

# Attachment Two (2)

Committee on Domestic Violence  
Court Subcommittee Agenda  
October 29, 2019

Contents: Battered Women Justice Project

## **Battered Women's Justice Project**

*The legal response to domestic violence has changed dramatically during the last 30 years. In the United States, all 50 states and the District of Columbia have enacted statutes that allow police officers to make warrantless arrests for domestic violence when probable cause exists,<sup>1</sup> and many states now have mandatory or preferred arrest laws. Both the scope of relationships and behaviors covered under these laws has resulted in an ever-increasing case load for the criminal justice system.*

### **WHAT IS RISK ASSESSMENT?**

To meet the goal of enhanced safety for an increasing number of victims, service providers and interveners are inevitably involved in attempting to identify the most dangerous offenders and manage the risks posed to victims. In response, risk assessment tools in the domestic violence field have been developed to assess both an offender's risk of re-offending, and a victim's risk of lethal assault.

**“Risk assessment is a procedure whereby we measure some characteristic of a person or situation and then use that information to predict the likelihood of some negative event — re-abuse, for example, as measured by re-arrest.”<sup>2</sup>**

## Benefits of Using Risk Assessments

- Assist victims and domestic violence workers to develop more realistic safety plans
- Help the criminal justice system identify which offenders need higher bail, inform conditions of release, and craft enhanced supervision strategies.
- Educate criminal justice practitioners and service providers about domestic violence and provide a shared language about risk factors.
- Assist perpetrator treatment programs to select the amount and types of treatment

Several evidence-based tools have been developed to identify the potential of lethal violence, the risk of reassault, and severity of the assault. Each tool was developed for a specific purpose, to be used in certain settings, by identified practitioners, and each obtains information from different sources, or combination of sources: public information (including past and present police reports), criminal history, past or present protective orders, violations of court orders or conditions, probation history, information from the perpetrator, and/or information from the victim.

The following are some examples of current instruments being used to predict risk.

### **Danger Assessment (DA)**

The DA is a clinical and research instrument designed by Dr. Jacqueline Campbell to help victims assess their danger of killed or reassaulted. It was originally developed for use by health personnel in consultation with victims to enhance their ability to plan for their safety. All risk information is obtained from the victim. This tool is appropriate in confidential settings, or where protocols and practices have been put in place to ensure that this information does not come into the hands of the offender. The Danger Assessment Scale is “one of the few instruments with any published empirical evaluation of psychometric properties such as test-retest and internal consistency reliability.”<sup>3</sup> [Learn more about the Danger Assessment.](#)

### **Domestic Violence Screening Instrument (DVSI-R)**

The DVSI can be completed by a review of prior court and probation records. It was developed for use as a domestic violence risk screen to be followed by more intensive evaluation if the DVSI-R score indicates a high level of risk. It has also been shown to have predictive validity in identifying those who will reoffend. It is currently used as to

inform pre-trial evaluations and as a corrections case management tool for offenders screened as high risk for domestic violence-related re-offense.<sup>4</sup>

## **Ontario Domestic Assault Risk Assessment (ODARA)**

The ODARA is an actuarial tool which indicates the likelihood that a person who has already committed an assault on a domestic or dating partner will do so again in the future. It also predicts the amount of time until a new assault, and greater severity of new assaults. The ODARA was developed to be used by police officers to identify high risk domestic violence cases, and provide a shared language about escalated risk to aid communication among criminal justice and other agencies responding to domestic assault. The ODARA's 13 yes-or-no items identify the perpetrator's history of substance abuse, violent and criminal behavior, details of the most recent assault, and the victim's vulnerabilities (poverty, having children in common, etc.).<sup>5</sup>

## **Spousal Assault Risk Assessment (SARA)**

The SARA, developed at the British Columbia Institute on Family Violence, is "a set of guidelines for the content and process of a thorough risk assessment." It comprises 20 items derived from the research literature on domestic violence and from the clinical literature on male perpetrators of domestic violence: criminal history, psychological adjustment, spouse abuse history, current offence characteristics, and other (e.g. stalking, torture). Application of the SARA is limited to presentence evaluations and recommendation, and probation case management strategies. It can also be applied to pretrial evaluations in charged individuals. The SARA gathers data from: interviews with the accused and with victims, standardized measures of physical and emotional abuse and of drug and alcohol use, and a review of police reports, victim statements, criminal records.<sup>6</sup>

## **CAADA-DASH Risk Identification Checklist**

The CAADA-DASH Risk Identification Checklist is a new 24-item tool being used in England and Wales by frontline agencies that identify or respond to domestic violence such as law enforcement, domestic violence advocacy organizations, batterer intervention programs, health care, mental health services, and children's court.<sup>7</sup>

The DVSI, ODARA, and SARA were designed to *predict likelihood of an offender's re-assault* against a current or former domestic or dating partner, while the DA was designed to *assess the victim's risk of lethal or near lethal violence*. They differ in risk factors identified in the instrument, the intended use of the instrument, and how the instrument is validated. For example, the DA, DVSI, ODARA, and SARA each have yes/no questions or scored items that deal with the offender's past assaults and substance abuse. However, only the DA has a question about strangulation, which has been identified as a risk factor for homicide of women.

## Other Risk Tools:

- The **Lethality Screen** portion of the Domestic Violence Lethality Assessment Program (DVLAP) promoted by the Maryland Network against Domestic Violence, uses 11 of the 20 questions asked by the Danger Assessment. Law enforcement uses the Lethality Screen to identify high risk victims and connect them with local advocates.
- The **Duluth Police Pocket Card** has adapted several key questions from risk assessment instruments to guide responding officers in asking open-ended questions (instead of yes/no questions) of victims. The responses are included in the narrative of the police report and aren't intended to be viewed as a valid risk score, but rather to describe to the court possible danger to the victim.
- The **Practitioner's Guide to Risk** contained within the [Blueprint for Safety](#) is based on not only on risk and danger factors, but also on other research about violence against women.<sup>8</sup>

*Of course, no instrument can predict with certainty the risk of re-assault or lethality in domestic violence cases.* Instruments should be viewed as an aid to the evaluation of risk, and to inform decision-makers during points of the criminal justice process such as arrest, bail, disposition, sentencing, and probation.

## How Will Risk Information Be Gathered?

Identifying and documenting risk factors should be incorporated into each step of the criminal justice intervention. Your CCR could provide leadership in assessing what practices are in place and where gaps exist in identifying, documenting and transmitting risk information throughout the criminal justice intervention. To assist in such an assessment, BWJP has developed *Accounting for Risk and Danger Practice Checklists*

for each step in the intervention process. Examples of items on these checklists are the following:

**911:**

What information on past arrests/convictions/protection orders is available to 911 and relayed to responding officers? Are questions asked regarding lethality indicators, such as weapons, threats to kill, threats of suicide, mental illness and military service/combat duty?

**Responding Officers:**

What information from 911 related to higher lethality risk is conveyed to officers? Is additional information on risk gathered and included in the police report? Is it passed on to subsequent interveners appropriately? Are high-risk victims connected with advocates?

**Jail/Detention:**

Are there procedures to note risk behaviors, such as threats, and to communicate this information appropriately? Are there policies/practices to prevent victim intimidation? Are jail calls available to prosecutors? How long are phone recordings kept?

**Conditions of Release/Bail:**

Is risk information gathered by law enforcement or 911 available to decision-makers at this point? Is DV-specific risk assessment a part of pre-trial evaluation?

**Prosecutors:**

Is risk information from law enforcement and pretrial evaluation available to prosecutors?

**Judges:**

How is risk information provided to judges? Do judges have access to a Bench Guide?

**Probation:**

Is risk information from police reports and pre-trial evaluation relayed to probation officers? Does probation conduct DV-specific risk assessment to craft recommendations for sentencing and case management? Are there resources to enhance monitoring of high risk cases, such as GPS or intensive/active field supervision?

**Offender Intervention/Treatment:**

Is risk information from probation available to offender intervention programs? Do programs assess risk? Is there an accountable system of referrals and reporting on violations in place? Do programs work with victims or victim advocacy organizations? What procedures are in place when risk/danger becomes elevated?

**Advocacy Programs:**

Are advocates engaging victims in conversations about risk assessment?

**WHAT IS THE PURPOSE IN GATHERING RISK INFORMATION?**

Sometimes communities embark on strategies to assess risk without having a clear sense of how the information will be used in practice. If nothing will be done with the information, if no practices change as a result of having risk information, why collect it? It's important to decide what the response will be to the identified risk.

Domestic violence victims may share different information with different interveners for a variety of reasons. Interveners should then assess risk on an ongoing basis, accounting for change in the circumstances of victims or offenders. Practices such as monitoring, surveillance, court-ordered services, and swift and certain consequences must interconnect, not only to manage but also to contain dangerous offenders. Ongoing assessment requires information from tools, practitioner expertise, offender history, and the victim's perceptions. It cannot rely on only one information source.

**HOW WILL THE VICTIM BE INFORMED ABOUT OTHERS' ACCESS TO THEIR RISK ASSESSMENT?**

Many victims in support groups and focus groups have indicated that they often think of a discussion or interview about risk as “I’m telling you, the practitioner” and are shocked to find that this information may be shared with many other players: prosecution, defense (and the defendant), the court, probation, and batterers’ programming. When collecting risk/danger assessment directly from the victim, it is necessary to identify who will have access to the information during the case processing, and afterwards, if it becomes part of the court record.

- Could this information be used against the victim?
- What are the potential ramifications to the victim of sharing this information?
- If your risk/danger assessment inquires about sexual assault, what will happen if the victim indicates that they have been sexually assaulted?
- Does the victim understand that an affirmative answer to some questions may trigger an additional investigation?
- How will the victim be fully informed about who will have access to the information now and potentially at a later date (prosecutors, defense attorneys, the defendant, child protection, family court practitioners etc.)
- How/will this information be shared with interagency practitioners?
- How will this process increase options for victims? Will it provide access to advocacy services and resources?
- Will assessment provide access to enhanced threat management strategies by practitioners?

## **WHAT IS THE POTENTIAL FOR UNINTENDED NEGATIVE CONSEQUENCES TO THE VICTIM IN SHARING THE INFORMATION?**

Risk is not solely the danger that a batterer poses to a victim of domestic violence. Interventions in the lives of victims of battering can pose their own risks. Interveners must be mindful of risks generated by not only by a batterer, but also by a victim’s immediate personal circumstances, by aspects of culture that increase vulnerability, and by the institutional and intervention responses.

Practitioners must account for how the intervention itself may exacerbate those risks. They can then work to improve criminal justice and community advocacy agencies’ support of victim-centered practice, ease of access to services and resources, and enhance the institutional ability to hold offenders accountable.

## Use of Risk Assessment in Other Settings

This discussion has focused solely on the use of risk assessment in the criminal justice intervention. The authors are aware that some communities have been applying the use of risk assessments in protective order hearings, child protection screenings, and family court matters, such as custody, etc.

Gathering risk information from the victim in each of these settings has its own potential benefits and concerns that are previously noted. It is essential that these applications of risk assessment be thoroughly assessed to ensure that the administrators of lethality and risk assessments inform all victims about who will have access to this information, now and later, obtain the victim's informed consent to conduct the screening or permit the victim to decline the screen (without negative consequences).<sup>9</sup>

## Considerations

- A risk assessment tool should not be used as the sole basis for safety planning with victims, but rather used in conjunction with other information.<sup>10</sup>
- Listen to victims. Research has shown that a victim's perception that she is at risk of future harm is “a reasonably accurate predictor of repeated reassault ... and improves the prediction of risk factors and instruments.”<sup>11</sup> These findings support the longstanding argument that many victims are good predictors of their own safety, and they send a message to those working in the field that they should pay attention to the victim's self-appraisal of risk.
- The use of risk assessment scores by police, probation officers and prosecutors should not be a substitute for listening to victims. There is a risk that, because of the aura of “science” around risk assessment tools, victim's voices and experiences may be disregarded.<sup>12</sup>
- Victims should not be placed in the situation of completing these tools where there is any possibility that this can place them at further risk from abusers.<sup>13</sup>
- It is important to be clear about “what type of risk you are assessing for, and what change in intervention will occur as a result of the assessment.”<sup>14</sup> Risk assessment should not be used to limit eligibility for services, but rather to identify when enhanced or expedited intervention is necessary.

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7. Richards, L., <http://www.dashriskchecklist.co.uk/>
8. <http://files.praxisinternational.org.s3.amazonaws.com/Blueprint/BPSupp1APractitioners%20GuidetoRiskandDangerDec2012.pdf>
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10. *Ibid.*
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12. Websdale, N. 2000a, *Lethality Assessment Tools: A Critical Analysis*, [web page]. National Electronic Network on Violence Against Women. [www.vaw.umn.edu/Vawnet/lethality.htm](http://www.vaw.umn.edu/Vawnet/lethality.htm) [2002, 11th September].
13. *Ibid*
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- [Resources](#)



[New Orleans CCR Training Materials Tools & Guides](#)

[Accounting for Risk and Danger Practice Checklists: Coordinating Risk](#)

[Assessment in Domestic Violence Cases Tools & Guides](#)

[Intimate Partner Violence, Military Personnel, Veterans, and Their Families Policy Analysis](#)

**RELATED RESOURCES** PROJECTS

- DV and Firearms
- ICJR Grantees
- Military & Veterans

## Domestic Violence Compliance Courts

1. Survey literature/resources relating to Domestic Violence Compliance Courts or specialized Domestic Violence Dockets.
  - A. Effect on defendants
  - B. Effect on victims/others

National Council of Juvenile and Family Court Judges, National Judicial College, National Center for Court Innovation, Department of Justice Office of Violence Against Women, etc.

2. Review Violence Against Women Act requirements/guidelines for judicial funding.
3. Review prior grant applications for domestic violence courts or specialized dockets in Nevada.
  - A. Las Vegas Justice Court—specialized docket
  - B. Reno Justice Court—Domestic Violence Compliance Court
  - C. Other applications
4. Survey/review of Nevada courts and how domestic violence cases are handled.
5. Review of Nevada Supreme Court Funding for specialty courts and/ or other funding sources.
6. Recommend action regarding specialized domestic violence to appropriate agencies.