

# MAINE STATE LEGISLATURE

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## **BATTERER INTERVENTION PROGRAMS (BIP)**

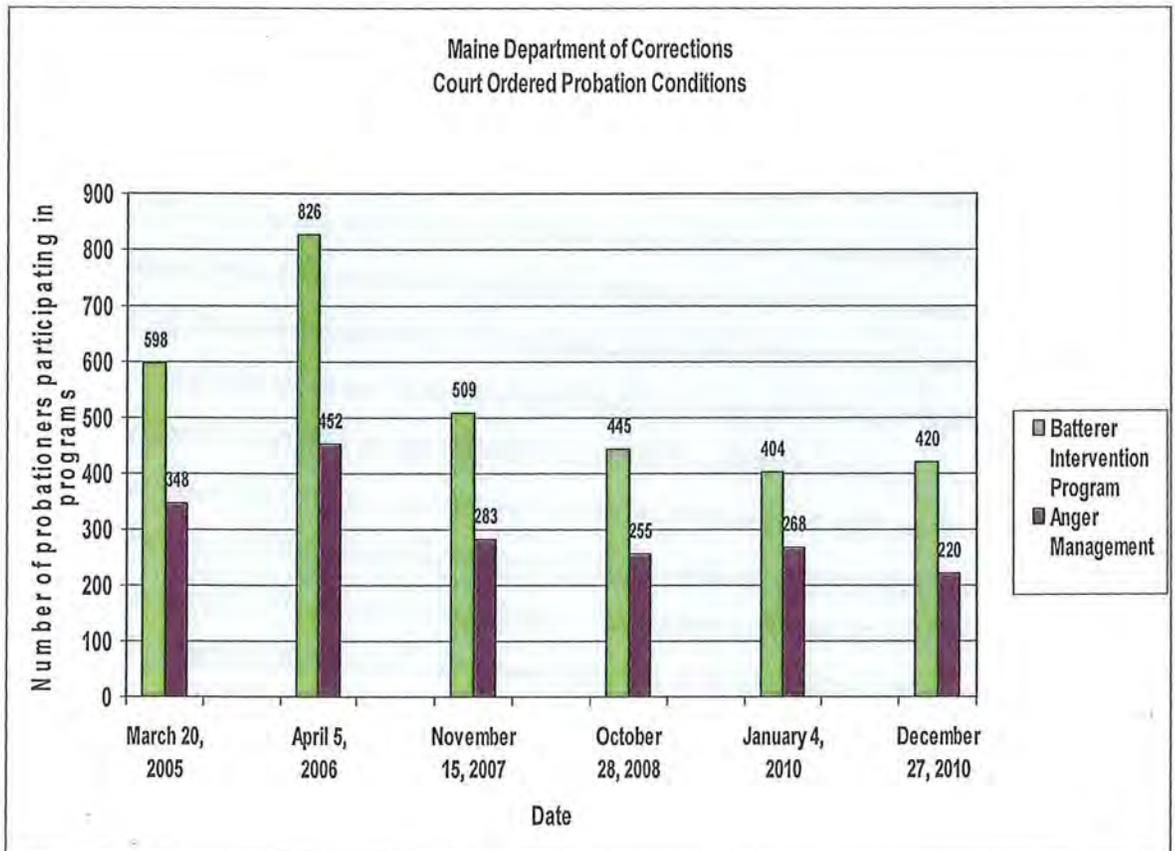
### **A Report to the 125th Legislature**

As a result of recommendations made by the Legislative Commission to Study Domestic Violence to the 120<sup>th</sup> Session of the Maine State Legislature, the Department of Corrections Office of Victim Services is required to report annually to the legislature on the performance of Batterer Intervention Programs in Maine. This is the eighth annual report.

The state standards for Batterer Intervention Programs require the Department of Corrections to monitor each program, which is done on an annual basis. There were no significant issues identified as a result of the monitoring done in 2010. (Attachment A) One complaint was received from a family violence project partner and a corrective action plan developed and implemented. One complaint was received from a program participant which was investigated and determined to be unfounded.

Since September of 2004, the Department of Corrections has maintained statistics comparing the number of offenders serving a term of probation with a condition of anger management to the number of probationers with the condition of attendance at a certified batterer intervention program. The trends reveal that the total number of domestic violence offenders on probation has declined. There are a number of domestic violence offenders sentenced to a term of deferred disposition, these offenders are not reflected in the chart. A study of deferred disposition done by the Muskie School of Public Policy for the State Sentencing and Correctional Practices Council found that domestic violence offenses are the third most frequently recommended offense for deferred disposition. (Attachment B)

The percentage of probationers being sentenced to anger management rather than batterer intervention programs is of concern; there is a great deal of research which states that battering is not about anger but rather is about power and control. Molly Butler Bailey in a 2006 article for the Maine Bar Journal states that “anger management is not an appropriate sentence in domestic violence cases and its use should be prohibited.” (Attachment C) The difference between anger management and batterer intervention is demonstrated in a side by side comparison adapted from the national model by the Cumberland county Family Violence Intervention Partnership (Attachment D)



Research indicates that men and women who use violence in their intimate relationships do so for very different reasons. Men who are arrested for domestic abuse may be referred to a Batterers Intervention Program. Currently, there are twelve certified Batterers Intervention Programs (BIP), providing services to men who have committed domestic violence offenses. This remains consistent with the literature, which indicates men and women use violence in their intimate relationships for different reasons, as demonstrated by Professor Robert Moyer in his paper "The Fate of Women Arrested for Domestic Violence. (Attachment E)

There are currently women who attend judicial monitoring, with no oversight of the programs they may be attending. Until recently in Maine, when a woman was arrested for domestic abuse, there were no appropriate programs to refer her to. It is a safety issue as some of those women may actually be the victim rather than the aggressor. There is currently one program for women who are involved with the judicial monitoring court. The Family Violence Project in Kennebec and Somerset counties is working with Youth and Family Services to ensure that there is equitable programming available to women who have been convicted of domestic violence offenses. The pilot program for women follows the same basic structure, i.e. 48 weeks but the content is gender specific. There is concern among some domestic violence advocates that women who are victims are being arrested and convicted and therefore are reluctant to support this initiative. The pilot program located in Somerset county, has been active for eighteen months and currently has five women participating. There are currently 25 women on probation statewide who have been convicted of domestic violence related offenses.

Prosecutors and others in the criminal justice system have been concerned about equal protection issues with the lack of certified programs for women convicted of domestic violence. In late 2009, a motion was filed by a defense attorney in the Belfast District Court alleging that the imposition of a sentence of two years of probation with a condition of completion of a certified batterer intervention program violated his equal protection rights. In April of 2010, Justice Hjelm's decision on the motion did not find the law unconstitutional as to the imposition of a certified batterer intervention program

for men as long as there is an equitable program for woman and an equitable length of the probationary period. (Attachment F).

Appropriate batterer intervention programs with oversight and monitoring is an essential component of the coordinated community response, and is a requirement of the judicial monitoring project. There are not batterer intervention programs available in every county in Maine. There are not appropriate programs for women who use violence. There is neither criminal justice system nor community support for batterer programs in some counties. The reason for batterer intervention programs still exists in **every** county in Maine. Domestic violence is a significant factor in approximately half of the homicides committed in Maine. A coordinated community response is the most effective way to attempt to change this statistic.

# **ATTACHMENT A**



### **Thoughts, Observations, and Suggestions from my 2010 BIP monitoring sessions.**

1. There is a significant difference in the number of participants in the BIP's. Some are at maximum size and others struggle with having enough men to meet the minimum group size. Reasons for each of these situations could be researched?
2. Equal participation and input of the facilitators continues to be positive trait of the BIP sessions. This exhibits very positive role modeling.
3. Some of the BIP's use role playing in the sessions and this can be a useful educational tool.
4. Thoughts on varying the type of check-in process for the BIP sessions. The same type every week gets repetitious and the batterer goes through the process without much thought. Some of the programs use a "reverse" check-in process that requires the batter to assume the role of the victim for the check-in. This could be expanded to the role of the children (if present) or the police officer who responds to the DV call. A game type spinner or dice could be used to identify the role to be used in check-in. That way the batterer will be thinking about and be prepared to speak about each of the roles in the DV situation that brought him to the BIP in the first place.
5. BIP's who use a dress code or no-hat rule hold the batterers to a higher standard of responsibility. Establish, exhibit, discuss, and use group "ground rules" (Have one of the participants who has been in the program for a while explain these every time a new person enters the group)
6. Use speakers from the community to reinforce the coordinated community response model. Use the statement that BIP's do not stop DV – Communities stop DV. These speakers could include but not limited to Probation Officers, Police, State Troopers, Family Violence Project staff, employers who have a good workplace safety program.
7. Ask the local police to drive by your location a few minutes before your class starts and, perhaps, park in a conspicuous place when the participants leave. This will also support the idea of coordinated community response.
8. Do not allow bathroom breaks. This is disruptive to the class and abused when allowed.
9. Use of visual aids adds to the educational part of the class. This may include flipcharts, PowerPoint, videos, etc.
10. The use of open ended questions for participants who are not participating in the discussions helps maintain the level of interest.
11. The non-verbal communications that is going on in a BIP session can be very important to the overall effectiveness of the class and the facilitators need to be aware of these messages.

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## **ATTACHMENT B**



# AN ANALYSIS OF DEFERRED DISPOSITION AND ADMINISTRATIVE RELEASE IN MAINE

Muskie School of Public Service for the  
CLAC/SSCPCC

# Prosecutorial District (Response Totals)

District	Response Percent	Response Count
District 2- Cumberland County	42.1%	16
District 4 – Kennebec and Somerset Counties	13.2%	5
District 5 – Penobscot and Piscataquis Counties	13.2%	5
District 6 – Knox, Lincoln, Sagadahoc and Waldo Counties	10.5%	4
District 7 – Hancock and Washington Counties	15.8%	6
District 8 – Aroostook County	5.3%	2

\*Districts 1 (York County) and 3 (Androscoggin, Franklin and Oxford Counties) returned no responses.

# Defense Attorney District (Response Totals)

District	Response Percent	Response Count
District 1 – York County	13.0%	3
District 2- Cumberland County	43.5%	10
District 3 – Androscoggin, Franklin and Oxford Counties	13.0%	3
District 4 – Kennebec and Somerset Counties	17.4%	4
District 5 – Penobscot and Piscataquis Counties	4.3%	1
District 6 – Knox, Lincoln, Sagadahoc and Waldo Counties	8.7%	2

\*Districts 7 (Hancock and Washington Counties) and 8 (Aroostook County) returned no responses

# District vs. Superior Court

	District Court	Superior Court
<b>Prosecutors</b>	36.8%	63.2%
<b>Defense Attorneys</b>	17.4%	82.6%

# Deferred Disposition Background

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- Beginning in 2004, the Maine Legislature created two new sentencing options: “deferred disposition” and “administrative release”.
- A sentence of deferred disposition is authorized for anyone who pleads guilty to any Class C, D or E crime.
- In a deferred disposition arrangement, the court accepts the guilty plea and continues the case for later disposition (typically for one year).

# Deferred Disposition Background (continued)

- During the deferral period, the defendant must be under a requirement not to commit any criminal conduct, and may be placed under any other reasonable conditions the court deems appropriate.
- If the court decides that the defendant inexcusably failed to comply with a deferred disposition requirement, the court may continue the running of the deferred disposition period with amended or unchanged conditions, or the court may terminate the deferment and impose a sentence within the range of punishment available for the crime to which the person pled guilty.

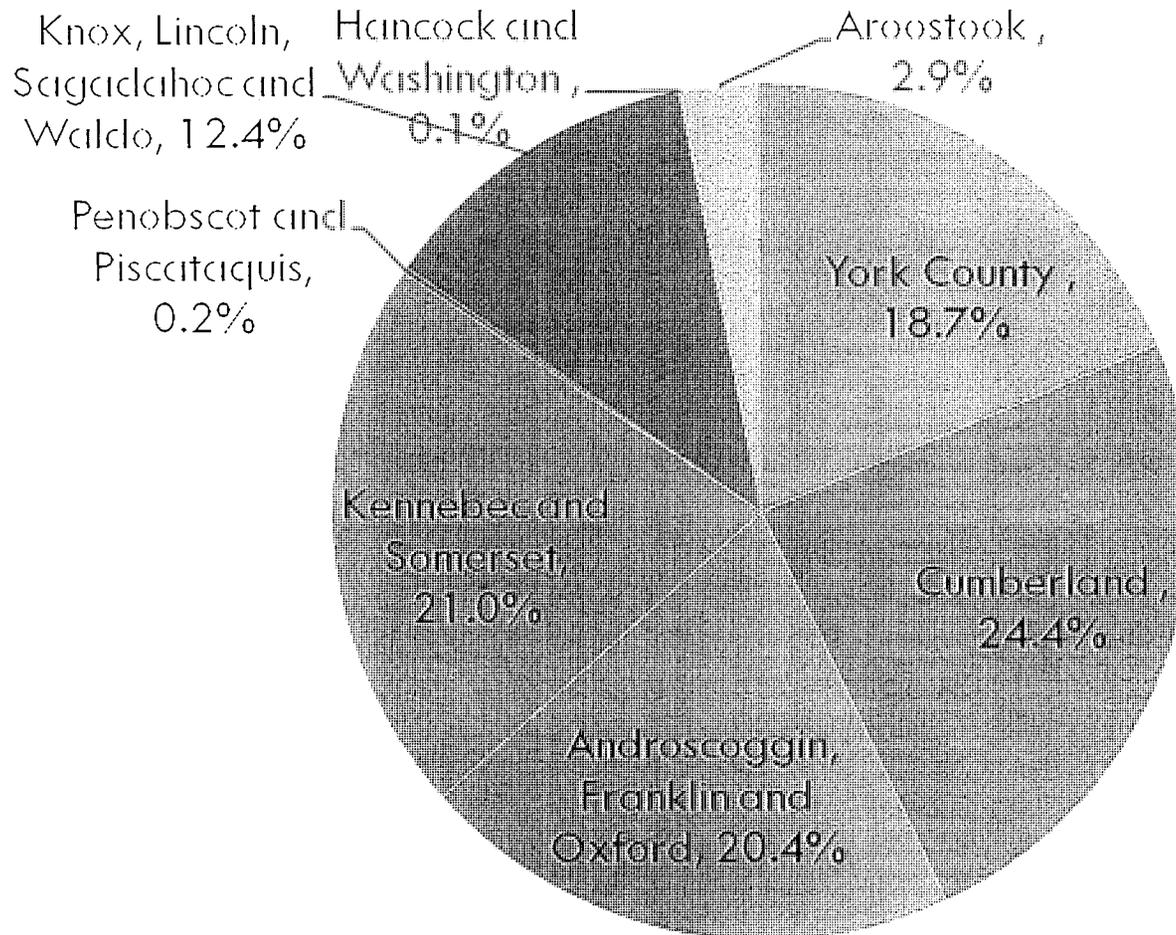
# Deferred Disposition Background (continued)

- At the end of the deferral term, there is to be a hearing on disposition. At the hearing, the defendant bears the burden of demonstrating by a preponderance of evidence that he or she has complied with all deferred disposition conditions.
- If this burden is met, the State may move to allow the defendant to withdraw the previously entered guilty plea.
- If the burden is not met, the court is to sentence the defendant within the terms of the written agreement.

# Deferred Dispositions: Yearly Totals by District

	2005	2006	2007 (projected)
District 1 – York County	166	212	350
District 2- Cumberland County	167	331	458
District 3 – Androscoggin, Franklin and Oxford Counties	225	368	382
District 4 – Kennebec and Somerset Counties	153	319	394
District 5 – Penobscot and Piscataquis Counties	2	8	4
District 6 – Knox, Lincoln, Sagadahoc and Waldo Counties	21	110	232
Districts 7 – Hancock and Washington Counties	1	0	2
District 8 – Aroostook County	6	14	54

# Share of Deferred Disposition Statewide Total – 2007



# Deferred Dispositions: Rate of Use in 2007

<b>Prosecutorial District</b>	<b>Number of deferred dispositions (projected)</b>	<b>Number of Adult Criminal Cases Filed</b>	<b>Percentage of deferred dispositions</b>
District 1 – York	350	10,256	3.4%
District 2- Cumberland	458	11,418	4.0%
District 3 – Androscoggin, Franklin and Oxford	382	8,940	4.3%
District 4 – Kennebec and Somerset	394	8,017	4.9%
District 5 – Penobscot and Piscataquis	4	7,786	0.1%
District 6 – Knox, Lincoln, Sagadahoc and Waldo	232	5,878	3.9%
Districts 7 Hancock and Washington	2	3,318	0.1%
District 8- Aroostook	54	2,727	2.0%

# Have you personally negotiated a deferred disposition?

	Yes	No
<b>Prosecutors</b>	89.7%	10.3%
<b>Defense Attorneys</b>	100%	0%

# Additional Prosecutor Questions

Have your charging decisions changed since the implementation of these two sentencing options?

Answer Options	Response Percent	Response Count
Yes	10.3%	4
No	89.7%	35

Are there any Class D and E offenses that you would like to have probation as a sentencing option?

Answer Option	Response Percent	Response Count
Yes	65.7%	23
No	34.3%	12

*Most common responses: 1. Assault; 1. (tie) OUI; 2. Drug Charges*

# What are the most important criteria for recommending a deferred disposition?

<b>Prosecutors</b>	<b>Defense Attorneys</b>
1. First Time Offender	1. Consequences of Conviction
2. State of the Evidence	2. First Time Offender
3. Non-Violent Offenses	3. Small Dollar Loss
4. Victim Wishes	4. Non-Violent Offenses
5. Consequences of Conviction	5. Availability of Services

# Differences Among Prosecutorial Districts (Deferred Disposition Criteria)

- District 5 (Penobscot and Piscataquis Counties) prosecutors are **LESS** likely to consider *non-violent offenses* as an important criterion for recommending deferred disposition.
- District 5 (Penobscot and Piscataquis Counties) prosecutors are **MORE** likely to consider *the consequences of conviction* as an important criterion for recommending deferred disposition.
- District 6 (Knox, Lincoln, Sagadahoc, and Waldo Counties) prosecutors are **LESS** likely to consider *the consequences of conviction* as an important criterion for recommending deferred disposition.

# Most common offenses offered/recommended deferred disposition

Prosecutors	Defense Attorneys
1. Theft	1. Theft
2. Assault	2. Assault
3. Domestic Violence	3. Domestic Violence

# In what type of cases has deferred disposition proven MOST effective?

<b>Prosecutors</b>
1. Cases involving Theft
2. Cases involving First Time Offenders
3. Cases involving Restitution

\*There are too few responses to this question from Defense Attorneys to draw general conclusions.

# In what type of cases has deferred disposition proven LEAST effective?

<b>Prosecutors</b>
1. Cases involving Substance Abusers
2. Cases involving Large Restitution
2. (tie) Cases involving Repeat Offenders

\*There are too few responses to this question from Defense Attorneys to draw general conclusions.

# Administrative Release Background

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- Administrative release is an available sentencing option for Class D and E Crimes, and for the Class C crime of operating after license revocation.
- Unlike a deferred disposition, administrative release can be imposed when a person has been found guilty after trial, as well as after the person has pled guilty.
- Administrative release may be imposed as part of a sentence involving a wholly suspended jail term; a jail term suspended in part after a period of incarceration; or a fine that is suspended in whole or in part.

# Administrative Release Background (continued)

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- The maximum term of administrative release is one year. During this term, the person must abide by conditions ordered by the court, which must include that the person commit no criminal conduct and may include any other conditions to help ensure the person's "accountability and rehabilitation".
- If the court determines by a preponderance of evidence that a violation has occurred, the court can revoke administrative release.

# Administrative Release Background (continued)

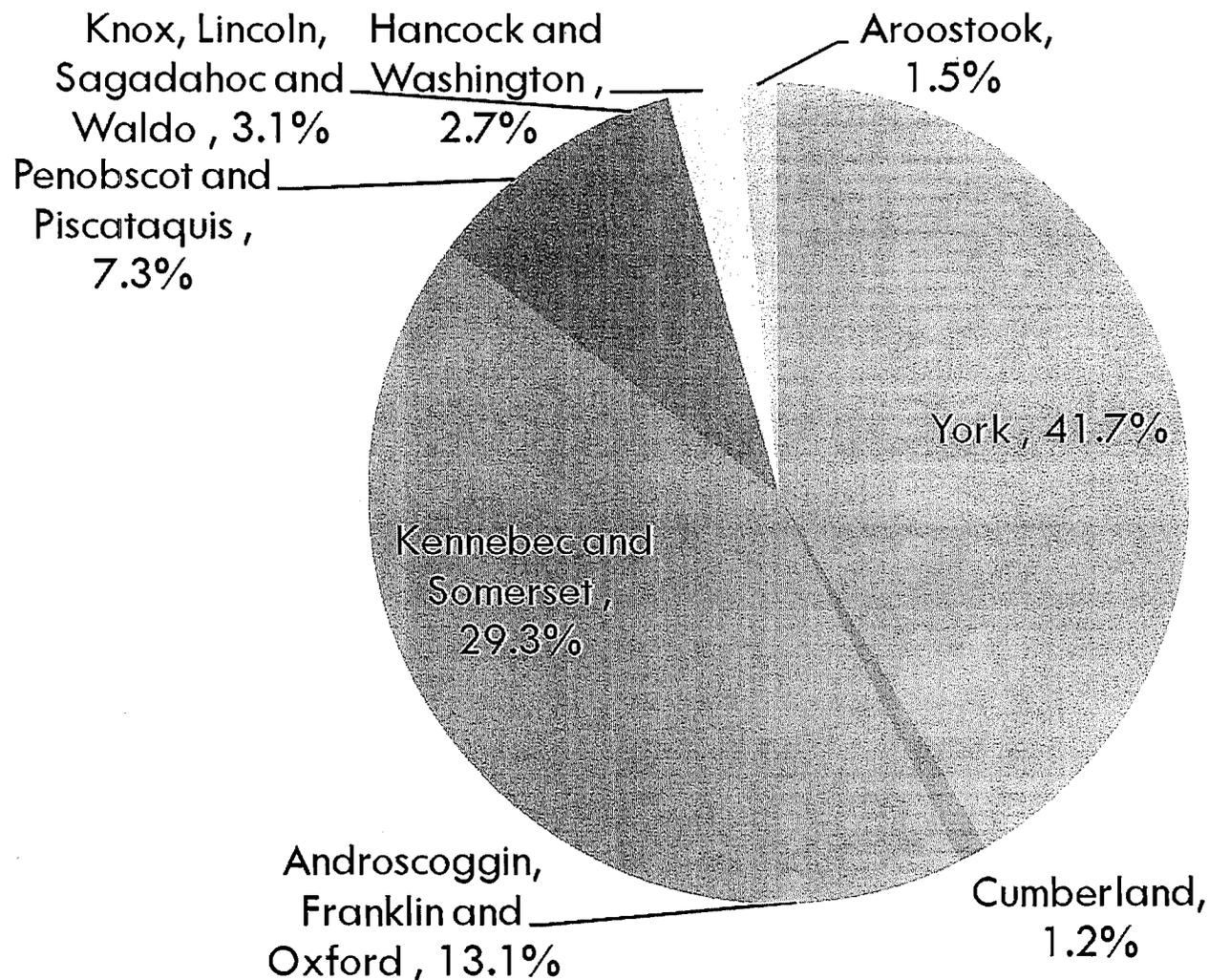
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- If the court revokes administrative release, it may order that a portion of the suspended sentence be imposed, with administrative release to continue (with or without added conditions); or it may impose all or a portion of the suspended sentence and terminate administrative release.
- Once the administrative release period has been fully served, or terminated without a motion to revoke, the sentence is completed and the person is fully discharged.

# Administrative Release: Yearly Totals by District

	2005	2006	2007 (projected)
District 1 – York County	79	193	216
District 2- Cumberland County	8	8	6
District 3 – Androscoggin, Franklin and Oxford Counties	37	68	68
District 4 – Kennebec and Somerset Counties	39	145	152
District 5 – Penobscot and Piscataquis Counties	29	41	38
District 6 – Knox, Lincoln, Sagadahoc and Waldo Counties	24	30	16
Districts 7 Hancock and Washington Counties	3	10	14
District 8- Aroostook County	3	4	8

# Share of Administrative Release Statewide Total – 2007



# Administrative Releases: Rate of Use in 2007

Prosecutorial District	Number of administrative releases (projected)	Number of Adult Criminal Cases Filed	Percentage of administrative releases
District 1 – York	216	10,256	2.1%
District 2- Cumberland	6	11,418	0.1%
District 3 – Androscoggin, Franklin and Oxford	68	8,940	0.8%
District 4 – Kennebec and Somerset	152	8,017	1.9%
District 5 – Penobscot and Piscataquis	38	7,786	0.5%
District 6 – Knox, Lincoln, Sagadahoc and Waldo	16	5,878	0.3%
Districts 7 – Hancock and Washington	14	3,318	0.4%
District 8 – Aroostook	8	2,727	0.3%

# The most common criteria used for recommending Administrative Release

<b>Prosecutors</b>	<b>Defense Attorneys</b>
1. Non-Violent Offenses	1. Small Dollar Loss
2. Victim Wishes	2. First Time Offender
3. First Time Offenders	3. Non-Violent Offenses
4. State of the Evidence	4. Consequences of Conviction

# Differences Among Prosecutorial Districts (Administrative Release Criteria)

- District 7 (Hancock and Washington Counties) prosecutors are **MORE** likely to consider *first time offender status* as a criterion for recommending administrative release.
- District 5 (Penobscot and Piscataquis Counties) and 7 (Hancock and Washington Counties) prosecutors are **MORE** likely to consider *the state of evidence* as a criterion for recommending administrative release.
- District 2 (Cumberland County) and 4 (Kennebec and Somerset Counties) prosecutors are **LESS** likely to consider *the state of evidence* as a criterion for recommending Administrative Release.

# What are the most common offenses you have offered Administrative Release? (prosecutors)

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- 1. Assault
- 2. Theft
- 3. Never Offer Administrative Release\*

\*District 6 (Knox, Lincoln, Sagadahoc and Waldo Counties) prosecutors are the most likely to report that they never offer Administrative Release.

# What are the biggest complaints about current sentencing policies, practices or programs?

<b>Prosecutors</b>	<b>Defense Attorneys</b>
1. Inconsistency in Sentencing	1. Sentences too harsh/strict
1. (tie) Light Sentences	2. Deferred Dispositions only available through discretion of prosecutor
2. Lack of Programs	2. (tie) Deferred Dispositions receive preference over filings.
3. Unavailability of Probation	

Do You have effective and available non-incarceration corrections programs in your district for non-violent or other felony offenders?

	Yes	No
Prosecutors	54.8%	45.2%
Defense Attorneys	80.0%	20.0%

*Prosecutors cite **Volunteers of America** as the best non-incarceration corrections program for non-violent offenders. There is no general consensus among Defense Attorneys regarding the best non-incarceration corrections program.*

## **ATTACHMENT C**



STATE OF MAINE  
WALDO, SS.

SUPERIOR COURT  
Docket No. CR-07-358

State of Maine

v.

Order

Paul Douglas Belden II

On October 15, 2008, the defendant proceeded to trial by jury on two counts of domestic violence assault. *See* 17-A M.R.S. § 207(1)(A). The jury found the defendant guilty of both charges, which were based on two separate incidents but involved the same victim. On October 24, the court imposed two identical, concurrent sentences of sixty days, with all but ten days suspended. Pursuant to 17-A M.R.S. § 1202(1-B), the court imposed a two-year probationary period, which was statutorily predicated on a requirement that, as a condition of probation, the defendant participate in a certified batterer's intervention program. The defendant appealed the convictions to the Law Court, which affirmed the judgment. While that appeal was pending, the defendant moved for a "determination of the constitutionality of sentence," which the court treats as a motion for relief from an illegal sentence under M.R.Crim.P. 35(a). That is the motion at bar. Hearing on the motion was held on October 29, 2009. Subsequent to the hearing, the parties filed written argument, which the court has considered.

Belden argues that the sentence violated his constitutional guarantee of equal protection, because certified batterer's intervention programs were available only for male offenders and not for female offenders. On this basis, Belden argues that the sentence was affected by an impermissible sex-based disparity. In support of this contention, Belden challenges the constitutionality of both the statute defining the crime for which he was convicted, *see* 17-A M.R.S. § 207(1)(A), and the statute authorizing the court to require a convicted offender to participate in a batterer's intervention program, in which case the period of probation may be extended beyond the one-year maximum that is applicable otherwise, to two years, *see* 17-A M.R.S. §§ 1202(1), 1202(1-B).

A statute challenged for gender-based discrimination is examined to determine "if it serves important governmental objectives and . . . [if] the discriminatory means employed are substantially related to the achievement of those objectives." *United States v. Virginia*, 518 U.S. 515, 532-33 (1996) (internal punctuation omitted). This criterion is an intermediate one – more forgiving than for a statute that creates a suspect classification such as race or national origin, *id.* at 532 n.6, which is subject to "rigid scrutiny" and must be justified by "the most compelling affirmative justification," *see Graham v. Richardson*, 403 U.S. 365, 375-76 (1971), but less exacting than the level of inquiry generated by statutes that do not implicate classes of individuals but rather address issues of economics and social welfare, requiring only that there exist a rational relationship between the means and the intended goal, *see id.* at 371.

Belden first attacks the constitutionality of the statute that defines the crime of domestic violence assault. Section 207-A(1)(A) provides: "A person is guilty of domestic violence assault if . . . [t]he person violates section 207 and the victim is a family or household member as defined in Title 19-A, section 4002, subsection 4." As applicable here, section 207, in turn, provides: "A person is guilty of assault if . . . [t]he person intentionally, knowingly or recklessly causes bodily injury or offensive physical contact to another person."

Section 207-A does not violate principles of equal protection. It does not purport to distinguish between males and females. Rather, it is gender-neutral and of equal application across the gender line.

Next, Belden argues that section 1202(1-B) is discriminatory. That statute provides:

if the State pleads and proves that the enumerated Class D or Class E crime was committed by the person against a family or household member, and if the court orders the person to complete a certified batterers' intervention program as defined in Title 19-A, section 4014, the person may be placed on probation for a period not to exceed 2 years, except that the term of probation must be terminated by the court when the probationer has served at least one year of probation, has completed the certified batterers' intervention program, has paid in full any victim restitution ordered and, from the time the period of probation commenced until the motion for termination is heard, has met all other conditions of probation.

As with the domestic violence assault statute, this statute providing expanding

sentencing options, taken by itself, is not constitutionally flawed. It does not create any classifications of persons who are subject to its provisions. Rather, it is gender-neutral and, more generally, classification-neutral.

The problem arises, however, not with the isolated terms of section 1202(1-B) but rather upon its application. Section 1202(1-B) authorizes the court to require, as a condition of probation, that the domestic violence offender participate in and successfully complete a "certified batterers' intervention program" as defined in 19-A M.R.S. § 4014. Section 4014 is an enabling statute charging the Department of Corrections with establishing administrative rules that establish standards and procedures governing certified batterers' intervention programs. As of the time the defendant committed the crimes of assault and the time when he was sentenced,<sup>1</sup> those rules defined "batterer's intervention program" as

an educational program *for men*, which is one component of a coordinated community response to domestic abuse where the main goals are

- a. working toward the safety of victims; and
- b. holding batterers accountable for their actions.

(Emphasis added.)

The BIP groups, under DOC's administrative rules, would consist exclusively of men. The rules also recited that its "standards are specifically designed for men who abuse their intimate women partners. A different model may be developed for same sex batterers, and for women who are abusive."

As of the date of the hearing on Belden's motion, there were 15 certified batterers' intervention programs for men located within the state. There was one such program for women. That program, located in Skowhegan, was a pilot program founded in January 2009. Its first participant was accepted in May 2009. Nonetheless, at the times relevant here, there were no administrative rules authorizing the creation of BIP programs for women or regulating the content and procedure for them. Therefore, although section 1202(1-B) is facially neutral, the sentencing authority it creates could be exercised only in cases where the defendant is male. Those sentencing provisions are not

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<sup>1</sup> Evidence presented at the motion hearing revealed that on the day following that hearing, new rules were to go into effect.

available in cases with female defendants.

The limitation of BIP participants to men, and the corresponding exclusion of women from such authorized programs, does not satisfy the constitutional standards that must be met for a gender-based disparity to survive constitutional challenge. As explained by the Department of Correction's Victim Service Coordinator, who oversees victim service programs, programs for women did not exist until recently, because there were not enough female offenders to justify the existence of such programs. However, at least as of 2007, batterers' intervention programs for women offenders were proposed because of an increasing number of such defendants. Thus, prior to 2007, regardless of whether a small pool of prospective female participants could have justified restriction of programs to male probationers, when the defendant committed the crimes of domestic violence assault in July and September 2007, any such justification would have dissipated. Therefore, as of the offense dates and certainly at the time the defendant was sentenced, the exclusion of women from batterers' intervention programs was not substantially related to the accomplishment of the articulated goals of those programs, namely, promoting the safety of domestic violence assaults and holding perpetrators accountable for their crimes. This means that aspects of sentencing that are uniquely authorized by section 1202(1-A) cannot be constitutionally imposed against Belden because they violate his constitutional right to equal protection under the laws.

Accordingly, imposition of a two-year period of probation was unlawful. This duration of probation is permissible under section 1202(1-B) only if a defendant is required to participate in a certified batterers' intervention program. And because such programs are available only for male defendants, men -- and not women -- are exposed to the two-year period of probation. Accordingly, any amount of probation that exceeds the term that could be imposed in a case involving a female perpetrator is unlawful, and that excess must be vacated. Therefore, the period of probation in this case must be reduced to one year.

The final question is whether it is unlawful to require, as a condition of probation, the defendant to attend and successfully complete a batterers' intervention program, when such a program was not available for women offenders. By statute, the court is authorized to require a probationer to participate in psychiatric treatment and to meet any

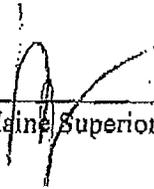
other condition "reasonably related to the rehabilitation of the convicted person or the public safety or security." 17-A M.R.S. §§ 1204(2-A)(D), (M). Under section 1204(2-A)(D), the court may order participation in a batterers' intervention program only if that program is certified under 19-A M.R.S. § 4014. The effect of this is that although men and women offenders can be ordered to participate in psychiatric treatment and other forms of counseling and therapeutic intervention generally, during the times relevant to this case, only a male probationer could be required to attend BIP specifically. Nonetheless, other comparable types of counseling, such as for anger management, have been available for women offenders.

The court does not find a constitutional flaw in an order directing a male offender to undergo BIP when women also may be ordered to engage in psychological counseling, even though that counseling is not BIP. In both cases, the requirement of participation is identical, and the consequences for successful and unsuccessful participation are identical for both genders. The constitutional protections relevant here prohibit imposition of a punishment against a male offender that is harsher than the punishment that may be imposed against women. *See State v. Houston*, 534 A.2d 1293, 1297 (Me. 1987). Nothing in this record suggests that participation in a batterers' intervention program is a harsher experience qualitatively or quantitatively compared to participation in other forms of therapy designed to protect victims of domestic violence and hold perpetrators accountable for past acts of domestic violence. Therefore, the requirement imposed on the defendant to engage in a certified batterers' intervention program was lawful.

The entry shall be:

For the foregoing reason, the period of probation imposed on counts 1 and 2 is reduced from two years to one year. In all other respects, the sentences will remain in full force and effect.

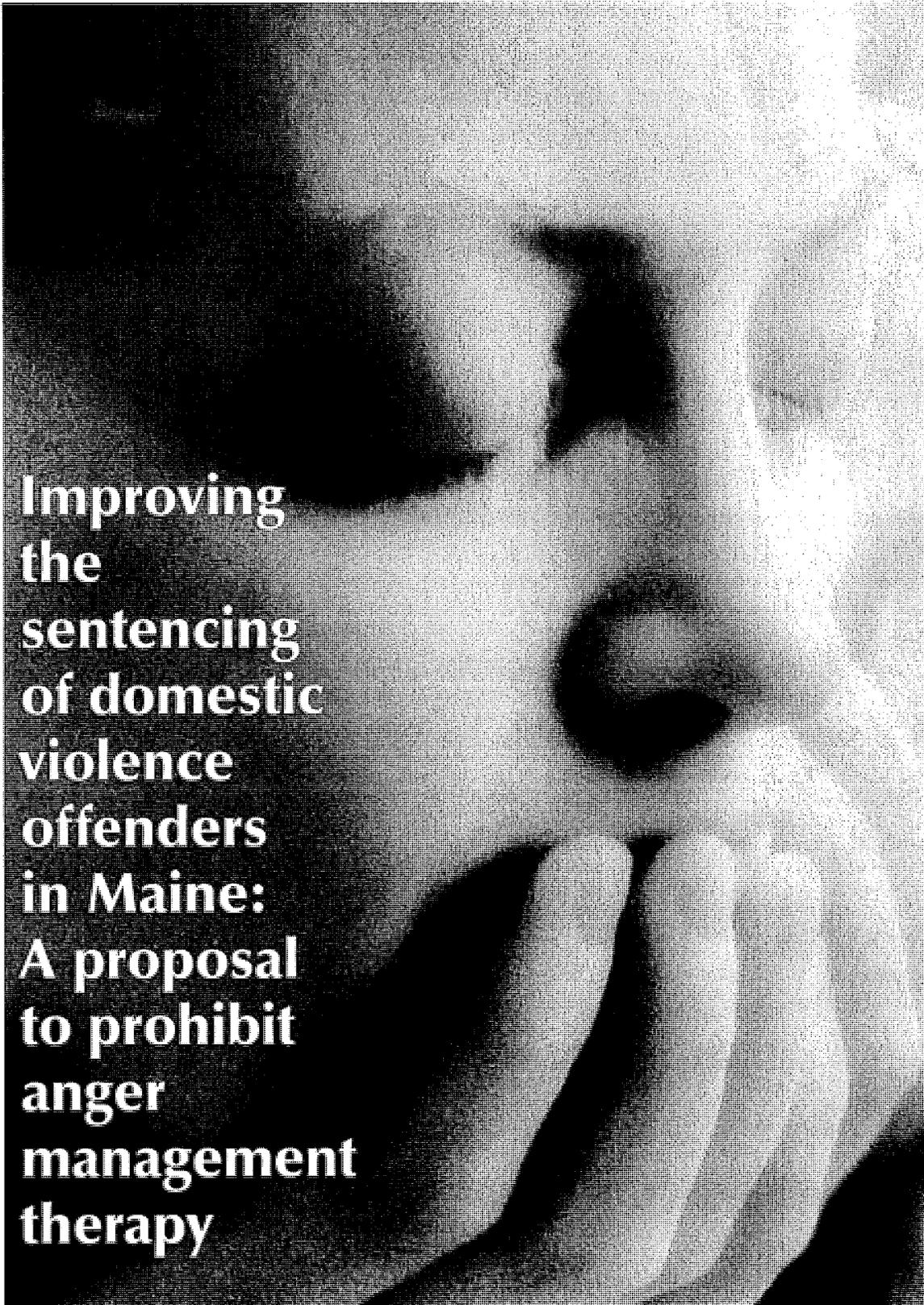
Dated: April 20, 2010

  
Justice, Maine Superior Court



# **ATTACHMENT D**





**Improving  
the  
sentencing  
of domestic  
violence  
offenders  
in Maine:  
A proposal  
to prohibit  
anger  
management  
therapy**

By Molly Butler Bailey

**C**URRENTLY, WHEN AN OFFENDER IS CONVICTED OF DOMESTIC VIOLENCE IN the state of Maine, he<sup>1</sup> will be sentenced to jail time, batterer's intervention, or anger management therapy. But anger management is not an appropriate sentence in domestic violence cases and its use should be prohibited.

Barring the use of anger management as a sentence for domestic violence offenders will fulfill Maine's sentencing aims to a greater extent than the current system. Rehabilitation is an important goal of any criminal justice system, in that if a criminal can be reformed, she will not reoffend.<sup>2</sup> When domestic violence is involved, the need for rehabilitation tends to be stronger than in other criminal cases.<sup>3</sup> Domestic violence is unlike any other crime. A domestic violence crime involves dynamics and risks that are not present with most other violent crimes.<sup>4</sup> For example, there is often a continuing relationship between the victim and the offender.<sup>5</sup> This relationship gives the state prior knowledge of the likely victim of the offender's future crimes. These considerations alter the usual methods of sentencing and require the state to consider alternative sentencing statutes for domestic violence offenders which involve extensive

rehabilitation and supervision. However, rehabilitation that is not designed for domestic violence offenders, like anger management, can not only be counterproductive but dangerous.<sup>6</sup>

This article focuses on just one possible change to Maine's sentencing statutes, the elimination of anger management therapy as a possible sentence. It explores the rehabilitation of domestic violence offenders generally, and focuses on batterer's intervention and anger management, which are the two most common rehabilitative sentences used in domestic violence cases in Maine.<sup>7</sup> I focus on batterer's intervention not because it is an ideal solution, but because the elimination of anger management would most likely lead to many more offenders being sentenced to batterer's intervention. There are public policy implications of such a statutory change, particularly focusing on the perception of domestic violence in our society and its ramifications on the domestic violence movement. But anger management is an inappropriate sentence for domestic offenders, and its elimination furthers the goals of Maine's sentencing system as well as our major public policy goals.

## Clegg Award 1st Prize Winner

Molly Butler Bailey is a 2006 graduate of the University of Maine School of Law, where, earlier this year, she won first prize in the second annual Kenneth Clegg Memorial Writing Awards, presented by the Maine State Bar Association and the York Bar Association. The three 2006 Clegg Awards include cash prizes from the York Bar Association and publication in the *Maine Bar Journal*. The awards were established by the York Bar Association in memory of Kenneth Clegg, a former faculty member of the University of Maine School of Law and a private practitioner and trial lawyer in Sanford. The awards are intended to encourage and publish outstanding writing by students at the University of Maine School of Law.

Molly Butler Bailey was born in New York, grew up in Massachusetts and graduated from Harvard University's Division of Continuing Education in 2003, when she and her husband bought a home in Limington and she enrolled in law school. As a law student, she has worked in the U.S. Attorney's office, the Lewiston District Attorney's office, the Maine Senate president's office, and the Maine Civil Liberties Union. She was a member of Maine Law's Moot Court Board and the law school's Trial Team, and was co-chairwoman of the American Constitution Society. She is currently studying for the bar examination and hopes to work as a litigation attorney in the fall. This article is her winning submission for the Clegg Awards.

## Rehabilitating the Domestic Violence Offender

ATTEMPTING TO REHABILITATE DOMESTIC VIOLENCE OFFENDERS is an important goal.<sup>8</sup> However, there is a substantial problem with rehabilitative therapy in domestic violence cases. Offering treatment to domestic violence offenders often makes the victim feel more secure, when more than likely she is not.<sup>9</sup> Studies show that when an abuser is sentenced to treatment, the victim is more likely to stay in the relationship.<sup>10</sup> Additionally, abusers tend to use their attendance in a rehabilitative program to control and manipulate the victim into staying in the relationship and the court into giving a lesser sentence.<sup>11</sup> This puts women whose abusers are sentenced to rehabilitative therapy into more danger because the prospect of rehabilitation causes them to let their guard down.

Because of the conflict between the need to rehabilitate domestic violence offenders and the danger of rehabilitative therapy, we need to be very careful which rehabilitative therapies are sentenced. In Maine, domestic violence offenders are commonly sentenced to one of two forms of rehabilitative therapy as part of their probation; batterer's intervention or anger management.<sup>12</sup> Fortunately, anger management is becoming less popular, this is probably the result of the growing consensus that it is ineffective at combating domestic violence.

### Batterer's Intervention Programs

BATTERER'S INTERVENTION PROGRAMS [BIP] ARE CLASSES THAT are specially tailored toward domestic violence offenders.<sup>13</sup> They are certified by the state, and supervised by both a state agency and a local domestic violence project, which is involved in planning the curriculum.<sup>14</sup> Maine has approved three nationally recognized models of intervention and restricts the program to these models.<sup>15</sup>

In the program, batterers are taught about the different types of abuse as well as the dynamics of abuse.<sup>16</sup> The classes emphasize that abuse is a choice the batter makes in order to, "gain and maintain an imbalance of power and control within the relationship."<sup>17</sup> The batterer is held accountable for his actions and the programs attempt to minimize victim blaming while teaching the abuser how to change his controlling behavior.<sup>18</sup> BIP is also a way to monitor the offender, because they regularly communicate with the probation office and the courts.<sup>19</sup> This monitoring includes an effort to assess the offender's dangerousness to the victim.<sup>20</sup> Lastly, the programs are quite lengthy at forty-eight weeks.<sup>21</sup>

Some studies assessing the effectiveness of BIP have concluded that they have no effect, but some studies have concluded that they are effective.<sup>22</sup> However, when these studies are assessed as a whole, the programs appear to be effective.<sup>23</sup> A recent paper prepared for a local judge, Robert Moyer, Ph.D. examined three hundred studies of these programs and found good presumptive evidence that BIP works.<sup>24</sup>

Other studies have shown that BIP can be effective, but not for all batterers. For example, one three year study performed by Edward Gondolf of the Mid-Atlantic Addiction Training Institute, found that that two thirds of men who had gone through the program did not re-assault for at least a year

after beginning the program, while only 10–15 percent of men seemed unresponsive to the court and the program.<sup>25</sup>

A recent study by the Massachusetts Trial Court Office of the Commissioner of Probation which came out in late 2004 is even more optimistic. Unlike earlier studies which tended to only look at the short term effect of batterer's intervention, the Massachusetts study followed batterers for a period of six years.<sup>26</sup> The study found that the likelihood of an offender who completed BIP being re-arraigned for any subsequent offense was 47.7 percent, while for an offender who did not complete the program the likelihood was 83.6 percent.<sup>27</sup> The likelihood of an offender who completed BIP to be arraigned for another violent offense was 33.7 percent, while for an offender who did not complete the program the likelihood was 64.2 percent.<sup>28</sup> Lastly, the likelihood of a completer violating a restraining order was 17.4 percent compared to 41.8 percent for non-completers.<sup>29</sup> These statistics show that BIP may indeed be an effective form of rehabilitation.

### Anger Management

ANGER MANAGEMENT PROGRAMS ARE CLASSES GEARED TOWARDS perpetrators of non-intimate violence.<sup>30</sup> Unlike BIP, anger management is not overseen by the state, there is no participation by domestic violence projects, and these programs are not certified.<sup>31</sup> Whether or not the facilitator is trained in domestic violence issues is a subject of agency discretion and in no way required.<sup>32</sup> Although the goals of BIP involve ending violent, abusive and controlling behavior; increasing victim safety; and holding the batterer accountable, the only goal of anger management is to control and express anger appropriately.<sup>33</sup> The length of treatment is also a lot shorter at eight to fifteen weeks.<sup>34</sup> Techniques used include, "time outs, relaxation methods, and coping skills."<sup>35</sup> The offender's violence is viewed as "momentary outburst[s] of anger" as opposed to a manipulation of power and control.<sup>36</sup>

There are several reasons why the differences between the two programs are significant. First, unlike BIP, anger management programs "fail to take into account the premeditated and controlling behavior associated with abuse."<sup>37</sup> Domestic violence is not about anger, it's about power and control, and in fact, abusers rarely lose control.<sup>38</sup> Abuse usually occurs when the abuser feels his control over his partner is slipping.<sup>39</sup> Batterers engage in "cold, calculated aggression," which is something not addressed in anger management classes.<sup>40</sup>

**Domestic violence is not about anger, it's about power and control, and in fact, abusers rarely lose control.**

Second, anger management programs often teach the abuser to be even more controlling<sup>41</sup> because they focus on the batterer controlling his emotions.<sup>42</sup> Control is at the root of the batterer's behavior.<sup>43</sup> In fact, the cycle of battering is about the batterer exercising his power and control over his victim.<sup>44</sup> Therefore, giving batterers the tools to be more controlling can make the situation worse.<sup>45</sup> Although the classes can sometimes decrease the violence in a relationship, these same techniques can teach the abuser to be more emotionally abusive.<sup>46</sup>

**A** third and related problem is that anger management can re-enforce the batterer's tendency to blame the victim.<sup>47</sup> The program does this in two ways. First, the program focuses on "what makes the offender angry" causing the offender to focus on what he feels his victim has done wrong instead of his own behavior.<sup>48</sup> Second, the concept of "anger management" implies that the offender is helpless to control his actions and that he was somehow provoked into abusing his partner.<sup>49</sup> This absolves the offender of any responsibility for his actions. This is particularly harmful in light of the fact that therapists have found that taking responsibility for past abuse is an essential part of any sort of rehabilitation for domestic violence offenders.<sup>50</sup>

A fourth significant difference between anger management and BIP is that anger management programs tend to "feed into the batterer's tendency toward self-pity and self-deception and his need to dwell on his own discomfort," whereas BIP is designed to avoid this result.<sup>51</sup>

Fifth, anger management affects the way batterers are perceived in our society. Sentencing a man to anger management implies that his is simply a psychological problem and not a criminal one. It takes the focus off of protecting the victim and puts it onto "treating the offender" thereby putting the victim into further danger.<sup>52</sup> By simply treating the offender we are "reinforcing the hierarchy that allows, and encourages, men to govern their spouses, thus supporting male dominance over women."<sup>53</sup> It reduces the "criminal stigma" attached to domestic violence<sup>54</sup> and turns it into a trivial problem.<sup>55</sup>

Lastly, the length of the anger management programs is a major concern. One study found that brief intervention strategies could actually be less effective than no treatment at all.<sup>56</sup>

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The study by the Massachusetts Trial Court Office of the Commissioner of Probation examined the effectiveness of anger management as well as BIP. The study found that the likelihood of an offender who completed anger management being re-arraigned was not significantly statistically different from those who dropped out of the program.<sup>57</sup> Additionally, when the effect of anger management and BIP were compared, the study found the likelihood of an offender who completed BIP being re-arraigned for any subsequent offense was 47.7 percent, while for an offender who completed anger management the likelihood was 57.7 percent,<sup>58</sup> and that the likelihood of an offender who completed BIP to be arraigned for another violent offense was 33.7 percent, while for an offender completed anger management the likelihood was 42.6 percent.<sup>59</sup> The study points out the extreme significance of these statistics in light of the fact that, "substantially more of those assigned to BIP were less well educated, more had a long standing substance abuse problem, and significantly more had a criminal history, especially one involving violence and prior restraining order violations."<sup>60</sup>

A common conclusion is that anger management programs are simply a "band aid" and do not actually fix anything.<sup>61</sup> The federal government has recently made changes to its funding policy that reflect the growing concern with anger management programs. The Federal Office of Violence Against Women now prohibits any of the grant money given to the states to be used to fund anger management programs for domestic violence offenders.<sup>62</sup> The federal prohibition shows the growing consensus that anger management programs are inappropriate for domestic violence offenders.

## **Use of Anger Management as a Sentence for Domestic Violence Offenders in Maine**

IN 2003, THERE WERE 5,364 DOMESTIC VIOLENCE ASSAULTS IN the state of Maine.<sup>63</sup> This was more than an 11 percent increase from 2002.<sup>64</sup> Domestic violence is the leading cause of murder in Maine accounting for 47 percent of all homicides in 2003.<sup>65</sup>

In June of 2004, the death of Lisa Deprez led state officials to reconsider the way domestic violence is treated in Maine.<sup>66</sup> One result of this reexamination was that the governor issued an executive order to set up a commission

on the prevention of domestic violence in Maine.<sup>67</sup> One of the commission's findings focused on BIP and anger management.<sup>68</sup> The commission found that "there are now more domestic violence offenders under the supervision of the department of corrections who are required to attend anger management counseling than offenders required to attend a batterer's intervention program."<sup>69</sup> The commission then gave an overview of the two programs, concluding that BIP was preferable and "urg[ing] defense counsel, prosecutors, judges and probation officers to assign domestic violence offenders to anger management programs only in exceptional cases and then only after consideration of the differences in the content and purposes of these two programs and the characteristics of the offender."<sup>70</sup> As of late March of 2005, assignment to anger management programs was down marginally from the statistic used in the commission's report. However, the number of offenders sentenced to these programs was still significant; 598 offenders had conditions of attendance at a certified BIP and 348 were required to attend anger management.<sup>71</sup>

The choice among sentencing an offender to jail time, BIP, or anger management is currently a discretionary decision the prosecutor makes in her sentencing recommendation, or a discretionary decision the judge makes at sentencing.<sup>72</sup> There are many factors leading to a decision to sentence an offender to anger management. Anger management is often used instead of BIP simply because prosecutors and judges do not know the differences between the two programs, or do not understand that domestic violence has nothing to do with anger.<sup>73</sup> Another reason is that defense attorneys push anger management during plea negotiations.<sup>74</sup> Anger management classes are both cheaper and shorter and therefore preferred by offenders.<sup>75</sup> As a result of the defendant's reluctance to plea-bargain when BIP is the proposed sentence as opposed to anger management, many prosecutors will settle for anger management rather than risk losing a conviction.<sup>76</sup>

## Proposal

AS THE ABOVE SECTION SHOWS, ANGER MANAGEMENT IS AT best ineffective and at worst dangerous, and in Maine, it is being used as a sentence much of the time. My proposed solution is simple: remove anger management as a possible sentence. As the research has shown, anger management is ill suited for domestic violence cases. By eliminating the discretion to give anger management as a sentencing option, the

prosecutor's need for that option is also eliminated. Defense attorneys will quickly realize that BIP is the only plea possibility and will offer a guilty plea instead of risking jail-time. At the same time, offenders will be getting the benefits of a program that is at least not counterproductive and at most helpful in curbing abusive behavior. Domestic violence will also carry with it a more expensive and time-consuming penalty.

I propose adding the following to 17-A M.R.S.A. §1204 (2-A)<sup>77</sup> the statute governing conditions of probation:

2-A. As a condition of probation, the court in its sentence may require the convicted person:

D. To undergo, as an out-patient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for the purpose. Failure to comply with this condition is a violation of probation and may not, in itself, authorize involuntary treatment or hospitalization. The court may not order and the state may not pay for the defendant to attend a batterer's intervention program unless the program is certified under Title 19-A section 4014. In cases where the state pleads and proves that the person was convicted of committing against a family or household member<sup>[78]</sup> a crime under chapter 9,<sup>[79]</sup> a sentence to anger management therapy shall not be permitted.

Using the term, "family or household member," which has been used in another section of the probation code, should ensure an accurate definition. This phrase has been interpreted by the Law Court to apply to perpetrators of "domestic violence."<sup>80</sup> Additionally, unlike statutes which mandate batterer's intervention, my approach leaves prosecutors with some discretion to recommend individual therapy or drug and alcohol counseling in appropriate cases.

## Implications for Maine's Sentencing Goals

THE FIRST PURPOSE OF SENTENCING LISTED IN THE MAINE Criminal Code is the purpose most directly affected by the statute I have proposed.<sup>81</sup> It reads as follows:

"To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety."<sup>82</sup>

This purpose encompasses three different goals. The first goal is deterrence. The belief behind this premise is that offenders won't commit criminal acts out of fear of the punishment.<sup>83</sup> There are two kinds of deterrence, general, which refers to the public at large, and specific, which refers to the specific offender being punished.<sup>84</sup> Unfortunately, there is only limited research with inconclusive results on deterrence in domestic violence cases, but what has been done has shown that domestic violence is more apt to be deterred when social controls, as well as legal sanctions, are imposed.<sup>85</sup> These controls involve things like "community and social reinforcers"<sup>86</sup> of particular behavior.<sup>87</sup> One way of implementing these controls is BIP.<sup>88</sup>

Despite the absence of empirical evidence showing that domestic violence can be effectively deterred, the removal of anger management as a sentencing option could only work to further this goal. In the absence of anger management therapy, two sentencing possibilities remain: incarceration and BIP. Incarceration is undeniably a harsher punishment than anger management. The other remaining option, BIP, is also a harsher punishment because it is thirty-three to forty weeks longer and substantially more expensive, thereby increasing the effect on the batterer's life.<sup>89</sup> Increasing the level of punishment will increase both the general and specific deterrent effect of the assault statute.

The second goal is rehabilitation. The principle behind rehabilitation is that if a criminal can be reformed, he will not reoffend.<sup>90</sup> As discussed earlier,<sup>91</sup> BIP goes much further towards satisfying this goal than anger management.<sup>92</sup> While there is some evidence that BIP may stop a domestic violence offender from reoffending,<sup>93</sup> anger management is at best ineffective and at worst counterproductive.<sup>94</sup> Given this reality, the goal of rehabilitation will be furthered by the unavailability of anger management as a sentence for domestic violence offenders.

The last goal is incapacitation. Incapacitation tends to "place the offender in some form of custody where s/he cannot commit any additional crimes against the public at large."<sup>95</sup> Obviously the easiest way of accomplishing this goal is incarceration. Increasingly, however, legislatures and courts have used other methods to accomplish this goal, examples include, curfews and chemical inhibitors.<sup>96</sup> Batterer's intervention and to a lesser extent anger management can further this goal in a

similar way. The time during which the batterer is mandated to be in counseling is time when the victim can do what she needs to do to stay safe. At a minimum, this means she is safe during these meetings. Ideally, she can use this time to regroup or to work on her plan to leave. BIP, being a longer program, provides a longer period of protection, furthering the goal of incapacitation. Prohibiting judges from imposing sentences of anger management will help to deter, rehabilitate and incapacitate offenders.

## Public Policy

TO UNDERSTAND THE IMPORTANCE OF THE CRIMINALIZATION OF domestic violence and the problems that can arise in the public policy arena when considering sentences for domestic violence offenders, it is helpful to briefly examine the history of domestic violence laws in this country. English common law in the nineteenth century gave a husband the right to abuse his spouse to maintain "family discipline."<sup>97</sup> One reason for this was that under English law a woman was the property of her husband and they were legally one person.<sup>98</sup> These principles were carried into American jurisprudence.<sup>99</sup> Early American courts repeatedly refused to intercede in domestic violence cases unless the husband had gone beyond "moderate chastisement."<sup>100</sup> The reasoning behind this was that the family relationship was private and "courts should not reveal private conduct to the public."<sup>101</sup> During the late nineteenth century, in the wake of the first women's rights movement, these attitudes began to change and husbands could be charged with assault and battery for abusing their wives.<sup>102</sup>

By the beginning of the twentieth century, however, this progress began to unravel. The advent of the family court system curbed judicial attitudes away from punishment and towards family reconciliation.<sup>103</sup> Judges even went so far as coercing wives into dropping charges against their husbands and refusing to provide protection after a complaint was filed.<sup>104</sup> Not until the 1960s did the movement against domestic violence begin to return to the public consciousness.<sup>105</sup> Following this resurgence, reforms to the laws began to emerge.<sup>106</sup> The earlier view that domestic violence is a private matter has persisted however; many Americans still believe that domestic violence should be dealt with between the couple and not through the criminal justice system.<sup>107</sup> The

**The principle behind rehabilitation is that if a criminal can be reformed, he will not reoffend. BIP goes much further towards satisfying this goal than anger management.**

idea of the private family realm has been the “most important ideological obstacle to legal change and reform.”<sup>108</sup> The biggest problem with this conception of domestic violence as a private matter is that it makes the problem individual.<sup>109</sup> By individualizing the problem into one between one woman and one man as opposed to a societal problem, responsibility for correcting the problem is placed within the individual relationship and not on society at large.<sup>110</sup>

**T**he criminalization of domestic violence has served to transform what was thought of as a private matter into one of an inherently public nature, converting the problem into a societal issue.<sup>111</sup> This change in perception has led to domestic violence beginning to be regarded as a crime as serious as stranger assault.<sup>112</sup> When domestic violence is criminalized, “the court becomes a place for women to turn for protection rather than a place that reinforces male authority. For men it is a place of alienation, a disruption of their sense of the social support for male authority.”<sup>113</sup>

One problem with therapeutic sentences such as anger management is that they can counteract the positive effects of criminalization. There are two deleterious effects caused by therapeutic sentences. The first is that treating domestic violence offenders “seeks to reunite the offender and the victim, thus privileging the sanctity of the family over other policy objectives.”<sup>114</sup> This could easily cause a reversion to the pre-1960s treatment of domestic violence as a private matter because the best way to protect the sanctity of the family is to avoid delving into private family matters.

The second problem with therapeutic sentences is that they can send the message to the public that domestic violence is not a serious crime.<sup>115</sup> Allowing defendants to attend counseling programs instead of submitting to other punishment allows offenders to duck the regular criminal penalties for their actions.<sup>116</sup> Sending the message that “one who abuses women needs help [but] one who abuses strangers is dangerous”<sup>117</sup> undermines the importance of domestic violence as a societal issue. Sentencing offenders to therapy gives the impression that batterers are “sick” and that battering is an illness.<sup>118</sup> This characterization excuses the batterer from any responsibility for his actions and takes the criminality out of battering.<sup>119</sup> Even most therapists agree that accountability is necessary.<sup>120</sup>

An abuser will not stop abusing because of therapy alone; he needs to take responsibility for his actions in order to make any progress towards stopping the abuse.<sup>121</sup> Criminalization is essential not only for domestic violence to remain a societal problem, but also to rehabilitate the batterer.

Some commentators, however, do see treatment as a punishment.<sup>122</sup> When an offender is sentenced to a treatment program, his liberty is infringed upon and his choices are restricted.<sup>123</sup> This is a type of sanction and in some regards is punitive in nature.<sup>124</sup>

**Unlike a typical therapeutic situation, BIP does not treat batterers as ‘sick.’ The programs emphasize that battering is a choice and not a disease.**

Keeping these concerns in mind, BIP has several features not present in anger management that lead to a closer fit with the policy concerns cited above. First, unlike a typical therapeutic situation, BIP does not treat batterers as “sick.” The programs emphasize that battering is a choice and not a disease.<sup>125</sup> Further, accountability is a central feature of the program; the batterer is forced to take responsibility for his actions.<sup>126</sup> Lastly, the close connection between the court system and BIP,<sup>127</sup> gives the program more of a criminal punishment aspect. Unlike anger management programs, in which the batterer is simply told to get some help, BIP involves the whole criminal justice system. Battering becomes a public matter because this program is so public. It is monitored by the state,

probation officers and judges are involved, and the program does everything to avoid treating battering as a private matter.<sup>128</sup> Society is involved in taking responsibility for the problem of domestic abuse.

**O**n the other hand, anger management perpetuates the societal misconception that domestic violence is a sickness. Sending batterers to anger management sends the message that domestic abuse is simply a psychological problem that affects the batterer’s control over his anger, which is not at all the case.<sup>129</sup>

Another important policy concern with the proposed statute has to do with the dangers of further differentiating domestic assaults from stranger assaults. The domestic violence movement has worked hard to assure that assaults between family members are treated just as seriously as other assaults.<sup>130</sup> At the beginning of the domestic violence movement, this approach was important, because it emphasized the fact that domestic violence is a crime and should be treated as

any other. Now that domestic violence is taken more seriously, however, the approach should change. My statute advocates for different treatment. The reasoning behind this is that domestic violence is different. In fact, the family relationship—the very reason that domestic violence was treated differently in the past—is the reason the crime is more serious.<sup>131</sup>

**T**he relationship between the victim and the abuser complicates the analysis and requires innovative solutions that are not necessary with stranger assault cases.<sup>132</sup> In domestic violence cases, the victim is often financially dependant on her abuser; in fact, abusers often strive to make their victim as financially dependant as possible as a way to control their behavior.<sup>133</sup> Additionally, the victim is often tied to the abuser through her children.<sup>134</sup> Abusers tend to use the legal system as a way to control their victims when other means of control no longer work.<sup>135</sup> This often includes trying to gain custody of the children.<sup>136</sup> Most important, the victim may often choose to stay with her abuser, requiring the criminal justice system to attempt to protect her in the future. Most women try to leave,<sup>137</sup> but the reality is that some victims stay with their abusers. Although it is dangerous to focus on the woman's pathology as opposed to the abuser's, there are myriad reasons why a woman might remain in an abusive relationship.<sup>138</sup> The most obvious reasons for a woman staying are: financial dependence, social factors, threats against herself or her children, love, fear, social isolation, and low self-esteem,<sup>139</sup> to name just a few. Even when women leave, they often need the protection of the criminal justice system. The most dangerous and often deadly time for an abused woman is after she has left.<sup>140</sup> When a woman leaves, the abuser often uses his usual technique to maintain their connection—asserting his control through violence.<sup>141</sup>

By acknowledging that domestic violence is different, the proposed statute serves to address the needs of the victim as well as meeting the criminal justice goals with respect to the abuser. Anger management classes do not address the presence of a victim, and can in fact make matters worse for her.<sup>142</sup> BIP, on the other hand, takes into account the presence of the victim, by addressing the behavior of the abuser that may cause him to abuse again and also by holding him accountable.<sup>143</sup> Further, BIP contacts victims to tell them of the batterer's enrollment, thereby keeping the victim informed and in the picture.<sup>144</sup> Lastly, the programs work to assess the abuser's present dangerousness and report to the court and probation officer in an attempt to protect the victim from further attacks.<sup>145</sup>

Domestic violence is already treated differently from other crimes. Programs such as BIP are available to aid in rehabilitation while taking the needs of victims into account. Forbidding the use of anger management will further tailor the sentencing system for assault to the differences between assault in domestic violence cases and assault in other contexts.

## Conclusion

GIVEN THE HIGH RATE OF DOMESTIC VIOLENCE IN MAINE,<sup>146</sup> a different approach towards the sentencing of domestic violence offenders is warranted. A statute forbidding the use of anger management in domestic assault cases is a great place to start. Anger management therapy was not intended, nor is it appropriate, for domestic violence cases. The presence of an alternative like BIP reduces the need for this therapy to nil by providing an alternative that is tailored specifically towards the rehabilitation of domestic violence offenders.

The proposed statute fulfills the purposes of the Maine sentencing provisions.<sup>147</sup> In fact, the absence of anger management as a sentence will go further towards satisfying those goals.<sup>148</sup> Lastly, eliminating anger management as a possible sentence furthers the public policy goals of increasing societal responsibility for domestic violence and enhancing its perceived seriousness.<sup>149</sup> Eradication of anger management as a sentence is a necessary step toward lowering the astounding rate of domestic violence in Maine;<sup>150</sup> and this step should be taken immediately. ▀

1. 95 percent of domestic violence in Maine is Male to Female. MAINE DEPARTMENT OF HUMAN SERVICES, DOMESTIC VIOLENCE IN MAINE DATA PROJECT 1990-1995, 118TH CONGRESS (1996). I use the word "she" for the victim and "he" for the perpetrator solely to simplify.

2. Richard Gebelien, *Delaware Leads the Nation: Rehabilitation in a Law and Order Society; A System Responds to Punitive Rhetoric*, 7 DEL. L. REV. 1, 2 (2004) (summary of sentencing goals and history of how they have been used throughout this century). See also Edward Rubin, *Model Penal Code Sentencing: Just say no to Rehabilitation*, 7 Buff. Crim. L. R. 17 (2003) (arguing that one of the reasons rehabilitation is important is that retribution is not working, "the United States has the highest rate of incarceration in the Western world by a factor of five"). See generally Bruce J. Winick, *Problem Solving Courts and Therapeutic Jurisprudence: Therapeutic Courts and Problem Solving Courts*, 30 Fordham Urb. L.J. 1055 (2003) (documenting the rise in problem solving courts which have a large rehabilitation component) See generally Francis T. Cullen, *Public Opinion and Punishment and Corrections*, 27 Crime & Just. 1, 49-54 (2000) (most citizens favor a system that includes some form of rehabilitation).

3. See KEVIN HAMBERGER & JAMES E. HASTINGS, LEGAL RESPONSES TO WIFE ASSAULT CURRENT TRENDS AND EVALUATION 189 (Zoe Hilton ed. Sage Publications 1993).

4. See ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 12-13 (Yale University Press 2000). See also CLAIRE DALTON & ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND THE LAW 55-56 (Clark et. al. ed. Foundation Press 2001).

5. See Hamberger, *supra* note 3.

6. See *infra* notes 37-56 and accompanying text.
7. See *infra* notes 67-71 and accompanying text.
8. See *supra* text accompanying notes 2-6.
9. Randal B. Fritzer & Leonore M.J. Simon, *The Development of a Specialized Domestic Violence Court in Vancouver, Washington Utilizing Innovative Judicial Paradigms*, 69 U. MO. AT KAN. CTY. L. REV. 139, 167 (2000). See also Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1536 (1998).
10. Fritzer, *supra* note 8 at 124 and William Warren et. al., *Stop F.E.A.R. Rockland Court Policy* (September 25, 2003) available at [www.opdv.state.ny.us/public\\_awareness/bulletins/2003/legalcorner.html/](http://www.opdv.state.ny.us/public_awareness/bulletins/2003/legalcorner.html/).
11. *Id.*
12. E-mail from Denise Giles, Victim Services Coordinator, Maine Department of Corrections, to Molly Butler Bailey, author (March 30, 2005 12:21:56 EST) (on file with author).
13. Governor's Advisory Council on the Prevention of Domestic and Sexual Violence and the Prosecution of Related Crimes in Maine & The Maine Commission on Domestic and Sexual Abuse, REPORT OF THE MAINE COMMISSION ON DOMESTIC AND SEXUAL ABUSE AND THE GOVERNOR'S ADVISORY COUNCIL ON THE PREVENTION OF DOMESTIC AND SEXUAL VIOLENCE, Appendix C (March 18, 2005) [Report of the Maine Commission].
14. *Id.*
15. *Id.*
16. *Id.* The classes teach the batterer that there are many types of abuse including, physical, emotional, sexual, verbal and economic. *Id.*
17. *Id.*
18. Joan Zegree and Meg Crager, *Comparison of Anger Management and Batterer's Intervention*, November 6, 2005 at [www.edvp.org/AboutDV/forabusets.htm#chart](http://www.edvp.org/AboutDV/forabusets.htm#chart).
19. See Report of the Maine Commission *supra*, note 13.
20. Doug Gaudette, Address at National Crime Victims Rights Week in Augusta, ME (April 23, 2004).
21. See Report of the Maine Commission *supra*, note 13.
22. Compare Hanna, *supra* note 9 at 1533-1536, (examining several different studies showing that intervention has no effect whatsoever), with, CRAIG CHALQUIST, DOMESTIC VIOLENCE OPPOSING VIEWPOINTS 145 (Tamara Roleff, ed., Greenhaven Press 2000) (stating that 70 percent of men who went to intervention did not batter their wives during the subsequent twelve month period).
23. See Robert Moyer, Ph.D., *To BIP or not to BIP* 9 (June 8, 2004) (on file with the York/Springvale DV case coordination project advisory board).
24. *Id.* at 9. Moyer examined 300 studies comparing batterer's intervention completers with non-completers, concluding that in every study completers reoffended less often than dropouts.
25. Gaudette, *supra* note 20.
26. Massachusetts Trial Court Office of the Commissioner of Probation, Restraining Order Violators, Corrective Programming and Recidivism 1, (November 1, 2004) [Massachusetts Report].
27. *Id.* at 6.
28. *Id.*
29. *Id.*
30. See Report of the Maine Commission *supra*, note 13.
31. George Anderson, *Without Rage* (July 2, 2004), available at <http://withoutrage.crimsonzine.com/> (George Anderson is the founder of Anderson & Anderson, the world's largest provider of anger management counseling. Georgia Commission on Family Violence, *Distinctions Between Family Violence Intervention Programs and Anger Management Counseling*, (November 6, 2005) available at [www.dcov.state.ga.us/pdf/FVIPdistinctions.pdf](http://www.dcov.state.ga.us/pdf/FVIPdistinctions.pdf)). See also Report of the Maine Commission, *supra* note 13.
32. See Report of the Maine Commission *supra*, note 13.
33. Zegree *supra*, note 18.
34. See Report of the Maine Commission *supra*, note 13.
35. *Id.*
36. *Id.*
37. Gaudette, *supra* note 20.
38. See Dalton & Schneider, *supra* note 4 at 57. See also Warren, *supra* note 10 (stating "domestic violence behaviors are almost always the result of a deliberate choice to exert power and control over a partner). See also Preventing Violence in the Home, *Anger Management? NO! Stopping Violence? YES!* (November 6, 2005) available at [www.dvc.org/NZ/anger.htm](http://www.dvc.org/NZ/anger.htm) (pointing out that men who abuse their partners are not violent with other people, and that anger management ignores the intentions behind the violence).
39. See Dalton & Schneider, *supra* note 4 at 62.
40. Cheryl Welch, *Courts Lack Tools to Treat Domestic Violence Offenders, Some Say*, NC STAR NEWS, June 20, 2004, at 1A, 4A.
41. See Gaudette, *supra* note 20. See also Welch, *supra* note 40.
42. Susan Scott, *Advocating for Victims of Domestic Violence*, 20 WOMEN'S RTS. L. REP. 73, 79 (1999).
43. See Gaudette, *supra* note 20. See also Welch, *supra* note 40.
44. See *supra* notes 37-39 and accompanying text.
45. See Gaudette, *supra* note 20. See also Welch, *supra* note 40.
46. See David Hench, *Is Anger Management a Remedy for Batterer's? A Federal Ban on Using Domestic Violence Grants to Fund the Programs Raises some Questions*, PORT. PRESS HERALD, October 10, 2004. See also Welch, *supra* note 40.
47. See Gaudette, *supra* note 20. See also Warren, *supra* note 10.
48. See *Anger Management isn't the Only Answer; Victims Advocates say These Programs Aren't Working, and Officials Should Listen*, PORT. PRESS HERALD, October 14, 2004, at A12.
49. See Hench, *supra* note 46. See also West Virginia Coalition Against Domestic Violence, *Batterer Intervention Programs in West Virginia* (November 6, 2005) available at [www.wvcadv.org/batterer\\_intervention.htm](http://www.wvcadv.org/batterer_intervention.htm).
50. BRADLEY BERRY, DAWN, J.D., THE DOMESTIC VIOLENCE SOURCEBOOK 42 (Dawn Bradley Berry ed. Lowell House 2000) (1995).
51. Gaudette, *supra* note 20.
52. *Id.*
53. Hanna, *supra* note 9 at 1540. See also West Virginia Coalition Against Domestic Violence, *supra* note 40, and Preventing Violence in the Home, *supra* note 38.
54. Stephanie Ebbert, *Study: Few Batterers Treatable*, BOSTON GLOBE, May 11, 1998, at C1.
55. Hanna, *supra* note 9 at 1540.
56. *Id.* Findings presented for the first time at the Massachusetts judicial training in May 2000 found that batterer's intervention was far more effective than anger management because the latter was missing several essential elements including a "coordinated response," safety issues, public accountability, and the experience of the women's movement. Additionally, anger management "doesn't address violence accruing planfully, out of angry arousal" or "entitlement to controlling behavior." See also Bradley Berry, *supra* note 50 (citing findings that programs which required the batterer to attend for six months or longer were more effective in the long run than shorter programs).
57. See Massachusetts Report, *supra* note 26 at 7. See also *supra* notes 26-30 and accompanying text.
58. *Id.*
59. *Id.*
60. *Id.*
61. See Benedict Carey, *Anger Management May not Help at All*, N.Y. TIMES, November 24, 2004.
62. U.S. Department of Justice Office of Violence Against Women, *Rural Domestic Violence And Child Victimization Enforcement Grant Program* (Fiscal Year 2005 Solicitation). See *Anger Management isn't the Only Answer, supra* note 48. See also Hench, *supra* note 46.
63. ATTORNEY GENERAL'S OFFICE OF MAINE, ANNUAL REPORT ON DOMESTIC VIOLENCE PROSECUTIONS IN MAINE (December, 2003) (Submitted July, 2004).
64. *Id.*
65. *Id.* Of the 17 homicides in 2003, 8 were domestic violence-related. In the past 18 years 47 percent of homicides in Maine have been domestic violence related. See also Barbara Walsh, *Volatile Life, Violent Death; Lisa Deprez, a Victim of Suspected Domestic Abuse, was no Stranger to Tragedy but met Life Head on*, PORT. PRESS HERALD, June 6, 2004, at 1A.

66. Welsh *supra* note 40.
67. E-mail from Faye Luppi, Esq., Violence Intervention Partnership, to Molly Butler Bailey, author (February 13, 2005 22:13 EST) (on file with author).
68. See Report of the Maine Commission *supra*, note 13.
69. *Id.* at 8.
70. *Id.*
71. E-mail from Denise Giles, victim services coordinator, Maine Department of Corrections, to Molly Butler Bailey, author (March 30, 2005 12:21:56 EST) (on file with author).
72. Telephone interview with Michael Cantara, commissioner of public safety (March 18, 2005).
73. See Hench, *supra* note 46.
74. *Id.*
75. *Id.*
76. *Id.*
77. See 17-A M.R.S.A. §1204: Conditions of Probation.
78. [See 17-A M.R.S.A. §1202 (A-1) (allowing higher periods of probation, "if the state pleads or proves that the person was convicted of committing against a family or household member a crime under chapter 9 or 13 or section 554 or if the person was convicted under chapter 11 or 12 or section 556.")]
79. [See 17-A M.R.S.A. §207 (2004) (assault) 17-A M.R.S.A. §208 (2004) (aggravated assault)]
- 17-A M.R.S.A. §208-B (2004) (elevated aggravated assault). Chapter 9 offenses are offenses against the person.
80. See also *State v. Hodgkins*, 2003 ME 57, 822 A.2d 1187 (interpreting the terms of this statute to mean it covers cases of "domestic violence").
81. See 17-A M.R.S.A. §1151 (2004).
82. *Id.*
83. See Gebelien, *supra* note 2.
84. *Id.*
85. Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 *FORDHAM L. REV.* 1285, 1314 & 1321 (2000).
86. *Id.* Tsai states that these social reinforcers include greater social costs, for example "negative impact on their employment, children, or reputation in the community." *Id.*
87. *Id.*
88. See *id.*
89. Report of the Maine Commission *supra*, note 13. Examples of the effect on a batterer's life include interruptions in his work schedule, social life and free time, as well as a strain on his bank account.
90. Gebelien *supra*, note 2 at 2 (summary of sentencing goals and history of how they have been used throughout this century).
91. See *supra* notes 22-29, 37-56.
92. *Id.*
93. See Moyer, *supra* note 23.
94. See Gaudette, *supra* note 20. See also Welch, *supra* note 40.
95. See Gebelien, *supra* note 2 at 2.
96. *Id.*
97. Schneider, *supra* note 4 at 13.
98. *Id.* at 14.
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.* at 16.
103. *Id.* at 18.
104. *Id.* Judges accomplished this by "badgering women into withdrawing their complaints, denying their petitions for financial support from husbands, or assigning cases to a social service organization." *Id.*
105. *Id.* at 20.
106. *Id.*
107. Campbell, Bonnie J., *DOMESTIC VIOLENCE OPPOSING VIEWPOINTS* 95 (Tamara Roleff, ed., Greenhaven Press 2000).
108. Schneider, *supra* note 4 at 187.
109. Hanna, *supra* note 9 at 1539.
110. *Id.*
111. See Schneider, *supra* note 4 at 186.
112. *Id.* at 184.
113. *Id.* at 50.
114. Hanna, *supra* note 9, at 1539-1540.
115. Tsai, *supra* note 85, at 1311.
116. *Id.*
117. Hanna, *supra* note 9, at 1540
118. *Id.* at 1542.
119. See *id.*
120. Bradley Berry, *supra* note 50 at 42.
121. *Id.*
122. See John A. Bozza, "The Devil Made me do It": *Legal Implications of the New Treatment Imperative*, 12 *S. CAL. INTERDIS. L. J.* 55, 78 (2002).
123. *Id.*
124. *Id.*
125. See Report of the Maine Commission *supra*, note 13.
126. Zegree, *supra* note 18.
127. See Report of the Maine Commission *supra*, note 13.
128. See *supra* notes 13-21 and accompanying text.
129. See *supra* notes 111-114 and accompanying text.
130. See *supra* notes 115-124 and accompanying text.
131. See *infra*, notes 133-141 and accompanying text.
132. See *supra* notes 4-6 and accompanying text.
133. Bradley Berry, *supra* note 50 at 32. Abusers often will insist on control of the finances, the victim is often "required to turn over her paycheck, quit her job, sell her car ... even wealthy women have been kept penniless." *Id.*
134. *Id.*
135. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 *MICH. L. REV.* 1, 44-45 (1991).
136. *Id.* This tactic is often successful, "[m]en who pursue custody have a better than even chance of gaining custody, *Id.*
137. See *id.* at 61. One study found that 70 percent of abused women had left at least once in response to violence. *Id.*
138. *Id.* at 27. Approaching the problem from the victim's pathology tends to "reinforce batterers' defenses and denials" because the focus is on the victim's pathology and not the batterer's. *Id.* Additionally, this approach shares the blame for the abuse between the partners instead of focusing on the abuser. *Id.* Some have argued that it is unfair to coerce a woman's choices by imposing the *responsibility* to leave on her despite the many reasons she may have to stay. *Id.* at 61-64.
139. Bradley Berry *supra*, note 50. Low self esteem is usually caused by the batterer. Batterers' techniques have been compared to the brainwashing techniques used by Nazi concentration camp guards. In fact, "they include many behaviors identified by Amnesty International as psychological torture, including isolation, monopolization of perception, induced exhaustion and debility, threats, occasional indulgences, demonstrations of complete power, degradation and humiliation, and enforcing trivial demands." *Id.* at 38. Compare Mahoney *supra*, note 135 (arguing that this reasoning portrays women as pathologically weak and creates a cultural stereotype with which most battered women do not identify).
140. See Schneider, *supra* note 4 at 51. See also Mahoney *supra*, note 135 at 5, 64.
141. *Id.*
142. Gaudette, *supra* note 20. See also Welch, *supra* note 40. See also *supra* notes 13-21 and accompanying text.
143. See *supra* notes 13-29 and accompanying text.
144. See Report of the Maine Commission *supra*, note 13. See also *supra* notes 13-21 and accompanying text.
145. *Id.*
146. See *supra* notes 64-66 and accompanying text.
147. See *supra* notes 81-96 and accompanying text.
148. See *id.*
149. See *supra* notes 97-145 and accompanying text.
150. See *supra* notes 64-66 and accompanying text. ▀

# ATTACHMENT E



## **The Fate of Women Arrested for DV Offenses**

Paper prepared at the request of Hon. Andre Janelle

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[April, 2006. Comments welcome: [rmoyer@bates.edu](mailto:rmoyer@bates.edu)]

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## I. Adjudication: What is happening in other jurisdictions to women who are arrested for using violence against an intimate partner?

I have found several examples of how these cases are adjudicated:

### 1. In Judge John Leventhal's Court (Brooklyn Felony DV court).

Judge Leventhal told me that women charged with DV offenses that come before him hardly ever exhibit the power and control dynamic that is more typical of male defendants.

Victim / Defendants: Nevertheless women are charged with DV in his court and he says they often are, or allege that they are, DV victims. He mentioned two things that sometimes happen in these cases:

Justification Defense: One is that the woman may mount a “justification defense,” which could involve trying to introduce Battered Person Syndrome, by getting an expert to testify that she’s a battered woman. (NY’s justification defense is a two prong test—subjective and objective--so the expert’s testimony is relevant to whether she subjectively thought her use of force was justified.) Under NY law she has to show evidence of threats or abuse “at or shortly before the incident that she’s charged with.” The Judge didn’t go into this, but I assume that if her “justification defense” succeeds she is acquitted, because this would be tantamount to establishing that her violence was in self-defense.

Sentence mitigation: But even if her justification defense fails, a female defendant's status as a victim might serve to mitigate her sentence. Judge Leventhal explained that NY "has a statute that permits a judge to sentence a defendant who would otherwise receive a determinate sentence to an indeterminate sentence if the defendant had in the past been abused by the complainant—even though the defendant's conduct was found not to be justified in the instance charged as a crime."

BIPs and NY state standards: As to Batterers Programs: Judge Leventhal says that there are very few in NY, for men or for women. He explained that the Governor has declined to certify any Batterers Programs because he does not believe the literature demonstrates that they work. Judge Leventhal stated: "Thus the governor, nor do I, want the public or victims to believe that simply because a person is in a certified program the victim's safety will be assured." Judge Leventhal knows of only one program in NYC for women defendants: it's called STEPS to end family violence. I haven't tracked it down, but I got the impression he doesn't assign defendants to it. [Exploring on my own I found something called the New York Model for Batterer Programs ([www.nymbp.org](http://www.nymbp.org)). The web site explains that, under the "New York Model," the main purpose of batterer programs is to assist the courts with monitoring and accountability of male DV perpetrators.

In fact, about half of the 44 states that have standards for batterers programs (not necessarily the same as state certification or a state law) note that their standards apply to male on female DV (including Maine: "The term 'batterers intervention program' refers to an educational program for

men...”), though some states acknowledge that a small amount of DV is of other types. An overview of all the existing state standards is available at the web site of the Batterer Intervention Services Coalition of Michigan ([www.biscmi.org](http://www.biscmi.org)).

## 2. In Judge Libby Hines’ Court (Washtenaw County, Michigan).

Washtenaw Co. is one of the three Judicial Oversight Demonstration sites, and Judge Hines was one of the Judges who visited Maine as part of the Vera Institute program in Portland in January of 2005.

Victim / Defendants: Judge Hines told me that in her experience “many women charged with DV are or have been victims of DV by the person they are accused of battering.”

Self-defense: Role of police & prosecutors. She went on to describe how they have dealt with this issue in her jurisdiction: “Although we can always do better, I believe we have done a good job of training our local police to identify the predominant aggressor to avoid dual arrests and arrest of women who are actually victims in the presenting incident. In addition, our Prosecutor understands the dynamics of DV and his office appears to do a good job evaluating cases to try to make sure that victims are not charged with DV.” So Judge Hines thinks that in her jurisdiction they’re not convicting many women of DV who are in fact just using self-defense.

Accountability: Judge Hines stressed the importance of accountability: “I will say that Jim [that’s Jim Henderson, her DV probation

officer] and I have found that it is important to do something ‘serious’ with women defendants, even if they are also victims. If not, and the violence is repeated, they can (and have) found themselves charged with a felony. That’s not helping anyone.”

BIPs (on the record) and MI state standards: She said: “I do sentence women convicted of DV to a batterer intervention program’ on the record, but the reality is that, at this time, we don’t have a program like the programs we use for men. I think it is important to refer to a ‘BIP’ so that it doesn’t appear the court is favoring women. However, my experience is that women have different reasons for using violence. It’s not usually about power and control.”

“I try to locate, through my probation officer, individual counselors who have a thorough knowledge of DV and work well with women. Understanding that the client with whom they are working is frequently a victim, too, is critical.”

As to specific probation conditions, Jim Henderson wrote: “We normally order the same two years we order the men but often discharge early due to total compliance. Our men are sentenced to 60 sessions of BIP, the women are usually ordered to a range from 26 to 52 as recommended by the program. All LIEN conditions are the same.”

In Michigan, too, the standards for BIPs were specifically written for men who batter women, but Michigan does not actually have state certification for BIPs. Therefore, according to Judge Hines, the DV probation officers

often visit programs to make sure they are appropriate for people who are sentenced to them.

### 3. In Duluth's deferred prosecution ("Crossroads") program.

The Domestic Abuse Intervention Project in Duluth, MN, the group that popularized the "Power & Control" wheel, has been a strong promoter of victim safety and offender accountability for several decades now. In the last few years the DA's office (called the City Attorney's Office there) has taken the lead in developing a deferred prosecution program for women charged with a Domestic Violence offense who are also being battered. [The program is fully described in Asmus, 2004; see references]

#### Victim / Defendants in Crossroads:

Crossroads is exclusively for defendants who are being battered: Since I've just used the terms "Domestic Violence" and "battering" this would be a good place to define them, because lumping them together can lead to considerable confusion.

Ellen Pence, one of the founders of the Duluth program, says "Domestic Violence" is a catchall term for any act of illegal abuse by one partner against another. She defines "battering" as an ongoing, patterned use of violence, intimidation, coercion, and psychological abuse within the context of an intimate relationship. To avoid additional confusion it is worth noting here that not all elements of battering are illegal and that "battering" itself is rarely defined as a crime by the criminal justice system.

To qualify for the Crossroads program a defendant must document not only that she is currently being subjected to physical abuse but also that she is experiencing the broader pattern of abuse known as battering. It would not be sufficient, for example, for a defendant to show that her husband had been convicted of a domestic violence offense against her, because this program does not equate discrete acts of domestic violence with battering. Put another way: A man who assaults his wife does not necessarily also batter her.

But Crossroads is not for victims who acted in self-defense: It is important to note that Crossroads is not a program for women who use self-defense against a batterer. Women who acted in self-defense, as legally defined, are not admitted to the program, but are instead referred to victim service agencies or their case is returned to the prosecutor for re-evaluation of the charges against them.

Probation is assigned the task of gathering information to help the prosecutors decide which defendants used self-defense, which are being battered in their current relationship, etc.

Accountability: Although all Crossroads participants are themselves victims of battering, they are still held accountable for their own violence. The Chief Prosecutor says: “the DA wants to intervene in a way that will stop the violence by both parties and send a clear message that violence is not the way to deal with being battered.” But the DA wants to hold these participants accountable for their violence “without invoking the full

ramifications of the criminal court process” and “provide program participants an opportunity to address their use of violence within the larger context of their victimization.”

Defendants must acknowledge their guilt: People who qualify for the Crossroads program must acknowledge their guilt before a judge.

Defendants must complete an education program that was especially designed for offenders who are also currently being battered.

Defendants who are admitted to the program and meet its conditions (such as completing the education program; staying sober, etc.) will have the charges expunged from their record.

Legal justification for deferred prosecution: The Duluth DAs office developed a detailed legal philosophy to justify such a program (for which men could also potentially qualify). The basic ideas are that similarly situated offenders should be treated similarly and that prosecutorial discretion is essential to justice.

A woman who is arrested for simple assault but has been battered for 34 years by her husband is not situated similarly to her husband, who is also arrested for simple assault—even though they have been charged with the same offense. Their history is different and probably so is the intention of the assaults, and their consequences. These two perpetrators should probably be treated differently, and the essential exercise of prosecutorial discretion makes this possible.

Impact of Crossroads? What has been the impact of Crossroads to date? Of the first 35 victims of battering who were arrested and entered the Crossroads Program, 32 completed the program without reoffending while in the program or during a one-year follow-up. These dropout and recidivism numbers are much lower than what is typically observed in Duluth's programs for men. Of course the Crossroads program may not be responsible. The lower recidivism for women may just reflect a general tendency for female DV offenders to recidivate less than men do--which some recent research suggests (Busch & Rosenberg, 2004; Henning & Feder, 2004; Melton & Belknap, 2003).

In addition to the possible beneficial impact on recidivism, it seems quite likely that Crossroads has less of a negative impact on these women's lives than does traditional prosecution, because by virtue of completing the program (which more than 90% of them eventually did), these offenders end up with no criminal record and thereby avoid a variety of undesirable consequences.

MN state standards: MN state standards for DV offenders are now written in gender neutral language. This of course allows programs for female offenders.

## II--Programs for female DV offenders

### 1. Standard BIPs with female-only groups.

Many observers have noted that with mandatory arrest policies, increasing numbers of women are being arrested, convicted and sent to a traditional batterer intervention program. Advocates are upset about these arrests and convictions, but sending women to a traditional BIP has been called an especially alarming trend, for several reasons:

Most BIPs were designed for men: So any consistent differences between how and why women and men use violence in an intimate relationship are not likely to be addressed in a standard BIP.

Few female offenders are batterers: Therefore, while I do think that women's violence should be addressed, with few exceptions it is inappropriate to do it by sending them to a program designed for batterers.

Many female offenders are victims: But a typical BIP is adamant about refusing to allow clients to call themselves victims. Refusing to acknowledge that female offenders might truly be victims may deny their experience as well as the causes of their violence. For this reason, too, mandating them to attend a traditional BIP seems like a bad idea.

Some female “offenders” acted in self-defense: Finally and worst of all, some women who are mandated to these programs have not committed any illegal acts at all, but instead were only acting in self-defense. When the criminal justice system re-victimizes the very people it is designed to protect, something is dreadfully wrong.

2. Some alternatives to standard BIPs for women convicted of DV offenses:

Fortunately, there are some programs that were created specifically for female offenders. These programs try to avoid the problems I have just reviewed, though some of their content may overlap with that of a traditional batterers program.

In Washtenaw Co., Michigan:

Before I describe several formally structured group programs, I want to provide a little more detail about what happens to convicted female DV offenders in Washtenaw Co.

Assessment and Victimization issues: Probation always does a Pre-sentence report / recommendation on DV defendants for Judge Hines. They interview the defendant about the incident and ask about family and criminal history, mental health, substance abuse, and employment. Additionally, probation reads the police report and takes a statement from the victim. Based on all this information they make a recommendation to the Judge as to probation conditions including substance abuse and type of

batterers' intervention program. Jim notes that the judge, prosecutor and all parties need to have this information if we hope to enhance safety.

He also mentioned that sometimes he'll have a victim on probation who is not compliant and whom he suspects is being battered. But he says: "My judges understand DV so if my defendant is non-compliant due to victim related issues a violation most likely will not be filed."

Program provider and program approach: Judge Hines says: "I have been very fortunate to have a woman counselor and professor, Dr. Cristina Jose-Kampfner, who works with the women on an individual basis or in group at a very reasonable rate. She is very knowledgeable about the dynamics of DV. Defendants love her and find her incredibly helpful dealing with the various issues they have...."

I asked Jim Henderson how the approach taken by Dr. Kampfner differs from a typical BIP for male offenders. He responded:

"The program is definitely different. Most of my women are or have been victims of domestic violence. They are often disempowered and underemployed. We did not have an appropriate program so I have them meet with Dr. Kampfner, a professor of women's studies and psychology... She does teach about DV and power and control but also teaches about self-empowerment, safety planning and accountability for one's choices." Jim commented: "A person cannot be held accountable if they have no personal power."

Program effectiveness? Concerning effectiveness, Jim said:

“Prior to our women’s program my victims who were charged were picking up new cases 80% of the time. Since we incorporated a supportive yet accountable victim sensitive program I have only had two re-assaults and neither of them was identified as a victim of domestic violence.” And, echoing Judge Hines’ evaluation, Jim said: “So far we have received positive feedback from the defendants.”

“Groupwork for Women who Abuse” (Minneapolis):

The Groupwork program has been in existence for more than 20 years. That must make it about the oldest program for female DV offenders in the country. It was begun by the Minneapolis-based Domestic Abuse Project to deal with women who battered their female partners, but over the years the DAP noticed an increase in the number of women who were violent toward their male partners, so the program accommodates those offenders too. The Groupwork program is deemed to be equally appropriate to these two kinds of female perpetrators, and they do not conduct separate groups for them.

Assessment & victimization issues: Groupwork does a careful assessment and screening of clients at intake. They state: “If a woman has only been violent in self-defense, she does not belong in this program. But a woman who develops a ‘never-again’ mode and is violent to a new partner who isn’t battering her does belong in this program.”

Program philosophy: The following direct quotations from the Groupwork for Women who Abuse manual provide a good sense of the program's approach:

1. "Abusive behavior is a choice on the part of the violent person."
2. "A desire for power and control is what motivates use of violence..."
3. "Violence and other forms of abuse are not acceptable ways to control another person, to release stress, or to express feelings."
4. "Women need to learn to choose non-violent behavior to solve problems, get needs met, deal with strong emotions... Even in situations of self-defense it is better to learn alternative ways to keep oneself safe."
5. "Stopping violent behavior is the primary goal of treatment."
6. "The heart of the client's work in the group is developing, refining, and using a self-control plan."

Program components: Education component: The program consists of 16 different educational topics, including:

- Definitions of abuse
- Costs and payoffs of being violent
- Shame and responsibility
- Action plans
- Time-outs;
- Communication skills
- Anger; and 9 other topics.

The first hour of each two-hour session is devoted to one of the 16 educational topics.

Process component: The second hour of each session is the process component. During this time participants discuss, in group, how the educational component applies to them personally. They also report their own progress in developing and using a self-control plan, and along the way they make several presentations to the group.

Numerous forms and handouts support both the educational and the process components of this program. They are reproduced in the manual sold (for \$47.95) by DAP. [All the forms and handouts, i.e., the first 138 pages of the manual, may be reproduced and used without permission. All other material in the manual is copyright protected.]

#### VISTA program for “Women Who Use Force” (New Jersey)

The VISTA program will be described in an article to be published in 2006 in the journal Violence Against Women. The author, Lisa Larance, was kind enough to provide me with an advance copy of the article. Lisa is a licensed social worker who runs one of the VISTA groups for Women Who Use Force (WWUF).

This program was started by Jersey Battered Women’s Services to deal with the increasing numbers of referrals (e.g., from the courts; from Child Protective Services) they were seeing of women who use force. They note that the program “builds on traditional survivors’ support group strengths”

and, as Jim Henderson said about the groups in Washtenaw Co., the program is distinctly different from batterers' intervention.

Assessment & Victimization issues: During assessment the VISTA staff screens out women who use self-defensive force. These women do not participate in the VISTA program. When a woman has been mandated to attend the group, but assessment reveals that she acted in self-defense, the staff writes a letter to the court or other referring agency explaining the results of the assessment and recommending that the woman be allowed to stop participating in the WWUF program and voluntarily attend a survivors group instead. Lisa comments that they have had good success with these letters, which have even resulted in jail sentences being reduced or charges dropped.

Over a two-year period (between 2002 and 2004) Lisa worked with 52 heterosexual women (the one woman who had a female partner was not included in the analysis) in groups of about five women at a time in the VISTA program.

Recall that women who apparently acted in self-defense were screened out of the program. Lisa described the remaining 52 heterosexual participants as follows:

- >One-third were victims of DV in their current relationship.
- >One-third had been victims in a previous relationship.
- >One-third, by their own report, had never been victims of domestic violence.

So, depending on how you want to look at it, you could say that two-thirds of the VISTA participants were DV victims (now or in the past). Or you could say that two-thirds of the VISTA participants were not (currently) DV victims.

Some of these women had used force in ways that might surprise us:

- To get partner to stop ignoring her
- When he threatened to leave the relationship
- When partner laughed at her or criticized her mother
- Stabbed partner to try to gain control during an argument

These behaviors appear to be illegal and are not good but, as other observers I have talked with have noted, these behaviors don't usually amount to battering. Lisa does occasionally encounter a female batterer, but in her experience most women who use force are not batterers and she believes that their behavior demands a different intervention. She calls the VISTA program a "curriculum-based psycho-educational support group."

VISTA program philosophy & content: Lisa says the program is driven by the belief that "Women who use force against their intimate partners—be they DV survivors or not—are putting themselves and others in their lives at greater risk of harm."

The purpose of the program is to provide these women with knowledge and skills to facilitate safer life styles. The program runs for 16 weeks at 90

mins. per session. Here is a description, courtesy of Lisa Larance, of the first four sessions of this program:

### **Session 1-Definitions of Abuse**

Group members will:

- Identify their own abusive behavior
- Explore the factors that have led them to learn and use violence
- Develop hope that their behaviors can change and they can live non-violently

### **Session 2-Costs and Payoffs to Being Violent**

Group members will:

- Develop an understanding of the costs and payoffs of abusive behavior
- Explore alternatives to abusive behavior

### **Session 3- Shame and Responsibility**

Group members will:

- Understand the difference between shame and guilt
- Develop a group norm for encouraging each other to recognize their guilt and take responsibility for their behavior
- Begin to develop an understanding of shame and how they experience it
- Identify defense mechanisms and understand how they are used for self-preservation

### **Session 4- Progression of Violence**

Group members will:

- Explore the patterns of abusive behavior
- Discuss the concept of “cues” that signal an escalation of abusive behavior
- Begin to develop a self-control plan

The 16 topics covered in the VISTA program are exactly the same ones that are covered by the Minneapolis Groupwork for Women who Abuse program. And my sense (confirmed by Susan Miller's, 2005, book—see below) is that many other groups for female DV offenders around the country borrow heavily from the philosophy and content of the Minneapolis Groupwork program.

NJ state standards: None

In Delaware: Female Offender Programs (“FOPs”)

DE state standards: When women in Delaware are convicted of a DV offense they are typically assigned to a year of probation and are required to complete a 12 week program for female offenders and a substance abuse program if needed. Males are typically assigned to a 16 week program for male offenders. The difference turns on a unique distinction made in the state standards between types of DV offenders:

>”Domestic Violence Offender / Batterer Type: An individual who has engaged in battering with an intimate partner.” (Battering is defined, in the Delaware state standards, as “systematic use of violence often used to support other forms of abuse in an attempt to gain power and control.”)

>”Domestic Violence Offender / Response Type: An individual who has engaged in at least one act of domestic violence exclusively in response to a perceived threat of violence and been the victim of domestic violence and often of childhood / family of origin abuse.”

While nothing in the standards says that this distinction must break across gender lines, in practice it probably does. That is, most Delaware DV Offenders / Batterer Type are male and get a 16 week program, while most DV Offenders / Response Type are female and get a 12 week program.

Women (and men too, I think) who are first time offenders are eligible for a deferred prosecution program (somewhat similar to the Crossroads program in Duluth, described above) and will have their arrest expunged if they successfully complete the program and comply with other conditions of their probation.

There are also women in the Delaware Female Offender Programs who are not first offenders --so they will have an additional conviction on their records when they complete the program.

Susan Miller is a professor of sociology & criminal justice at the University of Delaware. As part of gathering material for her new book, Victims as Offenders (published in Oct., 2005), Miller systematically observed several of these Delaware programs for female offenders. She refers to these programs as FOPs (female offender programs)--to distinguish them from BIPs. Over a six-month period she (or her research assistant) attended every session of several programs and observed a total of 95 participants.

Assessment & Victimization issues: Self-defense: The group leader had access to probation reports on the participants, so the participants could not minimize what they did. In some cases, however, the leader

concluded that a participant was purely a victim and not an offender (i.e., she had acted entirely in self-defense, or perhaps had plead guilty even though she had not used any violence at all). When this happened the leader would try to switch the participant to a victim's support group.

I don't understand how this works legally, but Miller says that sometimes the woman's partner would not consent to the woman switching to the support group and insisted that she stay in the FOP.

According to Miller, who also conducted interviews with advocates and criminal justice personnel, one of the main reasons that women who weren't really offenders sometimes ended up in the FOP was inadequate legal representation. She says: "The lack of legal advice available to women was astonishing." Often their attorneys never even mentioned self-defense and strongly advised them to accept a plea--without telling them about the negative ramifications.

Also, the availability of the first offender's program induced some victims to plead guilty (often with their attorney's urging), --to avoid a conviction-- even if they thought they were innocent. One woman who worked with children, for example, was told by her employer: "make those charges go away; otherwise you don't have a job anymore." She took the first offenders program.

[This is admittedly a tricky choice for defendants, but Miller's point is that the attorneys did not provide adequate legal assistance to most of the women

who were forced to make that choice. (It is possible that the representation these attorneys provided to men was no better, but Miller does not say.)]

According to Miller a substantial percentage of the women she observed did act “defensively” (though their behavior did not always meet the legal standard for self-defense). In addition, many were DV victims, either in a previous relationship or currently. They often used force to head off physical abuse when they perceived that it was about to occur (pre-emptive violence)-though in some cases the current partner had no history of abusing them. And sometimes they resorted to violence out of jealousy because, for example, their partner was flirting with another woman.

Another interesting twist confirming the victimization status of some of the women is that it was not uncommon for the male partners of these women to be in BIPs at the same time the women were in the female offender program.

Even though many of these women were DV victims, the program did try to make them accountable for their previous violence (with the exceptions noted above for the women who were referred out to support groups because they had used force strictly in self-defense); furthermore, when joining the group the women sign a contract not to be violent to any person; if they violate this contract they are likely to be terminated from the FOP and their probation will be violated.

Program philosophy & content: According to Miller the Delaware programs “follow a feminist philosophy that seeks to empower women through raising issues and conducting group discussions to

encourage self-realization.” This treatment model is adapted from the Groupwork program created in Minneapolis (described above), and seeks to empower these women by acknowledging their victim status (for those who are victims) and teaching them alternatives to violence. The primary means for doing this is Anger Education. They are taught how to recognize their anger and to respond to it with nonviolent behaviors. This is accomplished with practice in recognizing anger cues, taking time-outs, making “I” statements.

In addition to anger education the program providers believe it is important to increase participants’ awareness about the negative effects of their own violence--and their partner’s violence--on their children. As well, the program provides resources to participants: e.g., information about social support networks, GEDs, AA, how to get child support obligations enforced, navigating the criminal justice system.

Program impact? No formal evaluations have been conducted of this (or any other) program, but during their final session (week 12) all the women were “invited to share with the group any comments about how the program had affected them”. Miller tells us that 94 of the 95 women chose to speak up and described a variety of positive effects. Here are a few of the common themes:

1. They realized they made conscious choices about how to react in a given situation: “No one made me do it. I chose to do it.”
2. They learned how to recognize signs of anger in themselves and in their partner.

3. They learned how to make “I” statements so their feelings weren’t so “stuffed” inside of them.
4. They gained a new understanding of their right to say “no” and found that understanding brought them self-respect.
5. They learned strategies they could use to prevent situations escalating into conflict and violence (e.g., time-outs; walk-outs).

Since many of these objectives are exactly what the program sets out to accomplish, these women at least seem to have absorbed the lessons it tries to teach. Whether absorbing these lessons translates into sustained personal empowerment and reduced re-offending, nobody knows.

“Partner Aggressive Women” program (Worcester, MA)

Penny Leisring is a clinical psychologist at Quinnipiac University, and her colleagues, Lynn Dowd and Alan Rosenbaum are psychologists associated with the University of Massachusetts Medical School in Worcester, Mass. They recently published articles (2003; 2005) in which they outlined the topics covered in a U. Mass. Medical school program for “Partner Aggressive Women” and described 45 heterosexual participants in this program.

Assessment & victimization issues: The authors don’t address the issue of self-defense (e.g., whether the program might include women who had acted strictly in self-defense).

Many of the participants in this program were DV victims, as was true of the New Jersey VISTA program I described above. In fact three-quarters of the participants had been assaulted by their male partner within the past year.

However, a quarter of the women said that they were the only ones in the relationship to use violence--at least in the past year, which is all they were asked about.

Program philosophy & purposes: The people who run this program, which they refer to as an Anger Management program, believe that:

1. Reducing violence by women may increase their safety because some evidence shows that when women use violence their male partners often retaliate by increasing their own violence.

2. Reducing aggression by men and women may reduce rates of child psychopathology and intergenerational transmission of aggression.

3. Although violence by one partner can contribute to violence by the other partner, this does not excuse violence by either men or women. So women (as well as men) should be held accountable for their violence and learn ways to avoid it.

Program length: 20 wks; 90 min. sessions

Program components:

Components shared by men's & women's programs:

The treatment providers believe that many components of the men's

program they run (also called Anger Management) are also relevant to partner aggressive women, so they incorporate these components into their women's program. These shared components are very similar to components we have seen in the other programs for women that I already have described. They include teaching the women:

1. That they are responsible for their actions. They are taught that men don't make them violent; rather they choose to be violent instead of choosing some alternative behavior.
2. That their violence has consequences for their own safety as well as negative effects on their children.
3. To recognize anger signs and to use time-outs effectively.
4. To communicate feelings in non-threatening ways, including using "I" statements.

Components for women only: But the leaders believe that partner aggressive women also have unique needs, so the women's program also is somewhat different from the men's program. For example:

1. Because many of these women are or may become DV victims, there is more emphasis on safety, including developing specific safety plans, providing hotline and shelter phone numbers, etc.
2. The program provides information about resources that can help these women meet their basic needs including housing, food, and employment--especially for women who have recently left an abuser. Information about obtaining welfare and legal counseling is also provided. These resources are

offered on the theory that these women's basic needs must be met before they can deal with their violence toward their partner.

3. There is emphasis on dealing with referrals for post-traumatic stress disorder (one-third of the women in the 2005 study exhibited clinical evidence of PTSD) and other mental health issues, because participants who are experiencing these psychological problems can have a more difficult time dealing successfully with their violence.

4. There is more emphasis on parenting than there is in the Men's group, because women are typically more involved with parenting than men are. An emphasis on parenting is also needed because many of these women have been sexually or otherwise abused by their own parents—which is not a good parenting model.

5. There is less emphasis on power and control, because in the experience of the people who run this program few partner aggressive women qualify as batterers [In this case what they mean when they say the women aren't batterers is that the women's behavior doesn't cause their partners to change their behavior or to fear injury].

Program impact? The authors note that there are not yet any real evaluations of this or any other program for women. In passing I would note one similarity to men who enroll in BIPs: even though these women were court-mandated to attend the program, half of them dropped out before completing it.

MA standards: The MA standards are written in gender neutral language, but since the somewhat different programs for women have

existed for many years, the state doesn't seem to think this means that men's and women's programs have to be the same.

In Summary: Common characteristics of alternative programs

Nearly all of the programs for female DV offenders that I have located:

1. Encounter women who have acted strictly in self-defense and do not admit them to the female DV offenders program. This determination is not always easy to make, however, so most programs require some sort of outside corroboration and do not rely only on a client's assertion that she used violence strictly in self-defense.
  2. Encounter, and do include in their programs, substantial numbers of women who are DV victims, either currently or in a previous relationship.
  3. Explicitly acknowledge that their clients may be DV victims by addressing the needs of victims somewhere in their curriculum and by providing resources that DV victims might need.
  4. But most of the program providers note that, while many of their female clients are victims, they also sometimes use violence in situations where there may be no immediate threat to them.
  5. And most of these programs also have at least some clients who use violence against their partners and other people but are not themselves victims.
  6. Virtually all the providers note that in their experience the domestic violence perpetrated by women usually lacks the pattern of power and control that is more typical of men's domestic violence. Put another way, in their experience it is quite rare to encounter a female DV offender they would call a batterer.
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7. Although the programs acknowledge that their clients may well be DV victims and are unlikely to be batterers, they nevertheless hold these women accountable for the violence they have used and teach them alternative, non-violent strategies for dealing with their situations.
8. Involve a large anger management component.
9. Finally, none of these programs has been formally evaluated for effectiveness.

The strong similarities among the programs I have located in my search suggest that many programs for female offenders share a common core of characteristics. But other programs for female DV offenders do exist, and emerging state standards for offenders' programs may influence the type of program offered in a particular jurisdiction. Illinois, for example, not only has drafted very detailed Partner Abuse Interventions standards for "female perpetrators of heterosexual partner abuse"—the only state to have done so to date—but their standards for women specify, under "Exclusion Criteria," that:

"Participants who are identified through screening or subsequent assessment as victims must be referred to domestic violence victim services programs."

At the other extreme, legislation in California states that the content of programs for male and female offenders must be identical and that all convicted DV offenders, regardless of gender must attend a certified batterers' program:

“Programs providing women’s groups must comply with these Standards; no modification of content or curriculum is allowed. Penal Code section 1203.097 mandates that all defendants granted probation for an offense which qualifies as domestic violence complete a certified batterers program.”

But California does leave a door open for DV victim / offenders, because their standards also state:

“If a convicted batterer is referred to a program, and through the assessment process, or in the course of group discussion, it is revealed that there is a history of victimization, the participant may be referred to Probation with such information, indicating the defendant is unsuitable for the program. The Probation Department then may bring this information to the court’s attention, along with appropriate documentation, and request a modification of the court order to allow the defendant to attend an alternative counseling program.” This is a procedure similar to that used by several of the programs I have described above.

[The PowerPoint presentation: “Treating Female Perpetrators: State Standards for Batterer Intervention Services,” by Poco Kernsmith, provides a systematic overview of state standards for female DV offenders. It may be downloaded from: [www.biscmi.org/documents/articles](http://www.biscmi.org/documents/articles).]

Implications:

That concludes my brief overview of how women who use force are dealt with in several jurisdictions across the country. I think this information has many implications for how we might address this issue here in the State of Maine. Here are two of the most important implications:

First, in every case it is essential that a thorough assessment be made of whether the female offender acted in self-defense, as defined in the Maine Criminal Code, and that this determination be made as early as possible in the adjudication of her case. Because if she did act in self-defense she is not an offender and she should not be treated as one. We must not re-victimize women by criminalizing their self-defensive behavior because that has many negative consequences and it is just plain wrong. It is therefore very important that we scrutinize our own system—as some other jurisdictions have already done—to see whether it is victimizing innocent women. If problems are found, we must correct them.

Second, female DV offenders whose violence is not self-defensive may nevertheless be DV victims. Therefore, it is critically important that a careful assessment be made of all female DV offenders prior to sentencing, or at least prior to enrollment in a program for offenders. Those women who are identified as victims should not be required to meet with counselors or to attend programs that refuse to acknowledge their victim status.

These assessments of self-defense and victim status must be thorough and go beyond self-report, because substantial numbers of men as well as women DV defendants claim that they are victims: in one recent study half the men and two-thirds of the women claimed that they acted “completely in self-

defense” in the DV incident they were convicted of (Henning, Jones & Holdford, 2005), and we cannot rely simply on gender to determine which defendants are telling the truth. (Many anecdotal reports do suggest that women who engage in DV are more likely to acknowledge it than men are, but this does not reveal whether an individual offender is telling the truth; see also the Henning et al. article for some evidence that female as well as male DV offenders engage in minimization and denial).

Bottom line: Women who use force are not well-served when they are mandated to attend a traditional Batterer Intervention Program. This paper has provided detailed information about alternative programs, tailored to the special needs of this population, that are now operating in other states. These programs should be carefully considered by advocates and criminal justice officials who are concerned about the fate of women arrested for DV offenses here in the State of Maine.

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# **ATTACHMENT F**



ATTACHED FORMS

	<b>ANGER MANAGEMENT PROGRAMS</b>	<b>STATE CERTIFIED BATTERERS INTERVENTION PROGRAM</b>
<b>ARE PROGRAMS STATE CERTIFIED?</b>	No	Yes. Certification is administered by Maine Department of Corrections.
<b>WHO IS SERVED BY THE PROGRAMS?</b>	Perpetrators of stranger or non-intimate violence.	Specifically designed to work with domestic violence offenders.
<b>HOW LONG ARE THE PROGRAMS?</b>	Usually 8-15 weekly sessions.	48 weeks.
<b>ARE PROGRAMS MONITORED BY A STATE AGENCY?</b>	No	Yes. Each program must have a working relationship with the local domestic violence project, probation and the courts.
<b>DO PROGRAMS CONTACT VICTIMS?</b>	No	Yes. Programs are required to contact victims in writing. They are made aware of enrollment of perpetrators and how to access services through the local DV projects.
<b>ARE PROGRAMS LINKED WITH LOCAL DOMESTIC VIOLENCE PROJECTS?</b>	No	Yes. Each program must attend regular supervision provided by the local DV project to discuss class content.
<b>WHAT IS THE EMPHASIS OF THE INTERVENTION?</b>	Violence is seen as a momentary outburst of anger. Perpetrators are taught techniques like "time outs", relaxation methods, and coping skills.	Physical violence is seen as one of many forms of abusive behaviors chosen by batterers to control their partners, including physical, sexual, verbal, emotional, and economic abuse. Men are taught that stress, a life crisis, and chemical dependency are not causes of DV, and that abuse is a choice a batterer makes to gain and maintain an imbalance of power and control within the relationship.