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## Pretrial Innovations for Domestic Violence Offenders and Victims

*Lessons From the Judicial Oversight  
Demonstration Initiative*

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**U.S. Department of Justice  
Office of Justice Programs**

810 Seventh Street N.W.

Washington, DC 20531

**Alberto R. Gonzales**

*Attorney General*

**Regina B. Schofield**

*Assistant Attorney General*

**David W. Hagy**

*Acting Principal Deputy Director, National Institute of Justice*

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## Pretrial Innovations for Domestic Violence Offenders and Victims: Lessons From the Judicial Oversight Demonstration Initiative

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The opinions and conclusions expressed in this document are solely those of the authors and do not necessarily reflect the views of the U.S. Department of Justice or the Urban Institute, its trustees, or its funders.

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## ABOUT THIS REPORT

Domestic violence cases involving intimate partners pose challenges for the criminal justice system as the cases move from arrest to adjudication to sentencing. The lengthy time period after arrest but before case disposition (either by plea, trial verdict, or dismissal) puts domestic violence victims at high risk. Offenders often violate no-contact orders and seek out their victims during this pretrial period, raising the potential for more violence.

State courts in three demonstration sites are rethinking how they handle domestic violence cases through the Judicial Oversight Demonstration (JOD) project. The three sites are all seeking to increase victim safety while holding offenders accountable, but each site implemented the project in a slightly different way.

This report discusses how pretrial innovations were implemented in the three demonstration sites—

Dorchester, MA, Milwaukee, WI, and Washtenaw County, MI. It also describes the pretrial strategies, key aspects of their implementation, and lessons learned for other jurisdictions wishing to implement innovations in pretrial procedures for domestic violence cases.

Major changes in the operations of the courts at the pretrial stage entailed—

- Developing consistent and timely procedures for judges to use in handling pretrial matters in domestic violence cases.
- Restructuring court processes to focus on the unique characteristics of domestic violence cases.
- Monitoring defendants prior to trial and responding to violations of bond conditions.
- Connecting victims to support services early in the process.

*Christy A. Visher, Adele V. Harrell, and Lisa C. Newmark*

# Pretrial Innovations for Domestic Violence Offenders and Victims: Lessons From the Judicial Oversight Demonstration Initiative

In this report, the term domestic violence is used to refer to violence that occurs among intimate partners, as this term is most commonly used among practitioners and policymakers. The term intimate partner violence is used as well.

The Judicial Oversight Demonstration (JOD) initiative tests the idea that quick, coordinated responses by the community and the justice system can keep victims safer and hold offenders accountable in intimate partner violence cases.<sup>1</sup>

In 1999, Dorchester, MA, Milwaukee, WI, and Washtenaw County, MI, began integrating better judicial oversight into existing coordinated responses to intimate partner violence. The demonstrations strengthen previous partnerships and build new partnerships between the court and other agencies, including the prosecutor's office, victim service providers, batterer intervention programs, law enforcement, and probation. The goals include greater safety and offender accountability.

Researchers are in the process of evaluating the outcome of the project—whether domestic violence

victims are truly safer because of this new approach. The answers will be available in 2009. In the meantime, many jurisdictions are considering putting in place a domestic violence court or enhancing their pretrial responses to this crime. This report describes some of the challenges these jurisdictions may face.

## Innovative pretrial strategies

The pretrial period can be a high-risk time for domestic violence victims.<sup>2</sup> Their abusers, usually charged with misdemeanor domestic violence, are rarely held in custody before trial in most jurisdictions, though they may be held briefly after arrest (overnight or over a weekend) while awaiting an arraignment hearing. In most jurisdictions, released defendants are not supervised prior to trial. This raises concerns about the safety of

### About the Authors

Christy A. Visher is with the Urban Institute. Adele V. Harrell and Lisa C. Newmark were with the Urban Institute when the evaluation was conducted.

their victims. Defendants may retaliate or intimidate their victims into changing their story or not testifying.

Although many jurisdictions prohibit defendants from having any contact with victims while the case is pending, victims still face significant safety risks because no-contact bond conditions are often violated by the defendants. Further, no-contact order violations, even those reported to the police, often go unpunished because of lengthy intervals between court appearances.

The JOD sites addressed both victim safety and offender accountability by increasing the involvement of judges in managing domestic violence cases before trial, restructuring court procedures, and expanding victim services. Dorchester and Washtenaw County dedicated domestic violence dockets within their existing court structures, and Milwaukee added a domestic violence intake court. Washtenaw County and Milwaukee also developed standard policies and protocols for predisposition case processing, and all three sites expanded victim services to improve victim security and participation in the court process.

## Judicial involvement and consistency

With multiple judges hearing domestic violence cases at each of the sites, an important goal of the project was to ensure that the new JOD policies and protocols promoted consistent court procedures. This objective was accomplished in a variety of ways.

At each site, at least one judge started using innovative court responses to intimate partner violence before the demonstration began. These judges were instrumental in educating other judges on new approaches and involving the court in a coordinated, systemwide response. Also, all judges (and Milwaukee's court commissioners) involved in JOD participated in a judicial training institute sponsored by the Office on Violence Against Women (OVW). The 5-day curriculum covered a variety of topics including judicial decisionmaking in intimate partner violence cases, review hearings, graduated sanctions, the role of judges beyond the courtroom, immigration law, cultural awareness, risk and lethality assessment, and the effects of domestic violence on

children. The judges reported that the training gave them a more detailed understanding of intimate partner violence and the role of the court in adjudicating these offenses.

In Dorchester, judges used peer-to-peer learning to improve consistency in decisionmaking. The judges on the Dorchester JOD bench at the start of implementation had been very active in developing the *Massachusetts Trial Courts' Guidelines for Judicial Practice in Abuse Prevention Proceedings*. As other judges came to that court, the original judges shared their knowledge and expertise in domestic violence case processing through informal, on-the-job training opportunities.

In Washtenaw County, all seven of the county's district court judges signed and adopted a new domestic violence protocol, agreeing on six principles for domestic violence cases:

- Use of a designated probation unit.
- Automatic appointment of defense counsel.
- Early subpoenaing of witnesses.

The designated domestic violence judges also developed formal, standardized, written protocols for conducting arraignments, which included obtaining defendants' criminal histories and other background information to use in making bond decisions and using a common conditional bond-release form. This process built consensus and commitment to consistent judicial practices across the county's four district courts.

In Milwaukee, the chief judge carefully selected the new domestic violence court commissioner and the judges to be assigned to the domestic violence court. Judges were assigned to the domestic violence court for a 2-year term and attended special domestic violence training. The judges were rotated periodically to reduce burnout and give more judges the opportunity to receive training and experience in handling domestic violence cases—training and experience that can be applied to other cases,

such as homicide and sexual assault. The use of rotation suggests that the specialized judicial training in domestic violence provided by the OVV for the JOD sites should be continued as standard practice.

### **Restructuring court processes for domestic violence cases**

Two JOD sites, Dorchester and Washtenaw County, dedicated courts or docket days to domestic violence cases (including civil protection orders, misdemeanor criminal cases, and some or all felony cases in Dorchester), and Milwaukee added an intake court. Restructuring depended on each site's existing court structures, characteristics of the community, the size of the intimate partner violence caseload, and judicial practices in these cases. Other jurisdictions interested in replicating this approach could benefit from an examination of their own court organization and contextual factors before deciding how to structure their specialized courts (see "Structure, Schedules, and Staff Issues" on page 5).

In Dorchester, domestic violence cases had been spread

across six general sessions or courtrooms. The JOD initiative consolidated domestic violence into a single session for the first time, using a "vertical adjudication" model—the processing of cases by a single prosecutor through a specialized prosecution unit—for cases disposed without trial. Now, one of the general sessions operates as a full-time domestic violence court. This dedicated domestic violence court handles all intimate partner violence civil restraining orders and all criminal court procedures for domestic violence misdemeanors and lower-level felonies, including arraignments, pretrial and other hearings, plea hearings and sentencing, preliminary and final probation violation hearings, and probation reviews. The court also handles preindictment hearings for more serious felonies. Trials are adjourned to another session to help manage caseloads.

In Milwaukee, three specialized courts for domestic violence misdemeanor cases operated prior to JOD. With plans under JOD to expand services to these cases and begin hearing felony cases as well, Milwaukee needed an additional specialized court



to respond to the anticipated workload. Under the direction of a domestic violence court commissioner, an intake court was established to handle initial appearances for out-of-custody defendants and misdemeanor arraignments, freeing the other three courts for case disposition including pleas, trials, sentencing hearings, postdisposition hearings, and adjudication of felony cases. Milwaukee's domestic violence courts use vertical adjudication with felony cases only.

In Washtenaw County, one of the four district courts (District Court 15, located in Ann Arbor) already had a domestic violence docket day prior to the JOD project. Because Washtenaw County is a larger and less densely populated area compared to urban Dorchester and Milwaukee, it was necessary to maintain domestic violence courts at each of the four district courts located in different areas of the county. The caseload did not require full-time court resources for domestic violence cases in any of the courts, so each court established one domestic violence docket day per week. Washtenaw County District Courts also use a vertical adjudication model.

### **STRUCTURE, SCHEDULES, AND STAFF ISSUES**

The structure of the domestic violence court in each of the JOD sites proved to be very efficient for coordinating the necessary activities in prosecuting domestic violence cases. Prior to JOD, domestic violence case hearings in two of the three sites (Dorchester and Washtenaw County, except for District 15) were spread across different courtrooms. This meant that the relevant persons—prosecutors, defense attorneys, probation officers, and victim advocates—had different schedules.

During JOD, the dedicated dockets for domestic violence cases ensured that the dedicated staff could be present in the courtroom for all phases of the court process—from arraignment to sentencing. This led to the formation of courtroom teams of staff from different agencies, all dedicated to domestic violence cases. Anecdotal reports from the JOD sites suggest a positive response from staff and successful working relationships resulted from this change.

### **Monitoring and educating defendants**

Court monitoring of defendants is a delicate legal matter, touching on the “innocent until proven guilty” concept at the heart of the U.S. judicial system. Yet, it is clear that domestic violence victims are at high risk, and defendants can imperil both the victim's safety and the outcome of the criminal case if steps are not taken to deter defendants from further intimidation or violence. At the outset of the demonstration, Dorchester did not plan a pre-trial monitoring component

because of strong defendants' rights laws and a probation system limited by fiscal constraints. Instead, emphasis was placed on postdisposition supervision. Washtenaw County and Milwaukee struggled with balancing defendants' rights and victim safety in the pre-trial period and ultimately addressed this dilemma in different ways.

The Washtenaw County demonstration initially included active monitoring of defendants during the predisposition phase. After objections were received from the defense bar, monitoring activities were redesigned to an in-person review of bond conditions with groups of recently charged defendants and an initial drug test if ordered by the court (with regular testing possible, contingent on the results of the first test). Under this new practice, the courts ordered defendants to contact the Domestic Violence Probation Unit—a newly formed unit under the authority of County Probation—within 24 hours to make an appointment. Several times a week, the probation supervisor reviewed bond conditions with a group of defendants to ensure they understood the conditions

and to answer any questions. The group review of bond conditions within a week of arraignment was designed to overcome the pre-JOD problem of defendants and defense attorneys claiming that they were unaware of the bond conditions.

Also in Washtenaw County, responses to violations of bond conditions were improved in several ways. Court officers entered bond conditions into a statewide law enforcement database, so that if a law enforcement officer stopped a defendant anywhere in the State, any violations of release could easily be detected. The courts also put new systems in place to handle pretrial bond violations. If the defendant failed to call or appear for the appointment to review bond conditions with the Domestic Violence Probation Unit, a request for a bench warrant was sent to the judge for review. Washtenaw County streamlined procedures for bringing violations of bond conditions to the attention of prosecutors and the court, so that the courts could issue sanctions for these violations in advance of the trial date. Judges used a variety of sanctions to enforce bond conditions,

including fines and weekends in jail. Although it was not possible to enhance activities to detect noncompliance through active, individualized monitoring, strengthened responses to reported violations were intended to increase defendant accountability.

Only Milwaukee was able to implement active, individualized monitoring of released defendants, but defense bar concerns, as well as operational issues, also shaped its new monitoring program. The pretrial monitoring program evolved into an intensive schedule of monitoring activities, but was limited to 30 to 40 high-risk defendants at a time. On average, defendants reported to either the commissioner or the bail monitor every 2 weeks prior to case disposition. The bail monitor also made home visits to defendants to verify their addresses and monitor bail conditions such as absolute sobriety. Violations could be immediately reported to the court commissioner for possible sanctions. In addition, the bail monitor contacted victims regularly to check on their safety, reminding them to report any violations of the no-contact orders to the court. As part of the

demonstration, Milwaukee's Office of the District Attorney made enhancements to the prosecution of violations of bond conditions by charging many of those who violated a no-contact order with bail jumping, a criminal offense under Wisconsin law.

### **Information and service referrals for victims**

Another way to guard against the risks posed to victim safety is by improving direct services to victims. While all three JOD sites funded enhanced services by nongovernmental victim service agencies, the Dorchester and Washtenaw County sites also provided additional court-based services. Milwaukee had a longstanding presence in the courthouse with a range of services provided by two nongovernmental agencies, including an onsite restraining order clinic. JOD funds were used to enhance programs for these functions as well as for services in the community provided by four well-established nongovernmental organizations.

The Dorchester site used JOD funds to employ a victim specialist known as the

triager, who was based onsite in the restraining order clerk's office to provide early needs assessment, information and referrals, and assistance with restraining orders for victims in criminal and civil cases. The triage function, designed to serve all domestic violence victims who entered the courthouse, increased coordination and cross-referrals among the prosecution-based victim/witness specialists and the nongovernmental service providers, and encouraged victim participation in the justice system. Dorchester also used JOD funds to staff a Civil Legal Services Office at the courthouse with community-based advocates from four organizations. This office provided restraining order assistance to victims in multiple languages and referrals to culturally appropriate victim services.

Washtenaw County devoted some of its JOD funds to hire two specialists for the prosecutor's victim/witness unit who handled domestic violence cases exclusively. Prior to JOD, victim/witness specialists' major responsibility in intimate partner violence cases was to send letters to all victims informing them of their rights. With the initiation

of JOD, the new specialists took a more active role in working with victims. Specialists attempted to reach all victims by phone the day after the defendant's arrest to explain the court process and assess the victims' needs (see "Timing of Intervention" on page 9). They also encouraged victims to participate in the prosecution process, accompanied them in court, and referred them to the local nongovernmental victim support organization for further services.

In planning for JOD in Milwaukee, victim advocates expressed concern that the large urban courthouse posed the risk that domestic violence victims would be confronted with defendants appearing for hearings or trial. The Milwaukee project provided a secured space in the courthouse for victims and their children, staffed by victim/witness specialists who provided information about the court process and service referrals. All subpoenas to victims from the District Attorney's office instructed victims to report to this victim waiting room prior to the court proceeding. This innovation encouraged victim participation by providing information, privacy, and

security on site. Anecdotal reports from JOD staff indicate that victims were less likely to leave the courthouse prematurely because the likelihood of an unwanted encounter with the defendant had been sharply reduced.

To encourage victims to testify in court, the new domestic violence court commissioner in Milwaukee implemented new procedures in his courtroom, routinely asking if the victim was present and whether she wished to communicate with the court. Prior to JOD, victim input was not requested. In most jurisdictions, victim testimony is usually only requested at sentencing.

## Lessons learned

Four major lessons emerged from the Judicial Oversight Demonstration site's experiences in developing innovative, pretrial approaches to ensure defendant accountability and victim safety for intimate partner violence cases. These were the importance of—

- Judicial involvement and willingness to coordinate case procedures to enhance consistency.

## TIMING OF INTERVENTION

The JOD sites found that the most feasible first response to domestic violence victims by a victim advocate or law enforcement liaison may occur the day after the incident. Immediate, onscene crisis response to victims of intimate partner violence was attempted in two of the three sites (Dorchester and Milwaukee). Both sites experienced concerns for the safety of the advocate or responder, and law enforcement agencies were not always able to provide sufficient staffing to ensure their protection. In addition, victims may be more receptive to intervention after the initial crisis has passed—the domestic violence liaison in the Milwaukee Police Department made contact with 82 percent of the victims referred.

- Restructuring court processes in domestic violence cases to permit better coordination among agencies.
- Procedures to monitor or educate defendants and provide a quick court response to violations of no-contact orders and other bond conditions.
- Connecting victims to support services early in the process.

Challenges to implementing innovative pretrial practices include—

- Resource limitations for expanding staff and providing training.

- Developing consistent practices among the judiciary.
- Balancing pretrial policies and procedures with due process concerns.
- Defining the roles and mandates of different service providers.

Other states are also experimenting with unique procedures for handling intimate partner violence cases in the period before trial to ensure the safety of the victim. The Pretrial Services Resource Center reports<sup>3</sup> that Illinois has established a rule requiring persons arrested for domestic violence offenses to see a judge before being released so that appropriate release conditions can be set. Mississippi and Washington also have such laws. In Oregon, the pretrial release statute was recently amended to state that when setting terms of release for a person arrested for domestic violence, the judicial officer is to set whatever conditions are necessary “to assure that there is no repeat of the offense.” A typical condition is that the defendant provide a verified alternate address to live at until the case is resolved.<sup>4</sup>

As jurisdictions around the country move forward in

strengthening pretrial responses to domestic violence, the experiences of the JOD demonstration sites may help guide their efforts and suggest strategies and responses to the challenges they face.

## Notes

1. Although JOD was funded with the goal of improving victim safety and offender accountability in intimate partner violence cases, some of the JOD sites also chose to use JOD enhancements to address other domestic or family violence, including child and elder abuse cases and cases involving nonintimate cohabitating adults.

2. Erez, Edna, and Joanne Belknap, “In Their Own Words: Battered Women’s Assessment of the Criminal Processing System’s Responses,” *Violence and Victims* 13 (3) (1998): 251–268; Goolkasian, Gail, *Confronting Domestic Violence: The Role of Criminal Court Judges*, Research in Brief, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, May 1986, NCJ 102833.

3. Pretrial Services Resource Center, 2004, [www.pretrial.org/faq.html](http://www.pretrial.org/faq.html).

4. After JOD was underway, a similar law was passed in Michigan. As part of the arraignment guidelines developed in Washtenaw County, the judge or magistrate asks whether there are weapons in the home and whether the defendant is moving to a location that complies with the bond conditions.

## Additional reading

### Web resources

The Judicial Oversight Demonstration Initiative, NIJ information page, [www.ojp.usdoj.gov/nij/vawprog/demo\\_jud.html](http://www.ojp.usdoj.gov/nij/vawprog/demo_jud.html) (describes NIJ's role in the demonstration).

Judicial Oversight Demonstration Initiative, OVW information page, [www.usdoj.gov/ovw/jodi.htm](http://www.usdoj.gov/ovw/jodi.htm) (describes the role of the U.S. Department of Justice's Office on Violence Against Women).

Enhancing Judicial Oversight in Domestic Violence Cases, Overview, [www.vera.org/project/project1\\_1.asp?section\\_id=8&project\\_id=28](http://www.vera.org/project/project1_1.asp?section_id=8&project_id=28) (describes the technical assistance component of the demonstration).

### Other reports on domestic violence

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Healey, Kerry Murphy, and Christine Smith, *Batterer Programs: What Criminal Justice Agencies Need to Know*, Research in Action, July 1998, NCJ 171683, available at [www.ojp.usdoj.gov/nij/pubs-sum/171683.htm](http://www.ojp.usdoj.gov/nij/pubs-sum/171683.htm).

*NIJ Journal* 250, [www.ncjrs.gov/pdffiles1/jr000250.pdf](http://www.ncjrs.gov/pdffiles1/jr000250.pdf) (special issue containing six articles about homicide committed by the victim's spouse or other intimate partner).

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