

# MAINE STATE LEGISLATURE

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

### **A Report to the 126th Legislature (first regular session)**

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 tenth 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 2012. (Attachment A represents the data from the Maine Certified Batterer Intervention Programs in 2012.)

Since September of 2004, the Department of Corrections has maintained statistics comparing the number of domestic violence offenders serving a term of probation with a condition of anger management, psychological counseling, or domestic abuse counseling<sup>1</sup> to the number of domestic violence probationers with the condition of attendance at a certified batterer intervention program. A review of domestic violence offenders statewide in 2012 revealed nearly three quarters of the offenders were ordered to attend these other types of counseling rather than a batterer intervention program. Research indicates that battering is about power and control and not about anger issues or typical psychological issues. There are a number of domestic violence offenders sentenced to a term of deferred disposition, so these offenders are not reflected in the chart. (Attachment B represents the number of current probationers with anger management counseling, psychological counseling, domestic abuse counseling, or a certified batterer intervention program.)

There have been concerns about equal protection issues with the lack of certified batterer intervention programs for women convicted of domestic violence. In a decision

<sup>1</sup> Domestic abuse counseling is a counseling with an individual counselor, whereas batterer intervention is a group therapy.

by the Maine Supreme Judicial Court on December 6<sup>th</sup>, 2012 in the case of State of Maine v. Christopher Mosher, the Court addressed these concerns, although it did not finally resolve them. (Attachment C reflects the Court decision.) Previous to this decision, the Department of Corrections, along with the Program subcommittee of the Maine Commission on Domestic and Sexual Abuse, had proposed a revision of the Batterer Intervention Program Standards to reflect gender neutrality. The proposed standard changes have not been approved as of this report. (Attachment D reflects the proposed standard changes.)

The current standards do not allow for a certified Batterer Intervention program for women. However, according to Julia Colpitts from the Maine Coalition to End Domestic Violence, currently there are three programs available to women convicted of domestic violence offenses. Kennebec Behavioral Health in Kennebec and Somerset Counties has a program called RespectME for women that follows the same basic structure as the men's program, i.e. 48 weeks, but the content is gender specific. The program is located in Somerset County, has been active for four and a half years, and currently has 5 women participating. Safe Voices has a program for women in Franklin, Oxford and Androscoggin Counties called Alternatives to Abuse. It is a new program and currently has 3 participants. Caring Unlimited has a program for women in York County called Turning Point and currently has 2 referrals, but they are on hold due to the need for 2 more referrals to begin the class.

Maine has similar statistics as reported by the Bureau of Justice Statistics showing that about 85% of domestic violence crimes are committed by men. In the State of Maine there are not enough women who use violence in an intimate relationship at the same time and in the same geographical area to have a strong demand for a female program, and this may be problematic for establishing statewide certified Batterer Intervention Programs for women.

1 Domestic abuse counseling is a counseling with an individual counselor, whereas batterer intervention is a group therapy.

Appropriate batterer intervention programs with oversight and monitoring is an essential component of a coordinated community response for domestic violence. 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

1 Domestic abuse counseling is a counseling with an individual counselor, whereas batterer intervention is a group therapy.

## ATTACHMENT A

## Maine Batterer Intervention Programs: January 1 - December 1 2012

**Participation:**

- |   |    |
|---|----|
| 1. Total number of men who attended program in the year.....                      | 51 |
| 2. Number of men who completed the program .....                                  | 15 |
| 3. Number of men who left without completing the program.....                     | 14 |
| 4. Number of men who re-offended and went to jail while attending the program.... | 4  |
| 5. Number of men who completed but were required to attend the program again....  | 0  |

**Referrals:**

- |   |    |
|---|----|
| 6. Number of referrals from Probation.....                                  | 44 |
| 7. Number of referrals resulting from filings or conditions of release..... | 1  |
| 8. Number of referrals from DHS.....  | 1  |
| 9. Number of PFA referrals.....   | 2  |
| 10. Number of self-referrals.....   | 1  |
| 11. Number of deferred disposition referrals _____                          | 2  |
| Number of other referrals (please specify)                                  |    |
| 12. _____   | 0  |

**Special Needs:**

- |   |   |
|---|---|
| 13. Number of men with special needs.....   | 0 |
| English as a second language _____,      different culture _____,      hard of hearing _____, |   |

What accommodations, if any, were made within the program for these men?

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- |  |  |
|--|--|
| 14. Number of men referred for mental health services.....   |  |
| 15. Number of men referred for substance abuse services..... |  |
| 16. Number of men referred for literacy services.....        |  |

**ATTACHMENT B**

**Domestic Violence Offenders  
Court Ordered Probation Conditions  
Maine Department of Corrections  
2012**

- Batterer Intervention Program
- Anger management Program
- Domestic Abuse Counseling
- Psychological Counseling



ATTACHMENT C

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2012 ME 133  
Docket: Ken-12-79  
Argued: November 7, 2012  
Decided: December 6, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

STATE OF MAINE

v.

CHRISTOPHER L. MOSHER

PER CURIAM

[¶1] Christopher L. Mosher appeals from a judgment of conviction of domestic violence assault (Class D), 17-A M.R.S. § 207-A(1)(A) (2011), entered in the trial court (*Mulhern, J.*) following a nonjury trial. Mosher does not contest his conviction; however, he argues that the sentence, which included a period of two years of probation with a requirement that Mosher participate in a certified batterers' intervention program, violated the Equal Protection clauses of the U.S. Constitution, U.S. Const. amend. XIV, § 1, and the Maine Constitution, Me. Const. art. I, § 6-A.

[¶2] Mosher contends that his sentence violated equal protection principles because, he asserts, a woman convicted of the same crime could not be sentenced to a term of probation of more than one year. According to Mosher, the court could not impose the same sentence on a female defendant for the same crime.

Because there is no factual record from which we can evaluate Mosher's and the State's arguments, we vacate the sentence and remand for additional proceedings.

### I. CASE HISTORY

[¶3] Mosher was charged by complaint with domestic violence assault (Class D), 17-A M.R.S. § 207-A(1)(A), because of an incident that occurred on November 24, 2011. He was convicted following a nonjury trial. The court sentenced Mosher to 180 days in the county jail, with all but sixty days suspended, and a period of two years of probation with a requirement that Mosher participate in a certified batterers' intervention (CBI) program. Mosher objected to the sentence and argued that imposing two years of probation and requiring his participation in a CBI program violated his right to equal protection of the laws because the court could not impose a two-year term of probation for women.

[¶4] After sentencing, Mosher timely appealed pursuant to 15 M.R.S. § 2111(1) (2011) and M.R. App. P. 2. On appeal, he challenges only the sentence, not the conviction. We permit a direct appeal of an allegedly illegal sentence when the "illegality appears plainly in the record," and we review the constitutionality of a sentence de novo. *State v. Harrell*, 2012 ME 82, ¶ 4, 45 A.3d 732.

### II. LEGAL ANALYSIS

[¶5] Defendants, male or female, convicted of some Class D crimes, including domestic violence assault, may be sentenced to up to one year of

probation. 17-A M.R.S. § 1202(1) (2011). Title 17-A M.R.S. § 1202(1-B) (2011), however, permits a court to sentence a defendant convicted of domestic violence assault to two years of probation, but only if the court orders the defendant “to complete a certified batterers’ intervention program as defined in Title 19-A, section 4014.” The sentencing statute itself makes no distinction between men and women.

[¶6] Title 19-A M.R.S. § 4014(1) (2011) instructs the Department of Corrections to adopt administrative rules “that establish standards and procedures for certification of batterers’ intervention programs.” *See also* 5 M.R.S. §§ 8071-8074 (2011) (describing the Legislature’s review of major substantive rules). The Department then reviews and certifies CBI programs that meet its standards. 19-A M.R.S. § 4014(1). Courts may refer defendants to only those CBI programs that the Department has certified. 17-A M.R.S. § 1204(2-A)(D) (2011).

[¶7] At this point, we understand that the Department has promulgated rules that authorize CBI programs only for men, thus making two-year terms of probation available for men only. The regulation defines a batterers’ intervention program as “an educational program for men” that is “designed specifically to intervene with court referred adult men who are abusive to their intimate women partners.” 1A C.M.R. 03 201 015-1 § 1.1(B) (2008). The programs will be “comprised of the same sex (men).” 1A C.M.R. 03 201 015-4 § 4.1(B)(4) (2008).

The rule notes that its “standards are specifically designed for men who abuse their intimate women partners” and that “[a] different model may be developed for same sex batterers, and for women who are abusive.”<sup>1</sup> 1A C.M.R. 03 201 015-4 § 4.3(A) (2008).

[¶8] The parties dispute whether CBI programs for women actually exist, notwithstanding the absence of a regulation authorizing such programs. The parties’ arguments, although undoubtedly made in good faith, are not based on facts in the record. Absent such a record, we are unable to reach the constitutional dispute before us.

[¶9] The State argues that Mosher failed to meet his burden to demonstrate that female defendants are not, in fact, being sentenced to two years of probation with a requirement that they complete a CBI program. The record before us, however, suggests that the Department has adopted rules that authorize programs for men only. As a result, whether or not women are being sentenced to such programs, a fact absent from the record, the published regulatory scheme permits only male defendants to be sentenced to an additional year of probation. In this context, the State bears the burden of demonstrating the constitutionality of a

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<sup>1</sup> There are two ways to read this last phrase. The State argues that this phrase means that the regulation, at present, authorizes CBI programs for women. In the context of the full regulation, which repeatedly refers to programs for men, this interpretation is not persuasive. More likely, this language acknowledges that a different, and presently unpromulgated, rule may address programs for women. At oral argument, the State asserted that women are being sentenced to two-year terms of probation pursuant to provisional CBI programs for women. Nothing in the record supports that contention.

989 A.2d 1128. To withstand intermediate scrutiny, gender-based statutory classifications “must advance an important governmental objective and be substantially related to achieving that objective.” See *State v. Houston*, 534 A.2d 1293, 1296 (Me. 1987).

[¶12] We have previously held that a male defendant may not be punished more harshly than a female defendant convicted of the same crime. In *Houston*, we considered whether a sentencing judge violated a male defendant’s right to equal protection when the judge intimated at sentencing that he was punishing the defendant more harshly than he would a similarly situated female defendant. *Id.* We vacated the sentence and held that “[t]here exists no sound reason for punishing more harshly a man’s unprovoked assault upon a woman than a similar attack upon a victim who is an equally defenseless male.” *Id.* at 1297. Given this precedent, a regulatory scheme that permits men to be sentenced to two years of probation while women apparently may only be sentenced to one year of probation would not withstand constitutional scrutiny. The trial court must resolve in the first instance whether such a regulatory scheme exists in this case.

[¶13] Whether single-gender programs are substantially related to achieving an important governmental objective, *id.* at 1296, cannot be determined on the record before us. Similarly, whether there are in fact provisional CBI programs that permitted women to be sentenced to two-year terms of probation at the time

that Mosher was sentenced to a two-year term of probation cannot be determined on this record. The issue was addressed only in brief arguments before the trial court that did not promote development of a factual record to support the equal protection challenge on the significant constitutional issue raised by the term of probation imposed in this case.

[¶14] When an appeal presents a constitutional challenge to a statute or regulation, we must be cautious about addressing constitutional issues if addressing issues that do not implicate a constitutional violation can resolve the appeal. *Bates v. Dep't of Behavioral & Developmental Servs.*, 2004 ME 154, ¶ 85, 863 A.2d 890; *Hannum v. Bd. of Env'tl. Prot.*, 2003 ME 123, ¶ 18, 832 A.2d 765. Here, in order to address the constitutional issue, the trial court must require the parties to develop the facts as to whether CBI programs for women, permitting a two-year term of probation, are available or were available at the time that Mosher was sentenced, and then it must determine whether a gender-based distinction in implementing CBI programs is substantially related to a legitimate governmental interest.

[¶15] Accordingly, we remand for the trial court to develop the facts on these issues and, after development of the facts and completion of the constitutional analysis, resentence Mosher to the same term of probation or a

reduced term of probation as its factual findings and legal conclusions may support.

The entry is:

Sentence vacated. Remanded for further proceedings in accordance with this opinion.

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**On the briefs:**

Scott F. Hess, Esq., Law Office of Scott F. Hess, LLC, Augusta, for appellant Christopher Mosher

Alan P. Kelley, Acting District Attorney, and Alisa Ross, Asst. Dist. Atty., Prosecutorial District IV, Augusta, for appellee State of Maine

**At oral argument:**

Scott F. Hess, Esq., for appellant Christopher Mosher

Alisa Ross, Asst. Dist. Atty., for appellee State of Maine

**ATTACHMENT D**

**Chapter 15: BATTERER INTERVENTION PROGRAM CERTIFICATION**

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**Summary:** This chapter outlines the procedures and standards governing the certification and monitoring of Batterer Intervention Programs, pursuant to 19-A M.R.S.A. §4014

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**1. Procedures and Standards for Batterer Intervention Programs (relating to psychological, physical, verbal and sexual abuse).**

**1.1 Definitions**

**A. Domestic Violence**

In the context of this document, the definition of the term "domestic abuse" refers to 19-A M.R.S.A. §4002.

"Abuse" means the occurrence of the following acts between family or household members or dating partners ~~or by a family or household member or dating partner~~ upon a minor child of a family or household member.

1. Attempting to cause or causing bodily injury or offensive physical contact, including sexual assaults under Title 17-A, Chapter 11, except that contact as described in Title 17-A, §106, sub-§1, is excluded from this definition;
2. Attempting to place or placing another in fear of bodily injury through any course of conduct including, but not limited to, threatening, harassing, or tormenting behavior;
3. Compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage;
4. Knowingly restricting substantially the movements of another person without that person's consent or other lawful authority by: removing that person from that person's residence, place of business or school; moving that person a substantial distance from the vicinity where that person was found; or confining that person for a substantial period either in the place where the restriction commences or in a place to which that person has been moved;
5. Communicating to a person a threat to commit, or to cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is

communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed; or

6. Repeatedly and without reasonable cause:
  - a. following the plaintiff; or
  - b. being at or in the vicinity of the plaintiff's home, school, business, or place of employment.

**B. Batterers Intervention Program for Men**

1. The term "batterer's intervention program" refers to 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.
2. The programs for batterers (hereafter called "the BIP programs") referred to in these standards are designed specifically to intervene with court referred adults ~~men~~ who are abusive to their intimate ~~women~~ partners.

**C. Family Violence Project**

1. The term "family violence project" or "domestic violence project" refers to a network of programs and services for victims of domestic abuse. The Maine Coalition to End Domestic Violence (MCEDV) is comprised of most of Maine's domestic violence projects. Each domestic violence project is a private, independent, non profit agency which provides individual crisis intervention, legal information, and advocacy for people affected by domestic abuse, as well as support groups and shelter options for victims of domestic abuse and their children. These services are confidential, free of charge, and based on a self-help model. In addition, domestic violence projects provide training, education, and consultation to community groups, schools, public officials, and services providers to improve the community's response to domestic abuse.
2. In the case of a family violence project, which is not a member of the Maine Coalition to End Domestic Violence (MCEDV), that project which is providing the services described above will serve as the collaborator in that jurisdiction.
3. For the purposes of this document, hereafter "family violence projects" or "domestic violence projects" will be referred to as "FV projects."

- D. Monitoring** consists of observation of and consultation about the performance/operation of a BIP program in order to promote the safety of survivors of domestic violence. Monitoring will be provided by staff of a

family violence project as outlined in section 5.8 A or by a third party monitor as outlined in section 5.8 B. Written documentation of these interactions will be provided to the BIP program and maintained by the monitoring agency.

- E. **Supervision** is the internal oversight of the process and content of the BIP program by a qualified primary supervisor as defined in section 4.5 C.
- F. **Staff** means both paid and unpaid staff.

## 2. Requirements for Certification

### 2.1 Oversight of the Maine Standards for Batterer Intervention Programs

- A. The Maine Department of Corrections, hereafter called "DOC", shall be the lead agency responsible for implementation of these standards, through its Victim Services Coordinator. Only BIP programs that hold a valid certificate granted by the DOC shall be utilized for court referrals. A certificate shall be valid for two years unless suspended or revoked.
- B. The DOC, in consultation with the Maine Commission on Domestic and Sexual Abuse, shall develop and, on a biannual basis, review a certification process for BIP programs. The review process may include input from representatives of the following agencies and organizations and any others deemed appropriate by the DOC:
  - 1. family violence projects;
  - 2. batterer intervention programs;
  - 3. the judicial system;
  - 4. local law enforcement;
  - 5. survivors of domestic violence;
  - 6. health and human service agencies;
  - 7. schools;
  - 8. hospital emergency departments;
  - 9. community corrections;
  - 10. groups working with survivors of child abuse;
  - 11. groups working with survivors of rape;
  - 12. groups coordinating supervised visitation; and/or
  - 13. other related services.

- C. BIPrograms will be assessed a fee for program certification.
- D. Certification of BIPrograms will be for a period of two years.
- E. If anyone has a dispute regarding the certification of a BIProgram, which appears to be at an impasse, it will be the responsibility of the DOC, in consultation with the Maine Commission on Domestic and Sexual Abuse, to attempt to bring such a dispute to resolution.

## **2.2 Application for Certification**

- A. Each BIProgram requesting certification or renewal of certification shall submit a completed application to the DOC containing all of the information requested, to include, but not be limited to:
  - 1. demonstration of the BIProgram's ability to meet the Maine Standards;
  - 2. an overview of the BIProgram content;
  - 3. proof of successful completion for all co-facilitators at a national batterer's intervention training;
  - 4. documentation of a working agreement with the local FVProject in each county the BIProgram may operate in;
  - 5. documentation of a working agreement with the Regional Correctional Administrator;
  - 6. demonstration of need for a BIProgram, or another BIProgram, in the geographic area;
  - 7. name, address, and telephone number of the BIProgram and all sites; and
  - 8. a statement of ownership of the BIProgram, that discloses the names, address, and telephone numbers of all owners, directors, and officers of the corporation, and any members of any governing or advisory boards.

## **2.3 Denial, Refusal to Renew, Suspension, and/or Revocation of Certification**

### **A. Definitions**

- 1. **Denial:** action taken by DOC to not certify a BIProgram.
- 2. **Refusal to Renew:** action taken by DOC at the end of a two year certification period rejecting a BIProgram's application for renewal.
- 3. **Suspension:** action taken by DOC in lieu of revoking or refusing renewal of certification that stipulates the Program may not admit any clients until any deficiencies are corrected or the certification is revoked.

4. **Revocation:** action taken by DOC removing a BIProgram's certification after the DOC has certified the Program, but before the BIProgram's two year certification has expired. This action makes the affected BIProgram ineligible to receive court referrals.
- B. Each of the following, in and of itself, may constitute full and adequate grounds on which to deny, revoke, or refuse to renew certification to operate a BIProgram:
1. failure to submit information required for certification;
  2. failure to meet any of these Maine Standards for Batterer Intervention Programs;
  3. denial of entry to agents of the DOC to conduct site visits or inspections or any other attempt to impede the work of agents of the DOC;
  4. obtaining or attempting to obtain certification by fraud, misrepresentation, or by the submission of incorrect, false, and/or misleading information;
  5. criminal conduct by the owners, staff, or administrators as evidenced by criminal convictions;
  6. operation of a BIProgram after the expiration of certification;
  7. operation of a BIProgram in a manner which fails to fulfill the terms of the program - client agreement; or
  8. operation of a BIProgram in a manner, which endangers the health or safety of clients and/or survivors of domestic abuse.

#### 2.4 Recourse of Programs when Certification has been Denied, Refused Renewal, Suspended and/or Revoked

- A. A BIProgram whose certification has been denied, refused renewal, suspended and/or revoked by DOC will receive in writing, by certified mail, a program compliance letter outlining the standards that the Program is not in compliance with and the time frames allowed to bring the BIProgram into compliance.
- B. The BIProgram has 60 days from the date of notification of denial, refusal to review, suspension and/or revocation of certification to resubmit the application, clearly indicating remediation for deficiencies. DOC must respond to this information within 60 days of receipt.
- C. The BIProgram may appeal the DOC response to the Commissioner of Corrections within fifteen days of receipt of the response.

**3. Coordinated Community Response to Domestic Abuse**

**3.1 Goals**

- A. A coordinated community response to domestic abuse occurs when diverse segments of a community work together for two common goals:
1. the safety of the survivors of domestic abuse; and
  2. to end domestic abuse.

**3.2 A Coordinated Community Response to Domestic Abuse**

- A. During development, implementation, and evaluation of BIP programs, BIP program staff shall consult, cooperate, and coordinate with representatives of the following agencies and organizations:
1. family violence projects;
  2. the judicial system;
  3. local law enforcement;
  4. health and human service agencies;
  5. community corrections; and
- B. During development, implementation, and evaluation of BIP programs, BIP program staff are encouraged to consult, cooperate, and coordinate with representatives of the following agencies and organizations:
1. other certified BIP programs;
  2. survivors of domestic violence;
  3. schools;
  4. hospital emergency departments;
  5. groups working with survivors of child abuse;
  6. groups working with survivors of rape;
  7. groups coordinating supervised visitation;
  8. groups providing services to diverse populations; and/or
  9. other related services.

### 3.3 BIProgram - FVProject Collaboration

- A. The BIProgram shall acknowledge the leadership of survivors, who are experts on domestic abuse, and the battered women's movement, in ending violence against women through:
1. consulting with the local FVProject on all written curricula, publications, and public relations materials of the BIProgram;
  2. publicly acknowledging the contributions of the battered women's movement to their efforts and that BIPrograms exist in support of the goals of the FVProjects;
  3. consultation with the local FVProject when seeking funds in a way that competes with funding for FVProjects;
  4. always encouraging survivors to contact their local FVProject;
  5. inviting the local FVProject advocates to attend BIProgram groups;
  6. participation in a community response to domestic abuse; and
  7. negotiating an ongoing working relationship with the local FVProject and accepting feedback in order to hold themselves accountable to the battered women's movement, acknowledging that a working relationship may go beyond these standards.
- B. A BIProgram may only accept referrals of persons residing in a county in which the BIProgram has a working agreement with the local FVProject, unless the program is granted an exception by DOC.

### 3.4 Partner Contacts

- A. A partner contact is the verbal and/or written exchange of information between the survivor and a designated representative of the local FVProject.
- B. The purpose of the partner contact is to provide the survivor with:
1. support and validation;
  2. information about the BIProgram;
  3. information about the local resources for survivors;
  4. assistance in developing a safety plan; and
  5. information about the FVProject as an ongoing resource for survivors.
- C. Within seven days of enrollment in the BIProgram, unless the time frame is modified by the Family Violence Project's working agreement, the BIProgram shall provide the local FVProject with the names and addresses of:

1. the batterer enrolled in their program;
  2. any adult or child survivor identified in available police reports and/or court proceedings; and
  3. current partner of the batterer.
- D. The BIProgram shall never initiate written or verbal contact with survivors except in the following situations:
1. when a survivor may be in jeopardy (verbal communication only);
  2. notification of the batterers admission into the BIProgram (written communication only); and
  3. notification of when the batterer is discharged from the BIProgram (written communication only).
- E. Should a survivor initiate contact with a BIProgram, the survivor shall always be referred to the local FVProject for supportive services.

### **3.5 Financial Responsibility for BIProgram - FVProject Collaboration**

- A. Costs incurred by the FVProjects for providing services to partners in the context of their outreach efforts will be the responsibility of the FVProjects.
- B. Any costs incurred as the result of supervision, training, and/or monitoring by the FVProject of the BIProgram shall be reimbursed by the BIProgram.

## **4. BIProgram Model**

### **4.1 BIProgram Format**

- A. The training received by co-facilitators and the curriculum used by BIPrograms will be based upon, and adhere to, models developed by acceptable nationally recognized batterer<sup>2</sup>'s intervention programs that are consistent with Maine BIProgram Standards.
- B. BIPrograms will be:
  1. held in a group format of no more than 15 participants, nor less than 3;
  2. educationally oriented, using cognitive behavioral approaches;
  3. restricted to perpetrators of domestic abuse;
  4. comprised of the same gender(men); and
  5. have rolling or open admission (no waiting lists).

- C. Each group will be co-facilitated by an appropriately trained male and female co-facilitator (see 4.5 for definition of appropriately trained).

#### **4.2 Inappropriate BIP Program Format**

- A. Theories or methods which in any way make the survivor responsible for the batterer's behavior, or define a BIP program as treatment, or diminish the batterer's responsibility for the violence are inappropriate. The following formats, methods, and treatment modalities will not be used by certified BIP programs working with batterers:
  1. individual counseling;
  2. couples or conjoint counseling;
  3. anger management;
  4. systems therapy;
  5. addiction counseling (identifying violence as an addiction);
  6. family therapy; or
  7. medication management.
- B. Unless specifically authorized in these standards, facilitators shall not concurrently provide services to batterer and survivor, current partner or minor children.

#### **4.3 Target Population**

- A. These BIP program standards are specifically designed for adults men who abuse their intimate women partners. A different model may be developed for same sex batterers, and for women who are abusive. It is important that appropriate models be implemented for men who abuse their female partners, same gendered abusers, and women who use violence against their male partners.

#### **4.4 Length of the BIP Program**

- A. Batterer intervention programs will be a minimum of 48 weeks in duration.
- B. Each weekly session will be at least 90 minutes long.
- C. Batterers who have completed a minimum 48 week BIP program should be given the opportunity of voluntarily continuing their participation, or returning to the BIP program at a later date.
- D. The intake screening, initial assessment and admission evaluation shall not be considered one of the 48 weeks.

#### 4.5 BIProgram Staff Selection, Supervision, and Training

- A.
  - 1. Staff must be “violence free,” having had no convictions or protective orders for offenses of violence for the last ten years.
  - 2. Staff may not have a criminal conviction within the last ten years unless granted a waiver from the Department of Corrections.
  - 3. Staff shall not be on probation, parole or other supervised past supervision post conviction, administrative release, parole, or deferred disposition for any state or federal criminal offense.
  - 4. The program shall develop and maintain hiring criteria.
- B. All BIProgram staff having direct contact with batterers shall:
  - 1. provide certification of attendance at a national BIProgram training; or
  - 2. attend a national BIProgram training within 6 months of being hired to co-facilitate groups;
  - 3. be provided with on the job training with an experienced supervisor, to include a minimum of observation of six sessions of group, followed by co-facilitation of an additional six sessions of group with a trained experienced facilitator prior to assuming responsibility for a group; and
  - 4. attend a minimum of 8 hours per year continuing education on topics agreed upon by the program and the family violence project. It will be the responsibility of the primary supervisor of the Batterer Intervention Program to maintain training records.
- C. Any individual identified as the Program Director or “primary supervisor” shall have at least two years documented experience in the following areas:
  - 1. direct work with survivors;
  - 2. direct work with domestic violence perpetrators;
  - 3. group work; and
  - 4. supervision of employees.

#### 4.6 BIProgram Curriculum

- A. The BIPrograms must include in their curriculum that:
  - 1. stress, a life crisis, and chemical dependency are not causes of domestic abuse, but ongoing substance abuse increases the risk of re-offense;

2. domestic abuse is one choice a batterer makes to gain and then maintain an imbalance of power and control in his relationship with his intimate partner;
3. batterers are solely and exclusively responsible for their controlling and abusive behavior;
4. the effect of abuse on survivors, including children who witness abuse, is harmful; and
5. abuse is never justified.

#### **4.7 BIProgram Fee Structure**

- A. Survivors shall never be expected to pay for their batterers' participation in a BIProgram.
- B. Batterers must be charged at least a nominal fee. Programs may charge on a sliding fee scale.

### **5. Administrative Standards**

#### **5.1 BIProgram Intake Process**

- A. The BIProgram shall schedule an intake into the BIProgram within two weeks from the time the batterer contacts the Program.
- B. At the intake, the batterer must enter into a written agreement with the BIProgram, which includes the following:
  1. the responsibilities of the batterer;
  2. the responsibilities of the BIProgram;
  3. an agreement to stop all forms of violence;
  4. the minimum length of the BIProgram;
  5. waivers of confidentiality (approved by the Department of Corrections);
  6. the fee structure; and a payment plan.
  7. criteria for discharge.
  8. a copy of the complaint procedure.
  9. readmission criteria.

- C. During intake, the BIP program shall obtain the following information from the batterer:
1. full legal name of batterer;
  2. current home address and mailing address (if they are different);
  3. current home telephone number, cell phone number, or telephone number of contact if the batterer does not have a telephone;
  4. date of birth;
  5. name of employer, and current work address and telephone number of employer;
  6. partner and/or survivor name (if they are different);
  7. current driver's license number, or photo ID card;
  8. make, model, year and license plate number of the vehicles used by the batterer;
  9. history of any substance abuse;
  10. psychiatric history including homicidal and suicidal ideation;
  11. history of any weapons possession and usage; and
  12. history of abusive behaviors.
- D. Within six weeks after the batterer begins the BIP program, he must provide the BIP program with the following independent descriptions of his abusive behavior, including, but not limited to:
1. police reports (if available);
  2. probation, parole or other post conviction supervision or administrative release conditions;
  3. legal pleadings, including, but not limited to, deferred dispositions, petitions and complaints;
  4. court orders, including, but not limited to, protective orders;
  5. any previous CPS Child Protective Service reports (if available).
- E. The following people will be notified in writing of the batterer's acceptance into the BIP program within 7 days, unless the time frame is modified by the family violence project's working agreement:
1. the batterer;

2. the survivor and/or current partner;
  3. the batterer's Probation Officer;
  4. the local FVProject; and
  5. referral source, including the prosecuting attorney's office or DHHS caseworker.
- F. At minimum, the information to be contained in the communication referred to in 5.1 E must include:
1. the date the batterer begins the BIProgram;
  2. limitations of the BIProgram;
  3. that survivors are not required to have any contact with the FVProject and/or BIProgram; and
  4. a copy of participant agreement.

## **5.2 BIProgram Discharge**

- A. Reasons for discharge from a BIProgram include that:
1. the batterer has completed the 48-week program to the satisfaction of the BIProgram staff, based upon criteria contained in the participant agreement;
- B.
1. the batterer has three unexcused absences during the 48-week BIProgram;
  2. the batterer fails to pay the agreed upon amount for group; and/or
  3. the batterer does not comply with the rules of the BIProgram.
- C. The following people will be notified in writing of the batterer's discharge from the BIProgram.
1. the batterer;
  2. the survivor and/or current partner;
  3. the batterer's Probation Officer;
  4. the local FVProject;
  5. the prosecuting attorney's office if a Probation Officer is not involved; and/or

- B. Notwithstanding the above, the BIP program may provide information to the FV Project so that the Family Violence Project may offer safety planning resources.

### **5.7 Record Keeping**

- A. Batterer and survivor records (if any) must be maintained in separate files with no record or reference of partner contact beyond the initial letter to the partner about the batterer's admission into the BIP program.
- B. There must be at least minimal documentation for each group session attended, which must include:
  - 1. date;
  - 2. topic; and
  - 3. amount of time spent in group.
- C. Monthly status reports must be mailed by the BIP program to the batterer's Probation Officer. Reports must include information concerning:
  - 1. attendance; and
  - 2. compliance with BIP program rules.

The reports may include information about the existence of a substance abuse problem.

### **5.8 Approval and Monitoring Process**

- A. Any costs incurred as the result of monitoring of the BIP program shall be the responsibility of the BIP program.
  - 1. BIP programs should expect that monitors will attend a BIP program class once a month per facilitator pair. Monitoring may occur more or less frequently upon agreement between the family violence project and the batterer intervention program. Authorization must be obtained from the Department of Corrections for monitoring to occur less frequently than once per month per facilitator pair.
    - 1.a. BIP programs that are a component of services operated by a family violence project may be monitored every other month per facilitator pair, but no less than quarterly per facilitator pair.
  - 2. BIP programs should expect that monitors will provide written and verbal communication to BIP program regarding the performance/operation of each observed class within 30 days. The BIP is required to provide the documentation of monitoring to the Department of Corrections.

- B. Third Party Monitors will be utilized when the local family violence project is unable, unwilling or fails to monitor the Batterer Intervention Program.
  - 1. Selection of third party monitors will be made from a pool of names developed by the Maine Association of Batterer Intervention Programs and the Maine Coalition to End Domestic Violence.
  - 2. Documentation of monitoring sessions will be sent to ~~MCEDV~~ the local family violence project.

**6. Jail and Correctional Facility Standards**

**6.1 Jail Standards**

- A. Batterer Intervention Programs offered in county jails shall meet all standards required for certification.
- B. Prisoners will be required to provide victim/partner contact information as part of the intake process.
- C. Victim/partner information will be provided to the family violence project in the area that the victim/partner resides, within seven days of intake.

**6.2 Department of Corrections Facility Standards**

- A. Batterer Intervention Programs offered in correctional facilities shall meet all standards required for certification.
  - B. Prisoners will not be considered eligible for the program until they are within six months of discharge, release to probation or transfer to Supervised Community Confinement.
  - C. Prisoners will be required to provide victim/partner contact information as part of the intake process.
  - D. Victim/partner information will be provided to the family violence project in the area that the victim/partner resides, within seven days of intake.
  - E. Batterer Intervention Programs offered in a correctional facility will be limited to an 8-week introductory standardized curriculum.
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**STATUTORY AUTHORITY:** 19-A M.R.S.A. §4014

**EFFECTIVE DATE:**

April 29, 1998 (major substantive)

**STATUTORY AUTHORITY:** 19-A M.R.S.A. §4014 (1) The Maine Department of Corrections is adopting a proposal to revise the existing standards for the certification of batterer intervention programs pursuant to 19-A M.R.S.A. §4014 (1) to revise the Standards as a result of the 2002 biannual review. The Maine Department of Corrections developed the proposed rules in consultation with the Maine Commission on Domestic and Sexual Abuse in accordance with the provisions of 19A M.R.S.A. §4014(1). The proposed revisions to the Batterer Intervention standards will result in improved operation of the Batterer Intervention Programs.

**EFFECTIVE DATE:**

June 26, 2003 - filing 2003-167 (major substantive)

**STATUTORY AUTHORITY:** 19-A M.R.S.A. §4014 (1) The Maine Department of Corrections is adopting a proposal to revise the existing standards for the certification of batterer intervention programs pursuant to 19-A M.R.S.A. §4014 (1) to revise the Standards as a result of the 2004 biannual review. The Maine Department of Corrections developed the proposed rules in consultation with the Maine Commission on Domestic and Sexual Abuse in accordance with the provisions of 19A M.R.S.A. §4014(1). The proposed revisions to the Batterer Intervention standards will result in improved operation of the Batterer Intervention Programs.

**EFFECTIVE DATE:**

July 23, 2005 - filing 2005-247 (major substantive)

**REPEALED AND REPLACED:**

June 20, 2008 – filing 2009-211 (major substantive)