wichita, Kan. 12.1/1,000 (2000); Chicago, 6.9/1,000 (1997); and Nevada, 5.4/1,000 (2001). [135]

Performance Measure for Law Enforcement: If domestic violence is broadly defined and if law enforcement agencies mandate and enforce arrest upon probable cause, over the course of a year, law enforcement can reach the same percentage of victims who identify themselves as abused in national crime victim surveys. Departments should establish benchmarks based on the NCVS to assess their performance. (Research basis: This performance measure is based on actual arrest figures from Rhode Island, a state with mandatory arrest for protective order violations and assaults with injuries, and where domestic violence includes any crime committed by family or household members, cohabitants, current or former intimate partners, and dating partners.

Jurisdictions' definitions will necessarily vary and are based on state laws as documented in Klein, 2004, pp. 90-91.)

2.9 Do stalking arrests correspond to actual stalking rates as reported by victims?

Stalking arrests are rare, nowhere near the estimated number of stalkers. [207] A pioneering study determined that, although 16.5 percent (in a sample of 1,731) of all domestic violence incident reports filed in Colorado Springs, Colo., involved stalking, in all but one incident the suspect was charged with a lesser offense — harassment, violation of a protective order, or another nonstalking domestic violence offense. [210]

Implications for Law Enforcement

If stalking arrests constitute a negligible proportion of all domestic violence arrests, departments should undertake a legal, policy and practice review to determine barriers to the enforcement of stalking statutes. Law enforcement officers should receive training on stalking behavior and statutes. Not only may charging abusers with stalking more accurately reflect their behavior but also stalking charges are more likely to constitute felonies in many jurisdictions than are alternative domestic offense charges. (Research basis: National surveys supplemented by multiple domestic violence arrest studies from disparate jurisdictions across the country.)

2.10 Is arrest the best response?

A major re-examination of a series of fairly rigorous experiments in multiple jurisdictions finds that arrest deters repeat reabuse, whether suspects are employed or not. In none of the sites was arrest associated with increased reabuse among intimate partners. [155] Another major study, based on 2,564 partner assaults reported in the NCVS (1992-2002), found that whether police arrested the suspect or not, their involvement had a strong deterrent effect. The positive effects of police involvement and arrest do not depend on whether the victim or a third party reported the incident to law enforcement. Neither do they depend on the seriousness of the incident assault, whether a misdemeanor or a felony. [63]

A Berkeley arrest study found similarly that all actions taken by responding officers — including arrest, providing victims with information pamphlets, taking down witness statements, and helping victims secure protective orders — were associated with reduced reabuse. By contrast, the highest reabuse rates were found where the responding officers left it to the victim to make a “citizen arrest,” swearing out a complaint herself. [228] Research has also shown that police response also significantly increases the likelihood that victims will secure protective orders. [130, 151, 152]

Research also finds that, by and large, the vast majority of victims report satisfaction with the arrest of their abuser when interviewed after the fact. In Massachusetts, 82 percent were either very or somewhat satisfied, and 85.4 percent said they would call police again for a similar incident. [23] Similarly, a study of courts in California, Oregon, Nebraska and Washington found that 76 percent of the victims said they wanted their abuser arrested. [196] Also important to note is that police arrests in spite of victims' objections do not reduce the likelihood of victims reporting new abuse to police. [5]

Implications for Law Enforcement

Arrest should be the default position for law enforcement in all domestic violence incidents. (Research basis: Multiple studies in diverse jurisdictions. The police arrest studies were combined carefully, and intimate partner abuse cases were separated from family abuse cases.)

Implications for Prosecutors and Judges

One of the best ways prosecutors can encourage law enforcement to arrest abuser suspects is to follow through where possible by filing charges against those arrested. Judges encourage the arrest of abusers by ensuring that domestic violence cases that reach court are heard and not dismissed out of hand. (Research basis: The efficacy of arrests has been widely researched; the influence of prosecutors on law enforcement arrest behavior has been found in studies in which pro-arrest departmental policies mitigated anti-arrest personal views of individual officers. [59])

2.11 What should law enforcement's response be if the suspect is gone when they arrive?

A large percentage of alleged abusers leave the crime scene before law enforcement arrives. Where noted, absence rates range from 42 to 66 percent. [23, 50, 117, 196, 227, 228] Pursuing alleged abusers, including the issuance of warrants, is associated with reduced revictimization. [50] Pursuing absent suspects may be of particular utility because limited research finds that suspects who flee the scene before police arrive are significantly more likely to have prior criminal histories and to reabuse than those arrested at the scene. [23] Similarly, another study finds higher reabuse *if the victim is gone* when officers arrive. [228]

Implications for Law Enforcement

Law enforcement officers should make the arrest of abusers who flee the scene a priority. (Research basis: Numerous studies confirm that a large proportion of abusers flee the scene; only one study has looked at differences in records of those who fled the scene and those who didn't.)

Performance Measure: According to a national survey, 68 percent of police departments have specific policies that cover policies and procedures for responding law enforcement officers if the perpetrator is gone when they arrive. [213] In a study of the south shore communities of Massachusetts, researchers documented that police arrested 100 percent of abusers present at the scene and arrested or issued warrants for a majority (54 percent) who left the scene, for a total arrest or warrant rate of about 75 percent. [23] Similarly, a statewide New York study found that half of the domestic violence suspects fled the scene, but local police ultimately arrested 60 percent of those who fled. [165] (Research basis: State law varies regarding the power of police to arrest after the incident. Time limits are not restricted in Massachusetts or New York, where these results were documented.)

Implications for Prosecutors

Prosecutors should encourage law enforcement officers to file warrants for abusers who flee the scene and prepare reports for subsequent prosecution when arrests are made. Similarly, prosecutors should assist victims to file criminal complaints if necessary to allow for the prosecution of abusers who have left the scene before police arrived. (Research basis:

Numerous studies confirm that a large proportion of abusers flee the scene. Only one study has looked at differences in records of those who fled the scene and those who didn't.)

2.12 Who is the primary/predominant aggressor?

A substantial percentage of victims of domestic violence hit their perpetrators back. [72] In Massachusetts, 37.3 percent of the female victims fought back in the incident in which their male abuser was arrested. However, most (59.1 percent) of those females who fought back found that this made their abuser more violent. [23] A substantial number of victims will not self-disclose their victimization. [93] Consequently, determination of primary or predominant aggressor may not be self-evident. Nonetheless, data on police action in 2,819 jurisdictions in 19 states reveal that only 1.9 percent of incidents resulted in dual arrests for intimate partner violence and intimidation. In other words, less than 4 percent of all intimate partner arrests were dual arrests in which law enforcement could not determine a primary or predominant aggressor. [117]

Studies suggest that officers' determination of primary or predominant aggressor is particularly problematic when the intimate partner violence occurs between same-sex couples. Although police are equally likely to make arrests in same-sex as in heterosexual partner abuse cases, a study of more than 1,000 same-sex intimate partner violence reports from departments across the country found that officers were substantially more likely to arrest both parties in same-sex cases. Specifically, 26.1 percent of female same-sex cases and 27.3 percent of male same-sex cases resulted in dual arrests, compared to only 0.8 percent with male offenders and female victims, and 3 percent with female offenders and male victims. [175]

Research on the impact of primary aggressor policies, either mandated by state statute or by individual law enforcement agencies, reveals that such policies significantly reduce the percentage of dual arrests from an average of 9 percent to 2 percent of domestic violence arrests. [117]

Implications for Law Enforcement

If the rate of dual arrests exceeds that found on average across the country, law enforcement departments should develop and implement specific primary aggressor policies and protocols. (Research basis: The most significant dual-arrest study was based on examination of all assault and intimidation cases in the 2000 National Incident-Based Reporting System (NIBRS) database as well as more detailed examination of these data from 25 diverse police departments across the country.)

Implications for Prosecutors

If presented with a dual-arrest case, prosecutors should conduct an independent analysis to determine the predominant aggressor and proceed against that suspect alone. Determination of primary/predominant aggressor is briefly described by the American Prosecutors Research Institute on its Web site: http://www.ndaa.org/apri/programs/vawa/dv_101.html. (Research basis: The most significant dual-arrest study documenting its rarity was based on examination of all assault and intimidation cases in the 2000 NIBRS database as well as more detailed examination of these data from 25 diverse police departments across the country.)

Implications for Judges

In dual-arrest cases, judges should insist that prosecutors provide evidence that one of the parties was the primary or predominant aggressor and the other the victim. This may be

particularly important, as advocates caution that female victims who are arrested along with their abusers may nonetheless plead guilty in order to be able to return home to care for minor children. Furthermore, it appears that law enforcement finds it particularly challenging to determine the primary/predominant aggressor with same-sex couples. (Research basis: The most significant dual-arrest study was based on examination of all assault and intimidation cases in the 2000 NIBRS database as well as more detailed examination of these data from 25 diverse police departments across the country.)

3. Perpetrator Characteristics

3.1 What is their gender?

Although some sociological research [202] based on self-reporting finds equal rates of male and female partner **conflict** (including mostly minor physical assaults), behavior that is likely to violate most state and federal criminal and civil (protective order) statutes is typically perpetrated by males. [153]

Perpetrators that come to the attention of the criminal justice system are overwhelmingly male. For example, 86 percent of abusers brought to court for restraining orders in Massachusetts were male, [2] as were those arrested for domestic violence in California [228] and Charlotte, N.C. (as much as 97.4 percent for the most serious cases). [68] In Rhode Island, 92 percent of abusers placed on probation for domestic violence were male. [68, 141] A Cincinnati court study found 86.5 percent of 2,670 misdemeanor domestic violence court defendants to be male. [11] The overwhelming majority of their victims were women: 84 percent in both Charlotte, N.C., [68] and Berkeley, Calif. [228] The 2000 NIBRS multistate study found that 81 percent of the suspects were male and their victims were female. [117]

Jurisdictions with higher numbers of female suspects and male victims usually include higher numbers of non-intimate family violence cases. [139, 196] The latter typically involve older victims and their adult children perpetrators. A study of elder abuse across the state of Rhode Island, for example, found that two-thirds of elder female victims were abused by family members as opposed to intimate partners, including 46.2 percent by adult sons and 26.9 percent by adult daughters, 8.6 percent by grandsons and 1.6 percent by granddaughters. [139]

Implications for Law Enforcement

If the ratio of male to female suspects and victims differs substantially from those found above, departments should be alert to potential gender bias in their response to domestic violence. Ongoing training and supervision can address overrepresentation of female versus male arrests. (Research basis: Multiple studies of abusers and their victims brought to the attention of the criminal justice system [including civil protective orders] confirm the gender ratio as opposed to studies focusing on non-intimate and family conflict.)

Implications for Prosecutors

Prosecutors should be alert to gender bias in the response of local law enforcement agencies and re-screen cases if the percentage of female suspects accused of abusing male victims exceeds that commonly found across the nation. (Research basis: Multiple studies of abusers and their victims brought to the attention of the criminal justice system [including civil protective orders] confirm the gender ratio as opposed to studies focusing on non-intimate and family conflict.)

Implications for Judges

If, upon reviewing domestic violence dockets, judges find much higher rates of female-on-male abuse cases than those typically found across the country as a whole, they should be alert to potential gender bias on the part of police and/or prosecutors and ensure that they are presented with sufficient evidence to confirm the correct designation of victims and their abusers. (Research basis: Multiple studies of abusers and their victims brought to the attention

of the criminal justice system [including civil protective orders] confirm the gender ratio as opposed to studies focusing on non-intimate and family conflict.)

3.2 What age are they?

Most studies find most perpetrators to be between 18 and 35 years old, with a median age of about 33 years, although they range in age from 13 to 81. [11, 23, 68, 228] A large U.S. west coast study of abusers subject to police incident reports or protective orders found that 33 percent were between 20 and 29 years old, and slightly more (33.4 percent) were between 30 and 39 years old. [121]

3.3 Are they likely to be known to law enforcement already?

Most studies agree that the majority of domestic violence perpetrators that come to the attention of criminal justice or court authorities have a prior criminal history for a variety of nonviolent and violent offenses against males as well as females, and of a domestic or nondomestic nature. For example, a study of intimate partner arrests in Connecticut, Idaho and Virginia of more than 1,000 cases each found that almost 70 percent (69.2) had a prior record and that 41.8 percent of those had been convicted of a violent crime, including robbery and rape. [117]

The percentage of officially identified perpetrators with criminal histories ranges from a low of 49 percent for prior arrest within five years in an arrest study in Portland, Ore. [130], to 89 percent for at least one prior nonviolent misdemeanor arrest for domestic violence defendants arraigned in a Toledo, Ohio, Municipal Court. [216] Not only did most of the abusers brought to the Toledo Court for domestic violence have a prior arrest history but the average number of prior arrests was 14. Similarly, 84.4 percent of men arrested for domestic violence in Massachusetts had prior criminal records, averaging a little more than 13 prior charges (resulting from five to six arrests) — including four for property offenses, three for offenses against persons, three for major motor vehicle offenses, two for alcohol/drug offenses, one for public order violations, and 0.14 for sex offenses. [23] A study of the Cook County (Chicago) misdemeanor domestic violence court found that 57 percent of the men charged with misdemeanor domestic violence had prior records for drug offenses, 52.3 percent for theft, 68.2 percent for public order offenses, and 61.2 percent for property crimes. On average, they had 13 prior arrests. [107]

Even if abusers have no prior arrest records, they may be known to local police. In North Carolina, for example, researchers found from police files that 67.7 percent of the domestic violence arrestees had prior contact with the local criminal justice system, 64.5 percent were officially known by local police, and 48.3 percent had prior domestic violence incident reports. [68]

Studies of abusers brought to court for protective orders find similarly high rates of criminal histories, ranging from slightly more than 70 percent in Texas [26] to 80 percent in Massachusetts. [134]

Implications for Law Enforcement, Prosecutors and Judges

Given the large overlap between domestic violence and general criminality, law enforcement should carefully check domestic violence suspects' status in regard to outstanding warrants, pending cases, probationary or parole status, and other concurrent criminal justice involvement, including suspect involvement as a confidential informant for ongoing investigations. With regard to the latter, in the event the informant is involved in a domestic violence incident, he should be precluded from working with the department without the authorization of department

supervisors. In prosecuting or sentencing defendants for other crimes, prosecutors and judges should look for concurrent domestic violence that was previously prosecuted, is pending, or that may be charged. (Research basis: Multiple studies from jurisdictions across the country confirm these findings, although the extent of prior records may vary, depending on jurisdictional law enforcement, court practices and resources.)

3.4 Are they likely to be drug and/or alcohol abusers?

As with criminality in general, there is a high correlation between alcohol and substance abuse and domestic violence for abusers. This is not to say that substance abuse causes domestic violence. The Memphis night arrest study found that 92 percent of assailants used drugs or alcohol on the day of the assault, and nearly half were described by families as daily substance abusers for the prior month. [19] Other studies found a lower but still substantial incidence of substance use. For example, a California arrest study found alcohol or drugs, or both, were involved in 38 percent of the domestic violence incident arrests. [228] A large Seattle arrest and protective order study found that alcohol/drug use was reported in 24.1 percent of incidents involving police. [120, 121] It was higher in North Carolina, where 45 percent of suspects were identified as being intoxicated. [68]

A domestic violence fatality review study in New Mexico documented that alcohol and drugs were present in 65 percent of 46 domestic violence homicides between 1993 and 1996: 43 percent abused alcohol and 22 percent abused drugs. [170] Two surveys, one of state correctional facilities in 1991 and the other of jails in 1995, found more than half of those jailed or imprisoned for domestic violence admitted drinking and/or using drugs at the time of the incident. [93] Self-reports from batterers in Chicago revealed that 15 to 19 percent admitted to having a drug problem, and 26 to 31 percent scored more than one on the CAGE (Cut down drinking, drinking Annoyed others, felt Guilt over drinking, and needed a morning Eye-opener drink) test indicating alcohol abuse. [12] Among defendants prosecuted in Chicago's domestic violence misdemeanor court, 60.7 percent were found to have "ever had an alcohol or drug problem." [107]

Interviews with more than 400 North Carolina female victims who called police for misdemeanor domestic assaults found that abuser drunkenness was the most consistent predictor of a call to police. According to the victims, almost a quarter (23 percent) of the abusers "very often" or "almost always" got drunk when they drank, more than half (55 percent) were binge drinkers, 29.3 percent used cocaine at least once a month, and more than a third (39 percent) smoked marijuana. Furthermore, almost two-thirds of abusers were drinking at the scene of the incident, having consumed an average of almost seven drinks, resulting in more than half of them (58 percent) being drunk. [126] The national crime victims survey found substantial, but lesser rates of substance abuse. Between 1993 and 2004, victims reported that 43 percent of all nonfatal intimate partner violence involved the presence of alcohol or drugs, another 7 percent involved both alcohol and drugs, and 6 percent involved drugs alone. [27]

Both a batterer and an alcohol treatment study similarly reveal a consistent, high correlation between alcohol abuse and domestic violence. In one study, for example, for 272 males entering treatment for battering or alcoholism, the odds of any male-to-female aggression were 8 to 11 times higher on days they drank than on days they did not. [56]

Implications for Law Enforcement

Law enforcement officers should note the use of alcohol or drugs in domestic violence incident reports, not to mitigate abusive behavior but to indicate heightened abuser risk for continued abuse. (Research basis: The correlation is found in multiple studies across the country.)

Implications for Prosecutors and Judges

The presence of drug and/or alcohol abuse makes continued offending more likely. Although sobriety may not eliminate the risk for reabuse, research suggests it may be a necessary ingredient. When recommending or setting release or sentence conditions, requiring abstinence from alcohol and drugs may be appropriate. (Research basis: Correlation is found in multiple studies across the country.)

3.5 Are they likely to be mentally ill or have certain personality traits?

Batterers are no more likely to be mentally ill than the general population. [89] Although various researchers have attempted to classify abusers — ranging from agitated “pit bulls” and silent “cobras” [128] to “dysphoric/borderline” and “generally violent and anti-social” [122] — attempts to use these classifications to predict risk of reabuse have proven unhelpful. [112] However, researchers agree that batterers may differ markedly from each other. [29, 123, 193] Although some batterers may appear to be emotionally overwrought to responding police officers, other batterers may appear calm and collected. [128] Other research suggests that batterers can be classified as low-, moderate- and high-level abusers and that, contrary to common belief, batterers remain within these categories. [28] Similarly, in the treatment literature, the multistate study of four batterer intervention programs consistently found that approximately a quarter of court-referred batterers are high-level abusers, unlikely to respond to treatment. [84, 85, 88]

Implications for Law Enforcement

Abuser demeanor at the scene, especially compared to overwrought, traumatized victims, can be misleading. (Research basis: Multiple studies have failed to validate any classification of battering propensity based on personality types or mental illnesses, and multiple observational studies reveal different patterns of behaviors among batterers.)

Implications for Prosecutors and Judges

Battering does not appear to be a mental aberration and is not responsive to mental health counseling. Although batterers may suffer from depression or low self-esteem after being arrested or restrained, these conditions have not been found to have caused the abuse. (Research basis: Multiple studies have failed to validate any classification of battering propensity based on personality types or mental illnesses, and multiple observational studies reveal different patterns of behaviors among batterers.)

3.6 Do abusers stick with one victim?

Deprived of their victim, many abusers will go on to abuse another intimate partner or family member. Others may abuse multiple intimate partners and family members simultaneously. [32] The Rhode Island probation study, for example, found that in a one-year period, more than a quarter (28 percent) of those probationers who were rearrested for a new crime of domestic violence abused a different partner or family member. [141] The Massachusetts study of persons arrested for violating a civil restraining order found that almost half (43 percent) had **two or more victims over six years**. [18] This confirms an earlier state study finding that 25

percent of individuals who had protective orders taken out against them in 1992 had up to eight new orders taken out against them by as many victims over the subsequent six years. [2]

Studies have generally found that abusers who go on to abuse new partners are not substantially different from those who reabuse the same partner, with the exception that they tend to be younger and are not married to their partners. [2, 141]

Implications for Law Enforcement, Prosecutors and Judges

If the abuser is no longer with the victim of the last domestic violence incident, new intimate partners are vulnerable to becoming new targets of abuse. Whether the batterer remains with the same victim or not, battering behavior brought to police and prosecutors' attention is likely to reflect chronic, patterned, non-isolated behavior that is victim specific. In charging decisions, sentencing recommendations, and fashioning protective orders or criminal sanctions, prosecutors and judges must be concerned with future intimate-partner victims as well as immediate victims, even if the immediate intimate-partner victims are no longer available to the abusers. (Research basis: Although longitudinal studies of batterers are few, multiple studies that follow batterers for only a year or two also confirm the serial nature of battering for some abusers.)

3.7 How many abusers are likely to do it again?

Depending on how reabuse is measured, over what period of time, and what countermeasures either the victim (e.g., getting a protective order or going into hiding) or the criminal justice system takes (arresting or locking up the abuser), a hard core of approximately one-third of abusers will reabuse in the short run, and more will reabuse in the long run.

In Rhode Island, 38.4 percent of abusers were arrested for a new domestic violence offense within two years of being placed on probation supervision for a misdemeanor domestic violence offense. [141] A half-dozen batterer program studies published between 1988 and 2001 and conducted across the United States documented reabuse, as reported by victims, ranging from 26 to 41 percent within five to 30 months. [4, 48, 54, 84, 85, 88, 89, 98] Five studies published between 1985 and 1999 of court-restrained abusers in multiple states found reabuse rates, as measured by arrest and victim reports for the period of four months to two years after their last abuse offense, to range from 24 to 60 percent. [4, 26, 105, 133, 134]

Where studies have found substantially lower rearrest rates for abuse, it appears the lower rate is a result of police behavior, not abuser behavior. In these jurisdictions, victims report equivalent reabuse, notwithstanding low rearrest rates. For example, studies of more than 1,000 female victims in Florida, New York City and Los Angeles found that, whereas only 4 to 6 percent of their abusers were arrested for reabuse within one year, 31 percent of the victims reported being physically abused during the following year (one-half of those reporting being burned, strangled, beaten up or seriously injured) and 16 percent reported being stalked or threatened. [61, 190] Similarly, in a Bronx domestic court study, whereas only 14 to 15 percent of defendants convicted of domestic violence misdemeanors or violations were rearrested after one year, victims reported reabuse rates of 48 percent during that year. [185]

Reabuse has found to be substantially higher in longer term studies. A Massachusetts study tracked 350 male abusers arrested for abusing their female intimate partners over a decade, 1995 to 2005. The study found that 60 percent were rearrested for a new domestic assault or had a protective order taken out against them, even though some went three to four years

between arrests. [138, 224] An equivalently high rearrest rate for domestic violence was also documented in Colorado between 1994 and 2005. During that time, of 84,431 defendants arrested for domestic violence, according to the state bureau of investigation, more than 50,000 (nearly 60 percent) were arrested for domestic violence charges more than once. In other words, the domestic violence rearrest rate was almost 60 percent for arrested abusers over an average of five years. [125]

Implications for Law Enforcement

It is safe to assume that, more often than not, the typical abuser who comes to the attention of law enforcement has a high likelihood of continuing to abuse the same or a different victim, both in the short term and over the subsequent decade at least. (Research basis: Although observational studies vary on reports of reabuse [depending on how it is measured], there is widespread consensus that reported reabuse is substantially less than actual reabuse experienced by victims, which is typically found to be more than 50 percent. The few longitudinal studies of more than a year or two suggest that many abusers continue to abuse, notwithstanding gaps of several years between initial and subsequent reported incidents.)

Implications for Prosecutors and Judges

It is safe to assume that, more often than not, the typical abuser who makes it to the prosecutor's office has a high likelihood of continuing to abuse the same or a different victim, both in the short term and over the subsequent decade at least. While prosecuting specific, discrete incidents, prosecutors should recommend sentences that address long-term patterns of criminal behavior and are based on abuser risk for reabuse. Judges should fashion civil or criminal remedies/sanctions that maximize protection of current and/or future victims from the abuser. It is inappropriate to consider a repeat abuser as a "first" offender just because several years may have passed between abuse offenses. (Research basis: Although observational studies vary on reports of reabuse [depending on how it is measured], there is widespread consensus that reported reabuse is substantially less than actual reabuse experienced by victims, which is typically found to be more than 50 percent. The few longitudinal studies of more than a year or two suggest that many abusers continue to abuse, notwithstanding gaps of several years between initial and subsequent reported incidents.)

3.8 Are abusers at risk for committing new nondomestic violence crimes?

Given their extensive prior criminal histories, abusers typically do not confine their reoffending to domestic violence alone. Studies concur that abusers are also likely to commit new nondomestic violence crimes in addition to domestic-violence-related crimes. Two New York City studies, one in the Bronx Misdemeanor Domestic Violence Court and the other in the Brooklyn Felony Domestic Violence Court, found that 58 percent of those arrested for domestic violence were rearrested for any crime within 30 months of the study arrest in the former study [164], and 44 percent within two years of arrest in the latter. [183] Most of the new arrests (according to official complaints) were for nondomestic-violence-related crimes such as drug possession/sale or property offenses.

Similarly, whereas 51 percent of Massachusetts abuser arrestees were rearrested for new domestic violence over the following 10 years, 57 percent were rearrested for nondomestic violence, including 15 percent who were not also arrested for new domestic violence. [138] Among Cook County domestic violence misdemeanants, 26.1 percent were arrested within 2.4 years on average for new domestic violence, whereas 46.5 percent were arrested for any offense. [12]

It is not surprising that research from the National Youth Survey found that most men (76 percent) who engage in domestic violence report also engaging in one or more deviant acts concurrently, including illegal behavior such as stealing or illicit drug use. [167] Nor is it surprising that abuser violence was not limited to their households. In Cook County (Chicago), the majority of prosecuted misdemeanor domestic violence offenders (55.6 percent) were found to have been violent with others as well as their partners. [107]

Implications for Law Enforcement, Prosecutors and Judges

Aggressively pursuing, prosecuting and sentencing abusers not only may protect victims and their children but also may reduce nondomestic offenses often committed by abusers.

(Research basis: Although multiple, disparate studies document that abusers identified by the criminal justice system are likely to have nondomestic criminal histories, at least one study of nonarrested young married or cohabiting men also found that domestic violence and other deviant behaviors were associated both concurrently and prospectively.)

3.9 When are abusers likely to reabuse?

Studies agree that for those abusers who reoffend, a majority do so relatively quickly. In states where no-contact orders are automatically imposed after an arrest for domestic violence, rearrests for order violations begin to occur immediately upon the defendant's release from the police station or court. For example, in both a Massachusetts misdemeanor arrest study and a Brooklyn, N.Y., felony arrest study, the majority of defendants rearrested for new abuse were arrested while their initial abuse cases were still pending in court. [23, 164] The latter included a 16-percent arrest rate for violation of no-contact orders and a 14-percent arrest rate for a new felony offense. [164] Similarly, a little more than one-third of the domestic violence probationers in Rhode Island who were rearrested for domestic violence were rearrested within two months of being placed under probation supervision. More than half (60 percent) were arrested within six months. [141] A multistate study of abusers referred to batterer programs found that almost half of the men (44 percent) who reassaulted their partners did so within three months of batterer program intake, and two-thirds within six months. The men who reassaulted within the first three months were more likely to repeatedly reassault their partners than the men who committed the first reassault after the first three months. [81, 83, 84] In the Bronx, similarly, reoffending happened early among those convicted for misdemeanor or domestic violence violations. Of those rearrested for domestic violence, approximately two-thirds reoffended within the first six months. [185]

Implications for Law Enforcement

Arrest is only the first step in stopping abuse. Countermeasures must begin immediately, once the suspect is released pending trial. Focusing on those already arrested for domestic violence provides law enforcement with the means to target a high-risk population of abusers who are disproportionately likely to commit new abuse-related and other offenses. (Research basis: Multiple studies from disparate jurisdictions have all found relatively quick reabuse by abusers who reabuse within the first year or two.)

Implications for Prosecutors and Judges

Arrest is only the first step in stopping abuse. Once arrested, prosecutors must immediately pursue measures to safeguard victims pending trial and thereafter. If abusers are automatically released pending trial, the most vulnerable victims will be reabused by the worst abusers. This reabuse may also inhibit subsequent victim cooperation with prosecutors, resulting in subsequent dismissals for lack of prosecution. This in turn may further encourage abusers to

continue their abuse. (Research basis: Multiple studies from disparate jurisdictions have all found relatively quick reabuse by those that reabuse within the first year or two.)

3.10 Which abusers are likely to do it again in the short term?

When officers respond to a domestic violence call, they typically do not have a lot of information about the parties involved, their psychological profiles, family and child development histories, and the like. Fortunately, the research consistently finds that the basic information usually available to officers provides as accurate a prediction of abuser risk to the victim as do more extensive and time-consuming investigations involving more sources (e.g., clinical assessments). [111, 112, 113, 189] As a Bronx study on batterer treatment concluded, intensive individual assessments of attitudes or personality are not required to make reasonable judgments regarding abusers' risk of reabuse. [183]

3.11 Is gender an important risk factor?

Of course, the most powerful predictor of risk of domestic violence is gender. All of the research concurs that males are more likely to reabuse than females. [183]

3.12 Is age an important risk factor?

Younger defendants are more likely to reabuse and recidivate than older defendants. [23, 141, 183, 185, 216, 228] This has been found to be true in studies of arrested abusers and batterers in treatment programs as well as court-restrained abusers. [111, 112, 134, 153, 228]

3.13 Is prior arrest history an important risk factor?

If the abuser has just **one** prior arrest on his criminal record for **any** crime (not just domestic violence), he is more likely to reabuse than if he has no prior arrest. [23, 39, 85, 172, 185] A multistate study of more than 3,000 police arrests found that offenders with a prior arrest record for any offense were more than **seven** times more likely to be rearrested than those without prior records. [117]

The length of prior record is predictive of reabuse as well as general recidivism. [163] In looking at all restrained male abusers over two years, Massachusetts research documented that if the restrained abuser had just one prior arrest for any offense on his criminal record, his reabuse rate of the same victim rose from 15 to 25 percent; if he had five to six prior arrests, it rose to 50 percent. [134] In the Rhode Island abuser probation study, abusers with one prior arrest for any crime were almost twice as likely to reabuse within one year, compared to those with no prior arrest (40 percent vs. 22.6 percent). If abusers had more than one prior arrest, reabuse increased to 73.3 percent. [141] Of course, prior civil or criminal records specifically for abuse also increase the likelihood for reabuse. [23, 68, 216, 228]

Related to the correlation between prior arrest history and reabuse, research also finds similar increased risk for reabuse if suspects are on warrants. In the Berkeley study, researchers documented that having a pending warrant at the time of a domestic violence incident for a prior nondomestic violence offense was a better predictor of reabuse than a prior domestic violence record alone. [228] Similarly, in the one study that addressed this issue, suspects who were gone when police arrived were twice as likely to reabuse as those found on the scene by police. [23]

Similarly, one large statewide study found that if the suspect before the court for domestic violence was already on probation for anything else, or if another domestic violence case was also pending at the time of a subsequent arrest for domestic violence, that defendant was more likely to be arrested again for domestic violence within one year. [141]

Implications for Law Enforcement

The absence of a prior domestic violence arrest is not as powerful a predictor of no reabuse as the absence of a prior arrest for anything. On the other hand, a prior arrest record for any crime may be as accurate a predictor for subsequent domestic violence as a prior record for domestic violence. Law enforcement officers should attempt to track down the suspect who leaves the scene and aggressively serve warrants to protect victims from higher risk abusers. (Research basis: Multiple studies in disparate jurisdictions find that both prior criminal history and prior domestic violence correlate with reabuse, and vice versa, although the predictive power of prior domestic violence history may be less revealing if domestic violence arrest rates are low in that specific jurisdiction. Although only the limited studies speak to reabuse in correlation with abuser flight, they are consistent with more plentiful arrest studies that find support for the efficacy of arresting abuse suspects.)

Implications for Prosecutors and Judges

The absence of a prior domestic violence arrest is not as powerful a predictor of no reabuse as the absence of a prior arrest for anything. On the other hand, a prior arrest record for any crime is as accurate a predictor of subsequent domestic violence as a prior record for domestic violence. Therefore, in making charging decisions and sentencing recommendations, prosecutors should understand that if an abuser has a prior record for any crime, the prosecutor should assume him to be a high-risk domestic violence offender, not a low-risk “first” offender. Prosecutors should carefully review defendants’ prior arrest records for warrant status and bail status at the time of the domestic violence arrest to accurately gauge defendant risk. Judges should understand that if an abuser has a prior record for **any** crime, he is a high-risk domestic-violence offender, not a low-risk “first” offender. Judges should demand access to prior criminal and abuse histories before fashioning civil orders, making pretrial release decisions, or sentencing abusers. (Research basis: Multiple studies in disparate jurisdictions find both prior criminal history and prior domestic violence correlate with reabuse, and vice versa, although the predictive power of prior domestic violence history may be less revealing if domestic violence arrest rates are low in that specific jurisdiction.)

3.14 Is substance abuse an important risk factor?

Acute and chronic alcohol and drug use are well-established risk factors for reabuse as well as domestic violence in general. [118, 221] Prior arrests for drug and alcohol offenses also correlate with higher rates of reabuse. [78] Just one prior arrest for any alcohol or drug offense (e.g., drunk driving or possession of a controlled substance), for example, doubled the reabuse rate from 20 percent (no prior drug/alcohol arrest) to 40 percent (at least one arrest for drugs/alcohol) in a restraining order study over two years. [134]

Defendant alcohol and substance abuse, similarly, are predictive of reabuse and recidivism. [23, 134, 141, 228] The multistate batterer program referral study found heavy drinking to be a significant predictor for reabuse. For the same reason, it found that abuser participation in drug treatment predicted repeated reassaults. [113] Batterers who complete batterer intervention are three times more likely to reabuse if they are found to be intoxicated when tested at three-month intervals. [83, 84, 85, 88]

Many [63, 117, 172], but not all, studies [23] have found abuser or victim abuse of drugs or alcohol **at the time of the incident** to be a consistent risk marker for continued abuse.

Implications for Law Enforcement

Seemingly unrelated nonviolent offenses such as drunk driving or drug possession, which suggest substance abuse by the abuser, should be considered as risk markers for continued abuse. (Research basis: Multiple, disparate studies suggest that any disagreement regarding the relationship between domestic abuse and substance abuse has to do with whether or not substance abuse “causes” domestic violence, not with the existence of the correlation.)

Implications for Prosecutors and Judges

Seemingly unrelated nonviolent offenses like drunk driving or drug possession, which suggest substance abuse by the abuser, should be considered as risk markers for continued abuse. Substance and alcohol abuse should be considered when prosecutors make prerelease and sentencing recommendations and when judges set bail, pronounce sentences, and fashion civil protective orders and conditions of probation supervision. (Research basis: Multiple, disparate studies suggest that any disagreement regarding the relationship between domestic abuse and substance abuse has to do with whether or not substance abuse “causes” domestic violence, not with the existence of the correlation.)

3.15 Are victims accurate predictors of reabuse?

Victim perception of risk has been found to significantly improve the accuracy of prediction over other risk factors [44], increasing **sensitivity** — the proportion of true positives that are correctly identified by the test — from 55 to 70 percent. [112] However, the same researchers found that women’s perceptions have to be interpreted. Women who felt very safe were less likely to be repeatedly reassaulted than those that felt somewhat safe. However, women who were uncertain or felt somewhat unsafe were more likely to be reassaulted repeatedly than those who felt they were in great danger. The reason for this apparent contradiction is that women who felt in greatest danger took effective countermeasures during the study. In other words, the research suggests that if women are not certain they will be safe, they err by giving the benefit of the doubt to their abuser. For these reasons, these researchers concluded that the best predictions of repeated reassaults were obtained by using risk markers, including women’s perceptions. [44, 112] The researchers’ concern for victims with regard to assessed risk of abuse is borne out by a study of more than 1,000 women who sought protective orders or shelter, or whose abusers were arrested in Los Angeles or New York City. Almost a quarter of the victims who thought their risk of reassault was low were, in fact, reassaulted within one year. [190]

Victims’ perception of risk also affects their reaction to criminal justice intervention. Arrest research finds that victims who were not revictimized for more than two years were twice as likely to have opposed arrest, compared to those who were revictimized. Those victims who thought police and court intervention did not go far enough were also accurate. Those who said police actions were too weak were three times more likely to experience revictimization, and those victims who said courts failed them were seven times more likely to experience revictimization. [23]

Implications for Law Enforcement

Asking victims if they fear reassault or severe reassaults provides one of the best ways to predict reabuse or potential lethality — and requires the least resources and time commitment

— but cannot be relied on exclusively as a predictor. Although women are unlikely to exaggerate their risk, they often underestimate it. (Research basis: A national homicide study involving hundreds of victims of attempted homicides, as well as the general reabuse studies, confirms these findings.)

Implications for Prosecutors and Judges

Victim input should be an important part of any risk calculation considered by prosecutors and judges. If victims are in doubt as to their safety, prosecutors and judges should assume the worst. (Research basis: Extensive examination of multiple domestic violence risk studies shows agreement on this point.)

3.16 Are there other common risk factors associated with reabuse?

Several studies have found other consistent risk markers for reabuse, many associated with the variables described above. These include increased risk associated with abusers who flee the scene of domestic violence [23]; abusers who are unemployed [13, 25, 142, 154, 172], economically disadvantaged and living in disadvantaged neighborhoods [153], or living in a household with firearms [25, 142]; or abusers who are not the fathers of children in the household. [25, 142]

Implications for Law Enforcement

Law enforcement officers recording the status of the above variables in their initial reports will provide valuable data for the determination of risk in future bail hearings, charging decisions and sentencing reports. (Research basis: These specific risk factors generally have been found in multiple studies but may vary in relevance and power across jurisdictions.)

Implications for Prosecutors and Judges

Prosecutors and judges should review the status of the above variables for determination of risk to be used in bail hearings, charging decisions, sentencing recommendations and decisions, and fashioning civil protective orders and conditions of probation supervision. (Research basis: These specific risk factors generally have been found in multiple studies but may vary in relevance and power across jurisdictions.)

3.17 What factors are not associated with reabuse?

Generally, the seriousness of the presenting incident does not predict reabuse, whether felony or misdemeanor, including whether there were injuries or not, or what the specific charge is. [23, 39, 134, 141, 145, 172] Abuser personality types have not been found to be associated with increased risk of reabuse. [113] Actuarial data offer improvement over clinical data. [189] Victim characteristics, including relationship with abuser, marital status, and whether the parties are living together or separated, have not been found to predict reabuse. [23] At least one study has found that victim cooperation does not predict recidivism. [145]

Implications for Law Enforcement

Criteria for charges should not be confused with criteria for determining future risk. Abusers cited for misdemeanors are as likely to be dangerous as those charged with felonies. (Research basis: Wide agreement among multiple studies across the nation involving different abuser populations.)

Implications for Prosecutors

Criteria for charges should not be confused with criteria for determining future risk. Abusers charged with misdemeanors are as likely to be dangerous as those charged with felonies. If the offense against a dangerous defendant is not chargeable as a felony, prosecutors should explore the applicability of enhancement statutes for repeat offenses, multiple charges if appropriate, or maximum allowable sentencing recommendations. (Research basis: Wide agreement among multiple studies across the nation involving different abuser populations.)

Implications for Judges

Criteria for charges should not be confused with criteria for determining future risk. Abusers charged with misdemeanors are as likely to be dangerous as those charged with felonies. Although constrained by statute, judges should seek to minimize offender risk to the maximum extent allowable by law. (Research basis: Wide agreement among multiple studies across the nation involving different abuser populations.)

3.18 Do the widely used risk instruments accurately predict reabuse?

All of the common risk instruments in use are insufficient. The best instruments have been found to falsely predict 40 to 43 percent of abusers in both directions. [24, 190] For example, a study of a risk instrument used by police in Berkeley, Calif., found that those abusers classified at highest risk for reoffending did have the highest rate of reoffending but also that the instrument generated 43 percent false positives for predicting reabuse. Those abusers gauged as having the lowest risk of reoffending had 2 percent false negatives. [228]

Implications for Law Enforcement and Prosecutors

Given high base rates of reabusing, the default presumption should be that the defendant is likely to reoffend until proven otherwise. Risk instruments do not significantly improve upon victim perception and basic actuarial data. (Research basis: Not only is there wide agreement among multiple studies but it is also agreed that the same instrument may have different results in different jurisdictions.)

3.19 Which abusers are most likely to try to kill their victims?

Predicting lethality is much more difficult than predicting reabuse and recidivism because, fortunately, it is much rarer. Also, the risk of lethality may increase because of situational circumstances and not because of static abuser characteristics. Nonetheless, researchers have found some key factors that increase the likelihood of homicide or significant injuries.

3.20 How critical is the presence of firearms and other weapons?

According to a CDC study, more female intimate partners are killed by firearms than by all other means combined. [176] Firearms in the household increase the odds of lethal versus nonlethal violence by a factor of 6.1 to 1. Women who were previously threatened or assaulted with a firearm or other weapon are 20 times more likely to be murdered by their abuser than are other women. [25, 142] Prior firearm use includes threats to shoot the victim; cleaning, holding, or loading a gun during an argument; threatening to shoot a pet or a person the victim cares about; and firing a gun during an argument. [17, 191]

A significant Massachusetts study of 31 men imprisoned for murdering their female partners (and willing to talk to researchers) found that almost two-thirds of the guns used by men who

shot their partners were illegal because the suspect had a prior abuse assault conviction or a protective order was in effect at the time of the killing. [1]

Implications for Law Enforcement

One of the most crucial steps to prevent lethal violence is to disarm abusers and keep them disarmed. Departments should implement a program to identify firearms in abusers' possession, remove them as soon as legally permissible, and make sure the abuser remains disarmed. If police agencies are involved in firearm licensing, they should aggressively screen for domestic violence, even if it is not discovered initially by inquiries in the FBI's National Instant Criminal Background Check System (NICS). (Research basis: Multiple studies — national, state and local — support this policy, as do state-by-state correlations between the existence of restrictive gun laws for batterers, state registries to enforce them and lower domestic homicide rates. [217])

Implications for Prosecutors

One of the most crucial steps to prevent lethal violence is to disarm abusers and keep them disarmed. Prosecutors should take all steps possible to have firearms removed by the court as soon as abusers are arrested and obtain guilty verdicts so that federal firearm prohibitions apply (18 U.S.C. § 922(g)(9)). Victims should be advised to obtain protective orders, or the prosecutor should ask the court to order criminal no-contact orders against defendants so that federal firearm prohibitions apply (18 U.S.C. § 922(g)(8)). Prosecutors should collaborate with the U.S. Attorney to refer appropriate firearms violators for federal prosecution, especially where federal penalties are more substantial than state penalties. (Research basis: Although multiple studies document the association between firearms and domestic violence homicides, only one study examined the association between each state's restrictive gun laws for batterers, state registries to enforce them and lower domestic homicide rates. [217])

Implications for Judges

One of the most crucial steps to prevent lethal violence is to disarm abusers and keep them disarmed. Judges should take all steps possible to have firearms prohibitions enforced and refuse to approve alternative sanctions that preclude federal firearm prohibitions (18 U.S.C. §922(g)(9)). Victims in criminal cases should be advised to obtain protective orders if firearms cannot be removed through the criminal process (18 U.S.C. §922(g)(8)), and vice versa. In 2007, in *Weissenburger v. Iowa District Court for Warren County* (No. 47/05-0279, filed October 26, 2007), the Iowa Supreme Court reminded judges they are legally obligated to enforce federal domestic-violence firearm prohibitions, notwithstanding contrary (or silent) state statutes. (Research basis: Multiple studies — national, state and local — support this policy, as do state-by-state correlations between the existence of restrictive gun laws for batterers, state registries to enforce them and lower domestic homicide rates. [217])

3.21 What are other lethality risk markers?

In a national study, other lethality markers that multiply the odds of homicide five times or more over nonfatal abuse have been found to include: (a) threats to kill, 14.9 times more likely; (b) prior attempts to strangle, 9.9 times; (c) forced sex, 7.6 times; (d) escalating physical violence severity over time, 5.2 times; and (e) partner control over the victim's daily activities, 5.1 times more likely. [25, 142] Research has also found that male abusers are more likely to kill if they are not the fathers of the children in the household. [17, 25, 142] A Chicago study similarly found that death was more likely if the abuser threatened his partner with or used a knife or gun, strangled his partner or grabbed her around her neck, or both partners were drunk. [17]

A series of interviews with 31 men imprisoned for partner murders revealed how quickly abusers turned lethal. Relationships with short courtships were much more likely to end in murder or attempted murder; these relationships were also likelier to end much sooner than those with longer term courtships. Half of the murderers had relationships of no more than three months with the partners they murdered, and almost a third had been involved for only one month. [1]

In terms of female murders of male partners, the research suggests that abused women who killed their partners had experienced more severe and increasing violence over the prior year. They tended to have fewer resources, such as employment or high school education, and were in long-term relationships with their partners at the time. [17]

Implications for Prosecutors

Prosecutors must insist that law enforcement investigators provide them with appropriate information about prior activities, especially those associated with increased risk for lethality. (Research basis: Multiple studies have found similar risk factors for lethality. Although applying risk factors can create false positives, their consideration will avoid false negatives that prove deadly for victims.)

Implications for Judges

For judges to make safe decisions about bail, sentencing or fashioning civil orders, they must insist on appropriate information about abusers' prior activities, including those associated with increased risk for lethality. (Research basis: Multiple studies have found similar risk factors for lethality. Although applying risk factors can create false positives, their consideration will avoid false negatives that prove deadly for victims.)

3.22 What are the risk markers for severe injury?

Medical researchers have looked at severe injuries, those causing victims to seek hospital emergency room treatment. They have found that alcohol abuse, drug use, intermittent employment or recent unemployment, and having less than a high school education distinguish partners of women seeking medical treatment from domestic violence injuries from partners of women seeking treatment for nondomestic violence injuries. In one study, researchers found that 63.7 percent of the abusive partners were alcohol abusers, 36.7 percent abused drugs, a slight majority (51.6 percent) were drinking at the time of the assault, and 14.8 percent admitted to drug use at the time. [144] A similar hospital study found that cocaine use and prior arrests distinguished the violent partners from the nonviolent partners of women admitted to hospitals for treatment of injuries. [95]

Implications for Law Enforcement, Prosecutors and Judges

Prior threats to kill, prior strangulation and sexual assaults, as well as drinking and drugging histories and current use, should be taken very seriously when considering offender dangerousness. (Research basis: Conclusions from repeated studies somewhat overlap, indicating the same or similar risk factors for injury and lethality, including hospital studies of severe injuries of victims not necessarily involved in the criminal justice system.)

4. Victim Characteristics

4.1 Are victim characteristics and actions important factors in assessing the likelihood of abuse?

Victims come in all shapes, sizes, ages and relationships, but these differences are largely irrelevant in terms of their victimization. Victim characteristics — other than gender and age — have generally not been found to be associated with the likelihood of abuse. [23] For example, although many studies have associated pregnancy with increased risk for domestic violence, research suggests that the increased risk is related to the youth of women, not their pregnancy. [219]

Those victims who leave their abusers have been found to be as likely to be reabused as those who remain with them. [141] Those victims who maintain civil restraining orders or criminal no-contact orders against their abusers are as likely to be reabused as those who drop the orders. Only one study [120], comparing women with orders and those without, found that women with permanent as opposed to temporary orders were less likely to have new police-reported domestic violence. However, the researchers in this study excluded violations of the orders themselves, including violations of no-contact or stay-away orders.

Implications for Law Enforcement

Victims face a dilemma — staying or leaving, and securing, maintaining or dropping a protective order may all result in reabuse. Law enforcement officers should assist victims in safeguarding themselves and their children while recognizing their limitations in controlling their abusers. (Research basis: Multiple protective order studies in different jurisdictions over different time periods.)

Performance Measure: A little more than a quarter of both small and large law enforcement agencies require officers to review safety plans with victims, and almost three-quarters of agencies arrange transport of victims to shelters or medical facilities, when needed.

Implications for Prosecutors and Judges

Victims face a dilemma — staying or leaving, and securing, maintaining or dropping a protective order may all result in reabuse. Prosecutors and judges should assist victims in recognizing their limitations in controlling their abusers and safeguarding themselves and their children. Prosecutors must establish effective collaboration with victim advocacy and service agencies in order to refer victims as needed. In addition, prosecutors should advise victims that prosecution, along with civil protective orders, may further victim protection. (Research basis: Findings that protective orders reduce reabuse don't include the order violations themselves, undervaluing the detrimental impact of order violations on victims who have secured them. The research on prosecution efficacy can be found under the question, "Does prosecuting domestic violence offenders deter reabuse?" in the Prosecution Responses section.)

4.2 To what extent do victims engage in alcohol and drug abuse?

Victim abuse of drugs and alcohol is also associated with domestic violence victimization. [153] In the most dramatic findings, victims (or their families) reported in the Memphis night arrest study that 42 percent of victims were drinking or drugging the day of their assault. [19] The New

Mexico fatality review study documented that a third of the female victims had alcohol in their system at the autopsy, with a blood alcohol content of twice the legal limit allowable for driving; a little less than a quarter had drugs in their system. [170] Among women treated in emergency rooms for injuries caused by their abusers, those who suffered from substance abuse were found to have increased risk of violence from partners. However, if the partners' use of alcohol and drugs are controlled for, victim substance abuse is not associated with increased risk of violence. [144] Another hospital study also found that victims who were injured by partners were more likely than other injured women in an emergency room to test positive for substance abuse. [95]

Victim substance abuse has also been found to be associated with abuser use. For example, whereas one in five North Carolina victims reported either being high or binge drinking at the time of abuse, almost three-quarters (72 percent) of these victims were in relationships with men who were high or were binge drinking. [126]

Victim substance abuse has also been identified as a consequence of the ongoing abuse. In other words, victims abuse drugs as a form of self-medication to deal with their abuse trauma. [153]

Implications for Law Enforcement

Victims' abuse of drugs and/or alcohol may make them more vulnerable to continued abuse, requiring greater law enforcement scrutiny or surveillance. Information given to victims should include substance abuse treatment referral information. (Research basis: Multiple single-jurisdiction observational studies of victims as well as findings from a national victim survey of a representative sample of 8,000 women between November 1995 and May 1996.)

Implications for Prosecutors and Judges

Victims' abuse of drugs and/or alcohol may make them more vulnerable to continued abuse. Prosecutors should look at victim vulnerability first and worry about tactical considerations, such as what kind of witness they may make, second. Furthermore, prosecutors should be prepared to file a motion *in limine*, and judges should conduct a hearing, to determine whether to exclude evidence related to a victim's "bad" character (e.g., substance abuse) that does not directly relate to the abuse incident prosecuted and/or the victim's ability to perceive or remember the incident. (Research basis: Multiple single-jurisdiction observational studies of victims as well as findings from a national victim survey of a representative sample of 8,000 women between November 1995 and May 1996.)

4.3 Why do some victims behave as they do?

A significant proportion of victims of intimate partner violence and sexual assault suffer from trauma. [3, 153] Studies have found up to 88 percent of battered women in shelters suffer from post-traumatic stress disorder (PTSD). [6] Other studies have found that as many as 72 percent of abuse victims experience depression [212] and 75 percent experience severe anxiety. [76] A meta-analysis across multiple samples of battered women found a weighted mean prevalence of 48 percent for depression and 64 percent for PTSD. [77]

Even victims who do not have PTSD have been found to be severely adversely affected by their abuse. [153] Victims brought to emergency rooms of hospitals, for example, are more socially isolated, have lower self-esteem and have fewer social and financial resources than other

women treated for injuries in the same hospital emergency rooms who were not injured by their partners. [95, 153]

Research also suggests that some victims of intimate partner abuse have experienced multifaceted violence that stretches across their life span, beginning in childhood. [143] Such prior victimization is associated with greater risk of more serious (adult) partner violence, particularly **systemic abuse**, which includes physical, sexual and stalking abuse. [153] In short, some of the adult victims who suffer the greatest abuse may be the least able to protect themselves.

Implications for Law Enforcement

Law enforcement officers may find that the most severely traumatized victims behave the least as law enforcement officers expect of them. These victims may be among the least able to cooperate with law enforcement. (Research basis: Multiple victim studies have documented PTSD rates, although many studies obviously seek out samples likely to include the most severely abused victims, such as those in shelters.)

Implications for Prosecutors and Judges

Prosecutors should be prepared to assist and support traumatized victims and/or make appropriate referrals to other service providers. Prosecutors should be prepared to identify, and judges should allow appointment of, expert witnesses if they are needed to educate juries and judges as necessary if a victim's reaction to trauma appears problematic or counterintuitive. (Research basis: Multiple victim studies have documented PTSD rates, although many studies obviously seek out samples likely to include the most severely abused victims, such as those in shelters.)

4.4 Do male domestic violence victims differ from female victims?

Research on domestic violence victims brought to the attention of law enforcement and the courts find that male victims differ substantially from female victims. [153] First and foremost, male victims of any specific domestic violence incident are more likely than female victims to be **future suspects** for domestic violence. In one of the only studies to track abusers and victims over time, the Charlotte, N.C., law enforcement study found that 41 percent of males who were identified as **victims** and who were involved in new incidents of domestic violence within two years were subsequently identified by police as **suspects**. This compares with only 26.3 percent of females with such role reversals. On the other hand, males identified as suspects were much less likely to be identified later as victims than were female suspects (26 percent vs. 44.4 percent). [68]

Similarly, male victims of domestic violence homicides are much more likely than female victims to have been identified previously as abusers of their eventual killers. [131, 199, 218] Several treatises suggest that the abuse experienced by male victims of female intimates is contextually different than that experienced by women victims of male intimates. [177, 198] Just as male victims differ, so do females convicted of abusing male partners. [162]

Implications for Law Enforcement

Specific incidents of domestic violence may not reveal longer term domestic violence patterns, particularly if the suspect is a female and the victim is a male. Police should acknowledge this and encourage suspects who are more typically victims to report future victimization, notwithstanding their current suspect status. (Research basis: The North Carolina process

evaluation of the Charlotte-Mecklenburg police specialized domestic violence unit is unique in looking at subsequent status of victims and suspects in repeat incidents. The study looked at all police complaints involving domestic violence in 2003 that were followed for the next two years, totaling 6,892 domestic violence complaints. The findings are analogous to numerous findings regarding the prior status of male homicide victims as abusers.)

Implications for Prosecutors and Judges

Specific incidents of domestic violence may not reveal longer term domestic violence patterns, particularly if the suspect is a female and the victim is a male. Prosecutors and judges should be sensitive to this fact in charging and recommending sentences for such defendants and in issuing protective orders or fashioning sentences. Typical batterer intervention programs, for example, may not be relevant for abusers engaged in isolated, reactive or defensive behavior. (Research basis: The North Carolina process evaluation of the Charlotte-Mecklenburg police specialized domestic violence unit is unique in looking at subsequent status of victims and suspects in repeat incidents. The study looked at all police complaints involving domestic violence in 2003 followed for the next two years, totaling 6,892 domestic violence complaints in all. The findings are analogous to numerous findings regarding the prior status of male homicide victims as abusers. The analysis of batterer programs for court-referred female defendants is based on limited qualitative research that focused on content relevance based on defendant abuse histories.)

5. Law Enforcement Responses

5.1 Are specialized law enforcement domestic violence units effective in responding to domestic violence?

Performance Measure: A total of 11 percent of police departments have specialized domestic violence units, according to a national survey of a representative sample of 14,000 law enforcement agencies. Most domestic violence units work within investigative units and are most common in larger departments. A majority of departments (56 percent) with 100 or more officers have specialized domestic violence units. Although only 4 percent of departments maintain domestic violence information on their Web sites, three-quarters of those departments also have specialized domestic violence units. [213] (Research basis: A representative sample drawn from 14,000 law enforcement agencies across the nation.)

5.2 Do they influence prosecutions and convictions of abuse suspects?

Specialized domestic violence units, emphasizing repeat victim contact and evidence gathering, have been shown to significantly increase the likelihood of prosecution, conviction and sentencing. [130] Specialized domestic violence units are generally associated with more extensive inquiries by police department call takers — asking if weapons are involved, advising callers to stay on the line until police arrive, asking if children are present, whether the suspect uses drugs/alcohol, whether restraining orders are in effect, and whether the suspect is on probation or parole. [213] Domestic violence units are also more likely to amass evidence to turn over to prosecutors. The specialized unit in Mecklenburg County, Charlotte, N.C., collected evidence in 61.8 percent of its cases, compared to only 12.5 percent of cases collected by patrol officers. In addition, whereas 30 percent of victims handled by regular patrols declined to prosecute, only 8 percent of victims handled by the specialized unit declined to prosecute. [68]

5.3 Do they influence victim behavior?

Specialized police response is more likely to see victims leave their abusers sooner — within four months, compared to an average of 14 months for victims not receiving specialized police response. Specialized police response also results in higher victim reporting of reabuse. Finally, victims handled by specialized police response are more likely to secure protective orders against their abusers. [130] Specialized police services such as serving protective orders and assisting in safety planning also influence victim behavior. By contrast, victim services alone have not been found to be associated with victims leaving abusers, although this may also be due to the quality of the victim services studied. [172, 220]

5.4 Do they reduce reabuse?

An early study of a specialized detective unit in Dade County, Fla., found that it did not affect reabuse rates. [174] However, the detective unit focused on referring parties to counseling. Subsequently, specialized units have been found to be more effective: Victims self-report significantly less reabuse but are more likely to report the reabuse they do suffer. [130] Another study found that specialized responses reduce “personal harm” but not nonpersonal harm, such as property damage. The positive effect may be tied to the safety planning offered to victims. [68] By contrast, research found that victim services alone are not associated with increased

victim safety. [172, 220] Research in New York City among victims in public housing suggest that specific crime prevention training, as opposed to general victim counseling, may be associated more closely with reduced subsequent victimization. [37]

In North Carolina, 29 percent of the abusers handled by the specialized domestic violence unit had at least one subsequent domestic violence offense during a two-year follow-up period, compared to 37 percent of abusers handled solely by patrol units. This reduced rate was obtained even though the specialized unit handled more serious cases and offenders with more prior offenses. The odds ratio on reoffending for suspects handled by domestic violence units was nearly half that for suspects not handled by these units. Domestic violence suspects who reabused also reabused less often, averaging 0.46 new assaults compared to 0.62. The difference is statistically significant but, because fewer units' abusers reabused, the actual difference in the number of new incidents for just those abusers who reabused was less (1.59 vs. 1.67), not reaching statistical significance. [68]

5.5 Do they increase victim satisfaction?

Victim satisfaction with the criminal justice system is not associated with whether the victim received advocacy per se, but rather with concrete law enforcement activities such as issuance of a warrant against absent abusers or assistance in obtaining protective orders. [220] Similarly, the NVAWS found that stalking victims whose stalkers were arrested were significantly more likely to be satisfied with the police response than those in situations where no arrest was made (76 percent vs. 42 percent). [208]

Studies of victim dissatisfaction generally focus on four major themes: (1) adverse personal outcomes (victim arrested, child protection agency called), (2) the police "made assumptions or did not listen," (3) the police took sides (against her), and (4) nothing happened (a strong court sanction was absent). [151]

Implications for Law Enforcement

The single, most appreciated service that officers can deliver to the greatest number of victims is the arrest of their abusers. Specialized domestic violence law enforcement units that focus on arrests can enhance the likelihood of successful prosecution and increase victim satisfaction and safety. (Research basis: Although specific studies of specialized domestic violence law enforcement units are few, the activities conducted by these units have been more widely studied and supported by extensive research.)

5.6 Should law enforcement agencies participate in coordinated community responses?

A number of jurisdictions have endeavored to create what have been called ***coordinated community responses***, composed of multiple criminal justice and social service agencies that respond to domestic violence. This approach may exert a positive impact on both case processing and reabuse, according to initial research. [118] For example, both arrests and successful prosecutions increased in several Minnesota jurisdictions with the creation of coordinated community responses involving law enforcement. [69] Other studies have found similar promising results [118], although more is required than participation in multidisciplinary task forces for communities to create effective coordinated responses. [227] Personnel of relatively autonomous organizations (both public and private) cannot be presumed to have the organizational capacity or the willingness among their personnel to truly collaborate. [73]

Performance Measure: A total of 65 percent of police departments have established partnerships with community-based victim advocacy groups, according to a national survey of 14,000 police departments. [213] (Research basis: A representative sample drawn from 14,000 law enforcement agencies across the nation.)

5.7 Does domestic violence training improve law enforcement responses to victims?

Several studies suggest that general domestic violence training for law enforcement officers does not necessarily change attitudes toward domestic violence or, more important, change police behavior in terms of arrests of abusers or responses to domestic violence incidents. Although knowing a department's policy regarding domestic violence arrest preference increases the likelihood that officers will arrest alleged domestic violence suspects, the amount of domestic violence training received does not. [59, 65, 197] Research suggests that domestic violence arrest decisions are influenced more by an officer's assessment of the legal variables involved than by his or her attitudes. [117] At least one study suggests that failure of police managers to hold police officers accountable for failure to arrest in contravention of statutory requirements is responsible for their poor performance, not their lack of training. [187]

Implications for Law Enforcement

Clear policy pronouncements from the top administration may be more likely to change officer responses to domestic violence than is general domestic violence training aimed at education and attitude change. (Research basis: There is limited research in this area.)

Performance Measure: A survey of a sample of law enforcement departments across the nation finds that three-quarters have written domestic violence policies in place. Most have been in place for six years or longer. A large majority of departments (88 percent) require officers to complete incident reports for all domestic violence calls they are dispatched to, regardless of outcome. Almost two-thirds of departments (63 percent) require officers to fill out a supplemental form for domestic violence, and most require written justification when no arrest is made (68 percent) or when there is a dual arrest (86 percent). [213] (Research basis: A representative sample drawn from 14,000 law enforcement agencies across the nation.)

6. Prosecution Responses

6.1 What is the current level of domestic violence prosecution across the country?

Although there remain wide disparities in the prosecution of domestic violence cases from one jurisdiction to another, routine prosecution of domestic violence arrests is no longer exceptional or rare. In fact, prosecutors who automatically dismiss or *nolle prosequere* almost all domestic violence cases may be increasingly rare and exceptional.

A total of 120 studies from over 170 mostly urban jurisdictions in 44 states and the District of Columbia (and a few foreign countries) of intimate-partner prosecutions between 1973 and 2006 [71] found the average arrest prosecution rate was 63.8 percent, ranging from a low of 4.6 percent of 802 arrests in Milwaukee in 1988-1989 to 94 percent of 3,662 arrests in Cincinnati in 1993-1996. The rate of offense prosecution was lower, with an average of 27.4 percent, ranging from a low of 2.6 percent for more than 5,000 offenses in Detroit in 1983 to 72.5 percent for more than 5,000 offenses reported in Boulder County, Colo., in 2003-2005.

Several studies demonstrate that domestic violence prosecutions can be routine across entire states, notwithstanding demographic, prosecution and law enforcement variations across counties and localities. A study of 15,000 protective order violations across Massachusetts between 1992 and 1995 found that 60 percent were prosecuted in total. [10] A study of 4,351 felony domestic violence prosecutions in South Carolina between 1996 and 2000 found a 46 percent prosecution rate. [21] Similarly, a study of 238,000 misdemeanor domestic violence charges between 1997 and 2002 in North Carolina found a prosecution rate of 47 percent. [16]

Jurisdictions with specialized domestic violence prosecution programs generally boast higher rates. A study of San Diego's City Attorney's Office documented that prosecutors prosecuted 70 percent of cases brought by police. Similarly, specialized prosecutors in Omaha, Neb., prosecuted 88 percent of all police domestic violence arrests. In several of these sites, comparisons before and after implementation of the specialized prosecution program found marked increases in prosecutions. In Everett, Wash., dismissals dropped from 79 percent to 29 percent, and in Klamath Falls, Ore., they dropped from 47 percent to 14 percent. [196]

On the other hand, not all domestic violence cases are equally likely to be prosecuted. The research indicates that prosecutions of intimate-partner stalking [160] and intimate-partner sexual assault [161] are rare. The research also reflects very low arrest rates for these offenses.

Implications for Prosecutors

Prosecutors who fail to prosecute the **majority** of domestic violence arrests made by police should examine their practices, policies and priorities to determine why they are prosecuting fewer domestic violence arrests than their peers around the country. (Research basis: Multiple studies, including at least three statewide studies.)

6.2 Can most domestic violence arrest cases be successfully prosecuted in court?

Not all cases filed by prosecutors go to trial. As with most offenses, most domestic violence prosecutions are disposed of as a result of plea and sentencing negotiations. Of those that go to trial, not all prosecutions result in convictions. However, studies indicate that, in general,

domestic violence prosecutions that go to trial routinely result in court convictions. “Not guilty” findings are rare. Studies document findings that range from a high of only 5.0 percent in Ohio [11], to 2.7 percent in Massachusetts [23], to a low of 1.6 percent in North Carolina. [68] A study of felony domestic violence prosecutions in Brooklyn, N.Y., found a similarly low “not guilty” rate of only 2 percent. [164]

For most domestic violence cases that do not go to trial, an analysis of 85 domestic violence prosecution studies found an overall conviction rate of 35 percent, ranging from a low of 8.1 percent of 37 cases prosecuted in Milwaukee between 1988 and 1989 to a high of 90.1 percent of 229 cases in Brooklyn, N.Y., prosecuted in 1997. If one very large study of 123,507 Maryland prosecutions from 1993 to 2003 is removed, the average conviction rate increases to almost half, 47.7 percent. [71] In three statewide prosecution studies of tens of thousands of domestic violence cases, similar conviction rates ranged from one-third in North Carolina to more than one-half in South Carolina. [16, 21]

Jurisdictions with specialized domestic violence prosecution programs boast higher rates: 96 percent in San Diego, 85 percent in Omaha, Neb., 78 percent in Klamath Falls, Ore., and 55 percent in Everett, Wash. The latter rate was the lowest because prosecutors maintained a diversion program that siphoned off 22 percent of the cases prosecuted. [196]

As important, multiple studies also find that convictions can be consistently obtained that include the most intrusive disposition, sentences of incarceration. For example, in the three statewide domestic violence prosecution studies, 12.6 percent of the Massachusetts [10] and 20 percent of the North Carolina [16] misdemeanor domestic violence defendants prosecuted were sentenced to incarceration. In South Carolina, almost half (45 percent) of felony domestic violence defendants prosecuted were sentenced to prison. [21] In Brooklyn Felony Domestic Violence Court, 80 to 85 percent of all convicted offenders were sentenced to incarceration consistently during the study period of 1996 through 2000. [164] Although the latter single court incarceration rate may have been the result of a singular effort on the part of prosecutors and others, the statewide rates include multiple prosecutors across each state.

Many other disparate court studies document incarceration rates ranging from 76 percent to 21 percent: 76 percent in Klamath Falls, Ore. [196]; 70 percent in Cincinnati, Ohio, with the largest number incarcerated between 150 and 180 days [11]; 56 percent in Everett, Wash. [196]; 52 percent in Omaha, Neb. [196]; 39 percent in the Bronx, N.Y. [185]; 35 percent in Brooklyn, N.Y. [31]; 30 percent in Milwaukee [39]; 23 percent in Chicago (including time jailed pending prosecution) [107]; 22.5 percent in Quincy, Mass. [23]; and 21 percent in San Diego, Calif. [196] A study of intimate-partner arrests across three states — Connecticut, Idaho and Virginia — found similarly intrusive dispositions, with three-quarters of those convicted, incarcerated, sentenced to probation or fined. [117]

Implications for Prosecutors

The research suggests that domestic violence cases can be successfully prosecuted at trial, and a large proportion of cases (and most cases in some jurisdictions) can be disposed of before trial, even without removing incarceration as an outcome. (Research basis: Multiple studies in disparate jurisdictions for both felony and misdemeanor domestic violence prosecutions.)

Performance Measure: Norfolk County, Mass., prosecutors brought 505 charges arising out of 342 domestic violence incidents studied, compared to 531

charges initially filed by arresting police departments, a dropoff of only 5 percent. Prosecutors enhanced charges of felony assault from 14.1 percent filed by police to 23.8 percent. Prosecutors proceeded to *nolle prosequi* in 18.5 percent of the cases and asked that an additional 10 percent be dismissed in court. With the exception of 2.5 percent of arrests that resulted in not-guilty findings, the remaining defendants were either found guilty after trial or admitted to sufficient facts for a finding of guilty (although judges initially allowed 25 percent of the cases to be conditionally continued without imposition of a guilty finding). (Research basis: The studies followed 342 arrests that occurred within Eastern Norfolk County and followed them as long as 10 years. [23, 138])

6.3 Will aggressive prosecutions or sentences increase the demand for trials?

A study of four prosecution programs in four states where prosecutors specifically adopted (what they claimed to be) “no drop” prosecution policies (and in fact proceeded with the majority of all cases brought by law enforcement) found that trial rates ranged from a high of 13 percent to just 1 percent. Further research has suggested that the highest rates would recede once the aggressive prosecution programs were more established. In San Diego, which had adopted a no-drop policy a decade earlier, only 2 percent of the cases subsequently went to trial. [196] Furthermore, in these no-drop jurisdictions, sentencing included incarceration in 21 to 76 percent of the four jurisdictions. [196]

Implications for Prosecutors

Increased domestic violence prosecutions may not result in a dramatically increased proportion of trials, although there may be a transitory increase as defenders test prosecution resolve. (Research basis: Although implications are based on only one study, the study looked at four different no-drop prosecution programs in four states.)

Implications for Judges

Judicial administrators can rest assured that aggressive domestic violence prosecution will **not** result in dramatically increased and sustained demand for jury or bench trials. (Research basis: Although implications are based on one study, the study looked at four different no-drop prosecution programs in four states.)

6.4 Do victims want their abusers prosecuted?

If asked to declare publicly in court in front of their abusers, victims may express ambivalence about the prosecution and/or sentencing of their abusers. However, in interviews with researchers, often a majority of victims support domestic violence prosecutions and sentencing, especially mandatory referral to batterer programs. In a Chicago misdemeanor court study, approximately two-thirds of victims (67.6 percent) reported that they wanted their abusers to be prosecuted **and** jailed. [107] A study of four prosecution programs in California, Washington, Oregon and Nebraska, found that three-quarters (76 percent) of the victims interviewed wanted their abusers arrested, and 55 percent want them prosecuted. Furthermore, 59 percent expressed satisfaction with the outcome, and 67 percent expressed satisfaction with the judge, once the cases were prosecuted. [196]

Even when the majority of victims oppose prosecution, after trial they may change their minds. In the Quincy arrest study, only 46.8 percent wanted their abusers to be prosecuted as charged or wanted more serious charges filed. However, after trial, 53.4 percent said the court

experience gave them a “sense of control,” 36.9 percent said it motivated them to end the relationship with their abuser, and 38.8 percent said it “made them safer.” Most victims (71 percent) who did not want the case to go to court expressed satisfaction after the trial. [23] Similarly, a study of four specialized prosecution programs in four different states found that although 45 percent did not want their cases prosecuted, once they were prosecuted, only 14 percent tried to stop the prosecutors and only 4 percent said they wanted the court to let the defendant go. About three-quarters (72.1 percent) reported that they wanted the defendant jailed and/or ordered into treatment (79 percent). Sixty-four percent (64 percent) expressed satisfaction with the prosecution, another 9 percent were neutral, and only 27 percent were dissatisfied. Most (85 percent) reported that they felt the prosecution was helpful. [196]

Implications for Prosecutors

Prosecutors should not allow victim opposition to automatically stop them from prosecuting cases. If prosecutors find that the overwhelming majority of victims consistently oppose prosecution, they should examine both their and law enforcement’s interaction with victims to increase support of prosecution from victims that is more in line with that found across the rest of the country. (Research basis: Numerous studies from disparate jurisdictions.)

Implications for Judges

Judges should not assume that allowing cases to proceed over victim objections will necessarily embitter victims or jeopardize their safety. (Research basis: Numerous studies from disparate jurisdictions on victim attitudes toward prosecution, and several studies on court sentencing.)

6.5 Why do a minority of victims oppose prosecution?

Although studies have found multiple reasons for victim opposition to prosecution, fear is among the leading reasons expressed by victims. Fear of the abuser is first and foremost, followed by fear of testifying in court.

A study of five jurisdictions in three states found that victims across all sites reported that fear of defendant retaliation was their most common barrier to participation with prosecutors. [103] Even in a Chicago study where the majority of Chicago victims wanted their abusers prosecuted, fear was the biggest factor for those who opposed prosecution. A quarter of victims opposing prosecution reported being specifically threatened by their abusers against prosecution. Others expressed fear that their abusers would become more violent. In addition to fear, almost half who wanted the prosecution to be dropped thought it wouldn’t make any difference. About a third of the victims opposed prosecution because they depended on their abusers for housing. [107]

In addition to fear of the abuser, an Ohio study found that more victims were actually more afraid of testifying in court than they were of the defendant or compromising their relationship with the defendant. Specifically, victims expressed fear that the prosecutors would not prepare them adequately to testify. They were also concerned that the defendant might not be found guilty. [11]

Implications for Prosecutors

To increase victim cooperation and participation in prosecution, prosecutors must address victim fears of reabuse **and** of testifying in court. (Research basis: Several victim studies in different jurisdictions.)

6.6 Is victim fear of prosecution well founded?

Victim fear of their abusers appears to be well founded. Multiple prosecution and arrest studies broadly concur that abusers who come to the attention of the criminal justice system who reabuse are likely to do so sooner rather than later. In the Quincy court study, about 40 percent of the arrested abusers reabused their victims within one year. Forty-four percent did so **before** the study arrest was prosecuted in court. The average case took about six months from arraignment to prosecution. [23] Similarly, in a Cook County study, 30 percent of the defendants were rearrested within six months of their study arrest, and half of the arrests were for a new domestic violence offense. The average rearrest time was only 29 days after initial arrest. In addition, in almost half of the cases (45.9 percent), the defendants tried to talk the female victims out of testifying. Moreover, 29.1 percent of these defendants stalked their victims before the trial, and 8.7 percent specifically threatened them. [107] An Indianapolis prosecution study found that almost a quarter of the defendants reabused their victims before the pending trial. [67]

In the Brooklyn Specialized Felony Domestic Violence Court — where cases took 6.5 to 7.0 months, on average, to be disposed — 51 percent of defendants charged with domestic felonies (other than violation of protective orders) were rearrested before disposition; 14 percent were arrested for a crime of violence; and 16 percent were arrested for violation of a protection order. Among those charged with order violations — a felony in New York — the rearrest rate was 47 percent, including 37 percent for violating the protective order again. [164]

Although these studies do not demonstrate that prosecution causes reabuse, they indicate that pending prosecution by itself may not deter recidivist abusers.

Implications for Prosecutors and Judges

Prosecutors must gauge defendant risk pending trial and take appropriate measures to address it in order to protect victims and to successfully prosecute the case. Judges should insist that police and prosecutors document and inform the court if defendants reabuse, threaten or intimate victims while cases are pending so that possible additional charges can be filed and subsequent absences of victims who are too fearful to testify in court can be justified, allowing for substitute hearsay testimony. The equitable doctrine of forfeiture, affirmed in *Davis v. Washington*, 126 S. Ct. 2266, 2280 (2006), precludes a defendant from using his right to confrontation to bar the admission of a victim's statements when his wrongdoing caused her unavailability at trial. (Research basis: Rapid reabuse rates are documented in multiple studies from disparate jurisdictions. Research on the impact of specific prosecution practices is rare. Victim fear is documented in several victim studies in different jurisdictions.)

6.7 Can prosecutors increase victim cooperation?

Although victims most commonly reported fear of retaliation as a barrier to their participation in prosecution, a three-state study found that the fear was reduced at sites with specialized prosecution programs, increased victim advocacy and specialized domestic violence courts. [103] These specialized response programs generally include fast-track scheduling, reducing victim vulnerability pending trial, increased victim contact pending trial, and victim-friendly proceedings that remove, as much as possible, victim involvement to proceed with prosecution. These measures contrast with those used in some jurisdictions, in which studies indicate some prosecutors treat victims like civil claimants. In a large 45-county study of upstate New York domestic violence prosecutions, researchers found that half of the prosecutors required victims

to sign complaints in order to file charges. (On the other hand, two-thirds required victims to sign affidavits to confirm their interest in having charges withdrawn.) [227]

There is more research on what not to do than on what works. Specific studies suggest that the more prosecution-related burdens are placed on victims, the less likely they are to cooperate. In Milwaukee, a study found the majority of cases were dismissed when victims were required to attend a charging conference within days of the arrest of their abusers. However, absolved of this responsibility, Milwaukee prosecution rates increased from 20 percent to 60 percent. [38] In a similar vein, a comparison of protective order violation prosecutions across Massachusetts found a 66 percent dismissal rate when prosecutors routinely provided and encouraged victims to sign waivers of prosecution forms (often in front of defendants), compared to a 33-percent dismissal rate in an adjacent county in which victims were not provided this alternative. [10]

Some prosecutors are better at maintaining contact with victims than others. The Ohio court study found that the majority of victims never received rudimentary information from prosecutors before trial, including court dates. In almost 90 percent of the court cases, prosecutors never spoke with the victim on the phone and, in more than half of the cases (52 percent), never met with them before the trial date. When they did meet, it typically was for no more than a few minutes. [11] The importance of prosecutor-victim contact is underscored by a Toronto study that found if the victim met with a victim/witness representative, victim cooperation increased by a factor of 3.3. [43] In the Ohio court study, the strongest predictor of a guilty verdict in domestic violence misdemeanor cases was how many times the prosecutors met with the victim before trial. [11]

A limited number of studies that looked at the role of court-based victim advocates suggest that they may help in this regard. The studies found that victims appreciated contact with victim advocates/liasons and reported a high degree of satisfaction. In the Quincy study, 81 percent of the victims reported satisfaction with the time they spent with victim advocates, and three-quarters (77 percent) said they would talk to the advocate again if a similar incident recurred. [23] Chicago domestic violence victims who had contact with victim advocates reported more satisfaction with the proceedings than those who had no contact. However, the same study reported that advocates' contact with victims did not make the victims more likely to come to court. [107]

The seeds for victim contact may be planted before the case even reaches prosecutors. A Portland, Ore., police study found that the following police activities significantly correlated with increased prosecution: (1) police contacted victims, (2) victim accepted services, (3) police provided victims with prosecution information, (4) police helped set up victim appointments with prosecutors, and (5) police helped victims obtain restraining orders and served the orders. [130]

Implications for Prosecutors

Victim cooperation can be enhanced if prosecutors can address victim fear of their abusers as well as their fear around being involved in subsequent legal proceedings. Pretrial conditions or detention and/or speedy trial dates may address victim fear and minimize actions required of victims, and sensitivity to victim needs may address their fear of court proceedings. The quality of police contact with victims may also be important for subsequent successful prosecution. (Research basis: Multiple studies and victim interviews in multiple studies.)

Performance Measure: Over 80 percent of victims were contacted by a prosecutor advocate in the Quincy court arrest and prosecution study; 42 percent of

the victims had 45 minutes or more with an advocate, and the remainder had less time with one. [23]

6.8 Should prosecutors follow victim preferences when prosecuting offenders?

Although victim perceptions of the dangerousness of suspects have been found to be good predictors of subsequent revictimization [23, 112, 113], victim preferences on how the case should be prosecuted are not good predictors. The victims in the Quincy study who wanted the charges dropped were as likely to be revictimized (51 vs. 48 percent after one year) as those who did not want the charges dropped. [23] Similarly, studies in New York found that victim cooperation with prosecutors did not predict recidivism. In other words, if prosecutors proceeded with uncooperative victims, these victims were no more or less likely to be revictimized than victims who cooperated with prosecutors. [145]

Implications for Prosecutors

Although prosecutors should listen to victims, they should explain to victims (and, as important, to defendants) that the decision to prosecute cannot be based solely on victims' preferences.

6.9 What evidence is typically available to prosecute domestic violence cases?

One of the challenges domestic violence prosecutors face is the lack of evidence accompanying their cases. A study of domestic violence across Rhode Island in 2002, based on 6,200 police incident reports involving adult victims under 50 years of age, found the following evidence reported in cases: victim photos (17 percent), crime scene photos (16 percent), suspect photos (3 percent), physical evidence (8 percent) and weapons collected (11 percent), medical reports (9.4 percent), witnesses' interviews (37 percent: adults 24 percent, children 12 percent), suspect statements (18 percent) and signed victim statements (53 percent). [138] The Rhode Island data are not unique.

In the Mecklenburg County, N.C., study, researchers found that presentation of physical evidence to the special domestic violence prosecution unit was rare. Photos were available in only 15 percent of the cases submitted by patrol officers and only 30.5 percent of cases submitted by the police department's specialized domestic violence unit. Medical evidence was available in less than 10 percent of the patrol cases and 34 percent of the special-unit cases, which selected out the more serious cases such as those involving injuries. Given the fact that most domestic violence incidents occur in private, it is not surprising that witnesses were available in only 16 percent of the patrol cases and 19 percent of the special-unit cases. [68] Similarly, the Ohio court study found that photos of injuries and damages were available in only 14.3 percent of the cases, 911 tapes in only 2.2 percent, medical records in 1.7 percent, eyewitness testimony in only 1.6 percent, and police officer testimony in only 6.7 percent of the cases. [11]

One reason medical evidence may be limited is because of medical staff's poor handwriting. A study found that in records of medical visits containing indications of abuse or injury, one-third of the notes written by the doctors or nurses contained vital information that was illegible. [127]

Implications for Prosecutors

Especially in light of *Crawford v. Washington*, 541 U.S. 36 (2004), prosecutors must work with law enforcement to gather as much evidence as possible and accurately identify all potential

witnesses and ways to contact them, or identify third parties who will remain in touch with them. Vital witnesses may include third parties whom victims spoke to at the time of the incident. Statements that victims make to third parties are generally nontestimonial and therefore admissible at trial. Children may also be potential witnesses. The presence of children may also allow prosecutors to file additional charges against abusers for endangering the welfare of the child or allow them to file a similar charge that can go forward, even if the original charges cannot. (Research basis: Few studies review domestic violence evidence as a separate issue; these studies suggest that evidence collection can be dramatically improved.)

Consequently, prosecutors must rely on victims. In the Ohio court study, victim testimony was the evidence most frequently relied upon by prosecutors, available in 48 percent of the 2,952 domestic violence cases studied. [11] In Rhode Island, victims provided signed statements in 53 percent of the incident reports. [139] A Canadian study of a Toronto Domestic Violence Court found that, although having witnesses or corroborating evidence does not increase the likelihood of prosecution, if the victim cooperates, the odds of prosecution increase by a factor of 8, compared to cases in which the victim does not cooperate. [43] In Chicago, prosecutors achieved a 73-percent conviction rate for domestic violence cases when the victim showed up in court, and significantly less (only 23 percent) when they did not show. [107]

Generally, lack of cooperative or available victims is cited as the prime reason prosecutors drop or dismiss domestic violence cases. In the Quincy, Mass., arrest study, a quarter of the arrested abusers were not prosecuted by the district attorney's office. When indicated in the court file, the most common reason given was "victim denies abuse" (18.8 percent), married victims invoked their marital privilege not to testify against their husband suspects (12.9 percent), or the victim could not be located (10.6 percent). [23] In the large Ohio study, 70.5 percent of cases were dismissed because of victim "unavailability/failure to attend." [11] In another Ohio study, in Toledo, analysis of a sample derived from 1,982 misdemeanor domestic violence cases before the municipal court found that 70 percent of dismissed cases were dismissed because the "victim failed to appear." [216] In North Carolina, victim opposition was reported as the key factor in reducing the likelihood of prosecution. [119]

Implications for Law Enforcement

Prosecutors must work with local law enforcement to identify and obtain critical evidence whenever it is available, including information on how to locate and contact victims and other potential witnesses. (Research basis: Several large court and statewide studies in disparate jurisdictions indicate law enforcement's failure to provide available evidence.)

6.10 Can cases be successfully prosecuted without the victim?

Despite the fact that most prosecutors see the lack of victim cooperation as the reason why domestic violence prosecutions cannot proceed, both individual-jurisdiction and comparative studies clearly suggest that either lack of victim cooperation is exaggerated or victims are not the key variable in successful prosecution programs.

A study of almost 100 domestic violence trials in San Diego found that uniformly high conviction rates were obtained independent of victim or defendant statements, witness testimony and corroborating evidence. In fact, outcomes were also independent of whether the victim testified for the prosecution or for the defense. [196]

Other comparative studies consistently found that the determination of prosecutors rather than the availability of victims or other evidence accounted for varying rates of prosecution. For example, in the three statewide examinations of tens of thousands of domestic violence prosecutions, researchers documented widely varying rates of prosecution across equivalent counties. In Massachusetts, county prosecution rates ranged from 82 percent to 25 percent. [10] In South Carolina, prosecution rates varied from 69 percent to 22 percent from one prosecution district to another. [21] Similarly, in North Carolina, prosecution rates ranged from 57 percent to 21 percent in specific prosecution districts. [16] Although some of the counties or prosecutorial districts differed in terms of demographics and population density, even among those that did not, prosecution rates varied greatly. In fact, in South Carolina, after the study was published in the newspaper and the state's attorney general ordered prosecutors to prosecute all cases, the statewide dismissal rate dropped by 29 percent the next month. [20]

Studies confirm that jurisdictions with specialized domestic violence prosecution programs generally support the highest rates of successful prosecution. [196] These specialized programs apparently create their own momentum. For example, they either help create or are associated with courts that create expedited domestic violence dockets. As a result of the specialized prosecution in San Diego, processing time for domestic violence cases decreased to 32 days, with almost half of the defendants (46 percent) pleading at the arraignment. Similarly, in Everett, Wash., time to trial was 80 days, and in Omaha, Neb., it was 43 days. Shortened trial times reduce both victim vulnerability to threats and chances of reconciling with the abuser pending trial. In both San Diego and Everett, bails were regularly set at \$10,000 per domestic violence charge (with no cash alternative in the latter location). As a result, for defendants unable to raise bail, the incentive is to plead guilty to get **out** of jail.

In these jurisdictions, researchers found that evidence (eyewitnesses, photos, admissions, excited utterances, medical evidence and physical evidence) was **not** uniformly the most powerful predictor of prosecutors' decisions to proceed without victims and was not significantly associated with the decision to prosecute at all in Klamath Falls, Ore. [196]

Supporting the contention that prosecutorial determination is a powerful predictor of prosecutorial success, the Ohio court study found that increased time the prosecutor spent with victims while preparing the case was positively associated with successful prosecution, and large prosecution caseloads were negatively associated with successful outcomes. The availability of evidence (911 tapes, photographs, medical records and police testimony) was **not** associated with the likelihood of a conviction. Researchers did not suggest that only victims with strong cases self-selected to approach prosecutors. [11]

Implications for Prosecutors

Lack of evidence may be more likely to deter prosecutors from going forward than deterring juries from convicting defendants or deterring defendants from pleading guilty. (Research basis: Multiple studies have found prosecutors able to consistently achieve high conviction rates, notwithstanding consistently limited evidence. The analysis of San Diego trials specifically suggests that convictions may be obtained with varying types of evidence, notwithstanding absence of types of other evidence, including that from victims.)

Implications for Prosecutors

Parity should exist between prosecutors and defenders as well as between prosecutors and crimes to be prosecuted. In the Ohio study, where large prosecution caseloads were associated

with unsuccessful domestic violence prosecution, the court had 31 public defenders but only 18 prosecutors. (Research basis: Only one study.)

6.11 Can successful prosecutions be increased?

There have been multiple studies of specific prosecution efforts to significantly increase prosecution by adopting no-drop policies. Although the concept of a no-drop policy has proven elastic, the success of these programs in significantly increasing prosecution has been demonstrated in multiple jurisdictions. In the Queens Borough of New York City, prosecutors increased convictions from 24 to 60 percent. Research suggests that much of the increase was the result of increased follow-up with victims, and prosecutor's improved linkage with police (e.g., monitoring the same case log, and asking whether each of eight evidentiary items were covered in police incident reports, including photos and witness, victim and suspect statements). [159] A study of domestic violence prosecutions in two other states similarly found greatly increased conviction rates as a result of adopting no-drop policies accompanied by increased coordination with police. [196]

A study of specialized prosecution programs in Oregon and Washington that instituted no-drop policies found that increased use of evidence-based prosecution dramatically increased conviction rates, reduced processing time and initially increased trials. Dismissal rates more than halved in Everett, Wash., from 79 to 29 percent, and guilty findings increased from 10 to 53 percent (although diversion increased from 2 to 22 percent), whereas processing time declined from 109 days to 80 days. Trials increased from 1 percent to 10 percent. Conviction rates at trial were 80 percent. In Klamath Falls, Ore., only 10 to 20 percent of cases were screened out by prosecutors. Dismissals dropped from 47 to 14 percent, and convictions rose from 47 to 86 percent after introduction of evidence-based prosecution. Unlike in Everett, diverted cases dropped from 6 percent to none. Trials rose from 1 percent to 13 percent, and prosecutors won 63 percent of them. [196]

6.12 What does adoption of no-drop policies actually mean?

The most comprehensive study of model no-drop prosecution programs, including several that received large Justice Department grants, found that no-drop policies meant that approximately 30 percent of cases brought by police were screened out, but most of the remaining cases proceeded. Even when victims were not present at the time of trial, prosecutors typically were still able to proceed with 60 to 70 percent of the cases. [196]

Implications for Prosecutors

Although *Crawford v. Washington* further inhibits domestic violence prosecutors, the dramatic increase in successful prosecutions, with implementation of specialized domestic violence prosecution programs, suggests that most prosecutors should be able to significantly increase successful prosecutions but perhaps not as much as documented in these pre-*Crawford* studies. (Research basis: Multiple studies in disparate jurisdictions before the U.S. Supreme Court decided *Crawford*.)

6.13 What kind of dispositions do most suspects receive?

Just as prosecution rates vary widely, so does sentencing of domestic violence perpetrators, even though the vast majority of domestic violence defendants are prosecuted for misdemeanor assaults. Disparate studies from various jurisdictions illustrate some of the variety of sentences imposed.

In Quincy, where almost three-quarters of the suspects were charged with some form of assault and/or battery, about one-quarter of the defendants were diverted after a plea to sufficient facts, another quarter were sentenced to probation, and a little over one-tenth were imprisoned. The remainder defaulted or had their cases filed. [23] In Ohio, of those found guilty, almost 70 percent were incarcerated. The largest number were incarcerated between 30 and 45 days, but 18.8 percent were incarcerated for 150 to 180 days. A little more than 60 percent of those found guilty were placed under probation supervision. The largest number of defendants (30.8 percent) were incarcerated between 360 and 499 days. [11] In the Brooklyn misdemeanor domestic violence court study of 9,157 cases in 2002, of those defendants pleading or found guilty, 51 percent received a conditional discharge, 35 percent received a jail sentence, 7 percent received probation, 5 percent were ordered to complete community service and 1 percent were fined. [31] In Milwaukee, in the mid-1990s, out of 669 sample cases prosecutors accepted for prosecution, 30 percent were convicted with a jail sentence, and a little less than one-quarter were sentenced to probation. [39] In Chicago, a little less than one-third of the defendants were given conditional discharges, 24 percent were placed on probation or under court supervision and 23 percent received a jail sentence (including time served pending trial). [107] A study of more than 1,000 domestic violence arrests across three states (Connecticut, Idaho and Virginia) found that, of those convicted, three-quarters were incarcerated, sentenced to probation and/or fined. A little less than half (46.7 percent) were ordered into either anger management or batterer programs. [117]

A study of three domestic violence courts with specialized prosecutors in three different states found augmented probation conditions as compared to jurisdictions without domestic violence specialization. Augmented conditions included drug and alcohol abstinence and testing, batterer intervention programs that lasted longer and were more expensive, more no-contact protective orders, attendance at fatherhood programs or women's groups for female offenders, more mental health evaluations, mandatory employment and restrictions on weapons. [103]

Studies of four jurisdictions with specialized prosecution programs in as many states document that incarceration rates ranged from 20 to 76 percent. Most offenders were placed on probation and had to agree to no victim contact and attendance in a batterer treatment program. [196]

In at least one state, imprisonment of domestic violence felons has mushroomed over the last decade and a half. The number of domestic violence offenders sent to Ohio prisons increased nine-fold between 1991 and 2005. [225]

Performance Measure: By statute, Calif. Penal Code §1203.097, California batterers must be sentenced to three years probation; criminal protective orders must be incorporated to protect victims from further violence, threats, stalking, sexual abuse and harassment; the defendant must complete a batterer program of no less than one year, make a minimum \$200 payment, perform a specified amount of community service, attend a substance abuse treatment program as needed, pay restitution and, in lieu of a fine, pay up to \$5,000 to a battered women's shelter.

6.14 Does prosecuting domestic violence offenders deter reabuse?

The research is fairly consistent. Simply prosecuting offenders without regard to the specific risk they pose, unlike arresting domestic violence defendants, does not deter further criminal abuse. [11, 39, 55, 68, 96] The minority of abusers arrested who are low risk are unlikely to reabuse in

the short run, whether prosecuted or not. Alternatively, without the imposition of significant sanctions including incarceration, the majority of arrested abusers who are high risk will reabuse regardless of prosecution — many while the case against them is pending.

A study of a large number of arrests in three states (Connecticut, Idaho and Virginia) found that those who were prosecuted and convicted for domestic violence were **more** likely to be rearrested than offenders who were not convicted. However, in this study, those prosecuted and convicted were significantly more likely to be higher risk offenders as measured by prior criminal history. [117]

A number of studies have found that prosecution can reduce subsequent arrests and violence. [66, 91, 130, 211, 225, 226] The key to reducing reabuse may depend not on whether the case is prosecuted but on the dispositions imposed. For example, a Toledo, Ohio, misdemeanor court study found that conviction was significantly associated with reduced rearrests for domestic violence one year following court disposition, even when controlling for batterers' prior history of domestic violence arrests, age, gender, education, employment, and marital status. However, the details of the specific disposition mattered. The more intrusive sentences — including jail, work release, electronic monitoring and/or probation — significantly reduced rearrest for domestic violence as compared to the less intrusive sentences of fines or suspended sentences without probation. The difference was statistically significant: Rearrests were 23.3 percent for defendants with more intrusive dispositions and 66 percent for those with less intrusive dispositions. [216]

Another study of 683 defendants in Hamilton County (Cincinnati), Ohio, who were arrested for misdemeanor domestic violence also confirmed that sentence severity was significantly associated with reduced recidivism, especially for unmarried defendants, although in this study the actual sentence length (number of days in jail) was not found to be significant. [206] Similar research looking at the cumulative effects of arrest followed by prosecution and court dispositions (including those receiving batterer treatment) has found modest reductions in reabuse to be associated with greater post-arrest criminal justice involvement. [163, 204] Research of almost 2,000 domestic violence defendants in Alexandria, Va., found that, over a period of three and one-half years, repeat offenders were associating with those who had a prior criminal history and were **not** sentenced to incarceration for the study arrest during that period. This led researchers to recommend jail sentences for domestic violence defendants with any prior criminal history. [172]

The Ohio felony study, however, found mixed results between jail sentences and prison sentences. Although jail sentences were significantly related to lower odds of subsequent misdemeanor or felony intimate-partner assaults after two years, prison sentences were not significantly related. Although the likelihood of new charges was 9 percent less for those jailed (compared to those sentenced to probation), the likelihood was only 2 percent lower for those imprisoned, compared to those placed on probation. [225] This may simply reflect that the sample size in the study was too small to produce a statistically significant effect.

Implications for Prosecutors

Prosecution deters domestic violence if it adequately addresses abuser risk by imposing appropriately intrusive sentences, including supervised probation and incarceration. (Research basis: Although studies conflict with each other on the subject of abuse prosecution, those studies that researched prosecutions, and the resulting dispositions that addressed defendant risk, suggest that domestic violence prosecution can significantly deter reabuse.)

6.15 When does sentencing of domestic violence defendants not necessarily prevent reabuse?

Some dispositional studies suggest that domestic violence sentencing patterns differ from standard sentencing patterns. Surprisingly, domestic violence sentences often do not reflect defendants' prior criminal history, suggesting that prosecutors and/or judges may disregard prior records that are not domestic-violence-related. In the Ohio study, for example, researchers found no correlation between offenders' prior criminal histories and sentence severity. [11] Similarly, the Toledo, Ohio, study found that defendants with prior **felony** convictions were the **least** likely to be prosecuted and sentenced. [216] In contrast, in both Quincy, Mass., and Rhode Island, prior criminal history was significantly associated with severity of sentences. [23, 141] Sentences that do not reflect a defendant's prior criminal history (and prior sentences) may suggest to the defendant that domestic violence offenses are not taken as seriously as other offenses.

Implications for Prosecutors

Domestic violence sentencing should reflect defendants' prior criminal histories as well as abuse histories, as both indicate risk of reabuse as well as general criminality. (Research basis: Disparate sentencing studies found inconsistent variables, including consideration of prior records.)

6.16 Are defendants who don't show up in court more at risk for reabusing than those who do?

A Chicago study found that no-show defendants prosecuted by a specialized prosecution team had a significantly greater number of post-arrests than those that showed up in court (0.78 vs. 0.46). [107] Although this has not been examined elsewhere, in a Berkeley arrest study, researchers similarly documented that having a pending warrant at the time of the domestic violence incident was a significant predictor of reabuse. [228] The Quincy, Mass., arrest study also found that suspects who fled the scene before the police arrived were significantly more likely to reabuse than those suspects arrested at the scene. [23]

Implications for Prosecutors

If defendants default in court before their sentencing, prosecutors should consider them at higher risk for reabusing. (Research basis: Although only one study looked at this issue directly, several others found the same association between defendant conduct — not showing up in court — and risk of reabusing their victim before being prosecuted for the original abuse.)

6.17 Can "first" offenders be safely diverted or discharged?

In many jurisdictions, a substantial proportion of domestic violence defendants are diverted or given dispositions without having guilty findings imposed. Often, these dispositions are given to "first" offenders. Notwithstanding this trend, a trio of studies has found that a minimum of a quarter of defendants so sentenced reabuse or violate the terms of their conditional release.

In the Quincy, Mass., arrest study, a quarter of the arrested defendants were continued, without a finding to be dismissed, if they remained arrest free for six months to one year. These dispositions were reserved for defendants with less serious prior criminal and domestic abuse histories. These defendants were half as likely to have had prior records for domestic violence or crimes against persons or to have been sentenced to probation previously. Unlike those

sentenced to probation or jailed who began their criminal careers as teenagers, these defendants began theirs at an average age of 25. Nonetheless, a quarter of those continued without a finding were arrested or had new protective orders taken out against them within two years of their study arrest. Although this reabuse rate was still half that of defendants with more substantial prior criminal histories, it was substantially higher than prosecutors and judges had anticipated. [138] Similarly, a little more than a quarter of the abusers (27.5 percent) who were given a conditional discharge in Cook County violated the conditions. [107]

In Rhode Island, probationary sentences for domestic violence cases without underlying suspended sentences constitute an in-court diversion much like cases continued without a finding in Massachusetts. (A probationary sentence in Rhode Island does not constitute a conviction under state law and therefore does not count as a sentence enhancement to a former or subsequent conviction. In the study, those sentenced to probationary sentences were most likely to be “first” domestic violence offenders.) Although the average defendant given a suspended or split sentence had 1.1 and 1.9 prior domestic violence arrests, respectively, those sentenced to probation had 0.5 prior arrests. Nevertheless, the rearrest rate for domestic violence for probated defendants was 34.8 percent, compared to 43.6 percent for those given suspended sentences and 48.1 percent given split sentences. [141]

Implications for Prosecutors

Prosecutors must exercise caution in recommending case diversion or conditional discharges, even if abusers have minimal prior criminal histories. (Research basis: Limited site studies and broader research on offender risk previously cited.)

6.18 Do specialized prosecution units work?

There are a limited number of studies specifically devoted to specialized domestic violence prosecution programs. Because specific programs vary, including the resources expended, it is difficult to pinpoint what works and what does not. Also, in many instances, these programs coexist with specialized domestic violence courts and other programs that may affect outcomes independent of the prosecution programs. However, in general, the research suggests that these programs work well on a number of levels.

First, research indicates that victims generally report satisfaction with domestic violence prosecutions conducted by specialized prosecution teams. Increased satisfaction may translate into increased victim cooperation. For example, in Alexandria, Va., a study revealed that 90.2 percent of victims found prosecutors either very or somewhat helpful, a higher rating than that given to the police or a victim support service agency. The 90.2 percent satisfaction rate reported by Alexandria victims compares to only 67.3 percent for victims in Virginia Beach, a jurisdiction that did not have a specialized domestic violence response program by police, prosecutors or victim advocates. [172]

Similarly, in Cook County (Chicago), victims reported higher satisfaction with the specialized domestic violence prosecution unit than with the prosecutors who handled domestic violence outside the unit. The unit featured specially trained prosecutors and vertical prosecution, where one prosecutor handles the case from arraignment through final disposition. This unit also had its own victim advocates. The victims were also more likely to appear in court: 75 percent compared to 25 percent in domestic violence cases in jurisdictions with no specialized domestic violence unit. [107]

The latter finding was not unique. Although victims most commonly reported fear of retaliation as a barrier to their participation in prosecution, a three-state study found that the fear was reduced in sites with specialized domestic violence courts that also contained specialized prosecution programs and increased victim advocacy. [103] However, the same study found equal satisfaction with prosecutors in both demonstration sites and comparison sites that had no specialized court domestic violence programs. [103]

Second, specialized prosecution programs have significantly increased prosecution and conviction rates. The specialized prosecution unit in Cook County (Chicago) obtained a conviction rate of 71 percent compared to 50 percent obtained by the rest of the office for domestic violence cases. [107] In Milwaukee, the specialized domestic violence prosecution unit increased felony convictions five times over, once the unit was established. [104] Implementation of a specialized domestic violence prosecution unit in Champaign County, Ill., increased prosecutions by 18 percent, and overall domestic violence case dismissals decreased by 54 percent. Convictions increased by 22 percent. [109]

However, other studies suggest that specialized prosecution units must be adequately staffed to make a difference. The specialized prosecution unit in Mecklenburg County (Charlotte), N.C., obtained a much lower conviction rate (38 percent), akin to that obtained without specialized units. However, researchers noted that the unit was significantly understaffed, with only two prosecutors assigned to hundreds of cases annually. [68] Brooklyn's specialized felony prosecution program within the Borough's special felony domestic violence court increased convictions from 87 percent to 94 percent for felonies other than protection order violations and to 93 percent for violations. Although the rate was higher than before, the difference was not statistically significant. [164]

Third, specialized prosecution programs appear to be associated with more robust dispositions that also appear to be better monitored and enforced. A study of three domestic violence courts with specialized prosecutors in three different states found augmented probation conditions as compared to jurisdictions without domestic violence specialization. Augmented conditions included drug and alcohol abstinence and testing, batterer intervention programs that lasted longer and were more expensive, more no-contact protective orders, attendance at fatherhood programs or women's groups for female offenders, more mental health evaluations, mandatory employment and restrictions on weapons. [103]

Implications for Prosecutors

If adequately funded, specialized domestic violence prosecution units, especially if associated with specialized domestic violence law enforcement units and courts, should increase domestic violence prosecutions and convictions, victim cooperation and satisfaction and, if dispositions are geared to defendant risk of reabuse, more victim safety. (Research basis: Multiple studies in disparate jurisdictions.)

6.19 What characterizes specialized prosecution units?

An analysis of dozens of responses of prosecutors' offices to domestic violence found that the following dimensions characterized their responses: (1) responsiveness to victims (treating them as if they were civil plaintiffs as opposed to treating them dispassionately as witnesses to a crime), (2) treatment of suspects, (3) expectations for victim participation in prosecution, (4) specialization, and (5) information utilization. [227] The specialized units in upstate New York, unlike in other prosecutors' offices, were more likely to track: (1) cases for specialized

prosecution, (2) data to inform the pressing of charges for recidivists, (3) data to inform sentencing recommendations, and (4) routinely received police incident reports as well as police arrest reports. In addition, specialized domestic violence units were more likely to participate in task forces or coalitions involving other criminal justice and community agencies involved in responding to domestic violence. [227]

Performance Measure: Most large prosecutors' offices have special domestic violence units, allowing for innovations such as vertical prosecution for misdemeanors, improved case preparation, greater contact with victims, reduced caseloads and more malleable court scheduling. [160] One-third of prosecutors in small and medium-sized cities across upstate New York also had specialized domestic violence prosecution programs, half of which made victim advocates available to victims. [227] (Research basis: A 2000 mail survey of 200 of the largest jurisdictions in 45 counties of upstate New York.)
