



Ministry of Public Safety and Solicitor General  
Ministry of Attorney General  
Ministry of Children and Family Development

# Violence Against Women in Relationships

# POLICY

December 2010



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# Introduction

## About this Policy

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### Background

The ministries of Public Safety and Solicitor General, Attorney General, and Children and Family Development recognize that domestic violence constitutes a very serious and complex criminal problem.

The *Violence Against Women in Relationships* (VAWIR) policy was developed in 1993 to revise and expand the original 1986 Ministry of Attorney General Wife Assault policy. The policy has been updated several times over the years (1996, 2000 and 2004) to reflect applicable legislative changes (including Criminal Code and provincial legislation) and changes to operational policies.

This updated policy document fulfils a commitment under the province's Domestic Violence Action Plan. The action plan was launched in January 2010 in response to recommendations from the Lee/Park coroner's inquest and the Representative for Children and Youth's report on the death of Christian Lee. The focus of the action plan is enhancing and integrating the response to domestic violence by the justice system and child welfare partners to better serve all British Columbians.

The ministries of Public Safety and Solicitor General, Attorney General and Children and Family Development collaborated on the update of the provincial VAWIR policy.

Emerging best practices recognize the need for integrated cross-agency policies as a key component of an effective response strategy to domestic violence. The improved guidelines in this policy and the new protocol for highest risk cases reinforce the province's commitment to a multi-agency, co-ordinated response to domestic violence. All parties to this policy agree that minimizing the risk of violence, enhancing victim safety and ensuring appropriate offender management are priorities for the province.

### Definition

For the purposes of this policy, "violence against women in relationships" and alternative terms used when referring to "domestic violence" (including "spousal violence", "spousal abuse", "spouse assault", "intimate partner violence" and "relationship violence") are defined as physical or sexual assault, or the threat of physical or sexual assault against a current or former intimate partner whether or not they are legally married or living together at the time of the assault or threat. Domestic violence includes offences other than physical or sexual assault, such as criminal harassment, threatening, or mischief, where there is a reasonable basis to conclude that the act was done to cause, or did in fact cause, fear, trauma, suffering or loss to the intimate partner. Intimate partner relationships include heterosexual and same-sex relationships.

Domestic violence cases are designated as “K” files by Crown counsel. “K” files include cases in which the intimate partner is the target of the criminal action of the accused although not the direct victim; for example, where the accused has committed an offence against someone or something important to the intimate partner such as an assault on the intimate partner’s child or new partner. Similarly, Crown counsel identify as “K” files charges arising from breaches of court orders and applications for section 810 recognizances relating to domestic violence cases.

The title of this policy, *Violence Against Women in Relationships*, is meant to acknowledge the power dynamics involved in these cases. It recognizes that most of these offences are committed by men against women and that women are at a greater risk of more severe violence.

Nonetheless, the VAWIR policy applies equally in all domestic violence situations regardless of the gender of the offender or victim. The policy is equally intended to stop violence in both same-sex relationships and violence against men in heterosexual relationships.

For brevity, the terms “domestic violence” and “spousal violence” appear throughout this document.

“K” files include cases in which the intimate partner is the target of the criminal action of the accused although not the direct victim.

## **Purpose of VAWIR Policy**

This policy sets out the protocols, roles and responsibilities of service providers across the justice and child welfare systems that respond to domestic violence. It also reflects the operational policies of the various agencies involved.

The primary purpose of the VAWIR policy is to ensure an effective, integrated and co-ordinated justice and child welfare response to domestic violence. The goal is to support and protect those individuals at risk and facilitate offender management and accountability.

This policy is also intended to provide the public with information about the complex criminal issue of domestic violence, including the roles and responsibilities of justice and child welfare system partners.

While the VAWIR policy focuses on the justice and child welfare response to domestic violence, collaboration with allied service providers is vital to ensure a comprehensive response. When appropriate, collaboration with and referrals to and from service providers help ensure that victims of domestic violence are effectively supported in a co-ordinated fashion. Service providers include: transition house programs, stopping the violence counselling programs, children who witness abuse programs, outreach and multicultural outreach services, health services, and immigrant settlement services.

Developing and maintaining positive working relationships among service providers in the justice, child welfare, health, housing and social service sectors is key to ensuring that victims of domestic violence are well supported. This may include partnering with local service providers on innovative approaches to co-ordination through developing projects or processes that are supported by protocols or memorandums of understanding.

### Dynamics of Domestic Violence

In domestic violence situations, violence is commonly used by one person to establish control over their partner or to control their partner's actions. These tactics are often successful because of the fear and isolation a victim feels.

No matter which form it takes, the dynamics of abuse in domestic violence situations differ significantly from other crimes. The victim is known in advance, the likelihood of repeat violence is common and interactions between the justice system and the victim are typically more complex than with other crimes. Research indicates, for example, that 21 per cent of women who are spousal violence victims experience chronic assaults (10 or more).<sup>1</sup>

When violence occurs, there is usually a power imbalance between the partners in the relationship. It may be extremely difficult for a victim to leave the relationship due to feelings of fear and isolation as well as cultural/religious values, socio-economic circumstances, or even denial of the violence. Violence often escalates over time and may continue or even worsen if the victim attempts to leave the relationship causing the victim to stay or return. Similarly, concern for the safety of children may make it difficult for the victim to leave. The threat of violence to the children may be used by an abusive partner seeking power and control.

Despite the harm that the abuse may have caused and the risk of continued or more serious harm, the dynamics of the relationships in which these crimes arise may result in the victim's reluctance to fully engage with the police or Crown counsel in the investigation and prosecution of these crimes. Research suggests that nearly two-thirds of women (64 per cent) who are victims of a spousal assault do not report the violence to police.<sup>2</sup> There are a number of reasons, including fear of escalation in the violence or the potential for threats of violence directed toward children.

If a victim does become involved in the justice system, it is important to provide that individual with a full and sensitive explanation of the process. The importance of keeping the victim informed and supported throughout the situation should not be underestimated. This is especially true when children are involved. Justice system personnel proactively refer victims to available supports, including victim services and other community services, to ensure that victims have access to resources that keep them safe and allow them to effectively participate in the justice system.

Justice system personnel are trained on the power imbalance and dynamics that prevent a victim from taking steps to end violence. A vigorous approach to police investigation and subsequent legal response, promoted by this policy, are necessary to help prevent domestic violence in our society.

## Scope of the Domestic Violence Issue

Domestic violence has a significant and adverse impact on families and communities. While society has made important advances in addressing domestic violence, this issue remains a serious challenge in British Columbia:

1. Statistics Canada (2006). *Measuring Violence Against Women: Statistical Trends 2006*. p. 33.

2. Statistics Canada (2006). *Measuring Violence Against Women: Statistical Trends 2006*. pp. 16, 55.

- ❖ From 1999 to 2004, it is estimated that 183,000 British Columbians 15 years of age and over were victims of spousal violence.<sup>3</sup>
- ❖ Domestic violence cases constitute the most numerous case type for Crown counsel. In 2008/09, Crown counsel received 10,224 domestic violence cases (14 per cent of all cases received).<sup>4</sup>

## Children

Children who have been exposed to domestic violence are more likely to be abused or neglected in their family home. As adults, they are more likely to be in an abusive relationship as an aggressor or a victim.<sup>5</sup> From 1999 to 2004, more than three out of 10 victims in Canada reported that their children witnessed their abuse.<sup>6</sup>

## Women

The majority of domestic violence cases in the criminal justice system involve female victims. As a whole, women continue to be more adversely impacted by domestic violence than men. This view is supported by research findings that:

- ❖ The majority of victims of police-reported spousal violence continue to be women, accounting for 83 per cent of victims in 2007.<sup>7</sup>
- ❖ Women are more likely than men to be victims of spousal homicide. In 2007, almost four times as many women were killed in Canada by a current or former spouse as men.<sup>8</sup> Of the 73 domestic violence homicides occurring between January 2003 and August 2008 in British Columbia, 55 involved a female victim.<sup>9</sup>
- ❖ In domestic violence situations, women are more than twice as likely as men to be physically injured, three times more likely to fear for their lives and six times as likely to seek medical attention.<sup>10</sup>

## Groups at Increased Risk

Research shows that some groups of women are at greater risk of violence than others. Aboriginal women are more than three times as likely as non-aboriginal women to be victims of spousal violence, and are significantly more likely to report the most severe and potentially life-threatening forms of violence.<sup>11</sup> And, women under 25 years of age are at the greatest risk for spousal homicide.<sup>12</sup>

Research indicates additional factors intersect in women's lives to compound their experience of violence and abuse.<sup>13</sup> Immigrant and visible minority women who experience abuse from their partners are less likely to report it to the police and are often hesitant to use available support services, or be aware that they exist.<sup>14</sup> An immigrant who has not fully settled in Canada may be unfamiliar with laws, socio-cultural norms, their rights and responsibilities. They may lack social networks, and/or may have limited English language skills which may impact on their interactions in the justice system. Socioeconomic factors (poverty and homelessness), geography (rural isolation), and health factors (including mental health, addictions and physical disability) are commonly cited as affecting a woman's experiences of violence.

Throughout the VAWIR policy, justice and child welfare system partners are directed to be sensitive to the unique circumstances of victims of domestic violence.

3. Statistics Canada (2006). *Measuring Violence Against Women: Statistical Trends 2006*. p. 19.

4. Criminal Justice Branch (2010). *VAWIR Matters per Accused Person – JUSTIN Data*.

5. UNICEF et al. (2006). *Behind Closed Doors: The Impact of Domestic Violence on Children*. p. 3.

6. Statistics Canada (2006). *Measuring Violence Against Women: Statistical Trends 2006*. p. 19, 34.

7. Statistics Canada (2009). *Family Violence in Canada: A Statistical Profile*. p. 5.

8. Statistics Canada (2009). *Family Violence in Canada: A Statistical Profile*. p. 6.

9. British Columbia Coroners Service (2010). *Report to the Chief Coroner of British Columbia: Findings and Recommendations of the Domestic Violence Death Review Panel*. p. 3.

10. Statistics Canada (2006). *Measuring Violence Against Women: Statistical Trends 2006*. p. 33.

11. Statistics Canada (2006). *Measuring Violence Against Women: Statistical Trends 2006*. pp. 64-65.

12. Statistics Canada (2006). *Measuring Violence Against Women: Statistical Trends 2006*. pp. 36-37.

13. Johnson, Holly and Myrna Dawson (2010). *Violence Against Women in Canada: Research and Policy Perspectives*. Don Mills, ON: Oxford University Press.

14. Canadian Council on Social Development. (2004). *Nowhere to Turn? Responding to Partner Violence Against Immigrant and Visible Minority Women*. p. 34.



## How this Policy Document is Organized

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This document is divided into 10 sections.

It begins with an introduction which includes the background of the policy, definition of Violence Against Women in Relationships, purpose of the policy and the broader context of the issue of domestic violence.

Individual sections focus on the roles and responsibilities of the service providers (one section for each, but all integrated). The last section sets out a protocol for the highest risk cases.



# Police

## Introduction

As first responders, police have a key and important leadership role in managing issues associated with keeping victims safe. Police assume a critical responsibility in identifying highest risk cases of domestic violence and initiating the flow of information and communication among response agencies.

Police are advised to consult this policy (including the *Protocol for Highest Risk Cases and Police Release Guidelines*) and their own department or detachment's operational policies and procedures.

## Response

Domestic violence incidents come to the attention of police by a variety of means. These include 911 calls (e.g., incident, breach), in person complaints, probation officers (e.g., breach), and referrals from other agencies (e.g., victim service programs, other police agency). A call may be from a victim, family member, or the public.

### Priority Response

Police calls involving domestic violence are a priority for assessment and response. These include all reported breaches of no-contact conditions of criminal orders, recognizances, and civil restraining orders.

Police respond to the location regardless of whether the call is disconnected, if the caller indicates police are no longer needed, or if the caller cancels the request on a follow-up call.

When a person attends a police station or detachment in-person alleging domestic violence, an officer should be assigned to investigate. The victim is not directed to return at another time, or to complete a written statement and return it later. The timeliness of the victim's report (e.g., several days after the event) does not lessen the severity of the incident and must not affect the police response. If the incident occurred in another police jurisdiction, the official receiving the complaint ensures a timely referral to the correct police agency.

Dispatch or other staff who take reports prioritize the safety of victims. As domestic violence calls constitute a high risk to responding officers, it is important to acquire as much information as possible regarding the situation and the individuals involved.

### Evidence-based, Risk-focused Investigations

Responding officers apply their knowledge of risk factors and their training, including the course “*Evidence-based, Risk-focused Domestic Violence Investigations*” to conduct an investigation. The risk factor categories are:

1. **Relationship history** (current status of relationship; escalation of abuse; children exposed; threats; forced sex; strangling/choking/biting; stalking; relative social powerlessness – marginalization and cultural factors);
2. **Complainant’s perceptions of risk** (perception of personal safety/future violence);
3. **Suspect history** (previous domestic/criminal violence history; court order; drugs/alcohol; mental illness; employment instability; suicidal ideation);
4. **Access to weapons/firearms** (used/threatened; access to).

When a responding officer has concerns that a domestic violence case may possibly be highest risk based on their preliminary investigation, they contact their supervisor or a specialized investigator (Refer to the Protocol for Highest Risk Cases in this policy and operational policies).

The investigation process should not be influenced by the following factors:

- ❖ Relationship status or sexual orientation of the suspect/victim;
- ❖ Co-habitation of suspect and victim at the same premises;
- ❖ Preference by complainant that no arrest be made;
- ❖ Occupation, community status, and potential consequences of arrest;
- ❖ History of complainant including prior complaints;
- ❖ Verbal assurances that the violence will stop;
- ❖ Complaints about emotional state of the victim or suspect;
- ❖ Lack of visible injuries;
- ❖ Speculation that the complainant will not proceed to prosecution; and
- ❖ Intoxication/drug use by the victim.

### Primary Aggressor

When the parties allege mutual aggression, police fully investigate to determine what happened, who is most vulnerable, and who, if anyone, should be arrested. An allegation of mutual aggression may be raised by the primary aggressor as a defense with respect to an assault against their partner.

The practice of arresting both parties is discouraged. Police should conduct a primary aggressor analysis, and arrest the primary aggressor, where grounds exist, in accordance with the Criminal Code. The primary aggressor is the party who is the most dominant rather than the first, aggressor.

In determining the primary aggressor, police should consider all the circumstances, including the following questions:

- ❖ Who has superior physical strength, ability and means for assault and/or intimidation?
- ❖ What is the history and pattern of abuse in the relationship and in previous relationships?
- ❖ Who suffered the most extensive physical injuries and/or emotional damage and who required treatment for injury or damage?
- ❖ Are there defensive wounds?

### Entry

Where police have reasonable certainty that the ongoing safety of individuals within a premises is in jeopardy, police have limited authority to forcibly enter a premise to ensure the safety of all parties. They do not take the word of any single occupant with regard to safety, but speak to all occupants. The specific authority to enter a premise to check on the safety of occupants is found in the 1998 Supreme Court of Canada decision (R. v. Godoy).

### Suspect Departed Scene

When a suspect has departed the scene prior to police arrival, police assess the likelihood of the suspect's return and take steps to ensure victim safety. Police make immediate efforts to locate and arrest the suspect where there are grounds. They also complete a Report to Crown Counsel with a request for an arrest warrant. When appropriate, police enter the suspect on CPIC as arrestable.

### Children Present

As part of the initial investigation, the responding officer determines whether there are children in the relationship, if they were present during any of the reported incidents, and if they have been the victim of violence.

When children are involved, an officer's risk analysis and best judgment determines if a child is in immediate danger or a criminal offence against a child is suspected. The officer immediately contacts a child welfare worker to request their attendance. The child welfare worker's response is in accordance with their policy. If the child welfare office is not open, police call the After Hours Helpline for Children (310-1234) and indicate on the police incident/occurrence report and the Report to Crown Counsel that a child welfare worker was notified.

The child welfare worker speaks with the parent, and the child if possible, and makes arrangements with the police to ensure that the child is safe. This may include returning the child to the victim parent at a safe location, taking the child to a safe place identified by the victim parent, or taking the child to another safe place.

If a situation affecting children is of an immediate serious nature and a child welfare worker is not readily available, police "take charge" of the children under section 27 of the Child, Family and Community Service Act (parental consent is not required).

When children are involved and an officer's analysis of risk factors and best judgment determines a situation is not at the highest level of risk, the immediate attendance of a child welfare worker is not required. Prior to end of shift the incident is reported to a child welfare worker by notifying the child welfare office or the After Hours Helpline for Children (310-1234). A child welfare worker attends within legislated timelines.

If a child is in immediate danger or a criminal offence against a child is suspected, police should immediately notify a child welfare worker.

Police should include their name on the incident/occurrence report to the child welfare worker as well as the following information (Refer to *BC Handbook for Action on Child Abuse and Neglect: What to Report*, page 42):

[www.mcf.gov.bc.ca/child\\_protection/pdf/handbook\\_action\\_child\\_abuse.pdf](http://www.mcf.gov.bc.ca/child_protection/pdf/handbook_action_child_abuse.pdf)

- ❖ Details of the incident — what occurred, where, who was present (names, ages, addresses)?
- ❖ Does the suspect have a police history of violence?
- ❖ Is the risk assessment completed, or is the file being sent to a domestic violence unit?
- ❖ Were injuries sustained?
- ❖ Was there medical follow-up?
- ❖ Have police been to the location before. If so, when?
- ❖ Are there protection orders in place?
- ❖ What is the current location of the suspect, victim, and children?
- ❖ Were weapons used?
- ❖ Have children been interviewed or will they be interviewed, by police?
- ❖ Are charges being forwarded to the Crown?
- ❖ Is there sufficient information for the child welfare worker to assess whether it is safe for them to interview the suspect?

If children are out of the home when a police response occurs, the officer, working in partnership with the child welfare worker, takes steps to locate the children and ensure their safety (as well as that of any other individuals at the children's location).

When a criminal offence related to child abuse or neglect may have occurred, police thoroughly investigate the allegations and the potential for charges, in collaboration with a child welfare worker.

In instances when children are involved, whether they were present or not at the time of the incident, police record in their incident/occurrence report the date, time, and name of the child welfare worker with whom they spoke.

Police also ascertain if the suspect threatened to remove or harm the children as a tactic of control/intimidation.

A police interview of victims, child witnesses or family members must not occur in the presence of a suspect.

## **Firearms**

Police query the victim to determine if the suspect owns or has access to firearms and check the Canadian Firearms Registry. If firearms are present, police may seize weapons (with or without warrant, including firearms-related certificates, licenses, permits and authorizations) and do so regardless of whether the suspect has used/threatened to use them. Accordingly, police ensure that they fulfill legal obligations outlined in Criminal Code sections 109 to 117.15 and the Firearms Act and its regulations.

Police should keep the following procedures in mind:

- ❖ Apply for parallel (to the substantive offence) section 111 applications for firearms prohibitions, making a note on the substantive file that such an application is being made;
- ❖ Personally accompany the accused, to seize firearms and all possession and acquisition licenses, in cases when the term of an 11.1 Undertaking To Appear is to surrender such items;
- ❖ Release the suspect on recognizance with a firearms prohibition and certificate surrendering condition;
- ❖ If releasing a suspect on bail with a firearms prohibition, ensure conditions require the accused to immediately surrender any firearms to police;
- ❖ Log incident in police department records; and
- ❖ Forward information regarding seized firearms to Crown counsel on an urgent basis. There is a 30-day time limit for commencing proceedings after which it is mandatory to return the firearms.

### **Evidence**

When it has been established that an offence has occurred, police should document all evidence and provide Crown counsel with a complete written record even when the victim is reluctant to cooperate with the investigation. Police work to build a case that can stand independent of the victim testimony, taking accurate and detailed notes on the incident. Police should provide 911 tapes.

### **Breach of Conditions**

Alleged breaches of conditions of criminal and civil orders require assessment, no matter how minor, including those reported to police for investigation by bail supervisors/probation officers. Breach of conditions may result from direct or indirect contact (e.g., phone calls, text messages, e-mails, messages sent via friends) depending on the wording of the condition.

When a breach relates to an existing order on a domestic violence case, police should not release but hold the accused for court. The victim should also be notified by police.

Police ensure that all relevant information regarding the breach (including risk assessment information) is shared on a priority basis with bail supervisors/probation officers and appropriate contacts from child welfare.

If the accused is on any form of bail and has breached the current bail conditions, or if an officer's best judgment determines there are reasonable and probable grounds to believe the accused has or will commit an indictable offence, the accused is in a position where he/she must justify their release. (Refer to Criminal Code section 524.) A remand should be sought pursuant to Criminal Code section 516(1). This may be referred to as a reverse onus situation.

A Report to Crown Counsel, even if a preliminary report, must be provided for the bail hearing.

If the terms of an order under the Child, Family and Community Service Act or the Family Relations Act (family court) conflict with those of a criminal court order, the more restrictive terms of the criminal court order are paramount. For example, if

Charges should always be considered where a breach leads to a concern about victim safety.

A Report to  
Crown Counsel  
must be  
provided for  
the bail hearing.

a criminal order prohibits contact with the spouse while a corresponding family order grants access to the children, the accused is prohibited from contacting the spouse (according to the criminal order) even for the purposes of obtaining access to the children.

The Child, Family and Community Service Act or family court order terms not superseded by the criminal court order continue to be in effect. In some cases the Child, Family and Community Service Act order may contain no contact provisions regarding the children while the criminal order is silent on that issue. Upon expiration of a criminal order all of the terms of any valid Child, Family and Community Service Act and family court orders remain in effect.

The Child, Family and Community Service Act order is paramount when the terms of an order under the act conflict with those of a family court order.

If a Child, Family and Community Service Act or family court order includes terms prohibiting contact or communication to protect a person that are more restrictive than the criminal court order, the accused must abide by both orders and both orders are to be enforced. For example, a criminal court order restricting contact between spouses while a concurrent protection order under the Child, Family and Community Service Act or family law restricts contact with the spouse and children.

## Contact Information

Police should always provide the victim with the investigating officer's name, case number, and follow-up contact numbers.

## Arrest

Comprehensive and accurate documentation are critical elements in the investigation and prosecution of all cases. Police ensure all documents pertaining to the events and circumstances justifying an arrest are completed in this manner.

Police should ensure the file is appropriately denoted as domestic violence in all relevant documents (including Report to Crown Counsel, police files, incident/occurrence report) and justice databases (including PRIME), consistent with operational policies.

When an indictable offence has occurred, or may occur, police should arrest the suspect without warrant under section 495 of the Criminal Code to:

- ❖ Protect the public interest;
- ❖ Ensure victim safety;
- ❖ Prevent a repeat offence or the commission of new offences (i.e., interference with administration of justice, witness intimidation);
- ❖ Secure attendance of the accused in court; and
- ❖ Preserve evidence.

Police decisions to recommend charges must not be influenced by factors such as:

- ❖ Relationship status/co-habitation of the parties;
- ❖ Previous police calls involving the same victim/suspect;
- ❖ Verbal assurances by either party that the violence will cease;



- ❖ Gender, race, ethnicity, disability, sexual orientation, occupation, socio-economic status of the suspect;
- ❖ Denial by either party that the violence occurred;
- ❖ Reluctance to proceed on the part of the victim.

Upon arrest and prior to setting release or bail conditions, police should assess victim safety needs to determine whether to release or detain a suspect.

### **Release, Bail, Detention**

After arresting a suspect the following actions may occur:

#### **Released on appearance notice or summons**

It is not typically in the public interest to release an accused on an appearance notice or summons because no bail conditions can be attached to this form of release. Police must be satisfied the accused poses no risk of violence or intimidation to victims or witnesses.

#### **Released by a police officer on conditions**

Criminal Code sections 497-499 and 503 permit police to release accused persons on undertakings and recognizances with specific conditions. (Refer to APPENDIX ONE – Police Release Guidelines.)

#### **Police release occurs by having the accused enter into an undertaking according to Form 11.1** — Undertaking Given to a Peace Officer or Officer in Charge

The undertaking may include the following available conditions:

- ❖ Abstain from communicating, directly or indirectly, with any victim and children, witness (including children) or other person identified in the undertaking;
- ❖ Identify all persons, including children — names to be used where possible. If the names are unknown, an identifying description is reported such as “the family of Jane Doe/John Smith including their mother, father, child, brother and sister”;
- ❖ Consider including the names of the victim’s children and other family members, or any other person who may be subject to intimidation or undue pressure;
- ❖ Do not attend the family residence, victim’s place of work, children’s school/daycare, or other place where the accused knows that people named in the non-communication order could be found. *Note:* Places are specified by an area restriction or a specific address. Caution is used to avoid providing the accused with unknown information regarding the whereabouts of a victim/witness.
- ❖ Report to a bail supervisor at a designated location at specified times and as directed thereafter by the bail supervisor. This condition should always be applied in domestic violence cases;
- ❖ Abstain from possessing firearms, surrender firearms in their possession, and surrender authorizations, licenses, and registration certificates to acquire or possess firearms. *Note:* When a suspect on bail with a firearms prohibition is released, police ensure conditions are upheld that require that the accused surrender firearms to the police immediately and not at a later date;

- ❖ Abstain from consuming alcohol and drugs;
- ❖ Comply with other conditions that the police consider necessary to ensure the safety and security of the victim or witnesses.

Police officers should immediately:

1. Submit completed form 11.1 for entry into the POR/CPIC. Any changes to conditions (varied or cancelled) are updated in the POR/CPIC;
2. Share the completed form 11.1 with the bail supervisor, if reporting conditions have been imposed; and
3. Forward the Report to Crown Counsel so that Crown counsel may address any attempt by the accused to change the bail conditions in court at or prior to the first appearance.

### **Held for Bail Hearing before Justice of the Peace or Provincial Court Judge and Released on Conditions:**

In all cases where police determine there is a significant risk of violence, police should hold the accused for a bail or adjournment hearing, unless the investigator has a high degree of confidence that the risk factors can be effectively managed through UTA/PTA conditions appropriate victim safety planning, and in accordance with the Criminal Code, s. 497–499.

#### **Important notes regarding POLICE RELEASE CONDITIONS:**

- ❖ Prior to releasing an accused under an 11.1 Undertaking to Appear (UTA), police should always check for other bail conditions or UTAs that may have been imposed by criminal or family court. Police should explain to the accused the need to obey existing orders. When a breach relates to an existing order on a domestic violence case, police should not release the accused on an 11.1 UTA but rather hold the person for court.
- ❖ Police officer releases do not apply to offences that are punishable in excess of five years in jail.
- ❖ The wording of some conditions in form 11.1 may not provide adequate protection to victims. For example, case law indicates court issued “no-contact” orders offer victims greater protection than form 11.1 “non-communication” conditions.
- ❖ Amendments to a form 11.1 UTA must be done judicially.
- ❖ Police have no power to impose a weapons prohibition (distinct from a firearms prohibition). When a weapon (e.g., knife) is used or threatened, serious consideration is given to seeking a weapons prohibition through a bail hearing. A court may impose a prohibition order for firearms and other weapons. Police can seek such an order either under section 111 of the Criminal Code or through a bail hearing.

The Report to Crown Counsel should provide the evidence necessary to support a recommendation to the court that:

- ❖ The victim requires a higher measure of protection from the accused through the issuance of “no contact” orders rather than from “non-communication” conditions available in a form 11.1; and
- ❖ A condition prohibiting the accused from possessing firearms, cross-bows, knives, prohibited and restricted weapons, prohibited devices or ammunition and explosives, is necessary and appropriate in the circumstances.

If an accused is released on conditions, police should immediately provide corrections officials with relevant documentation (including risk analysis information). In cases when children are present, police should also notify the child welfare worker of the release and conditions.

### **Request for court ordered detention**

Where police determine that there is a significant risk of violence, or concerns that the accused will not obey imposed release conditions, the accused is held for court and a detention order from a judge (or justice of the peace) is sought. Section 518(1)(d.2) of the Criminal Code requires a judge to consider any evidence submitted regarding the need to ensure the safety and security of a victim or witness.

More time might be required to conduct additional investigation or to gather further information to determine if it is necessary to detain the accused for the safety or protection of a victim, witness or the public. In this case, Crown counsel may apply to the court to adjourn the show cause hearing for up to three days according to section 516 of the Criminal Code. Police must clearly articulate the investigative steps already taken to obtain the necessary information to assess the safety concerns. They may also be required to explain the steps necessary to obtain the required information should the adjournment be granted.

Subsection 516(2) of the Criminal Code authorizes a justice who remands an accused to custody under subsection 516(1) or subsection 515(11) to order that the accused abstain from communicating directly or indirectly, with any victim, witness or other person identified in the order. The only exemption to this abstention must be in accordance with conditions specified in the order that the justice considers necessary.

### **Residence**

If as a result of a charge, the accused will be prevented by condition from returning to their previous residence, every effort should be made to confirm a residence prior to release. If residence cannot be confirmed prior to release, the bail supervisor should be provided with residence approval authority. If there is concern regarding risk, and residence cannot be confirmed prior to release, the accused is viewed as a risk to breach bail and/or to commit additional offences and should be held for a bail hearing.

### **Reporting**

Police should request Crown counsel to seek a condition requiring that the accused report to a bail supervisor.

## Victim Notification

If an accused is released from custody police are to notify the victim about the release and explain the conditions prior to the accused's release. When agreed practices have been established in the community, Crown counsel or designated personnel may inform the victim. A hard copy of the Undertaking to Appear (UTA) is to be provided to the victim as soon as possible. If the UTA/Promise to Appear (PTA) is cancelled, the victim must be notified.

Police should ensure that victim safety issues are addressed. The arresting officer advises the releasing officer of the telephone number and address where the victim is located.

## Safe Haven

If an arrest is not immediately possible, police identify a safe haven for the victim and any children present (for example, a transition house with support services). Transportation is provided or arranged, if required.

## Charge

### Decision to Prosecute

Police should advise the suspect and victim(s) that all domestic violence cases are treated as serious criminal matters, and that it is the responsibility of police to investigate and Crown counsel, not the victim, to decide whether criminal charges should proceed. When evidence indicates that an offence occurred, police should submit a Report to Crown Counsel recommending a charge even if there are no injuries to the victim and regardless of the victim's desire or willingness to lay charges and/or testify in a criminal prosecution. If a victim does not provide a written witness statement but there is still evidence to support a charge, a Report to Crown Counsel should still be completed. Follow-up is done at a later date to encourage the victim to provide a written statement.

All breaches of bail on a spousal violence case and/or related court orders require assessment, no matter how minor, and charges should always be considered when a breach threatens victim or witness safety. Police ensure all relevant information regarding the breach (including risk assessment information) is shared on a priority basis with bail supervisors/probation officers and appropriate contacts from child welfare.

All domestic violence cases are treated as serious criminal matters. While it is the police who investigate the matter, it is up to Crown counsel, not the victim(s), to decide whether criminal charges should proceed.

### Submitting Charges

Police submit all recommendations for charges as soon as possible and within 24 hours for warrant requests.

### Processing Suspect

All suspects are processed according to the Identification of Criminals Act (i.e., booking and fingerprinting).

Police should support Crown counsel's efforts to process charges as quickly as possible, especially when a warrant request is made.

## Recognizance

When evidence doesn't support charges, but a complainant reasonably fears for their safety or fears that the safety of their children might be in jeopardy, police should submit a Report to Crown Counsel recommending that an application be made for a recognizance according to section 810 of the Criminal Code.

Police should immediately inform the complainant that police must still complete a Report to Crown Counsel and are empowered to (and will) swear information on the complainant's behalf.

In recognizance applications (peace bonds) according to section 810, when the danger to the complainant is immediate but grounds for charges do not exist, a warrant is sought.

In cases when Crown counsel have sought a material witness warrant for a victim who failed to attend court to testify, police should make every effort to have the investigating officer who is familiar with the case execute the warrant.

## POLICE SUPERVISOR

Due to the complexity of domestic violence cases, and the risk to victim safety, a high degree of supervision is required. Police supervisors should review all domestic violence incidents regardless of whether an arrest was made and prior to disposition of the accused by remand or release.

The arresting officer decides whether a suspect is released. Supervisors ensure that the grounds on which this decision is made are clearly articulated, based on evidence and focused on risk.

When a charge is not recommended, the officer's decision (including rationale and evidence) are documented on the case file and affirmed by a supervisor. They keep in mind this policy as well as the operational policy of their department or detachment.

## Services to Victims

Police provide necessary assistance to victims of violence and are responsive to their needs. When requested, police stand by to keep the peace in case either party wishes to return to the residence to collect personal effects.

## Referral

Referring victims to victim services is crucial. As soon as possible, police should provide a referral to victim services and advise the victims that a victim service worker will contact them.<sup>15</sup> Police should also inform victims of other community support services that are available for victims and their children.

Police inform victims of, and refer cases to, community-based victim service programs where they exist. If assistance is required outside of regular office hours, police-based victim services may be available to provide immediate crisis support before referring the case to the community-based program. Transition houses, which operate 24/7, are also an option for immediate crisis support.

15. Referrals are made in accordance with the *Ministry of Public Safety and Solicitor General's Referral Policy for Victims of Power-Based Crimes*.

VictimLink BC  
crisis support  
helpline:  
1 800 563-0808

Where no community-based victim services are available, cases should be referred to police-based victim services for support and assistance. Where no community or police-based victim services are available locally, police should provide victims with assistance directly and refer the individual to VictimLink BC at 1 800 563-0808 for crisis support.

Police proactively assist victims and their children by arranging safe transportation to a transition house, safe home or other safe shelter. Where resources exist, crisis teams involving social services professionals are relied upon for support.

Police should inform victims that a victim support worker or advocate, if available and appropriate, may accompany the victim to their police interview, if the victim wishes. If victims will not testify unless they are accompanied to court by a police officer because the accused poses a danger to them, arrangements are made to support the victim.

## Services to Victims with Special Needs

The police may be the only chance for effective intervention in cases when the couple is elderly and abuse has been long term, or when cultural, religious, community or family values, sexual orientation or disability (physical or mental), make it difficult or impossible to seek assistance to stop the violence. In such situations, respectful and dignified treatment of the victims and an understanding of the dynamics of domestic violence are critical. Police must be sensitive and accommodating when dealing with victims/witnesses who have special needs due to isolation, mobility restrictions, and language or communication abilities. It might be necessary to alter investigative procedures for victims with special needs.

Consideration should be given to allowing support persons for victims/witnesses to be present during interviews, regardless of whether an interpreter is present. It must not be assumed that an immigrant victim who can speak some English is able to fully understand the language and/or the context of the justice and child welfare systems in B.C.

The accused, young children, family members of the victim or accused should never be used as interpreters. It is preferable to utilize an individual who is unrelated to the accused or victim wherever possible. Names of interpreters used (and their relationship to the parties, if any), are to be recorded on the file.

Police should clearly indicate on the Report to Crown Counsel witness pages that the victim has special needs because of mental or physical disability, language barriers, religion or cultural values. If no victim or support service is available to meet the victim's needs, this information is to be communicated to Crown counsel.

## Monitoring

Because domestic violence cases are complex and often involve dynamic factors, the risks posed to victims may change when new or unforeseen circumstances develop. Consequently, a reassessment of risk might be required in conjunction with communication with other involved agencies (e.g., child welfare worker, corrections staff) to ensure the continued safety of victims.

Police should:

- ❖ Monitor the suspect to ensure compliance with imposed conditions;
- ❖ Check with the victim (or with victim services) on the status of safety planning; and
- ❖ Ensure that any breach of release conditions results in a review of the risks present in the case, and a reconsideration of what measures, if any, are necessary to protect the victim.





# Crown Counsel

The *VAWIR Policy and Protocol for Highest Risk Cases* must be read in conjunction with the *Crown Counsel Policy Manual* which provides specific guidance to Crown counsel.

As it applies to Crown counsel, the *Violence Against Women In Relationships Policy* and the *Protocol for Highest Risk Cases* must be read in conjunction with the *Crown Counsel Policy Manual*, which contains its own policy on spousal violence (SPO 1) and provides specific guidance to Crown counsel on many of these same issues. More specifically, Crown counsel will refer to SPO 1 in their assessment of whether a criminal prosecution should be brought, continued or ceased, and what the prosecution ought to be for. They also take guidance from SPO 1 on the issue of judicial interim release. Crown counsel exercise their discretion as prosecutors independently, and their decision making will necessarily be informed by the individual circumstances of each case.

## Introduction

British Columbia's prosecution service, in the Criminal Justice Branch of the Ministry of Attorney General, contributes to the protection of society by conducting and supervising prosecutions and appeals at all levels of court. The service acts fairly, impartially and respectfully on behalf of the community.

Crown counsel exercise a quasi-judicial function under our system of law and have a paramount duty to see that justice is done in each court case. In practice, this means that while Crown counsel conducts prosecutions vigorously, Crown counsel's duty is not so much to obtain a conviction as to ensure that the trial process is fair to all and that the integrity of the justice process is maintained.

Criminal Justice Branch works cooperatively in co-ordination with other justice agencies to respond effectively to spousal violence cases.

The branch recognizes the significance of the crimes that make up spousal violence cases and the inherent danger and risk of future harm that is often present in these types of crimes. Mindful of its pivotal role in the justice system and the unique role of Crown counsel, the branch works cooperatively and in co-ordination with other justice agencies to effectively respond to these types of crimes.

## Charge Assessment

According to the Crown Counsel Act, Crown counsel are responsible for the decision to prosecute. In discharging this responsibility they must fairly, independently and objectively examine the available evidence to determine whether there is substantial likelihood of conviction (the evidentiary test), and whether a prosecution is required in the public interest. The decision to prosecute is guided by specific Crown counsel policy (*Charge Assessment Guidelines – CHA 1*) which provides that in defined circumstances, a prosecution may also proceed on the basis of there being a reasonable prospect of conviction. In these latter cases, however, the decision to lay charges must be approved by regional or deputy regional Crown counsel.

When deciding whether to approve charges arising from an allegation of spousal violence, Crown counsel take into account the policy, *Charge Assessment Guidelines*. The policy states that it is generally in the public interest to proceed with a prosecution when the victim “is a vulnerable person, including spouses”.

Crown counsel considers laying charges according to sections other than the assault section of the Criminal Code, as appropriate. These include offences noted above, such as criminal harassment, threatening, and mischief. Because a breach of a court order is an identified risk factor for future violence, Crown counsel should consider laying charges for breaches of bail and probation in cases when the original (substantive) charge was a spousal violence offence. In rare cases it may also be appropriate to consider charges in relation to non-compliance with court orders according to the provincial Family Relations Act when there is a reasonable basis to conclude that the safety of the victim or a member of her family is in jeopardy.

The safety of the victim and the victim’s family always remains a concern. When there is a decision not to lay a charge or where a stay of proceedings becomes appropriate, Crown counsel should consider whether the safety of the victim or their family requires an application to court for a recognizance under s. 810 of the Criminal Code and whether there is evidence to meet the legal test in that section. Crown counsel should consider whether counselling and supervision programs administered by the Corrections Branch, aimed specifically at spousal violence offenders, are appropriate as a condition of the recognizance.

Crown counsel anticipates receiving from the police available and admissible evidence from all sources, including:

- ❖ 911 audiotapes;
- ❖ Forensic evidence, photographs;
- ❖ Police observations at the scene;
- ❖ Independent witness statements and evidence of injuries sustained; and
- ❖ Relevant information from other agencies such as the Ministry of Children and Family Development and Corrections Branch, Ministry of Public Safety and Solicitor General.

The Criminal Justice Branch recognizes that spousal violence has distinctive dynamics that can make investigation and prosecution unique from other types of crime. Spousal violence often involves a reluctant victim/witness. When Crown counsel has a reasonable basis to conclude that the victim may not testify, they should consider the availability of other independent evidence that is capable of meeting the charge assessment standard.

Generally, and in all cases when the file has been identified by the police as one of highest risk in accordance with the *Protocol for Highest Risk Cases*, spousal violence charges are assessed on a priority basis. Whenever possible, Crown counsel attempts to ensure that early trial dates are obtained.

All victims should be advised of the availability of victim services. Whenever possible, Crown counsel tries to provide timely information to the victim directly or through victim services, upon request, pursuant to the Victims of Crime Act, or in any case involving particular concerns about safety, regarding any charges laid, release conditions imposed, or other developments in the case.

It is generally in the public interest to proceed with a prosecution when the evidentiary test is met and the victim is a vulnerable person. However, there are situations in which it is appropriate to use an alternative to prosecution, where the most important objectives of a court proceeding can be achieved without a prosecution. When Crown counsel concludes that in all the circumstances, protection of the victim, members of the family and society do not require formal legal proceedings, alternative measures may be appropriate.

### Bail

Crown counsel will consider all available, reliable information regarding risks presented by the accused to the safety of victims and family members whenever assessing their position on bail.

When assessing the Crown's position on bail for an accused, Crown counsel should have particular regard for the safety of victims and other family members, particularly children and will consider all available reliable information relating to the risk presented by the accused.

An unendorsed warrant should be sought whenever it is necessary to protect the victim or other potential victims by seeking a detention order or conditions of release.

When an accused has been arrested and is released by the police on an undertaking (UTA), a promise to appear (PTA) or recognizance with conditions, Crown counsel should review the conditions to determine if they are enforceable and adequate to protect the victim. If necessary, a warrant and an amendment of the conditions is requested.

When Crown counsel has reason to conclude, based on an objective assessment of the available evidence, that there is a substantial likelihood that the accused will cause severe bodily harm or death to another person, a detention order must be sought, along with a "no contact" order pursuant to section 515(12) or 516(2) of the Criminal Code requiring the accused to abstain from communicating, directly or indirectly with the victim.

When Crown counsel concludes that it is appropriate to make submissions to the court concerning release conditions, they should use the *Best Practices and Principles for Conditions of Community Supervision for Domestic Violence* (Refer to Appendix Two) as the basis for their submissions, if they conclude that these conditions provide adequate protection in all circumstances.



# Corrections

## Introduction

The Corrections Branch is committed to delivering co-ordinated and effective responses to domestic violence that reduce reoffending and enhance victim safety. This is accomplished through:

- ❖ Continuous application of offender risk assessment and the delivery of behavioral programs and interventions with sentenced offenders; and
- ❖ Co-ordinated supervision and enforcement of bail and sentenced orders in co-operation with other justice system and law enforcement agencies.

Court orders are critical to the safety and security of victims and are actively monitored and enforced by branch staff to ensure offender accountability. The supervision of sentenced offenders in the community is undertaken by probation officers with specialized training in domestic violence and risk assessment.

Correctional centres and community corrections offices conduct proactive notification to victims and others protected by a court ordered condition. Notification is undertaken to ensure that victims:

- ❖ Understand protective conditions and receive an explanation of the process to report concerns or violations of conditions; and
- ❖ Receive timely information regarding changes to protective conditions and specialized victim support services available in the community to assist with safety planning.

Contact with victims is an integral component of ongoing risk assessment and offender management.

Proactive victim contact continues throughout the course of offender supervision to monitor offender compliance with protective conditions.

## Alternative Measures

The decision to refer and approve an individual accused of a domestic violence offence to alternative measures screening rests with Crown counsel. Due to the complexity of these cases and the potential risk to victim safety, alternate measures screening is conducted by probation officers who are trained in the dynamics of domestic violence and risk assessment. Probation officers can only recommend alternative measures when the following requirements are met:

- ❖ Report to Crown Counsel does not refer to any physical injury to the victim as a direct result of the incident, use of a weapon, threats to harm the victim, or threats to harm others;
- ❖ Accused has no reported history of violence, bodily harm, aggravated assault, involvement of a weapon or threats to third parties;

- ❖ Victim confirms that there is no pattern of historic or ongoing violence or threats and indicates that there has been no actual or apparent intimidation or coercion;
- ❖ Victim's views regarding the use of alternative measures are relayed to Crown counsel and weighed in formulating a recommendation;
- ❖ Victim does not express directly or indirectly concerns for personal safety or the safety of other persons;
- ❖ Victim does not wish to have protective conditions imposed on the accused;
- ❖ Victim is referred to specialized support services available in the community;
- ❖ Offence was not sufficiently serious to threaten the safety or tolerance of the community;
- ❖ Accused does not require programming or treatment that would be provided to persons subject to court orders; and
- ❖ Results of the risk needs assessment indicate a low risk to reoffend.

## Correctional Centres

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When an inmate is admitted to remand or sentenced custody, the warden or designate ensures that the:

- ❖ Front of the warrant file is stamped with the letter K to alert each officer who handles the file of the need to keep the victim informed;
- ❖ Inmate is informed that the victim, and any other individual protected by a court ordered condition on the warrant of remand/detention/committal, is notified of the admission and relevant information regarding changes in custodial status; and
- ❖ Inmate is restricted from communicating with any victim, witness or other protected party in accordance with:
  - A court ordered condition on the warrant made according to section 516(2), 515(12) or 743.21 of the Criminal Code; or
  - An active order prohibiting contact with the victim or other protected party (i.e. civil restraining order or no contact order).

### 1. Remand custody

When an accused is denied bail and remanded in custody, the warden or designate ensures that the victim is notified of the following:

- ❖ Date of next court appearance;
- ❖ How to report violations of no-contact conditions on the warrant of remand/detention;
- ❖ Institutional transfers and changes in custody status;
- ❖ Escapes;

Victim notification does not jeopardize victim safety and may be made through an identified third party, such as a victim support worker or other designated contact person.

- ❖ Release from custody; and
- ❖ Contact information to access specialized victim support services available in the community.

## 2. Sentenced custody

When an offender is sentenced to serve a period of incarceration only, or as a prelude to a period of community supervision, the warden or designate ensures that the victim is notified of the following:

- ❖ Length of sentence;
- ❖ Probable date of discharge from custody;
- ❖ How to report violations of no-contact conditions on the warrant of committal;
- ❖ Institutional transfers and changes in custody status;
- ❖ Conditional releases from custody (i.e. parole and temporary absence)
- ❖ Escapes;
- ❖ Release from custody; and
- ❖ Contact information to access specialized victim support services available in the community.

Victim notification does not jeopardize victim safety and may be made through an identified third party, such as a victim support worker or other designated contact person. If contact is not made, the reasons for not doing so are documented in CORNET.

The Parole Board of Canada is responsible for the parole of offenders serving sentences of six months or more in provincial correctional centres. When offenders are granted parole, the Correctional Service of Canada is responsible for their supervision and management in the community.

When an offender applies for parole, the warden or designate ensures that the victim is notified. This notification informs the victim of the parole application and provides information on how to contact the:

- ❖ Regional communications officer at the Parole Board of Canada to obtain information regarding the parole process, involvement in the parole hearing and notification of outcomes; and
- ❖ Victim Safety Unit to receive assistance with the Parole Board of Canada registration process.

Bail supervisors inform the accused that domestic violence is a serious criminal matter and that Crown counsel not the victim are pursuing the charge. The accused is also informed that the victim is made aware of the bail conditions, the process for reporting breaches, and that breaches of the order are acted on immediately.

Without jeopardizing the safety of the victim, the bail supervisor obtains the victim's name, address and telephone number from Crown counsel and makes reasonable efforts to contact the victim and others protected by the bail order to:

- ❖ Explain the contents of the order, especially protective conditions, and provide a copy of the bail order;
- ❖ Provide the next court date for the accused and an explanation that it might not be the trial/sentencing date;
- ❖ Explain how to report breaches of protective conditions and advise that he/she may be required as a witness in a hearing;
- ❖ Provide information regarding specialized victim support services available in the community that can assist with safety planning, access to services and program referral; and
- ❖ Provide ongoing information regarding the implications of any changes to the order that may affect the victim's security.

If the victim is not contacted, the reason is recorded in CORNET.

If the accused allegedly breaches a protective condition of bail, bail supervisors:

- ❖ Report the alleged breach to police for investigation and preparation of a Report to Crown Counsel; or
- ❖ Discuss the situation with their local manager and record the reasons for not reporting the alleged breach to police or Crown counsel in CORNET.

If there is a family justice counsellor involved with the family of the accused, the bail supervisor and family justice counsellor obtain the consent of the parties to share case information.

If the bail supervisor believes that an accused is about to violate a protective condition of the bail order, the police and victim are informed immediately.

## Pre-Sentence Reports

Probation officers preparing reports on domestic violence offenders have specialized training in the relationship dynamics of victims of violence in relationships, including the impact on children witnessing violence.

When preparing a pre-sentence report, the probation officer contacts the victim, in a manner that does not jeopardize the victim's safety. Contact with the victim is made to:

- ❖ Explain the function of the pre-sentence report;
- ❖ Obtain information relevant to the history and dynamics of the relationship;



- ❖ Obtain information regarding the impact of the offence on the victim and others, particularly the children, to ensure that the information is presented to the court;
- ❖ Discuss possible court recommendations related to the safety of the victim and children; and
- ❖ Advise of specialized victim support services available in the community to assist with safety planning, access to services and program referral.

When a victim is not contacted, the probation officer states in the pre-sentence report the reason for no contact.

The probation officer informs the judge of relationship violence programs and the time necessary to allow for successful completion of the program. Relationship violence programming is not considered as an alternative to incarceration or other sanction, if incarceration or other sanctions are warranted in the offender's circumstances. Suggested phrasing of conditions in a community supervisor order includes:

- ❖ Having consented in court, attend, participate in and complete a relationship violence program to the satisfaction of the probation officer and the relationship violence program staff; and/or
- ❖ Attend, participate and complete counselling or other similar programming as directed by the probation officer.

## Post-Sentence Supervision in the Community

Probation officers inform offenders that domestic violence is a serious criminal matter and that breaches of orders are acted on immediately. Offenders are informed that the victim is made aware of the conditions of the order and the process for reporting breaches.

Without jeopardizing the safety of the victim, the probation officer obtains the victim's name, address and telephone number from Crown counsel and makes reasonable efforts to contact the victim and others protected by the order to:

- ❖ Explain the contents of the order, especially the protective conditions, and provide a copy of the order;
- ❖ Explain how to report breaches of protective conditions and the possible requirement to be a witness in a hearing for breaches of conditions;
- ❖ Provide information regarding specialized victim support services available in the community that can assist with safety planning, access to services and program referral; and
- ❖ Provide ongoing information regarding the implications of any changes to the order that may affect the victim's security.

If the victim is not contacted, the reason for no contact is recorded in CORNET.

Probation officers conduct risk assessment with sentenced domestic violence offenders. Risk assessment provides guidance in determining the level and form of correctional interventions required to reduce an offender's potential to reoffend. The application of risk assessment is a continuous process that commences at first contact and remains a priority throughout the offender's term of supervision.

When an offender is ordered by the court to participate in a relationship violence program, the probation officer refers the offender to the Corrections Branch's Relationship Violence Prevention Program. The program is comprised of two consecutive components:

- 1) 'Respectful Relationships' — a 10-week program delivered by branch staff; followed by the
- 2) 'Relationship Violence Program' — a 17-week program that is delivered by contracted service providers.

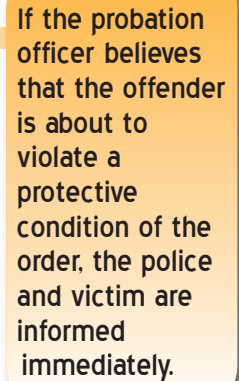
The probation officer maintains regular contact with the program provider to monitor the offender's attendance, participation and completion. Program providers make reasonable efforts to contact the victim when the offender is referred to the program. They are also guided by a risk management protocol when responding to indications of escalating risk against the victim, current intimate partner, children, others or the participant himself.

If the probation officer believes that the offender is about to violate a protective condition of the order, the police and victim are informed immediately.

If the offender allegedly breaches a protective condition of the order, probation officers:

- ❖ Report the alleged breach to police for investigation and preparation of a Report to Crown Counsel; or
- ❖ Discuss the situation with their local manager and record the reasons for not reporting the alleged breach to police or Crown counsel in CORNET.

If a family justice counsellor is involved with the family of the offender, the probation officer and family justice counsellor obtain consent from the parties to share case information.



If the probation officer believes that the offender is about to violate a protective condition of the order, the police and victim are informed immediately.

## Diverse Victim Needs

Corrections personnel are sensitive to the special concerns and diverse needs of victims, including aboriginal victims, visible minority victims, immigrant and refugee victims, lesbian/gay/bisexual/trans-gendered victims, victims with disabilities, elderly victims and victims who are isolated or in rural areas. Information and, when necessary, assistance from victim services is obtained when responding to the diverse needs of victims.

# Victim Services

## Introduction

Supports and services are essential to victims of domestic violence to assist them in developing effective safety plans, keep them informed of the criminal justice process, prepare them for the court experience, and refer them to other services that may help them deal with the violence in their relationships. The most effective responses for victims of domestic violence are those that empower the victim; that is, services that enable victims to improve their lives and keep themselves and their children safe.

A respectful response to the needs of victims is one that takes into account their individual circumstances, including socio-economic factors, culture, language, refugee/immigration status, sexual orientation, age, physical and mental disabilities, geographic location, family situation and lifestyle issues.

## Victim Service Programs

There are different types of victim service programs in British Columbia. Police-based programs operate out of RCMP detachments and municipal police departments and serve victims of all crime types. Community-based programs generally operate out of non-profit organizations and primarily serve victims of family and sexual violence. These programs have specialized expertise in dealing with power-based crimes and are well situated to assist victims who might initially be reluctant to engage the criminal justice system.

### Referral Policy

Victim service programs adhere to the Ministry of Public Safety and Solicitor General's *Referral Policy for Victims of Power-Based Crimes* which indicates that police-based victim service programs should refer all victims of family and sexual violence to community-based victim service programs in an appropriate and timely manner, where these programs exist.

If there is no community-based victim service program serving the community, a police-based victim service program provides services to victims of family and sexual violence.

VictimLink BC  
1 800 563-0808

When there is no police-based or community-based victim service program, victims are referred to VictimLink BC at 1 800 563-0808 or to other local services for assistance such as transition house programs (including safe homes).

### Services Provided to Victims

Due to the unique nature of violence in relationships, including the potential for ongoing violence, victim service programs treat domestic violence cases as a

priority when delivering services. Victim service programs prioritize service delivery based on victim safety, victim vulnerability, type of crime and identified risks.

Victim service programs provide the following services:

### **1. Critical incident response**

Victim service programs respond to call outs from police and hospitals and address the immediate emotional, safety and logistical needs of victims in a co-ordinated manner with other justice, health, housing, child welfare, immigrant settlement and social service providers.

### **2. Criminal justice information and support**

Victim service programs offer the following criminal justice information and supports:

- ❖ Provide information to victims about their rights according to the Victims of Crime Act (VOCA);
- ❖ Obtain, provide and/or arrange for victims to receive case specific information which they may request according to sections 6 and 7 of VOCA, including registration with the Victim Safety Unit;
- ❖ Provide information about the criminal justice system process, including roles of key parties;
- ❖ Work collaboratively with justice system personnel (e.g., police, Crown counsel, corrections staff) on behalf of victims;
- ❖ Arrange, facilitate and accompany victims to meetings with criminal justice system personnel (e.g., police, Crown counsel, corrections staff);
- ❖ Support and prepare victims for the criminal court process, including:
  - Initiate conversations with Crown counsel regarding the participation of victims in the court process, including, if appropriate, exploration of testimonial aids (e.g. screens or closed-circuit television);
  - Prepare victims for possible emotional responses to court proceedings and/or testifying;
  - Provide victims with court orientation by providing a courthouse tour, reviewing courtroom protocol, or providing public education materials;
  - Provide victims with information regarding options for travel expenses to court and assist with facilitating these processes and arrangements;
  - Accompany victims to court and/or provide related emotional and practical assistance;
  - Provide information about and assistance with victim impact statements; and

- Provide support to victims on conclusion of the case to ensure that victims are aware of and understand the court outcome. Access to necessary follow-up resources including registration for victim notification when appropriate is also ensured.

### **3. Safety planning**

Safety planning is a key service for victims of domestic violence. Victim service programs support victims to:

- ❖ Identify and address their immediate and emergency safety needs;
- ❖ Develop and continue to update a safety plan including co-ordination and collaboration with justice, health, housing, child welfare, immigrant settlement and social service providers when appropriate.

A personal safety plan for victims of domestic violence includes an identification of the potential risks to their safety and strategies for mitigating these risks. Safety planning also includes tools that assist victims to organize their response to incidents of violence and empower them to take control of their situation.

### **4. Information and referrals**

Victim service programs provide information and referrals related to supports and services available for victims of domestic violence and their children. Victim service workers assist victims by setting up appointments with other service providers to ensure available services are used.

Key victim services available include, but are not limited to:

- ❖ Victim Safety Unit – provides notification services to registered victims of crime regarding the custody status of an accused or offender including releases from custody and information about conditions that must be followed when in the community (Refer to page 34 for more information).
- ❖ Crime Victim Assistance Program – provides medical expenses, counselling services, protective measures, income support and other benefits to help eligible victims of crime and their immediate family members to recover from the impacts of the offence (Refer to page 35 for more information).
- ❖ Victim Court Support – located in select courthouses, provides enhanced support to victims in the criminal court process including emotional support, court updates, information, orientation, accompaniment, and referrals to victims/witnesses and their families.

Other relevant programs and services include, but are not limited to:

- ❖ Stopping the violence counselling programs – counselling for women who have experienced violence in relationships, childhood abuse, or sexual assault, to help them deal with the trauma of the experience and resulting symptoms and effects.
- ❖ Children who witness abuse programs – programs for children aged three to 18 who have witnessed abuse, threats, or violence in the home to help these children and their adult caregivers heal from the trauma and learn about healthy relationships.
- ❖ Outreach and multicultural outreach services – programs that help women fleeing violence identify and access the services they need by providing emotional support, information and referrals, and accompaniment and transportation to other necessary services.

- ❖ Transition house programs (including safe homes and second-stage housing) – temporary housing and support services for women and their dependent children who are fleeing violence. Transition houses are open 24/7 and can provide emotional support, crisis intervention, safety planning and help in accessing housing, child care, schooling, parenting support, and financial, medical and legal assistance.
- ❖ Immigrant settlement services – programs for newcomers to Canada to assist them in settling and integrating into BC's society and economy. Settlement services include orientation to life in Canada, information and referral to public and community services, English language classes, community bridging programs, and labour market services. Settlement workers provide appropriate support, information, and resources, with an understanding of the immigration and settlement process and its stressors. Services are often provided in the first language of immigrants.

## 5. Emotional and practical support

Victim service programs provide emotional and practical support to:

- ❖ Help victims cope with the impacts of crime and trauma;
- ❖ Assist victims with the completion of forms; and
- ❖ Assist victims with access to transportation, and other available supports and services including medical, housing, counselling, police and justice services.

## Victim Safety Unit

The Victim Safety Unit (VSU) accesses court and corrections databases to provide timely notifications to registered victims regarding the accused/offender and court outcomes. Protected parties on civil restraining orders who have significant safety concerns may also register to receive information that affects their health or safety.

Notification services provided by the VSU are supplemental and do not replace the mandated services provided by other justice system personnel.

When a victim of domestic violence (including civil restraining order protected parties) registers for notification, VSU staff provide and review the following information with the victim, and document in the case log:

- ❖ The victim's safety concerns;
- ❖ Whether the victim has a victim service worker;
- ❖ Where appropriate, whether the victim requires interpreter services and the victim's first language;
- ❖ Contact logistics, including preferred methods and message details; and
- ❖ Information from corrections and other justice personnel.

Whenever possible for consistency and quality of service, VSU staff are assigned specific cases to enable the staff and client to establish a familiar relationship. When applicable, the VSU notifies registered victims about the status of the accused in the corrections system including:

- ❖ Admission, transfer, release from custody;
- ❖ Transfers from custody to a mental health facility;
- ❖ Temporary absences;
- ❖ Application for parole;
- ❖ Admission, transfer and release from community corrections; and
- ❖ Name, location and contact information of the community corrections supervisor.

Court outcome information including:

- ❖ Results of bail and judicial interim release hearings;
- ❖ Trial dates and outcomes;
- ❖ Dispositions and sentences;
- ❖ Warrants issued for failure to appear; and
- ❖ Current protection orders, including providing copies.

## Crime Victim Assistance Program

Benefits offered through the Crime Victim Assistance Program (CVAP) help victims and their immediate family members recover from the effects of violent crime. Many victims, especially those affected by domestic violence, need a variety of services to assist them in dealing with the physical and psychological effects of victimization and to promote their safety.

Working in collaboration with victim service programs and police, CVAP staff will prioritize or expedite applications from victims of domestic violence when there are significant safety concerns (i.e., in highest risk cases).

Key benefits for victims of domestic violence include:

- ❖ Counselling – sessions to help the victim recover from the psychological injury that resulted from the offence; and
- ❖ Protective measures – security or communication equipment and services such as a cell phone, home alarm, change of locks or relocation expenses when other protective measures are not sufficient to ensure a victim's safety or address psychological trauma from the offence. Relocation expenses include moving expenses, security deposits, a relocation allowance and connection fees for telephone and utilities.

## VictimLink BC 1 800 563-0808

VictimLink BC is a toll-free, province-wide, multilingual help and information line that operates 24 hours a day, seven days a week. The helpline provides information and referral services to victims of crime and immediate crisis support for victims of family and sexual violence in more than 110 languages, including 17 aboriginal languages in North America.

VictimLink BC  
Website:  
[www.victimlink.bc.ca](http://www.victimlink.bc.ca)

Visit the VictimLink BC website for more information: [www.victimlinkbc.ca](http://www.victimlinkbc.ca)





# Ministry of Children and Family Development

## Introduction

In British Columbia, the Ministry of Children and Family Development or Delegated Aboriginal Agencies have the lead responsibility for responding to suspected child abuse and neglect. Child welfare workers employed by the ministry or a Delegated Aboriginal Agency are delegated under the Child, Family and Community Service Act to assess reports, provide support services, provide a protective response when needed and collaborate with other service providers, such as police, schools, and health practitioners, to ensure the safety and well-being of children.

The Best Practice Approaches: Child Protection and Violence Against Women guides child welfare workers in domestic violence cases.

In cases of domestic violence, the safety of the non-violent parent is integral to the safety of the children. Cases of domestic violence can be extremely complex and dynamic. To address these operational challenges the ministry created the *Best Practice Approaches: Child Protection and Violence Against Women* to guide child welfare workers in their interventions of cases involving domestic violence.

Children who have been exposed to domestic violence need specialized interventions and supports that help address their experiences of witnessing abuse. A careful assessment of each child is extremely important because not all children who witness violence show immediate consequences.

... 30 to 40 per cent of children and youth who witness domestic violence also experience direct physical abuse themselves.

The presence of domestic violence is an indicator for the co-existence of child maltreatment. Evidence suggests that 30 to 40 per cent of children and youth who witness domestic violence also experience direct physical abuse themselves<sup>16</sup>. Thus, domestic violence and child maltreatment (including neglect) can occur simultaneously.

Child welfare workers value active participation by parents who have experienced violence and understand that co-ordination among service providers is crucial in helping to ensure the safety of children. Information sharing with service partners must occur regularly when circumstances arise or change. Establishing regular meetings and other ways of communicating early on in the case management process is an effective way of ensuring that all parties are aware of all relevant information.

## Receiving Reports

### Duty to Report Need for Protection

Section 14 of the Child, Family and Community Service Act (CFCSA) requires that **anyone who has reason to believe** that a child has been or is likely to be abused or neglected, and that the parent is unwilling or unable to protect the child, **must report** their concerns to a child welfare worker.

16. Health Canada (March 1991; revised April 1996). *National Clearing House on Family Violence. Wife Abuse – The Impact on Children*. Public Health Agency of Canada.

“Reason to believe” means that based on what a person has seen or information they have received, they believe a child has been or is likely to be at risk. They do not need to be certain, or have proof as it is the child welfare worker’s job to determine whether abuse or neglect has occurred or is likely to occur. Even if they think that someone else may make a report or that a child welfare worker is already involved, they must still make a report. All reports must be made as soon as possible.

### **Circumstances that must be reported**

The CFCSA sets out the circumstances when a person must report to a child welfare worker. They must report when they have reason to believe that a child or youth has been or is likely to be physically, sexually, or emotionally abused and/or neglected. For more information refer to The *B.C. Handbook for Action on Child Abuse and Neglect*:

[www.mcf.gov.bc.ca/child\\_protection/pdf/handbook\\_action\\_child\\_abuse.pdf](http://www.mcf.gov.bc.ca/child_protection/pdf/handbook_action_child_abuse.pdf)

The child welfare worker may ask the following questions when a report is made:

- ❖ Is there a current or estranged partner posing a risk to the non-violent parent and/or child?
- ❖ Are there legal proceedings regarding custody underway?
- ❖ Have the police attended the home and if so for what purpose?
- ❖ Have the non-violent parent and child left the home due to safety concerns?
- ❖ When did the violence occur and have the children been exposed?
- ❖ Are weapons, particularly firearms present?
- ❖ Have threats of violence been heard and what is the nature of the threats?
- ❖ What is the location of the suspect and is there prior criminal history?
- ❖ Is the reporter concerned for the safety of the non-violent parent and children?
- ❖ What response might be given to a child welfare worker/police officer attending the home?

In all situations, child welfare workers report allegations of child physical harm, sexual abuse and neglect to the police in accordance with existing protocols and practice standards and collaborate on the investigation with the police.

### **Police Interface and Child Welfare**

If at any time a police officer is unsure about making a report the officer must call a child welfare worker to discuss a particular case or situation to help them interpret section 13 of the Child, Family and Community Service Act and determine if the file requires a child welfare worker to intervene.

“Reason to believe” means that based on what a person has seen or information they have received, they believe a child has been or is likely to be at risk.

Every report received is assessed by an appropriately delegated child welfare worker with either Ministry of Children and Family Development or delegated aboriginal agency. Section 16 of the Child, Family and Community Service Act directs that a child welfare worker must assess the information contained in a report made according to section 14. After the assessment, the child welfare worker may:

- a) Take no further action;
- b) Refer the family to informal and formal support services;
- c) Provide a family development response;
- d) If the child is a youth, provide a youth service response; or
- e) Conduct a child protection investigation.

In accordance with section 16(3)(b) of the Child, Family and Community Service Act, the child welfare worker makes all reasonable efforts to report the results of the investigation to the person who reported the information that led to the investigation (i.e., police).

In domestic violence situations child welfare workers apply their professional judgment and expertise to assess the risk to children and develop a plan to reduce or eliminate risks with the parent(s). Police assess the risks according to their procedures. The results are shared among child welfare and police to ensure that everyone is working with the same information. The approach is collaborative and the outcomes are complementary. Sharing of this information is important because children can only be protected when the level of risk surrounding them is decreased.

## Role of Child Welfare

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There are domestic violence files in which there may be no criminal charges. This will not mean that the children are safe and that child welfare does not have a continued role. Child welfare workers need to keep in mind that each agency has a mandate and expectations that differ from child welfare's role to ensure the safety and well-being of children. In these cases, appropriate interventions to ensure safety are still necessary and the child welfare worker still needs to engage with other service providers. They include community-based victim services, police, and in some cases family court.

The child welfare worker's assessment of the child's safety and well-being will include a careful review of the information in the report and other information gathered by the child welfare worker. The child welfare worker may also contact the parent, police, schools, hospitals, victim services, transition houses, immigrant settlement services, or others with knowledge of the child's situation to gather information to aid in the assessment.

Once the immediate assessment is complete, the child welfare worker determines the type of response needed for the situation (Refer to above).

## General

Wherever possible, attempts are made to obtain consent from the victim to share information. However, there are times when this is not possible, or consent is not given. In situations in which the sharing of information is essential to ensuring safety, the Child, Family and Community Service Act provides authority to enable child welfare workers to exercise their powers to perform the duties and functions according to the act:

### Section 79 (a) & (a)1:

Child welfare workers may disclose information without consent if it pertains to the safety and well-being of children or the safety of a person other than a child. To ensure safety, any information that becomes known to the child welfare worker regarding such risk to health and safety is shared with the appropriate individuals, such as the non-violent parent, police, Crown or victim services.

### Section 96:

Child welfare workers have the right to information that is in the custody or control of a public body and necessary for them to carry out their duties according to the Child, Family and Community Service Act.

Refusal by a service provider or agency that is not a public body to provide information must not be viewed as an unwillingness to co-operate. It is recognized that such service providers might be complying with confidentiality policies. Specialized community-based victim service programs do not constitute a 'public body' and section 96 of the Child, Family and Community Service Act does not apply. If this occurs and there are reasonable grounds to believe a record contains information necessary for determining whether a child needs protection, a child welfare worker may apply to court according to section 65 for an order to release the information.

Child welfare workers need information related to the safety of the child. It could be information about the:

- ❖ Parent – areas of strength, support network, history of violence, alcohol/drug abuse, mental health concerns, and behaviours that place children at risk;
- ❖ Children – strengths, emotional problems, behavioural problems, coping skills; and
- ❖ Suspect/offender – history of violence, substance abuse issues, mental health issues, past criminal record, and compliance with court orders.

## Determining Child's Need for Protection

Determining when a child needs protection is complex. Ultimately, the child welfare worker and clinical supervisor are accountable for the decisions made regarding the child's need for protection and the protective response that follows. Gathering information from others is vital to making these decisions.

By providing information police, victim services, corrections, and health professionals support the decision-making by child welfare workers. Child welfare workers use available information, and their clinical experience and professional

training, to make informed decisions regarding the safety of the child and develop effective service plans.

## Working with Service Partners

### Police

Police officers and child welfare workers have complementary roles in responding to reports of suspected child abuse or neglect. Police have authority according to the Criminal Code and the Child, Family and Community Service Act to respond:

- ❖ When a child is in immediate danger;
- ❖ When a Criminal offence against a child is suspected; and
- ❖ Where a criminal offence against a child is suspected, police may investigate, working in collaboration with child welfare workers.

Child welfare workers must be aware of domestic violence risk factors.

Child welfare workers must make themselves aware of the risk factors identified in the police training course *Evidence-based, Risk-Focused Domestic Violence Investigations*. Child welfare workers need to be aware of these risk factors and report to police any information on these risk factors, such as disclosures by children, photographs, or statements made by the victim or accused. This information may be used by the police in their assessment of the accused, forwarded to Crown and, if relevant, used when making decisions regarding the criminal justice response.

Similar to other involved agencies, child welfare workers must assess the risk posed by an accused. Although not responsible for the formal risk screening of an offender, child welfare workers use their expertise and training to assess risk and safety factors. The child welfare workers assessment is included in the immediate and comprehensive safety plan for children.

If police are first on the scene in domestic violence situations and they determine that children are at immediate risk, they contact a child welfare worker for assistance. The child welfare workers response is in accordance with Child, Family and Community Service Act legislation and *Ministry of Children and Family Development Standards/Aboriginal Operational and Practice Standards and Indicators*. The child welfare worker speaks to the parent(s) and children, if possible, and makes arrangements with the police to ensure safety of the children.

These arrangements may include returning the children to the non-violent parent at a safe location, or taking the children to a safe place identified by the non violent parent or another safe place. If the police are submitting a Report to Crown Counsel, the child welfare worker and police officer discuss what information from the child welfare worker will be included on the report.

After Hours  
Helpline for  
Children  
310-1234.

When domestic violence has occurred outside of child welfare office hours, police contact MCFD's AfterHours Helpline for support. The officer may be providing occurrence information in a timely manner, or requesting that a child welfare worker attend the scene of the incident for assistance. The professional judgment of the officer and training from the "*Evidence-based, Risk - Focused Domestic Violence Investigations*" course must be applied to the request to ensure that an appropriate response is initiated.

If the occurrence information is called in to the AfterHours Helpline, the assigned child welfare worker contacts the investigating officer or police supervisor to confirm that the information was received, gathers and shares the appropriate information, and discusses risks associated with the offender. Safety planning for the non-violent parent and children is also confirmed.

If the children are out of the home when police respond, the child welfare worker may be asked to assist the officer in locating the children if there are safety concerns. The child welfare workers ensure the ongoing safety of the children.

Child welfare intervention involves direct contact with the child and family in their home. Child welfare workers must be aware of safety issues that might exist, such as the offender's history of violence, access to weapons, or substance abuse issues. If safety concerns exist, child welfare workers attend the home or meet the accused with the police present.

At other times, police might be required to assist a child welfare worker in enforcing Child, Family and Community Service Act court orders. These may include a section 17 order to access a child, or enforce a section 28 or 98 no contact order. Child welfare workers ensure that these court orders have an enforcement clause that allows police to arrest, without a warrant, the person for whom the order is made.

Child welfare workers immediately notify police if they become aware of breaches of protective orders.

### **Crown Counsel**

If criminal charges are before the court, it is helpful for Crown counsel to have information from the child welfare worker regarding any involvement. If a child has been found in need of protection, any information regarding the accused's contact with the children, and information relating to any orders granted under the Child, Family and Community Service Act including protective intervention orders (section 28), supervision orders (section 29), and restraining orders (section 98) must be shared. Information is recorded by the police officer on the Report to Crown Counsel or shared directly to Crown counsel by the child welfare worker. Sharing this information creates consistency among court orders. It also promotes safety and service planning, such as no contact with the child on bail conditions.

### **Court Services — Protection Orders**

Child welfare workers may ask police about information in the Protection Order Registry including criminal activities and/or orders related to members of the household and information on past and current protection orders contained in the registry.

When applying for a protection order, child welfare workers may file Victim Safety Unit notification applications. The court registry faxes these to the unit, which notifies victims about the status of the offender.

### **Victim Service Programs**

Child welfare workers ensure victims are connected to the victim service program for supports and services available for victims of domestic violence and their children.

## **Family Justice Counsellors**

Child welfare workers may find it valuable to refer victims who need to address child custody, guardianship, and access issues to a family justice counsellor — but the worker must obtain consent from victims to share their information with the counsellor.

## **Community Corrections (Bail Supervisors/Probation Officers)**

If an accused/offender is bound by an order of community supervision (bail, probation, conditional sentence, and recognizance), the child welfare worker may contact the supervising bail supervisor/probation officer to discuss court ordered conditions, concerns regarding risk of harm and when concerns are reported to the child welfare worker.

Similarly, if a child welfare worker becomes aware of information regarding an accused/offender who poses a risk, they must contact the bail supervisor/probation officer to discuss concerns related to safety, risk management and potential breaches of protective conditions.

## **Integrated Service Planning**

It is critical that appropriate information sharing occurs when working with other service providers regarding safety planning and offender accountability. The Child, Family and Community Service Act allows for critical information to be shared with other professionals when children are at risk (Refer to section above). Withholding of information among service providers could lead to poor planning and devastating outcomes for a family.

If children are involved, the child welfare worker ensures that the safety needs of the child are met through the overall safety plan. If a safety plan is not being developed through another agency, or is not adequate to protect the child, the child welfare worker develops safety plans.

## **Service Plans**

When a child welfare family service file is opened, child welfare workers collaborate with the parent(s) to reduce risk to a child. They apply their training and knowledge to educate parents regarding the harm to children when they witness violence. Child welfare workers also provide support to non-violent parents and advocate for them when they attempt to access financial, residential, and other practical services.

The child welfare worker develops separate service plans for the non-violent parent and the accused. The accused's involvement and access to the child needs to be consistent with the child's treatment and safety needs, keeping in mind that offenders often use times of access to further harass or threaten the other parent. The service plan must focus on holding the accused accountable for the way their actions put the children at risk. It may also require an offender to attend a treatment program for batterers and comply with court ordered conditions.

Child welfare workers will not tell non-violent parents to apply to the courts to vary a Family Relations Act or protective order to address child welfare concerns when it is more appropriate for the child welfare worker to initiate court action according to the Child, Family and Community Service Act (such as using sections

28 and 98). If child protection concerns exist in light of a contested FRA matter, it is not appropriate to leave it to use Family Relations Act provisions to address the concerns. Applying for a new, more restrictive Child, Family and Community Service Act order will also prevent the child welfare worker from having to advise the parent not to follow an FRA order when protection concerns exist.

### **Ongoing Service Planning**

Continued involvement of other agencies is necessary to ensure safety of children. Child welfare workers engage with other agencies such as probation, police, and victim services to ensure that the safety needs of children are maintained. Family service plans may also include proactive referrals to community-based victim services.

Before child welfare workers decide to close a file that includes domestic violence as a key issue, they contact the police to ensure that all relevant and current information is known by both agencies.



# Court Services

## Introduction

Court Services Branch, Ministry of Attorney General is responsible for the delivery of court administration services in British Columbia. Services include:

- ❖ Court registry services
- ❖ Courtroom clerks;
- ❖ Courtroom and courthouse security;
- ❖ Prisoner custody and escort services;
- ❖ Interpreter services; and
- ❖ Information to the public.

Court administration also includes

- ❖ Case documentation, initiation and processing;
- ❖ Fine payment processing;
- ❖ File and exhibit management;
- ❖ Preparation and distribution of court orders; and
- ❖ Transcript ordering information.

While not exclusive to domestic violence, branch policies and procedures related to protective orders support the timely production and distribution of orders with protective conditions to ensure the safety of victims or potential victims of domestic violence. The production, filing and distribution of these orders are guided by detailed policy and procedures that stress timeliness, tracking and reconciliation. Training of courtroom and registry staff emphasizes the policy and processes related to Protection Order Registry orders or Canadian Firearms Centre conditions.

Included in the Criminal Case Processing Manual is policy for provincial court or Supreme Court orders with protective conditions. These include bail documents, recognizances according to the Criminal Code sections 810, 810.1, 810.01, or 810.02, common-law peace bonds, probation orders, conditional sentence orders and other sentencing disposition documents.

Policy regarding restraining orders is included in the *Provincial Family Court Policy Manual* and in the *Civil Supreme Court Manual*. Information regarding family court matters in provincial or Supreme Court (civil) is stored in the Civil Electronic Information System. The system can track matters when protective conditions have been ordered.

Protection  
Orders may be  
criminal or civil.

A protection order is an order that contains a condition that provides safety and security to a specified (i.e., named) person or persons. An order must contain a no-contact, limited contact, or other protective condition to be considered a protection order.

An order with a sole condition to "keep the peace and be of good behaviour" is not a protection order. Inclusion of a condition that protects non-person objects such as property or assets, or the community in general does not make a protection order.

### Protection Order Registry

The Protection Order Registry, part of the Security Programs Division, Ministry of Public Safety and Solicitor General, is a computer database of all protection orders issued by various court levels in B.C.<sup>17</sup>

Information registered with the Protection Order Registry is used by ministry staff to answer telephone inquiries from police, provincial and federal corrections, VictimLink BC and others regarding the status and contents of protection orders. Police use the registry to immediately access information when responding to breaches of protection orders.

### Criminal Orders

Criminal Orders that might include protective conditions include:

- ❖ Probation order;
- ❖ Conditional sentence order;
- ❖ Recognizance made according to the Criminal Code sections 810, 810.1, 810.01, or 810.02;
- ❖ Common law recognizance such as a peace bond;
- ❖ Disposition order under the mental disorder section 672.54(b) of the Criminal Code;
- ❖ Bail orders; and
- ❖ Police releases.

All criminal orders with protective conditions are distributed electronically to police, relevant agencies, and the Protection Order Registry on the day the order is made, varied or cancelled.

### Family/Civil Orders

Civil protection orders include:

- ❖ A restraining order according to the Family Relations Act, Family Maintenance Enforcement Act, and the Child, Family and Community Service Act;
- ❖ A protective intervention order according to the Child, Family and Community Service Act; and

17. Provincial Court protection orders made prior to July 10, 1995 have not been registered (in the case of Supreme Court protection orders, prior to October 10, 1995). If a party wishes to have an older order registered, that party must submit a sworn declaration requesting registration. If a person wishes to register a protection order issued in another province, that party must apply to the court in British Columbia for an order authorizing enforcement of the other province's order. Once the British Columbia protection order is signed and entered, the registry will fax both orders to the Protection Order Registry.

- ❖ An order containing a condition that a child is not to be removed from a specified geographic location (e.g., British Columbia, or a municipality).

Court registry clerks fax civil/ family orders with protective conditions and orders that change or end a protection order to the Protection Order Registry on the same day the order is signed and dated by the judge.

### **Victim Notification**

Court registry staff provide the Victim Safety Unit application forms to civil and criminal protected parties and faxes completed forms to the Victim Safety Unit.

Protected parties may apply to register with the Victim Safety Unit if they would like to request criminal justice information about the defendant/accused/offender.

Application for registration with Victim Safety Unit is voluntary, but essential if the protected party wants to be notified about criminal justice system status and updates related to the defendant/accused/offender, such as release from jail.

For civil protected parties, the criminal matter may be related or unrelated to the civil matter.

An order or protection order (such as a restraining order) takes effect on the date that the judge makes it, unless the judge orders otherwise.

Once the order or protection order is approved and signed by counsel, the party in whose favour it was made or the party's counsel must deliver it to the court registry to be signed by the judge and filed with the court. For an order to come into effect, the party must deliver for filing any document that a judge requires to be filed with the order.

A clerk provides a filed copy of the order or restraining order to the parties or their lawyers unless the judge orders otherwise.

### **Notice of Restraining Order**

When counsel do not file a restraining order in the provincial family court according to the terms identified on the day it is ordered, the registry prepares a notice of restraining order. It takes the place of a Protection Order Registry restraining order until the restraining order is filed.

In Supreme Court (family and civil), a notice of restraining order is not sent to the Protection Order Registry. Protection orders are sent to the registry when litigants or their counsel draft the order and present it to the registry for entry.

### **Flagging Protection Orders**

Court registry staff carefully flag and expediently transmit protection orders to the Protection Order Registry.

### **Protection Orders on Transferred Files within the Province**

When a file is transferred within the province, court registry staff ensure that outstanding protection orders at the originating location or subsequent protection orders are flagged and expediently submitted to the Protection Order Registry and files are updated.

## **Protection Orders Made in Another Province**

If a person wishes to register a protection order with the Protection Order Registry that was made by a court in another province, the person must apply to the British Columbia court for an order authorizing enforcement of the order in B.C.

If the court grants the order authorizing enforcement in British Columbia, the registry sends the original order and the B.C. order to the Protection Order Registry.

# Information for Justices of the Peace and Trial Coordinators

In light of updated policies for service providers across the justice and child welfare systems that respond to domestic violence, the following information is intended to assist justices of the peace and trial coordinators:

1. New materials, tools and training have been developed and implemented which justices of the peace and trial coordinators may wish to familiarize themselves with, including:
  - ❖ Standardized risk assessment tool for police use (B-SAFER);
  - ❖ Advanced risk assessment/B-SAFER training for police, and allied professionals;
  - ❖ Police online training: Evidence-based, Risk-Focused Domestic Violence Investigations;
  - ❖ Updated provincial *Violence Against Women in Relationships Policy*, including a new protocol for highest risk cases;
  - ❖ Domestic violence website ([www.domesticviolencebc.ca](http://www.domesticviolencebc.ca)); and
  - ❖ *Best Practices and Principles for Conditions of Community Supervision for Domestic Violence* have been developed for Crown counsel use as the basis for their submissions to the court concerning release conditions, if they conclude that these conditions provide adequate protection in all circumstances.
2. A justice of the peace approached by an individual for the purpose of seeking a peace bond should advise them that the police will assist in preparing the necessary documentation which will then be forwarded to Crown counsel, who will contact the individual to swear an information before the justice of the peace.
3. Domestic violence is known to involve recurring offences which may escalate in severity. When a warrant is requested in a peace bond application or in a domestic violence charge, careful consideration of the request may be appropriate.
4. If an individual requests to swear an information respecting allegations of domestic violence, a justice of the peace should inquire whether the informant has advised the police of the circumstances. Where the police have not been informed, the justice of the peace should encourage the informant to contact the police for that purpose.
5. Adjournments sought for cases involving domestic violence should be well founded to reduce unnecessary delays.

6. An accused desiring to set a trial date for a case involving allegations of domestic violence should be encouraged to seek counsel before setting the trial date, because:
- ❖ the offence is regarded as a serious criminal matter; and
  - ❖ it would avoid a situation where the accused cross-examines their spouse.

In addition, the accused should be advised that it is the responsibility of Crown counsel, not the victim, to decide whether criminal charges should proceed.

7. Dates requested for cases involving allegations of violence against women in relationships should be set as early as trial scheduling will allow, given the emotional stress and often dangerous situations which develop in such cases.
8. Crown counsel who interview the victim should conduct the prosecution. Cases involving domestic violence should not be moved by trial coordinators from the courtroom in which they have been set, unless assigned Crown counsel and the victim are consulted and same Crown counsel is able to continue with conduct of the case.

# Family Justice Services

## Introduction

The Justice Services Branch, Ministry of Attorney General is responsible for family justice programs and services delivered by or for the provincial government. It is also responsible for encouraging and incorporating alternatives to court when possible, and promoting public access to the British Columbia justice system as a whole.

The branch consists of four divisions:

- ❖ Dispute Resolution Office;
- ❖ Maintenance Enforcement and Locate Services (and Family Maintenance Enforcement Program);
- ❖ Family Justice Services Division (including family justice centres and family justice counsellors); and
- ❖ Criminal Justice and Legal Access Policy Division.

Family Justice Services Division delivers services that promote the timely and just resolution of family disputes to families experiencing separation or divorce. Its clients usually seek assistance from a family justice centre before, during or after the breakdown of a relationship when the risk of violence within a family relationship increases.

Family justice counsellors screen for violence and other power and control imbalances in every family case. It is vital for family justice counsellors to identify family violence to:

- ❖ Help ensure the safety of family members; and
- ❖ Protect the best interests of children who are harmed even when they are not the direct victims or witnesses to the violence.

Such screening is also important because violence and power imbalances within the family dynamics violate the basic assumptions of mediation. When one partner is negotiating under duress or intimidation, there can be no fair and equitable settlement.

## Role of the Family Justice Counsellor

All family justice counsellors have specialized knowledge about the dynamics of domestic violence and its effect on families and children. This knowledge is gained as part of the training curriculum that family justice counsellors must complete for certification as a family relations mediator.

Family justice counsellors:

- ❖ Discuss a family's situation, including the children's experience of violence and their needs;
- ❖ Assist with referrals to therapeutic programs or other community services;
- ❖ Help clients recognize abuse and the dynamics of violence, abuse and control; and
- ❖ Are sensitive to safety concerns arising from language or cultural differences, sexual orientation, disability, isolation and other factors.

The family justice counsellor:

- ❖ Promotes the safety and well-being of all family members;
- ❖ Provides information to victims regarding safety plans for all family members;
- ❖ Educates families about the effects of violence on children and adults;
- ❖ Refers family members to appropriate services; and
- ❖ Assists families to develop parenting plans in an environment free from coercion or intimidation.

### **Family Violence Screening**

Prior to offering dispute resolution services, family justice counsellors interview each client separately and screen for violence, power and control imbalance. Clients are asked questions to assess whether:

- ❖ They have ever had concerns for their safety or the safety of their children during the relationship;
- ❖ Their partner has caused them to feel threatened or fearful; and
- ❖ They believe there is an immediate risk of violence in their family, either to themselves or their children.

Every client is individually screened for violence, power and control imbalances.

When there is an indication of family violence, the interview must provide more in-depth screening about the nature and extent of the relationship violence and what safety measures are required.

If a client reveals that violence is a factor in the relationship, family justice counsellors:

- ❖ Assess whether there is an immediate safety concern. If so, they make all reasonable efforts to inform the person at risk and make a report to the police, for the person's protection;
- ❖ Encourage the client to report to police, seek medical treatment and contact a victim services program if the client has been assaulted or threatened. If there is no victim service program available, they assist the client to develop a safety plan that addresses the safety needs of the client and their children;
- ❖ Ask if criminal or civil court orders are in effect or being sought, and explain criminal and civil provisions of the law regarding family violence;
- ❖ Record safety concerns and ensure that individual intake interviews are scheduled and structured to provide a safe environment; and



For mediation to proceed, the process must be voluntary, fair, and safe for all parties.

- ❖ Report concerns to a child welfare worker that a child needs or is likely to need protection, in accordance with sections 13-14 of the Child, Family and Community Service Act. When a child is in immediate danger, they also contact the police.

### **Addressing Family Violence Concerns in the Mediation Process**

Mediation requires a balance of power between negotiating parties. If the screening process reveals power imbalances or violence issues, the family justice counsellor takes measures to ensure a safe and open negotiating environment. For instance, parties may attend with a support person or advocate. A shuttle mediation process may be used, in which the mediator talks to each party separately, communicating information back and forth and assisting the parties to reach agreement.

Mediation is inappropriate if either the family justice counsellor or a client believes the process or the decisions are not fully voluntary and fair, or there are violence issues that are not acknowledged by the abusive partner or victim. In these situations, mediation is not started, or is terminated if it becomes inappropriate after the process has started. The family justice counsellor supports the parties to seek help from other agencies and professionals, documenting and/or reporting concerns as described above. The issue of violence itself is never mediated.

Family justice counsellors consider history of violence when assisting with custody and access issues. Access arrangements are structured to limit the clients' exposure to conflict and help ensure everyone's safety. Such arrangements may include supervised access if appropriate and available. Family justice counsellors do not negotiate access by an abusive person if the victim or children are reluctant.

Where there are criminal charges stemming from violence in a family relationship, caution must be exercised before facilitating a Family Relations Act agreement, which may include custody, access and/or maintenance. For example:

- ❖ Bail and probation orders that prohibit contact with a victim may use the words, "except for the purposes of facilitating access to the children as arranged by a family justice counsellor." This language does not create an access order. Instead, it preserves the ability of parties with a no-contact order to work with a family justice counsellor to negotiate access provisions. If screening for violence issues and power imbalances indicates that mediation processes are inappropriate or the victim/child expresses concerns, the family justice counsellor does not negotiate access. If there is an existing order or agreement for access, the family justice counsellor advises the parent how to make an application to court to vary the terms;
- ❖ When facilitating Family Relations Act agreements, family justice counsellors ensure that all safety considerations have been addressed before access takes place;
- ❖ When making recommendations to the court (i.e., a section 15 custody and access report), family justice counsellors identify all safety considerations that need to be addressed before access can safely take place;
- ❖ When more than one order or agreement exists and the terms are contradictory, the family justice counsellor brings the client's attention to the relevant provisions of the *Violence Against Women in Relationships Policy*. The family justice counsellor refers the client to the police, victim services, community corrections, legal counsel or court for clarification.

If a bail supervisor or probation officer is involved in the case, the family justice counsellor obtains the consent of the parties to share their case information with the supervisor/officer.

Family justice centres have escape and safety plans to provide a safe environment in the workplace for clients and staff.

# Family Maintenance Enforcement Program

## Introduction

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The Family Maintenance Enforcement Program is a service of the Ministry of Attorney General. According to the Family Maintenance Enforcement Act, the program is responsible for monitoring and enforcing all maintenance orders and agreements that are filed with them. It is available to individuals who have child and/or spousal support orders and agreements.

When payments are paid on time and in full, the Family Maintenance Enforcement Program receives the payment from the payor and makes a disbursement to the recipient. The program maintains a payment summary that is available to clients. If payments are not made, staff may take enforcement action, including:

- ❖ Garnishment of income such as wages, bank accounts, and federal payments;
- ❖ Placing liens against personal property;
- ❖ Reporting arrears to credit reporting agencies;
- ❖ Preventing the renewal of driver's licences and motor vehicle licences;
- ❖ Requesting the suspension of passports and some federal licences; and
- ❖ Initiating court action that could result in imprisonment.

Interest and default fees may be charged on missed or late payments. Before taking these actions, program staff speak with the payor or provide notice that enforcement actions will be taken. If the payor's whereabouts are not known, enforcement action may be taken without notice.

Enforcement actions may continue even when payments are being made. For example, registration of the order against land is continued to provide security for future payments.

Given the long-term nature of the financial obligations that exist under maintenance orders, individuals can be enrolled in Family Maintenance Enforcement Program for many years. Being enrolled in the program can reduce tension between the payor and recipient by eliminating the need for direct contact between the parties concerning maintenance payments. In some cases enrolment, enforcement action or an unrelated incident can precipitate a threat to client safety even when there is no history of relationship violence.

The Family Maintenance Enforcement Program enrolment package contains questions developed to help identify client safety issues. Once enrolled, clients are encouraged to contact the program at any time to provide additional information if they have any safety concerns. Cases with a history of violence or with concerns that violence may occur are flagged within the program's computerized case management system and managed with special care. The safety of clients and children is paramount.

## **Addressing Concerns about Violence in the Maintenance Enforcement Process**

Most client contact occurs by telephone, mail and through the Family Maintenance Enforcement Program website. The only time the payor and recipient may appear in the same location at the same time as a result of action taken by the program is when the recipient is required to attend a court hearing where the payor is present. If court action is initiated, program staff make arrangements to check the Protection Order Registry and ensure that appropriate precautions, including the presence of court security staff in the courtroom, are taken to address any safety issues.

The Family Maintenance Enforcement Program outreach officers meet with individual payors and recipients in family justice and justice access centres. Prior to setting up an in-person meeting, program staff review the case file to ensure that safety risks are considered. These meetings do not include the payor and recipient at the same time.

## **Protection of Personal Information**

The Family Maintenance Enforcement Program ensures that information held on file is only disclosed as permitted by the Family Maintenance Enforcement Act. The act allows for release of information only for enforcement purposes.

## **Initiating Enforcement Action**

Threats of violence do not relieve a payor from the obligation to pay child or spousal support. When a recipient or Family Maintenance Enforcement Program staff member identifies that the payor may present a safety concern, he or she contacts the recipient by phone or letter when enforcement action is initiated. This allows the staff member to discuss safety concerns, make appropriate referrals and consider suspending enforcement action if the recipient or the enforcement officer believes the intended enforcement action will precipitate violence or threat of harm.

## **Critical Incidents**

The Family Maintenance Enforcement Program provides crisis intervention and critical incident handling training to staff. This training is specifically designed for the program and provides staff with skills to deal with situations when an individual is threatening harm to self or to others. Some managers and staff are trained in suicide risk assessment through the Vancouver Crisis Centre and some have backgrounds in counselling.

**Violence  
Against  
Women  
In  
Relationships**

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**POLICY**

When a staff member receives a threat or a report of potentially violent or threatening behaviour, contact is made with the client to clarify the nature of the violence or threatening behaviour. When a safety risk is identified, contact is made with the police as well as the person(s) threatened. A critical incident form is completed, and a manager reviews the case to ensure that the actions in place are appropriate to the circumstances. Following the incident, the case manager conducts regular follow-up phone calls with the clients involved. Managers or trained staff provide immediate and ongoing support when necessary to the Family Maintenance Enforcement Program staff person who received the call.



# Protocol for Highest Risk Cases

## Purpose

The *Violence Against Women In Relationships Policy* recognizes the severity of domestic violence and the importance of a co-ordinated and collaborative response by government, justice and child welfare partners. This protocol applies to highest risk domestic violence cases and is intended to supplement the other sections of the policy.

While all domestic violence incidents are a concern, certain cases pose a greater risk of violence for serious bodily harm or death. This protocol is intended to enhance the justice<sup>18</sup> and child welfare system response to highest risk cases through heightened information sharing, comprehensive and collaborative safety planning and risk mitigation strategies.

This protocol acknowledges the importance of responders working collaboratively with allied service providers to ensure a comprehensive response. Service providers include transition house programs, stopping the violence counselling programs, children who witness abuse programs, outreach and multicultural outreach services, health services, and immigrant settlement services. Referrals to and collaboration with these services are key to ensuring that victims of domestic violence are effectively supported in a co-ordinated fashion.

## Defining Cases with the Highest Risk

For the purpose of this protocol, the designation of highest risk will be assigned by police to a domestic violence case where police believe there is significant potential for serious bodily harm or death. This designation is assigned by police case by case according to their professional judgment, training and experience and should be supported by a formal risk assessment. This protocol acknowledges that risk is dynamic in nature. Risk factors can change rapidly when new developments occur or new case information is discovered.

Once a case is identified as highest risk by police, this protocol comes into effect and with it, enhanced provisions for information sharing and case management. When it is determined that a case is not highest risk, partners to this protocol continue to work collaboratively to enhance victim safety and manage offender accountability according to the overall intent of the *Violence Against Women in Relationships Policy*.

18. For the purposes of this protocol 'justice system' includes the following personnel: police, Crown Counsel, corrections staff (bail supervisors and probation officers), and victim service workers funded all or in part by the Ministry of Public Safety and Solicitor General.

## Legislative Authority for Information Sharing

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To facilitate an effective and co-ordinated justice and child welfare system response, and protect the victim and others at highest risk for violence or death, timely sharing of information is required between police, Crown counsel, corrections staff (i.e., bail supervisor and/or probation officer), the victim service worker, and child welfare worker.

Information disclosed and collected under this protocol may include:

- ❖ Risk assessment findings;
- ❖ Court outcomes including bail and release conditions;
- ❖ Breaches of conditions; and
- ❖ Other relevant information pertaining to the accused/offender or victim (including victim contact information).

The authority to share information among justice and child welfare partners is found in provincial and federal legislation. Key legislation includes the Criminal Code; Police Act; Correction Act; Victims of Crime Act; Child, Family and Community Service Act; and Family Relations Act. Applicable privacy legislation includes the provincial Freedom of Information and Protection of Privacy Act (FOIPPA), provincial Personal Information Protection Act (PIPA), and federal Privacy Act.

Subject to constitutional and legislative obligations to disclose where these obligations exist, information shared according to this protocol is kept confidential and used only to provide a co-ordinated and effective justice system and child welfare response to highest risk domestic violence cases.

## Protocol Provisions

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A key objective of this highest risk protocol is to enhance information sharing among justice and child welfare partners thereby facilitating an effective response to these cases. Partners in this case management response include:

- ❖ Police;
- ❖ Crown counsel;
- ❖ Corrections staff (bail supervisors and probation officers);
- ❖ Victim service workers; and
- ❖ Child welfare workers.

In every domestic violence investigation, police apply their knowledge of risk factors and training to conduct an evidence-based and risk-focused investigation.

When a case is identified as highest risk, justice and child welfare personnel will provide a heightened, co-ordinated and collaborative case management response that includes monitoring of the accused/offender and comprehensive safety strategies for the victim and others as appropriate.



## Police

The following provisions apply to highest risk domestic violence cases and are intended to supplement provisions in other sections of the VAWIR policy:

1. When a responding officer has concerns that a domestic violence case may possibly be highest risk based on their preliminary investigation, they contact their supervisor or a specialized investigator with formal risk assessment training to advise them of their concerns. The supervisor or specialized investigator will decide whether to initiate a B-SAFER<sup>19</sup> risk assessment, and when a case is identified as highest risk by police (whether or not a B-SAFER is initiated) the supervisor or specialized investigator ensures the partners in this protocol are notified.
2. As domestic violence investigations are complex, the timing in the investigation to make supervisor/specialized investigator contact will vary depending on the case. The responding officer will make this contact as soon as they have information suggesting a case may be highest risk, and they will provide available supporting investigation documents as soon as practicable (before end of shift and on an ongoing basis), along with any other information requested by the officer contacted.
3. If an accused is arrested and detained, a bail hearing is required within 24 hours. In all domestic violence cases, a Report to Crown Counsel must be completed for the bail hearing. The report should detail the investigation, summarize the risk factors present, victim (and others at risk) safety concerns, and child protection concerns. It should also include detailed contact information for the victim, family members and witnesses, and any other relevant information.
4. In highest risk cases, if a B-SAFER risk assessment has been initiated, the Report to Crown Counsel should include investigation details, a summary of the B-SAFER risk assessment findings, victim (and others at risk) safety concerns, child protection concerns, and opinion on risk including recommendations regarding protective conditions or the need for detention. It should also include detailed contact information for the victim, family members and witnesses, and any other relevant information.
5. This protocol acknowledges that a full B-SAFER risk assessment and report may not be possible to complete for the bail hearing. Domestic violence investigations are multifaceted and key information may be missing or incomplete (e.g., a victim cannot be interviewed), and it may be impossible in such circumstances to reach a reliable opinion regarding risk until further information is gathered.
6. In all domestic violence cases, if there is insufficient information or evidence to conduct a full and informed bail hearing within 24 hours of the arrest of the accused, and the police have missed the cut off period with the Crown office and Court Registry to get an information sworn, police will have to request a remand in custody (for up to three days) pursuant to s. 516 of the Criminal Code (Refer to the Bail Options website at [www.bailoptions.ca](http://www.bailoptions.ca) for assistance with submissions). The police should advise the Judicial Justice of the Peace (JJP):
  - ❖ Why they are seeking the adjournment of the bail hearing;
  - ❖ What evidence they are still in the process of obtaining;
  - ❖ Why the information is required in order to conduct the bail hearing;

19. B-SAFER (Brief Spousal Assault Form for Evaluating Risk) is a set of structured professional guidelines for assessing risk for spousal assault. The risk factors included in the B-SAFER are evidence-based and were derived from a comprehensive review of relevant scientific and professional publications on domestic violence

- ❖ The seriousness of the circumstances of the alleged offences;
- ❖ Any known concerns about flight risk, or prior failures to appear at court or breaches of court orders; and
- ❖ The potential for further violence and victim, witness and public safety concerns.

Police should ensure the correct charges and the accused's record are before the court and include a summary of the risk assessment findings known at the time as well as identify victim safety and child protection concerns in the Report to Crown Counsel. Also, where appropriate, a section 516 (2) no contact order with victims, witnesses and children should be sought.

7. If a Report to Crown Counsel has been submitted to Crown counsel during regular office hours and police are requesting Crown seek the s. 516 remand, they must provide Crown counsel with the same information noted above (#6) to support the request.
8. When a child appears to be in immediate danger or a criminal offence against a child is suspected, police request a child welfare worker to attend at the scene.

In highest risk cases, when a child is not in immediate danger, but resides with the accused or victim, police report the incident to a child welfare worker regardless of whether the child was present at the time of the incident or witnessed the violence. The following are provided to the child welfare worker: Information concerning the incident, the highest risk designation and identified risk factors.

9. Release on an Undertaking to Appear (UTA) or Promise to Appear (PTA) is strongly discouraged in highest risk cases. It is recommended that the accused be held in custody for a bail or adjournment hearing unless the investigating officer has a high degree of confidence that the risk factors present can be effectively managed through UTA/PTA conditions and safety planning.
10. As soon as possible, and as a priority, police should provide a referral to victim services and advise the victim that a victim service worker will be contacting them.<sup>20</sup>

If available, have victim services attend the scene to provide immediate crisis intervention/critical incident support to the victim.

Information concerning the victim, incident, highest risk designation and identified risk factors are provided to the victim service worker to assist with safety planning and to ensure that contact with the victim can be initiated safely.

11. Police proactively assist the victim and children by arranging safe transportation to a transition house (or safe home) or other safe shelter. Transition houses offer 24/7 staffed services for women fleeing violence.
12. When police receive a request for information related to the provision of benefits under the Crime Victim Assistance Program (CVAP) they provide the information as soon as possible to CVAP staff to ensure that victims have timely access to protective measures and other available benefits.
13. Prior to the bail/adjournment hearing, police responsibilities include ensuring

20. Referrals to victim services are made in accordance with the Ministry of Public Safety and Solicitor General's *Referral Policy for Victims of Power-Based Crimes*.

the victim is: contacted to canvas safety concerns; provided with information regarding the status of the investigation; informed of potential outcomes of the pending bail/adjournment hearing; and advised that the case is designated as highest risk. Police may contact the victim directly or request that the victim service worker do so.

14. In cases designated by the police as highest risk, Crown counsel or designated Crown personnel ensure the victim and police are notified of release, conditions of release and court disposition as soon as possible. This assists the victim to be in a position to contact the police if necessary. Police will then notify other justice/child welfare partners as soon as possible unless there is an agreed practice in the community for Crown counsel to do so.
15. After the bail hearing, police provide the child welfare worker, bail supervisor, and victim service worker with information regarding the release, conditions of release, the highest risk designation, status of the investigation, contacts in the partner agencies (including contact information), updated risk factors and, if known, the status or outcome of any child welfare involvement.

If possible, police co-ordinate a meeting among these personnel to share information to mitigate risk and identify safety strategies. Or, on request, another justice partner co-ordinates a meeting. When a meeting is not practical, information exchange may occur by phone (including conference calls) or, at a minimum, in writing in a locally agreed format.

16. If there is a breach of bail or release conditions, police recommend charges and/or breach of bail revocation to Crown counsel in all cases when sufficient evidence exists.
17. Police share information concerning all breaches of conditions or new charges with the bail supervisor/probation officer, child welfare worker and victim service worker.

Police also ensure that the victim is aware of any breaches or new charges. This may involve contacting the victim directly or requesting the victim service worker to do so.

If possible, when a breach of conditions has occurred, police co-ordinate a meeting with justice and child welfare staff to share information to mitigate risk and identify safety strategies. Or, on request, another justice partner co-ordinates a meeting. When a meeting is not practical, information exchange may occur by phone (including conference calls) or, at a minimum, in writing in a locally agreed format.

19. Crown counsel or designated personnel notify the victim and police of the court disposition (e.g. conviction, stay, acquittal) unless the agreed practice among justice personnel in the community is for an alternate process.

To ensure justice and child welfare partners have up-to-date information, police notify corrections staff (bail supervisor/probation officer), the child welfare worker and the victim service worker of the court disposition. They provide contacts in the partner agencies (including contact information) for the benefit of the probation officer. This information may be shared verbally or in writing in a locally agreed format.

## **Crown Counsel**

This highest risk protocol is to be read in conjunction with the *Crown Counsel Policy on Spousal Violence*, SPO 1. This protocol identifies the principal points in SPO 1 that guide Crown counsel in the prosecution of domestic violence files. Crown counsel should consider the Best Practices and Principles for Conditions of Community Supervision for Domestic Violence (Refer to Appendix Two).

The following provisions apply to highest risk domestic violence cases and are intended to supplement provisions in other sections of the VAWIR policy:

19. An unendorsed warrant should be sought whenever it is necessary to protect the victim or other potential victims by seeking a detention order or conditions of release. Crown counsel should seek a warrant if an accused is released by police and Crown counsel concludes that detention or additional conditions are necessary to protect the victim, and the victim's family.
20. When assessing the Crown's position on bail for an accused, Crown counsel should have particular regard for the safety of victims and other family members, especially children, and must consider all available, reliable information regarding the risk presented by the accused. When Crown counsel has reason to believe that additional relevant information is available, they request it from the police before making submissions on a bail hearing and ask for a remand under s. 516(1) if necessary.
21. When Crown counsel has reason to conclude, based on an objective assessment of the available evidence, that there is a substantial likelihood the accused will cause serious bodily harm or death to another person, a detention order must be sought, along with a "no contact" order according to sections 515(12) or 516(2) of the Criminal Code, requiring the accused to abstain from communicating, directly or indirectly, with the victim. When a detention order is not made in such cases, the court must be asked by Crown counsel to impose conditions on release that will protect the victim and other members of the public.
22. When Crown counsel concludes, after an objective assessment of the available evidence and with reference to the legal test for a detention order according to the Criminal Code, that a detention order is not necessary in a file that has been identified by police as one of highest risk in accordance with this Protocol, or that the conditions of bail recommended by the police are not necessary, Crown counsel should consult the police before making the final decision on the Crown's position at the bail hearing and should ask the police whether there is any further relevant information or evidence to consider.
23. In cases designated by the police as highest risk, Crown counsel or designated Crown personnel ensure the victim and police are notified as soon as possible of the release, the conditions of release and the court disposition. This assists the victim to be in a position to contact the police if necessary. Police will notify the other justice/child welfare partners as soon as possible unless there is an agreed practice in the community for Crown counsel to do so.
24. When Crown counsel has reason to conclude in a case involving spousal violence, particularly one that has been identified by police as highest risk, that an alleged breach of a bail condition raises concerns for the safety of a victim, their family member or any other person, Crown counsel makes an application to revoke bail and seek a detention order.

25. Generally, and in all cases where the file has been identified by police as one of highest risk, spousal violence charges are assessed on a priority basis. When possible, Crown counsel attempts to ensure that early trial dates are obtained.
26. Generally, and in all cases where the file has been identified by police as one of highest risk, Crown counsel or designated personnel notify the victim and police of the court disposition (e.g. conviction, stay, acquittal) unless the agreed practice among justice personnel in the community is for an alternate process.

### **Corrections staff (bail supervisors and probation officers)**

The following provisions apply to highest risk domestic violence cases and are intended to supplement provisions in other sections of the VAWIR policy:

27. The bail supervisor makes efforts to contact the victim and others protected by the bail order to explain the protective conditions, the process to report breaches and to reinforce the need to develop a safety plan.
28. Adherence of the accused to court imposed conditions of the bail order are monitored and enforced by the bail supervisor. Information concerning breaches that are relevant to victim safety (including, but not limited to, breaches of protective conditions or failures to report when the location of the accused is unknown) are shared with police, Crown counsel, child welfare worker, victim service worker and the victim. *Note:* the relevant contact information should be known as will have been provided by police  
– Refer to #15.
29. When an offender is sentenced to community supervision, probation officers make efforts to contact the victim and others protected by the order to explain the protective conditions, the process to report breaches and to reinforce the need to develop a safety plan.
30. Adherence of the offender to court imposed conditions of the community supervision order are monitored and enforced. Information concerning breaches (i.e., including, but not limited to, breaches of protective conditions or failures to report when the whereabouts of the offender is unknown) and aspects of offender case management which are required to ensure the safety of the victim are shared with police, the child welfare worker, the victim service worker and the victim. *Note:* the relevant contact information should be known as will have been provided by police – Refer to #17.

When possible, probation officers (or another justice partner upon request) coordinate a meeting among these personnel to share information to mitigate risk and identify safety strategies. When a meeting is not practical, information exchange may occur by phone (including conference calls) or, at a minimum, in writing in a locally agreed format.

### **Victim service workers** <sup>21</sup>

The following provisions apply to highest risk domestic violence cases and are intended to supplement provisions in other sections of the VAWIR policy:

31. Upon notification by police that a case is highest risk, the victim service worker prioritizes the case to provide relevant supports including safety planning and emotional support. The victim service worker contacts the police officer at the earliest opportunity to obtain additional relevant information that

21. Referrals to victim services are made in accordance with the Ministry of Public Safety and Solicitor General's Referral Policy for Victims of Power-Based Crimes.

was not provided in the initial referral and to provide their contact information for distribution to other partner agencies, thereby facilitating effective safety planning.

32. The victim service worker contacts the victim on a priority basis to address the victim's immediate safety concerns and develop a safety plan. The victim service worker assesses the need for additional supports to address specific language, cultural or immigration factors and informs other partners of these needs. The victim service worker also facilitates victim registration with the provincial Victim Safety Unit (if appropriate), provides information and assistance to expedite their application for protective measures or other benefits available through the Crime Victim Assistance Program, and, when appropriate, facilitates referrals to other services such as transition house programs, counselling programs, outreach and multicultural outreach services, health services and settlement services.

Expert advice is available to victim service workers through the Provincial Protective Measures Unit (PPMU) to discuss additional interventions and protective measures appropriate for highest risk cases. Contact information for the PPMU can be obtained through VictimLink BC at 1 800 563-0808.

33. The victim service worker works with the police and victim to ensure that copies of any protection orders that protect a child are provided to the child's school or daycare provider. Copies of protection orders may be requested by the victim or the victim service worker on the victim's behalf from the Victim Safety Unit by calling 1 877 315-8822.
34. The victim service worker supports the victim through the criminal court process. Services include providing court orientation and accompaniment; providing assistance with victim impact statements; supporting the victim during court proceedings; and upon conclusion of the case ensuring the victim is aware of and understands the court outcome and has access to necessary follow-up resources.
35. When appropriate, victim service workers forward an application for benefits on behalf of the victim to the Crime Victim Assistance Program, indicating that the case has been designated as highest risk and that, if eligible, the provision of protective measure benefits should be expedited. To ensure a prompt response, victim service workers follow up with the program's management by calling 1 866 660-3888.

### **Child welfare workers**

The following provisions apply to highest risk domestic violence cases and are intended to supplement provisions in other sections of the VAWIR policy:

36. Upon notification by police that a case is highest risk, the Ministry of Children and Family Development or Delegated Aboriginal Agency immediately assigns a child welfare worker to the file. The worker contacts the police officer immediately to review relevant information and provide their contact information for distribution to other partner agencies.

In highest risk domestic violence cases, the child welfare safety assessment, planning and intervention process begins immediately to ensure the child is safe.

37. The child welfare worker assesses to ensure the children's safety and well-being. If concerns about children's safety exist, it may be appropriate for the child welfare worker to provide services, make referrals or obtain a court order according to the Child, Family and Community Service Act.
38. Information concerning the results of child welfare involvement is provided by the child welfare worker to the police for dissemination and/or to other relevant involved agencies (e.g., Crown counsel, corrections staff, and victim service workers).





# **APPENDIX ONE**

## **Police Release Guidelines**

### **Police Release on a Promise to Appear with an Undertaking in Violence Against Women in Relationships Cases**





# Police Release Guidelines

## Police Release on a Promise to Appear with an Undertaking in Violence Against Women in Relationships Cases

December 2010

### INTRODUCTION

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#### Background

As first responders, police have a key and important leadership role in managing issues associated with keeping victims safe. Police assume a critical responsibility in identifying highest risk cases of domestic violence and in initiating the flow of information and communication among key response agencies

Emerging best practices recognize the need for integrated cross-agency policies as a key component of an effective domestic violence response strategy. In 2010, as part of the province's domestic violence action plan, the 2004 *Violence Against Women in Relationships (VAWIR) Policy* and the 2005 police release guidelines were updated.

#### Purpose

These guidelines supplement the provincial *VAWIR Policy*. They are intended to assist municipal police and Royal Canadian Mounted Police across British Columbia. Police agencies are advised to provide their officers with a copy of the guidelines and ensure their operational policies are consistent with these guidelines.

If police officers follow these procedures when releasing offenders, the integrity of the court process can be assured and victim safety maximized.

Related documents include:

- ❖ *Violence Against Women In Relationships Policy 2010.*

Related Training Includes:

- ❖ Online Course: *Evidence-based, Risk-Focused Domestic Violence Investigation*
- ❖ Online Course: *Introduction to Domestic Violence Risk Assessment and Safety Planning* (date TBA)
- ❖ Advanced Training: *Risk for Intimate Partner Violence: Threat Assessment and Management Using the B-SAFER* beginning fall 2010.

There are three legal points to be made about the release of persons accused of domestic violence:

### 1. Statutory authority

The Criminal Code of Canada provides authority to police officers to release an accused person who is in custody, having been arrested with or without warrant, under sections 503 and 499.

Sections 496-503 oblige officers to release accused persons with the least restrictions of liberty necessary under the circumstances.

Sections 499 and 503 permit police officers and officers in charge to release suspects on undertakings and recognizances with specified conditions. The available conditions are the same in each section, and include an authority to impose such conditions that the "officer considers necessary for the safety and security of any victim or witness to the offence". However, the officer must be able to justify any condition imposed.

Although the list of conditions can address many risks, the sections do not grant peace officers blanket authority to impose conditions unless they can be justified.

### 2. Public interest

Police officers must consider several factors relevant to the public interest.

Factors which justify more restrictive forms of release and more restrictive conditions are the:

- ❖ Need to identify the accused;
- ❖ Need to preserve evidence;
- ❖ Risk that the offender will commit more offences;
- ❖ Risk that the offender may jeopardize the safety of victims or witnesses;
- ❖ Risk that the offender will intimidate witnesses; and
- ❖ Need to ensure the offender will attend court.

If the factors cannot be addressed by police release conditions, the accused should be detained and brought before a court for a bail hearing under section 515 of the Criminal Code.

The court may impose more restrictive conditions and may require a recognizance with cash or surety, or may detain the accused in custody.

### 3. Change of process

If the accused is not in custody when charges are approved and if Crown counsel believes that the release conditions imposed by the police do not adequately protect the safety and security of the victim and the public, Crown counsel may request a warrant according to section 512 of the Criminal Code.

Crown counsel may also make an application for a warrant in order to bring the accused before the court to re-establish protective conditions if the Promise to Appear (PTA) or Undertaking to Appear (UTA) is cancelled. Release conditions or terms of court imposed bail can be changed if there is a change in circumstances, particularly if there is a threat to the safety of a victim or witness, or if the accused is no longer likely to attend court as required.

Sections 499(3), and 503(2.2) permit the accused to apply to the court for variation of the conditions on an undertaking imposed by a police officer, prior to first appearance, without notice to the Crown. This may happen before the Report to Crown Counsel has been received by the Crown.

Section 499(4) and section 503(2.3) permit Crown counsel to apply for changes to the conditions of the undertaking, but requires three days notice to the accused and must be done prior to or at the first appearance.

## **POLICE OPTIONS**

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After arresting a suspect, police may do the following:

- ❖ Release the accused on appearance notice or summons (no conditions);
- ❖ Release the accused on conditions;
- ❖ Request the accused be held for bail hearing before justice of the peace or provincial court judge and released on conditions; or
- ❖ Request court ordered detention.

### **1. Release the accused on appearance notice or summons**

It is not typically in the public interest to release an accused on an appearance notice or summons because no bail conditions can be attached to this form of release. Police must be satisfied the accused poses no risk of violence or intimidation to victims or witnesses.

### **2. Release the accused on conditions**

Criminal Code sections 497-499 and 503 permit police to release accused persons on undertakings and recognizances with specific conditions.

Police release occurs by having the accused enter into an undertaking according to Form 11.1 (Undertaking Given to a Peace Officer or an Officer in Charge) and it may include conditions. It may include the following available conditions:

- ❖ Abstain from communicating, directly or indirectly, with any victim and children, witness (including children) or other person identified in the undertaking;
- ❖ Identify all persons, including children. Names are used where possible. If the names are unknown, an identifying description is reported such as "the family of Jane Doe/John Smith including their mother, father, child, brother and sister";
- ❖ Consider including the names of the victim's children and other family members, or any other person who may be subject to intimidation or undue pressure;
- ❖ Do not attend the family residence, victim's place of work, children's school/daycare, or other place where the accused knows that people named in the non-communication order could be

found. Note: Places are specified by an area restriction or a specific address. Caution is used to avoid providing the accused with unknown information regarding the whereabouts of a victim/witness;

- ❖ Report to a bail supervisor at a designated location at specified times and as directed thereafter by the bail supervisor. This condition should always be applied in domestic violence cases;
- ❖ Abstain from possessing firearms, surrender firearms in their possession, and surrender authorizations, licenses, and registration certificates to acquire or possess firearms. Note: When a suspect on bail with a firearms prohibition is released, police ensure conditions are upheld that require that the accused surrender firearms to the police immediately and not at a later date;
- ❖ Abstain from consuming alcohol and drugs;
- ❖ Comply with other condition that the police consider necessary to ensure the safety and security of the victim or witnesses.

### **3. Request the accused be held for bail hearing before Justice of the Peace or Provincial Court Judge and released on conditions**

In all cases where police determine there is a significant risk of violence, police should hold the accused for a bail or adjournment hearing, unless the investigator has a high degree of confidence that the risk factors can be effectively managed through UTA/PTA, conditions appropriate victim safety planning, and in accordance with the Criminal Code s. 497 – 499.

A Report to Crown Counsel, even if a preliminary report, must be provided for the bail hearing.

The RCC should provide the evidence necessary to support a recommendation to the court that:

- ❖ The victim requires a higher measure of protection from the accused through the issuance of “no contact” orders rather than from “non-communication” conditions available in a form 11.1; and
- ❖ A condition prohibiting the accused from possessing firearms, cross-bows, knives, prohibited and restricted weapons, prohibited devices or ammunition and explosives, is necessary and appropriate in the circumstances.

### **4. Request for court ordered detention**

Where police determine that there is a significant risk of violence, or concerns that the accused will not obey imposed release conditions, police should hold the accused for court and recommend Crown counsel seek a detention order from a judge (or justice of the peace). Section 518(1)(d.2) of the Criminal Code requires a judge to consider any evidence submitted regarding the need to ensure the safety and security of a victim or witness.

More time might be required to conduct additional investigation or to gather further information to determine if it is necessary to detain the accused for the safety or protection of a victim, witness or the public. In this case, Crown counsel may apply to the court to adjourn the show cause hearing for up to three days according to section 516 of the Criminal Code. Police must clearly articulate the investigative steps already taken to obtain the necessary information to assess the safety concerns. They may also be required to explain the steps necessary to obtain the required information should the adjournment be granted.

Subsection 516(2) of the Criminal Code authorizes a justice who remands an accused to custody under subsection 516(1) or subsection 515(11) to order that the accused abstain from communicating directly or indirectly, with any victim, witness or other person identified in the order. The only exemption to this abstention must be in accordance with conditions specified in the order that the justice considers necessary.

## **POLICE RELEASE PROCESS**

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In addition to these guidelines, police are advised to consult the VAWIR policy (including the Protocol for Highest Risk Cases) and their own department or detachment's operational policies and procedures to be followed in cases of violence against women in relationships and other instances of domestic violence.

1. When an indictable offence has occurred, or may occur, police should arrest the suspect without warrant under section 495 of the Criminal Code to:
  - ❖ Protect the public interest;
  - ❖ Ensure victim safety;
  - ❖ Prevent a repeat offence or the commission of new offences (i.e., interference with administration of justice, witness intimidation);
  - ❖ Secure attendance of the accused in court; and
  - ❖ Preserve evidence
2. Comprehensive and accurate documentation are critical elements in the investigation and prosecution of all cases. Police ensure all documents pertaining to the events and circumstances justifying an arrest are completed in this manner.
3. Upon arrest and prior to setting release or bail conditions, police should assess victim safety needs to determine whether to release or detain a suspect.
4. Arrest and detention must always be fully justified in law. The process of justifying the detention of an accused is best accomplished if predicated by an assessment of the risks associated to the release of the accused. A police officer must also be able to articulate the grounds that brought them to the conclusion that a person can safely be released from custody.
5. When considering release, police should:
  - ❖ Consider all risk factors and relevant facts to assess victim safety needs to determine whether to release or detain a suspect. When determining whether to release the suspect, police officers consider the public interest, including the possible risk to children involved;
  - ❖ Check the Protection Order Registry (POR) to determine if any orders are in place. Civil orders as well as criminal orders can provide valuable background information. A history of violation of any order should be taken into consideration.
6. Police supervisors should review all decisions related to release or detention of the accused in domestic violence cases.

## Important Notes and Considerations Regarding Police Release

- Police release does not apply to offences that are punishable in excess of five years in jail.
- The wording of some conditions in form 11.1 may not provide adequate protection to victims. For example, case law indicates court issued “no-contact” orders offer victims greater protection than form 11.1 “non-communication” conditions. If conditions must be put on the suspect that a court must impose, police should not release.
- Amendments to a form 11.1 UTA must be done judicially.
- Police have no power to impose a weapons prohibition (distinct from a firearms prohibition). When a weapon (e.g., knife) is used or threatened, serious consideration is given to seeking a weapons prohibition through a bail hearing. A court may impose a prohibition order for firearms and other weapons. Police can seek such an order either under section 111 of the Criminal Code or through a bail hearing.
- Police Release on an Undertaking to Appear (UTA) or Promise to Appear (PTA) is strongly discouraged in highest risk domestic violence cases. It is recommended that the accused be held in custody for a bail or adjournment hearing unless the investigating officer has a high degree of confidence that the risk factors present can be effectively managed through UTA/PTA conditions and safety planning.
- All alleged breaches of criminal and civil orders require assessment, no matter how minor. When a breach relates to an existing order on a domestic violence case, police should not release but should hold the accused for court.
- If the accused is on any form of bail and has breached the current bail conditions, or if an officer’s best judgment determines there are reasonable and probable grounds to believe the accused has or will commit an indictable offence, the accused is in a position where he/she must justify their release (Refer to Criminal Code section 524). A remand should be sought pursuant to Criminal Code section 516(1). This may be referred to as a reverse onus situation.
- If the ability of the accused to understand or abide by the release conditions is impaired, then consideration should be given to detention until such time that the accused is competent to understand and abide by the conditions.
- If as a result of a charge, the accused will be prevented by condition from returning to their previous residence, every effort should be made to confirm a residence prior to their release. If residence cannot be confirmed prior to release, the bail supervisor should be provided with residence approval authority. If there is concern regarding risk, and a residence cannot be confirmed prior to release, the accused is viewed as a risk to breach bail and/or to commit additional offences and should be held for a bail hearing.



7. Prior to releasing an accused from custody, police should:
  - a. Check for other bail conditions or UTAs that may have been imposed by criminal or family court;
  - b. Immediately submit completed form 11.1 for entry into the POR/CPIC. Any changes to conditions (varied or cancelled) are updated in the POR/CPIC;
  - c. Immediately share the completed form 11.1 with the bail supervisor, if reporting conditions have been imposed;
  - d. In cases when children are present, police should also notify the child welfare worker of the release and conditions;
  - e. Forward the Report to Crown Counsel so that Crown counsel may address any attempt by the accused to change the bail conditions in court at or prior to the first appearance;
  - f. Explain to the accused the need to obey all existing orders;
  - g. Ensure that victim safety issues are addressed. The arresting officer advises the releasing officer of the telephone number and address where the victim is located.
  - h. Notify the victim about the release and explain the conditions, prior to release of the accused. Where agreed practices have been established in the community, Crown counsel or designated personnel may inform the victim;
  - i. Inform the victim of and refer them to a community-based victim service program or, if no community-based program exists, the local police-based victim service program where available;
  - j. Advise the victim of VictimLink BC, a 24-hour, toll-free, confidential help and information line (1-800-563-0808);
  - k. Provide a hard copy of the UTA to the victim as soon as possible; and
  - l. Notify the victim, in the event the UTA/PTA is cancelled.
8. As domestic violence cases are complex and often involve a variety of dynamic factors, the risks posed to victims may change as new or unforeseen circumstances develop. Consequently, a reassessment of risks may be required in conjunction with ongoing communication with other involved agencies (i.e., child welfare worker, corrections staff) to ensure the continued safety of victims.
9. Victim safety is best managed by finding ways to prevent, discourage and monitor contact between the suspect and victim. Police should:
  - ❖ Monitor the suspect to ensure compliance with imposed conditions;
  - ❖ Check with the victim (or with Victim Services) on the status of safety planning;
  - ❖ Ensure that any breach of release conditions should result in a review of the risks present in the case, and a reconsideration of what measures, if any, are necessary to protect the victim's safety.

## **Cancellation of the Promise to Appear/Undertaking**

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If, as of the first appearance date indicated on the promise to appear or appearance notice, no criminal proceeding has been commenced (i.e., no information sworn or direct indictment), any attached UTA in Form 11.1 is no longer in effect. In order to preserve any conditions listed on a Form 11.1 UTA it is important that the information be sworn before the first appearance date on the PTA. It is recommended that the Report to Crown Counsel be completed on an expedited basis to ensure that the information can be sworn, if appropriate, and approved by Crown counsel, prior to the first appearance date.

If the information is sworn after the first appearance date a warrant should be requested so that any protective conditions can be re-established. The following police personnel have responsibilities in this regard:

- ❖ The court liaison officer or designate responsible for swearing the information:
  - a. Notifies the supervisor that the PTA/UTA has been cancelled and that the case will be proceeding by way of either a summons or warrant as determined by the Justice of the Peace;
  - b. At the time of swearing the information, informs the Justice of the Peace of the reasons why protective conditions are sought, and requests a warrant be issued; and
  - c. Requests a personal service summons if the case cannot proceed with a warrant.
  
- ❖ The police supervisor ensures that:
  - a. The victim is informed about the cancelled protective conditions;
  - b. The victim is referred to a community-based victim services agency, if available, or to police-based victim services, for assistance in reviewing victim safety and available protective measures;
  - c. The Protection Order Registry does not remove an order from the database. The order is cancelled and the documentation scanned into the file. The cancelled conditions are deleted from CPIC; and
  - d. Crown counsel is notified of the cancelled PTA/UTA so that they can request a change of process at the first appearance to re-establish protective conditions.

## APPENDIX TWO

# Best Practices and Principles for Conditions of Community Supervision for Domestic Violence

The dynamics of domestic violence differ significantly from other crimes because:

- ❖ The complainant is known in advance;
- ❖ The likelihood of repeat violence is common and often predictable; and
- ❖ The interactions between the justice system and the complainant are typically more complex.

The recommended categories and conditions of community supervision have been selected to support:

- ❖ The necessary protection of complainant(s), their children, and others who may be at risk, including the prevention of further offences, intimidation and harassment;
- ❖ Structured orders which are understandable, enforceable and practically achievable relative to the presenting circumstances and risk factors of each individual case;
- ❖ Clear wording of conditions which emphasize the obligations and restrictions of the accused/offender; and
- ❖ Successful and expeditious enforcement in the event of non-compliance.

These categories and conditions are not exhaustive, but rather are recommended on the basis of best practice principles for managing the risks presented by domestic violence accused/offenders. Because every case of domestic violence has the potential for unique risk factors and circumstances, these conditions may need to be modified in response. When modifying or crafting unique conditions, it is important to carefully consider each condition area and the best practice principles articulated within. Ultimately, these are suggestions, but are not binding on the exercise of discretion of the Crown or the Court, and the Crown is responsible in each case for showing cause why more restrictive bail conditions are justified.

## 1. General/Statutory Conditions

- **These conditions should be considered for inclusion on bail and 810 recognizance orders (already exist as mandatory conditions of probation and conditional sentence orders).**

- You shall keep the peace and be of good behaviour.
- You shall appear before the court when required to do so by the court.
- You shall notify the court or the [bail supervisor/probation officer/conditional sentence supervisor] in advance of any change of name or address and promptly notify the court or the [bail supervisor/probation officer/conditional sentence supervisor] of any change of employment or occupation.
- You shall remain within the province of British Columbia unless given prior written permission by the court or the [bail supervisor/probation officer/conditional sentence supervisor].

## 2. Reporting Conditions

- **The inclusion of conditions requiring supervision of the accused/offender by community corrections are critical for monitoring adherence to court imposed conditions and the management of risk and needs.**

- You shall report in person to a bail supervisor at [address of probation office], [before \_\_\_am/pm on a date specified by the court/within two working days after the making of this order], and thereafter as and when directed by the bail supervisor. If at any time prior to the expiration of this order, you are arrested, detained or have served a sentence for another offence, you shall report to the bail supervisor within two working days of your release from custody.
- You shall report in person to a probation officer at [address of probation office], [before \_\_\_am/pm on \_\_\_ a date specified by court/ within two working days after the making of this probation order/ within two working days of your release from custody/within two working days of the expiration of your conditional sentence order], and thereafter as and when directed by the probation officer. If at any time prior to the expiration of this order, you are arrested, detained or have served a sentence for another offence, you shall report to the probation officer within two working days of  You shall report in person to a conditional sentence supervisor at [address of probation office], [before \_\_\_am/pm on \_\_\_ a date specified by the court/ within two working days after the making of the conditional sentence order/ within two working days of your release from custody], and thereafter as and when directed by the supervisor. If at any time prior to the expiration of this order, you are arrested, detained or have served a sentence for another offence, you shall report to the conditional sentence supervisor within two working days of your release from custody.

### 3. Residence Conditions

- **Residence restrictions should be included on every domestic violence related order.**
- **If there are concerns regarding the risk posed by the accused and a residence cannot be confirmed prior to release, the accused should be viewed as a risk to breach bail and Crown counsel should give serious consideration to seeking a detention order.**
- **In the vast majority of domestic violence cases, the accused will be prevented from returning to the family home. It is critical when crafting residence conditions to request/assist the court to articulate/approve a specific residence prior to release, even if temporary, to support clear accountability of the accused and expeditious enforcement in the event of non-compliance.**
- **If a specific residence cannot be identified prior to release, the conditions should provide the community corrections supervisor with residence approval authority.**

- You shall reside at [insert specific address as approved by the court], and do not change that residence without the prior written permission of the [bail supervisor/probation officer/conditional sentence supervisor].
- You shall reside at a residence approved of in advance by your [bail supervisor/probation officer/conditional sentence supervisor], and do not change that residence without the prior written permission of your [bail supervisor/probation officer/conditional sentence supervisor].

### 4. Curfew

- **Imposition of curfew conditions may be appropriate and an added safeguard depending on the circumstances of the offence and prior history of the accused/offender.**

- You shall obey a curfew by being inside your residence between the hours of [\_\_\_\_pm and \_\_\_\_am] each day, except as follows:
  - With the prior written permission of the [bail supervisor/probation officer/conditional sentence supervisor]. Such permission is to be given only for compelling personal, family or employment reasons. This written permission is to be carried on your person at all times and is to be provided to a police officer upon demand; or
  - When travelling directly to, or returning directly from, your place of employment, or while in the course of your employment. You shall provide the [bail supervisor/probation officer/conditional sentence supervisor] with written proof of your employment if requested to do so.
- You shall remain within your residence at all times, and are not permitted to be outside of your residence, except as follows:

- Between the hours of [\_\_\_\_\_] and [\_\_\_\_\_] each day, in order to attend to personal matters; or
  - With the prior written permission of the [bail supervisor/probation officer/conditional sentence supervisor], which is to be carried on your person at all times. Such permission is to be given only for compelling personal, family, or employment reasons; or
  - While in the company of \_\_\_\_\_; or
  - When travelling directly to, or returning directly from, your place of employment, or while in the course of your employment. You shall provide the [bail supervisor/probation officer/conditional sentence supervisor] with written proof of your employment if requested to do so.
- You shall present yourself at the door of your residence when any Peace Officer, [bail supervisor/probation officer/conditional sentence supervisor] attends there for the purpose of determining your compliance with the curfew/house arrest condition of this Order.

## 5. Area Restrictions

- **Area restrictions should be considered for inclusion on any domestic violence related order.**

- You shall not attend at or be within [insert specific area radius using the measure of "blocks"] of [insert specific address], or any place you believe to be the residence, school or workplace of [insert specific names], except as follows:
- one attendance in the company of a peace officer for the purpose of retrieving your personal belongings; or
  - unless in the company of [insert specific name of authorized third party] for the purpose of [insert specific purpose of contact].
- Not to be in the city/municipality of [insert name of city/municipality], except:
- with the written permission of the [insert bail supervisor/probation officer/conditional sentence supervisor]
  - while on a highway in a moving motor vehicle [identify specific highway or road]
  - if travelling directly to or from or attending a scheduled court appearance, or
  - [insert other specific purpose(s) approved by the court].
- You shall not enter the area bounded by [\_\_\_\_\_ to the North, \_\_\_\_\_ to the South, \_\_\_\_\_ to the West and \_\_\_\_\_ to the East, in \_\_\_\_\_], British Columbia, except with the written permission of the person supervising this order. You must carry this permission with you and produce it to a peace officer when requested.

## 6. Disclosure Conditions

- **May be considered for inclusion in a sentenced order for community supervision when the offender has demonstrated a pattern of domestic violence offending.**

- ❑ You shall immediately advise your [probation officer/conditional sentence supervisor] of any romantic/intimate relationship with any person which resembles a marriage, common-law relationship or otherwise involves cohabitation with another person, and refrain from continuing with that relationship until that person has been advised of your criminal history by the [probation officer/conditional sentence supervisor].
- ❑ You are to immediately advise the [probation officer/conditional sentence supervisor] of any romantic/intimate relationship with any person which resembles a marriage, common-law relationship or otherwise involves cohabitation with another person, and consent to that person being informed of your criminal history by the [probation officer/conditional sentence supervisor].

## 7. Drug and Alcohol Conditions

- **Alcohol abuse is a prominent risk factor for domestic violence, is associated with violent recidivism, and may contribute to more severe violence. Abstention conditions should be considered when drugs or alcohol appear to be a factor in the index offence or the offender has a history of drug or alcohol use.**

- ❑ You shall not possess or consume any alcohol, any non-prescription drugs or any prescription drugs not prescribed for you by a licensed physician or dentist.
- ❑ You shall not attend any establishment licensed primarily for selling alcoholic beverages.

## 8. Weapons Conditions

- **Weapons restrictions should be included on all orders where violence was used, threatened or attempted, consistent with section 515(4.1) of the Criminal Code.**
- **Where police are not available to escort the accused directly from custody to the location where weapons are stored, then the first retrieval condition below should be used. Where arrangements can be made to have a police officer accompany the accused from custody to the storage location of any weapons, then the second retrieval condition should be used.**
- **In any situation where police know that the accused possesses firearms, and there are reasonable grounds to believe that it is not desirable in the interests of the safety of the person, or of any other person for the accused to be in possession of firearms, the police should immediately take steps to seize under section 117.04 of the Criminal Code, if possible.**

- You shall not possess any knives, except:
  - For the immediate preparation and consumption of food;
  - For purposes directly and immediately related to your employment; or
  - Woodworking knives and such woodworking knives are to be possessed only for the purpose of the craft of woodwork, and only to be possessed at the place, specifically [specify the place and address] where this craft is carried out.
- You shall not possess any weapon as defined in Section 2 of the Criminal Code.
- You shall not possess, own or carry any weapon, including but not limited to any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or any imitation weapon or imitation firearm including pellet guns or air guns and replica firearms, and any related authorizations, licenses and registration certificates.
- If you are in possession of, or any person possesses or holds for you on your behalf, any items that this order prohibits you from possessing, you shall, forthwith upon your release attend at the [specify police detachment] police detachment at [insert address] and present a copy of this order, for the purpose of an officer from that detachment or another officer accompanying you to the location(s) where any of the said items are kept. Upon attending at the location(s), you shall, in a manner as directed by the police, which may include your facilitating access into the location(s) by the police, such access to be solely for the purpose of your surrendering such items, surrender to the police all items that this order prohibits you from possessing that are in your possession or are in the possession of another person on your behalf, together with any authorizations, licenses or registration certificates for the said items. Except for the purposes of surrendering to the police in accordance with this condition, you must not possess any of the said items and you must not reside in a residence where any other person keeps or stores any such items.



- ❑ If you are in possession of, or any person possesses or holds for you on your behalf, any items that this order prohibits you from possessing, you shall, forthwith upon your release, accompany [insert rank and name of officer pre-arranged by Crown] to the location(s) where items that this order prohibits you from possessing are kept. Upon attending at the location(s), you shall, in a manner as directed by the police, which may include your facilitating access into the location(s) by the police, such access to be solely for the purpose of your surrendering the said items, surrender to the police all such items, together with any authorizations, licenses or registration certificates for the said items. Except for the purposes of surrendering to the police in accordance with this condition, you must not possess any of the said items and you must not reside in a residence where any other person keeps or stores any such items.

## 9. No Contact Conditions / Exceptions for Indirect Contact

- **Specify the precise names of individuals requiring protection and the specific purpose of any exceptions for indirect contact that may be considered appropriate in the circumstances.**
- **If possible, canvas the accused and the victim for the existence of family court orders/written separation agreements to minimize unintended conflict between orders.**
- **When there is conflict between a civil and criminal order (e.g. Family Relations Act order granting reasonable access to children and a bail order restricting direct or indirect contact with a spouse by way of a no contact condition) the more restrictive terms of the criminal order are enforced.**

- ❑ You are to have no contact or communication, directly or indirectly with [insert the specific names of victim(s), children, family, friends, business associates and others who require protection].
- ❑ You are to have no contact or communication, directly or indirectly with [insert the specific names of victim(s), children, family, friends, business associates and others who require protection], except :
  - Through legal counsel, or a family justice counsellor for the purpose of [select one or a combination of the following depending on the circumstances]:
    - Arranging, facilitating or exercising access to your children in accordance with a family court order or written separation agreement;
    - Resolving matters of maintenance, property, custody and access; or
    - Arranging household matters, including finances and child care, during the existence of this order/until the charges are resolved.

# Recommended Conditions for Inclusion On Warrants of Remand/Detention/Committal

The Criminal Code makes provision for communication restrictions while an accused/offender is in custody pre-trial and post-sentencing. Orders under the following three sections greatly enhance Corrections officers' ability to restrict contact with the victim or other protected parties. Protecting the victim and others from harassment, intimidation and threats, and protecting the integrity of the evidence for trial may depend on restricting the accused's/offender's access to the victim and other witnesses while in jail, especially when the motive to influence the victim and other witnesses is likely to be strong.

## General Principles

- Exceptions for indirect communication should be carefully considered when the accused is being remanded or detained for alleged offences and contact may be used to threaten or intimidate the protected party.
- Any exceptions should be limited to a purpose specifically set out by the court in appropriate circumstances following an analysis of risk factors and the specific reasons stated for indirect contact. As detention and sentencing orders may be in place for an extended period of time, consideration may be given to indirect communication with the protected party for specified purposes.
- Enforcing non-compliance with the order is greatly enhanced when the communication restrictions and any exceptions are clearly outlined by the court.

### 1) Applicable While the Accused is...

#### Remanded Pending a Bail Hearing - Sec 516(2)

- Enforcement is initiated pursuant to section 145(3)
- Although the suggested conditions note that they are in effect until further order of the court, Crown must reapply for the section 516(2) order at each and every remand to ensure that the non communication order remains in effect until such time as a judicial interim release hearing is held and an order is made arising from that hearing.

- ❑ You are to have no contact or communication, directly or indirectly with [insert the specific names of victim(s), children, family, friends, business associates and others who require protection] until further order of the court.
- ❑ You are to have no contact or communication, directly or indirectly with [insert the specific names of victim(s), children, family, friends, business associates and others who require protection] until further order of the court, except :

- Through legal counsel, or a family justice counsellor, for the purpose of [select one or a combination of the following depending on the circumstances]:
  - Arranging, facilitating or exercising access to your children in accordance with a family court order or written separation agreement;
  - Resolving matters of maintenance, property, custody and access; or
  - Arranging household matters, including finances and child care, during the existence of this order/until the charges are resolved.

## 2) Applicable While the Accused is ... Detained After a Bail Hearing - Sec. 515(12)

- **Enforcement is initiated pursuant to section 145(3)**

- You are to have no contact or communication, directly or indirectly with [insert the specific names of victim(s), children, family, friends, business associates and others who require protection].
- You are to have no contact or communication, directly or indirectly with [insert the specific names of victim(s), children, family, friends, business associates and others who require protection], except :
  - Through legal counsel, or a family justice counsellor, for the purpose of [select one or a combination of the following depending on the circumstances]:
    - Arranging, facilitating or exercising access to your children in accordance with a family court order or written separation agreement;
    - Resolving matters of maintenance, property, custody and access; or
    - Arranging household matters, including finances and child care, during the existence of this order/until the charges are resolved.

## 3) Applicable while the Offender is ... Serving a custody sentence - Sec. 743.21(1)

- **Enforcement is initiated pursuant to section 743.21**

- You are to have no contact or communication, directly or indirectly with [insert the specific names of victim(s), children, family, friends, business associates and others who require protection].
- You are to have no contact or communication, directly or indirectly with [insert the specific names of victim(s), children, family, friends, business associates and others who require protection], except :
  - Through legal counsel, or a family justice counsellor, for the purpose of [select one or a combination of the following depending on the circumstances]:
    - Arranging, facilitating or exercising access to your children in accordance with a family court order or written separation agreement;
    - Resolving matters of maintenance, property, custody and access; or
    - Arranging household matters, including finances and child care, during the existence of this order/until the charges are resolved.



