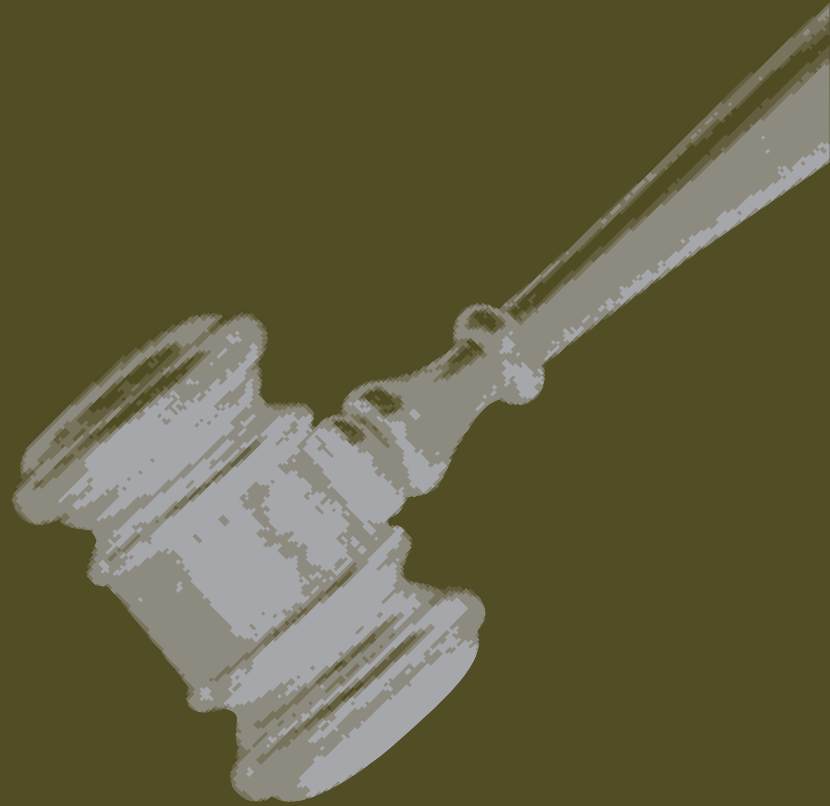




## ENHANCING RESPONSES TO DOMESTIC VIOLENCE

PROMISING  
PRACTICES FROM  
THE JUDICIAL  
OVERSIGHT  
DEMONSTRATION  
INITIATIVE



# Judicial Review Hearings: Keeping Courts on the Case



# Dear Colleagues,

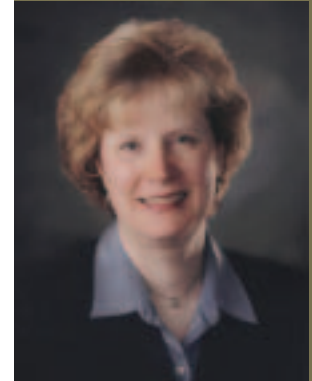
As a judge, I speak for many of my colleagues and others committed to reducing domestic violence when I recognize that proper handling of domestic violence cases is homicide prevention. Many of us recognize, too, that the old way of doing business often failed to hold defendants accountable or enhance victim safety. All too often, our court orders—no matter how appropriate—were violated with few or no consequences. This publication describes one court-based innovation that can make a critical, potentially life-saving difference: judicial review hearings.

Judicial review—the practice of requiring a defendant to appear before the judge at a post-conviction review hearing to demonstrate that he or she is complying with the conditions of probation—is believed to improve offender compliance and victim safety. Under this practice, probation agents are expected to maintain contact with offenders and their victims. Victim input is sought prior to each review session, compliance by the defendant is valued and rewarded, and violations, when found, result in prompt, graduated sanctions. Depending on the violation, these sanctions may include jail, work release, extra sessions at batterer intervention meetings, additional protective conditions, substance abuse testing and treatment, or more frequent judicial reviews before the judge. If appropriate, judicial review hearings also allow for terms of probation to be modified to support and address the particular needs of the victim and/or defendant.

Where judicial review is in place, offenders see that they are being held accountable, and victims and the community see the court is serious about its orders. Judicial review hearings help send an important, consistent message: domestic violence is a crime that will not be tolerated in our community.

I invite you to read more about judicial reviews in the following pages and encourage you to consider implementing them in your jurisdiction. The process is relatively simple, and no extra funding is required. All you need is a willingness to look at more effective ways of handling domestic violence cases, some planning in coordination with your community partners, and a desire to make sure your orders are enforced. Not only will you help in your community's efforts to reduce domestic violence, you may well save a life.

*Elizabeth Hines*



— *Elizabeth Pollard Hines, District Judge, 15th District Court Ann Arbor, Michigan (Washtenaw County)*

# Enhancing Responses to Domestic Violence

Over the last two decades, many communities have successfully improved the way they police and prosecute misdemeanor crimes related to intimate partner violence. Nevertheless, ensuring that individuals who are found guilty of such offenses comply with the terms of their sentences remains a critical challenge. An informal survey conducted in 1998 by the District Attorney's Office in Milwaukee County, Wisconsin—one of three sites participating in the Judicial Oversight Demonstration (JOD) Initiative (see box on Judicial Oversight Demonstration at left)—found, for

example, that of approximately 1,200 people convicted of domestic violence and ordered to attend batterer intervention programs, fewer than 16 percent actually completed the program. The experience of all three JOD sites suggests that the challenge of ensuring offender compliance is shared by courts in many jurisdictions, regardless of demographic or regional diversity. To address this problem, each site developed a specialized court process that extends judicial involvement in domestic violence cases beyond sentencing. Despite modest variations in implementation, these “judicial review hearings” seek to ensure that probationers genuinely comply with the conditions of their release, thereby helping to keep victims safer and maximizing the court's impact in deterring future crimes.<sup>1</sup>

This paper describes how judicial review hearings operate. Its format, alternating between descriptive and illustrative passages, is intended to give readers a full sense of the roles that judges, probation agents, prosecutors, defense attorneys, and advocates and victim/witness specialists play in these hearings and how they interact to build public confidence in the criminal justice system. (The first illustrative passage exemplifies, among other things, the new judicial demeanor that review hearings require; the second shows how graduated

sanctions give judges more options in shaping offender behavior; and the third underscores how victim safety and offender accountability remain the top priorities throughout the process.) The paper also seeks to demonstrate how successful these programs have been in meeting their goals, as reflected by the views of professionals who have participated in the review hearing process.

## *The Judicial Oversight Demonstration Initiative*

In 1999, three jurisdictions—Dorchester District in Boston, Massachusetts; Milwaukee County, Wisconsin; and Washtenaw County, Michigan—embarked on an ambitious effort to improve criminal justice and community responses to domestic violence. The Judicial Oversight Demonstration (JOD) Initiative, funded by the U.S. Department of Justice's Office on Violence Against Women and managed by the Vera Institute of Justice, brought together in each site judges and defense attorneys and prosecutors, advocates for women and batterer intervention specialists, probation agents, police, and others to develop new ways to enhance victim safety and the oversight of offenders in their communities.

Five years later, each jurisdiction's efforts reflect their particular local circumstances and needs. This report is a part of a series that explores the innovations in Dorchester, Milwaukee, and Washtenaw so that other jurisdictions can learn from their experience.

For more information about the Judicial Oversight Demonstration Initiative, or to view other publications in the Enhancing Responses to Domestic Violence series, visit [www.vera.org/jod](http://www.vera.org/jod).

<sup>1</sup> An independent evaluation is currently under way by the Urban Institute in Washington, DC. Outcome results are expected to be released some time in 2006.

# What Are Judicial Review Hearings?

Judicial review hearings are regularly scheduled court appearances—most are held at intervals of 30, 60, 90, or 120 days after sentencing—in which judges publicly evaluate how well individuals convicted of a crime against an intimate partner are adhering to the terms of their sentence.<sup>2</sup> Judges base their reviews on comprehensive reports provided by probation agents who monitor the individual offenders and who seek input from victims. Depending on the contents of these reports, judges use the influence of the court and graduated sanctions and rewards to encourage those who are doing well and to assure that those with poor compliance either change or are held accountable. Each of the illustrative passages in this document highlights a typical judicial response to one of three levels of compliance: full compliance with all conditions, partial compliance, and failed compliance.<sup>3</sup>

The judicial review hearing process takes special care to help protect the safety of victims. Unlike other crimes, in which offenders and victims might share few ties beyond the criminal incident or court proceedings, many domestic violence victims remain connected to the defendant either through shared property, emotional bonds, or children and families. For those victims who are taking steps to break ties with the offender, the risk of increased violence may become higher. Studies show that half of all murders of wives by husbands take place within two months of a separation. Whether or not a victim stays with the offender, the JOD sites have taken several steps to ensure victim safety. These include an ample presence of victim/witness specialists, additional bailiffs to maintain court security, probation agents who have received special training, and enhanced nonprofit victim advocacy services. One of the most powerful expressions of the care for victim safety, however, is the emphasis on ensuring that offenders are in compliance. “Judicial review hearings let victims know that the court is actively involved in supervising this person who has caused them pain in the past, and that’s a good message,” explains Timothy Gailey, a judge in the Dorchester Division of the Boston Municipal Court.

In conducting the hearings, the various players—including court staff, bailiffs, probation agents, prosecutors, the defense bar, batterer intervention programs, court and community-based victim advocates, and others—face the challenge of collaborating on an ongoing basis. As a result, many develop a deeper understanding of both their colleagues’ roles and their own responsibilities. According to Deirdre Kennedy, Project Director for the Dorchester site, the process can bring out the best in the criminal justice system, the community, and all the partner agencies. “By collaborating in a very trusting relationship, we can take a hard look at the deficits in our system and move to address them,” she says.



*One of the most powerful expressions of care for victim safety is assuring that offenders are in compliance with court orders.*

<sup>2</sup> Most cases under review involve individuals convicted of misdemeanors, but some jurisdictions also use reviews for lower-level felony cases. Most of these individuals are sentenced using a combination of “imposed and stayed” jail time that the judge can institute, in part or full, if the probationer does not comply with court orders. For the felony cases, it is common that some conditional jail is imposed prior to the offender being released to probation.

<sup>3</sup> Each scenario is based on court observations at the three demonstration sites, but they are not verbatim transcripts and names have been changed to protect the identity of both probationers and victims.

The hearings also strive to promote the integrity of the individuals drawn into the system—both those who have suffered at the hands of a domestic partner and the aggressors who caused the suffering. “An approach where offenders are respected as individuals yet held accountable and responsible can go a long way toward deterring domestic violence as a way of life for some people,” notes Sheila Blakney, Senior Assistant Public Defender with the Washtenaw County Public Defender’s Office.

## **Judicial Review Hearing #1 Mr. Byres: Full Compliance**



*“An approach where offenders are respected as individuals yet held accountable can go a long way toward deterring domestic violence as a way of life for some people.”*  
— Sheila Blakney,  
Defense Attorney  
(Washtenaw County)

It’s review hearing day, and the domestic violence courtroom is packed. Probationers, victims, probation agents, prosecutors, defense attorneys, nonprofit advocates, and friends and family members—all overseen by vigilant bailiffs—watch as the judge enters and takes a seat. The judge welcomes the audience and briefly explains the procedures for the upcoming hearings. Then the clerk calls out “Mr. Byres,” initiating the first of 37 cases to be heard that afternoon.

Mr. Byres looks tense and worried as the judge greets him and his probation agent, Ms. Schrader. Speaking carefully so that an interpreter can translate for Mr. Byres, the judge assesses the agent’s report for the entire courtroom to hear.

“Mr. Byres, this is a very good report, Sir. I see that you’ve begun your batterer intervention classes as scheduled and you’ve attended five classes so far with no misses. I see a note here from Ms. Schrader that you’ve had no dirty urine screens, you’ve made all of your appointments with your agent, and you’re continuing to work full time and make all of your scheduled classes. I’m quite impressed, Sir.”

The tension in Mr. Byres’ face starts to soften, but he remains intent on the judge’s words. The judge finishes reading Mr. Byres’s report and turns to the agent, asking if she has anything to add.

“Yes, Your Honor. I was able to contact Mrs. Byres just last night. She tells me that she’s not having any problems with Mr. Byres. He’s made no attempts to contact her and he seems to be abiding by the stay-away order. She reports that he’s been depositing his child support check every other week as we had previously arranged.”

“Well, Mr. Byres,” the judge responds, “keep up the good work, Sir. It’s nice to see you doing so well. Is there anything that you would like to say, Mr. Byres?”

Declining help from the translator, Mr. Byres looks the judge in the eye. “Thank you very much, Judge,” he says, in heavily accented English.

The judge nods and turns to Ms. Schrader. “Would you like to schedule another review date now, or since this is his second positive



review, would you like to just bring it back if there are any problems?”

“Since he’s doing so well, Judge, I don’t think we need to schedule another review date right now,” she replies. “I will definitely bring it back, though, if there are any problems.”

“Very well. Thank you for your time Mr. Byres and I hope I don’t hear anything back from Ms. Schrader.”

It has taken less than three minutes to complete the day’s first domestic violence judicial review hearing.

## Redefining the Role of Judges

Judicial review hearings differ from traditional court hearings in several ways. As illustrated above, one of the most obvious is that, unlike traditional court hearings where judges primarily interact with the counsel, a judge in a judicial review hearing is likely to speak directly to offenders from the bench to impress upon them in a firm yet respectful manner that domestic violence is unacceptable. This more engaged approach can help persuade offenders “that unless they get it, and get it right, the process is going to be a real problem for them,” explains Judge Kirk Tabbey from Washtenaw County. The fact that the hearings take place in front of victims, friends, family members, and other offenders lets judges use their authority to influence a broader audience as well. “When a judge is either praising or critical of a defendant, it makes everyone else very aware of what’s going on in the courtroom,” explains Assistant District Attorney Julie Sunkle-Higgins from the Suffolk County District Attorney’s Office in Boston. “It makes the defendant before the court, as well as any other defendant in the courtroom or in the community as a whole, realize that the court is very serious about these cases.”

In addition to allowing judges to educate broader audiences, these hearings also help victims educate the court about their particular needs, wants, and circumstances. This might happen indirectly, as described above in Judicial Review Hearing #1, by having a probation officer convey information on behalf of the victim. It might also happen more directly, as illustrated in Review Hearings #2 and #3.

In contrast to traditional sentencing options, judicial review hearings provide judges with a range of sentencing options and a mechanism to assure compliance with court orders.<sup>4</sup> In review hearings, judges rely on a system of graduated sanctions and rewards to tailor their responses to individual offenders. Graduated sanctions, which can include community service, fines, restitution, intensive probation, additional weekly sessions at a batterer intervention program, and full and partial jail time, give judges tools for compelling offenders to honor the terms of probation and change their behavior. “Any time a judge imposes a sentence, he or she considers a

<sup>4</sup> Without graduated sanctions and encouragement, judicial responses to offender behavior are usually limited to straight up-front jail time or full revocation of probation regardless of the type of violation.



*This more engaged approach can help persuade offenders “that unless they get it, and get it right, the process is going to be a real problem for them.”*

*— Kirk Tabbey, Judge (Washtenaw County)*



*“Any time a judge imposes a sentence, he or she considers a variety of factors. The most important is the deterrent effect.”*  
— Sydney Hanlon,  
Presiding Justice  
(Dorchester District)



*Graduated sanctions such as short periods of incarceration or work-release allow judges to punish technical violations without undue strain to the correctional system.*

variety of factors,” explains Presiding Justice Sydney Hanlon, of the Dorchester Division of the Boston Municipal Court. “The most important is the deterrent effect. They ask themselves, ‘What type of sentence will keep this particular defendant from coming back to court because of new offenses?’” Similarly, rewards ranging from public praise and less-frequent reviews to the opportunity to tell one’s success story to other probationers allow judges to acknowledge good behavior and encourage further progress. “We feel that if we can make the sanctions tough enough and give probationers every opportunity to make changes in their life, it should reduce the amount of re-offending,” explains James Henderson, a probation agent from the 15th District Court’s Probation Department in Washtenaw County.

The flexibility afforded by these graduated responses is particularly important given the intimate character of domestic violence. When the offender is the primary breadwinner in a family, for example, a long period of incarceration can throw the victim into poverty and put housing and health care benefits at risk. Similarly, children may blame the victim for the other parent’s incarceration. Or the victim may fear retaliation from friends and family members who feel that domestic violence is a strictly private “family matter.” There are also victims who want their partners to get help yet do not want to see them incarcerated. Some prosecutors report that victims are more likely to cooperate with them and with victim/witness staff prior to trial if they know that judges have a variety of possible sentencing options in addition to jail.

For those victims who would feel safest with their partners or ex-partners in jail (rather than on probation), graduated sanctions hold the promise of punishing those who violate the terms of probation. According to Project Director Danielle Basil Long, of Milwaukee County’s JOD Initiative, this leads to more contact between victims and probation agents. “It’s given victims the opportunity to have a direct link to the agent, who then can go to the judge to report violations,” she says. “The victim knows that this is the person I can call if the defendant is violating his conditions of probation.”

Corrections departments can also benefit from graduated sanctions. When there were essentially two responses to technical violations, judges had to choose between ignoring the violation or imposing full jail time.<sup>5</sup> Neither response is ideal: ignoring the violation encourages probationers to flout the law, while incarcerating them for nonviolent technical violations occupies scarce jail space that may be better reserved for violent or threatening offenses. Graduated sanctions such as short periods of incarceration, work-release, or intensive probation allow judges to punish technical violations without undue strain to the correctional system. As Review Hearing #3 illustrates, review hearings are not meant to coddle offenders or offer them a “get-out-of-jail-free card.” Rather, they provide an opportunity to comply with less restrictive punishments while ensuring that violations will be taken seriously and addressed swiftly.

## **Batterer Intervention Programs**

Batterer intervention programs (BIPs), which are designed to hold offenders accountable for their actions and help them change their behaviors, represent one of the key sanctions used in the judicial review process. Most BIPs, which differ from

<sup>5</sup> Technical violations include things like failure to pay fees, fines, or court costs or failure to make all scheduled appointments with a probation agent or a court mandated program. These do not include things like restraining order violations, stalking type behaviors, threats, or new acts of violence.

anger management programs, are run by community-based, nonprofit organizations and may vary widely in duration and approach. At the JOD sites, BIPs supply probation agents with information about offenders' enrollment, attendance, participation, progress, and behavior in group sessions. This information, combined with information from other sources, helps agents monitor offenders' behavior and determine how well probationers understand the severity of the charges against them. Agents in turn share this information with the court at each review hearing. As Mitch Rothenberg, an administrator and educator with Common Purpose, a Massachusetts-based BIP, explains, "The sense that the men have of increased monitoring is making them more present in all aspects of the case. They're more present in group. They're more present with their probation officer. It's an opportunity for them to show progress."

At sentencing and during review hearings, judges frequently use their authority to require attendance at BIPs. Review Hearings #2 and #3 illustrate how this works and how review judges convey the message that battering is a learned behavior and that individuals are responsible for their use of violence—key themes in BIP curricula.

## **Judicial Review Hearing #2**

### **Mr. Davis: Partial Compliance**

The clerk calls the next case forward. "Mr. Gregory Davis."

"Mr. Davis, have you read your report, Sir?"

Leaning confidently into the microphone, Mr. Davis replies, "Yes, Judge."

In a harsher, more skeptical tone than the courtroom had witnessed with the first probationer, the judge remarks, "I don't have this marked as a very good report, Sir. Do you want to talk about it?"

"Well, yes, Judge. I do," Mr. Davis proudly states.

"I have to tell you, Sir, that I'm not terribly impressed with your level of compliance or cooperation with probation. It says here that you were given two possible batterer intervention agencies that you could attend, and you're not too receptive to going to any class, is that right?"

"Yes, that's right," Mr. Davis replies.

"Well, WHY is that?" the judge retorts. "Didn't you know that was a condition of your probation?"

"Yes, Judge," Mr. Davis replies. "But I don't need to go to those classes because I'm not a batterer. Those classes are for people who hit women and I didn't do that."

An uneasy silence ensues as the judge thumbs through the file before him.



*Information provided by batterer intervention programs helps probation agents monitor offenders' behaviors.*



“Mr. Davis, do you know a Ms. Lila Johnson?”

“Yes, Judge. That’s my girlfriend. We have a new baby. She’s here today if you want to ask her. She’ll tell you that I didn’t hit her.” The judge begins reading aloud in a matter-of-fact tone: “Mr. Davis, the original police report here states that on the night of April 11, you got into an argument with Lila, and during that argument, using both of your hands, you pushed Lila to the floor—and, at that time, she was nine months pregnant, no less. It says here that you also pulled over a TV stand and then proceeded to put your fist through the front glass window. As you stormed out of the residence, you twisted the screen door half off the hinges and then picked up a large rock from the front garden and began smashing the windshield of Lila’s car, shouting, ‘Try to leave now, bitch.’ The neighbors called the police, you ran from the police, and you eventually turned yourself in.”



The judge closes the report and looks straight at Mr. Davis. “Is that correct, Sir?”

“Yes, Judge,” Mr. Davis replies. “But I never hit her. I only did that other stuff because I had too much to drink that night. Since then, I’ve been going to my substance abuse meetings and Alcoholics Anonymous (AA). I’ve done like you said and I’ve stayed away from Lila and the baby. I’ve even already paid her back for the broken door and windshield. You can ask Mr. Thomas.”

The judge turns to the probation agent. “Is this true, Mr. Thomas?”

“Yes, Your Honor,” Mr. Thomas answers. “The main problem we’re still having is that he won’t go to the batterer program. Lila’s here because I’ve told her that I won’t change the conditions of the no-contact order until he’s successfully completed at least five of the [batterer intervention] classes. She’s still pretty angry with me about that, Judge, but with the new baby and all, I don’t think he should go back home until he takes some responsibility for what he did that night and has had some time to learn something from a program.”



Turning to the victim, the judge asks, “Ms. Johnson, do you have anything you’d like to say? If so, please come up here and sit next to Mr. Thomas.”

A victim/witness specialist stands up at the back of the courtroom and answers on Ms. Johnson’s behalf. “Your Honor, Lila’s decided that she doesn’t want to speak right now, but she wants you to know that she wants Mr. Davis to get help and that she says that she wants him to come home as soon as possible to help with the new baby.”

The judge turns directly to the victim. “I hear how you feel, Ms. Johnson, and I appreciate you coming all the way down here this

afternoon. I hope that you understand that I want Mr. Davis to do well just like you do. I also hope you understand that, no matter how much you and I want this for Mr. Davis, he's really the only one who can choose to make these changes. We can offer him the tools, but he's the one who decides how to use them. I also want you to know that I agree with Mr. Thomas's decision about the no-contact order. I've been doing this work for a long time and I've seen how bad things can get unless people like Mr. Davis get help."

Turning back to the probationer, the judge continues. "Well, Mr. Davis, while I appreciate that you've been staying away from Ms. Johnson and you've been going to AA, I can't ignore the fact that you haven't gone to the batterer classes because, while you don't think that you did anything wrong with your behavior, I assure you, Sir, that your conduct that evening was unacceptable. Until you get into a program that specifically addresses these kinds of issues, you're not going to learn anything different about how to handle yourself in intimate relationships."

Addressing the defense, the judge asks, "Ms. Terrance, do you have anything that you'd like to say on behalf of your client?"

"Yes, Your Honor. I think that Mr. Davis realizes how serious this is now, and first thing Monday morning, he'll call one of the programs that Mr. Thomas recommended. He's been doing well in his AA and substance abuse program, and in addition to paying restitution for the broken windshield and screen door, he's also saved up enough money to start paying the child support that's been ordered. He's working very hard in his new job and it's been very helpful to his self-esteem to finally have a decent income. I'd hate to see anything mess that up."

"Thank you, Ms. Terrance. I'll take that into consideration. Any last words, Mr. Davis?"

"Yes, Judge. I understand how important it is for me to get into the batterer program now. Like Ms. Terrance said, I'll call them first thing on Monday morning."

"Well, Mr. Davis. I hear what you're saying, but I still can't ignore that you hadn't done this earlier—this is an unnecessary waste of time. I think what I'll do now, Mr. Davis, is have you spend the weekend in custody—just to make sure that you have some time to think about what's important. You'll get out in time for work on Monday and in time to call that program. Ms. Terrance will explain what you need to do now, but before you leave, we need to schedule the next review date. Mr. Thomas?"

"I think we should bring it back in four weeks, Judge," the probation agent responds.



# New Roles for Other Players



*“It’s easy to find out about fees and attendance at batterers programs but the more important part is to know how things are really going, and that means hearing from victims.”*  
— Elizabeth Pollard Hines, Judge (Washtenaw County)



*“The review process helps me be taken more seriously because probationers know that there’s no room for wiggle.”*  
— Thelda Eiwuley, Probation Agent (Dorchester District)

Just as judicial review hearings require judges to fill a new role, the reforms also require other players to adopt new strategies and responsibilities.

## Probation Agents

The integrity of judicial review hearings depends on the quality of information that probation agents provide to judges. “You would not want to be doing reviews based solely on what the defendant tells you,” notes Dorchester Judge Sydney Hanlon. “That would give everybody a false feeling of security.”

In compiling their reports, probation agents draw on a variety of sources. These include first-hand interactions, records of probationers’ compliance with court-ordered programming (such as batterer intervention programs, parenting classes, job training or employment programs, and substance abuse programs), and random drug tests. Probation agents also check local and state law enforcement databases for evidence of new arrests or new orders for protection against the probationer.

But that’s not the end of the story, explains Judge Elizabeth Pollard Hines from Washtenaw. “It’s easy for judges to find out about fees and attendance at batterer programs. The trickier and more important part is to know how things are really going, and that means hearing from the victims.” For such information, Judge Hines and other judges rely on probation agents. Probation agents inform victims of the date and time of each scheduled review and update them on the progress of the court case. Direct contact also gives agents an opportunity to gather relevant information about an offender’s behavior. This is a delicate task, however, since it involves balancing the need to keep victims safe with the need to keep track of the offender. Agents must not make victims feel as if they were the ones on probation, nor should they compel victims to share information that could put them in danger. They must also make it clear that any information a victim gives may be shared in court or documented in official public records available to the offender or the offender’s attorney. Victims who fear retaliation can work with agents to create safety plans before and after each hearing. “In prior times, victims would be out of sight, out of mind,” explains Sean Norris, a probation agent from Dorchester District. “But under this program we’re making a much greater effort to stay in contact with victims regularly throughout an individual’s probation so that if there is a problem I know about it first hand.”

Although some agents were initially concerned that judicial review hearings would lead judges to micromanage their decisions, they have found instead that the hearings support their own work. “The review process helps me be taken more seriously because probationers know that there’s no room for wiggle,” explains Thelda Eiwuley, a probation agent in Dorchester. Thomas Salter, a probation agent from Wisconsin, feels empowered by the hearings’ set timelines and goals: “The court review process has made my job much easier in that I can lay all of this out to an offender at our first meeting and we have a specific, concrete date and time that they need to accomplish goals. It helps me keep them focused on those goals that we need to achieve.”

## Prosecutors

In traditional courts, a prosecutor’s involvement in a case ends after a verdict is reached. In judicial review hearings, prosecutors continue to play a role until the convicted party has completed the sentence. “We’re not just about prosecuting people, holding them accountable, and sending them off somewhere,” explains Prosecuting Attorney Brian Mackie, of Washtenaw County. “Knowing that defendants are going to be with other people—victims and potential victims—we want to really change them.”

Besides underscoring the seriousness of the process, the prosecution’s presence at each review hearing allows them to keep an eye on offenders who may be at high risk of re-offending. “The judicial review helps me monitor a defendant’s progress along with the probation department,” says Assistant District Attorney Julie Sunkle-Higgins from the Dorchester initiative. “If something comes up that might be a subsequent offense, I can make contact with the police department and, if appropriate, seek further criminal charges.” At each review hearing, prosecutors can present arguments to the court if they think that a defendant deserves harsher sanctions than the judge has imposed for violations of probation.

## Defense Attorneys

As with prosecutors, the role of defense attorneys now extends beyond sentencing. Many public defenders find that judicial review hearings require them to attend more hearings than they would during a traditional court process—especially if an offender has violated the terms of probation. In such cases, the defense attorney presents qualifying circumstances to the judge to help explain the non-compliance. Often, defense attorneys do not attend hearings for compliant probationers. However, if probationers begin to incriminate themselves during a hearing, or if evidence that a probationer has violated the terms of probation emerges unexpectedly, the judge can call in a defense attorney before continuing with the hearing. Right-to-counsel laws for post-conviction hearings vary from state to state, so individual sites have sought to ensure fairness in different ways.<sup>6</sup>

## Advocates and Victim/Witness Specialists

All three demonstration sites have victim/witness specialists from the prosecutor’s office and victim advocates from nonprofit, community-based organizations available to support victims. Victim/witness staff offer assistance in a variety of ways, ranging from court escorts and in-court explanations of procedures and rulings, to referrals to community-based agencies that can help with practical support. In some jurisdictions, victim/witness staff have also helped facilitate probation agents’ contact with victims. Nonprofit service providers—whose support is particularly useful for victims who are reluctant to work directly with the prosecutors or police—can offer confidential support to victims who come to court and can work independently with victims who choose not to participate in the ongoing intervention with offenders.

The advocate’s presence at judicial review hearings benefits the court as well. When judges have reason to believe that victims’ needs and concerns are being addressed by helping professionals, they can proceed with greater confidence in decisions that

<sup>6</sup> At one site, the defense counsel offices are located directly across the street from the courthouse; when defense counsel is needed, the judge can pause the hearing and wait for an attorney to arrive. Another site assigns a defense attorney to attend all review sessions. Yet others notify defense counsel if the content of the probation agent’s written report is likely to result in jail time for the probationer.



*Review hearings allow prosecutors to keep an eye on offenders who may be at high risk for reoffending.*



*Victim/witness staff offer a variety of services, from in-court assistance, to referrals to community-based agencies.*



affect the victim. (Victims will often ask a judge to change or lift the conditions of a no-contact order, for example.) Moreover, if victims or children become upset during a hearing, a judge can momentarily adjourn the proceedings while advocates or victim/witness specialists offer support.

## *Review Scheduling and Report Submission*

Because each of the three demonstration sites has varying needs and resources, the scheduling of judicial review hearings differs from site to site.

The Dorchester Court holds judicial review hearings beginning at 9 a.m. on weekdays, a time when lawyers are usually reviewing cases and negotiating how to move them forward. This is also a time when the general domestic violence docket is heavy and the courtroom is usually crowded with people attending pretrial, plea, or restraining order hearings. As a result, more people are able to witness and learn from the hearings.

In Milwaukee County, each of the jurisdiction's three full-time domestic violence court judges conducts one Friday afternoon review hearing per calendar month. Probation agents and lawyers in Milwaukee County tend to be more available on Fridays; most other court calendars tend to be light as well, so bailiffs from other sessions are able to provide the extra security needed to run a consolidated calendar of domestic violence case reviews. In addition, holding reviews on Friday afternoons allows judges to sanction noncompliant probationers with weekend custody—a penalty that sends a pointed message without putting probationers' jobs at risk.

In Washtenaw County, five district court judges hear domestic violence (DV) cases at four separate courthouses. Consequently, judges organize review hearing schedules across the courts to prevent overlapping review calendars. Each court has one day per week that is known locally as "DV Day." Staggered review schedules allow each court to have adequate coverage from the special domestic violence prosecution unit, and the nonprofit advocacy agency that provides in-court support to victims. This also allows specialized probation agents to cover colleagues' caseloads as the need arises. Finally, as Judge Elizabeth Pollard Hines notes, "When you consolidate all the domestic violence cases, there's more time to listen to the defendant, and there's more time to listen to victims and pay more attention to these cases."

Just as the scheduling of review hearings varies from site to site, so does the way in which probation agents submit their reports. Milwaukee County has a systematized process for e-mailing written probation reports to the court clerk, who then compiles them for the judge and forwards them to the defense and prosecution at least two days before an upcoming review. In Washtenaw, agents are encouraged to deliver or e-mail written reports to the judge at least one day before the hearing. Prosecutors and defense attorneys are allowed to read the report, but they do not receive copies, as pre-sentence reports are deemed confidential under Michigan law. The probation agent is present at the court hearing to answer questions, respond to any challenges, confirm last minute compliance, and meet with victims, defendants, the judge, and counsel as needed.

Systematizing the process for submitting reports not only gives judges time to prepare for each case; it also helps new staff pick up where others have left off. In the Dorchester Court, agents do not submit written reports; rather, they make on-the-record verbal reports to the judge. In all three jurisdictions, last-minute updates to probation reports are common, reflecting probationers' scramble to meet compliance deadlines prior to facing the judge.

### Judicial Review Hearing #3 Mr. Brown: Failed Compliance

The appearance of his estranged wife in the courtroom has prompted Mr. Brown, the probationer, to confess to his defense attorney, Mr. Myers, that he has violated the no-contact provision of his probation by telephoning her. “I only did it to let her know how much I love her and how I don’t want our marriage to end like this,” he says. “That’s all I said. I swear!”

When the clerk calls Mr. Brown, he and his attorney come forward. Ms. Shaffer, the probation agent, and the district attorney on duty take a few moments to brief each other on what they’ve just learned.

Ms. Shaffer explains to the judge that there has been a violation of the no-contact order and that this information has just come to light from Mrs. Brown, who is here and would like to speak. The judge welcomes Mrs. Brown and calls her forward. As she approaches, Mr. Brown’s glare sends an unmistakable message: “Keep your mouth shut.” Recognizing this tacit exchange, the judge cuts in: “Mr. Brown, Sir! You are here today to face me, not Mrs. Brown, so I suggest that you keep your eyes on me, Sir.” As the judge speaks, the bailiff steps forward and stands squarely between the defense and prosecution tables—physically blocking Mr. Brown’s view of Mrs. Brown.

The judge turns his attention to the defense table. “Mr. Myers, before I give Mrs. Brown a chance to speak, is there anything that your client would like to say?”

“Yes, Your Honor. Mr. Brown admits that he did call Mrs. Brown, but only to tell her that he loved her and that he was very distraught over receiving divorce papers. I’m sure you can understand, Judge, how my client must have felt when he received those papers. They’ve been married for 15 years. They have children together. My client felt that he needed to talk to her and remind her how much he loves her. He didn’t mean any harm by it, Judge. You can also see from Mr. Brown’s probation report that he’s been doing almost everything the court has asked him to do with the exception of missing two [batterer intervention] classes, but these were excused absences and he’s going to make up those sessions. I’m sure this is a mistake that Mr. Brown won’t make again, Your Honor.”

The judge thanks Mr. Myers, then turns to Mrs. Brown. “Would you like a chance to speak now, Mrs. Brown?”

In a fast and anxious tone, Mrs. Brown answers: “Yes, Sir. I really didn’t want to come here today, but I felt I had to. I know I should have told Ms. Shaffer about what happened, but I was still scared and upset and I didn’t know what to do. I didn’t want to make Joe angrier. He told me that if I told Ms. Shaffer that we had talked that he would get into trouble and, because I spoke to him, I could get arrested for violating the no-contact order.”



*The judge turns his attention to the defense table. “Mr. Myers, before I give Mrs. Brown a chance to speak, is there anything that your client would like to say?”*

## *Details of Graduated Sanctions and Rewards*

Each of the three demonstration sites has developed its own set of sanctions and rewards, based largely on the facts of the underlying case and the availability of community resources. Common options for sanctions include:

- Full jail time;
- Jail time with mandated jail programming for men who batter;
- Partial jail time up front, followed by probation and community programming upon release, plus regularly scheduled review hearings for the duration of the sentence;
- All probation up front with full jail time available in total or portion if needed, along with community programming and review hearings;
- Work release programs that allow offenders to go to work and to mandated community intervention programming during the day, but that require that they report back to jail at night;
- Increased number of batterer intervention sessions per week;
- Increased fees, fines, restitution, and/or community service;
- Other programming—for example, parent education; and
- More frequent home and office visits with probation.

Judges also reward probationers for good behavior in an effort to encourage them to keep up the good work. Rewards might include:

- Public praise;
- Fewer, less frequent reviews;
- Less intensive probation reporting;
- Reduction or waiving of certain court fines or costs;
- Exceptions or changes to no-contact orders (only if requested by victim);
- Relief from having to appear before the judge after a certain number of favorable reviews; and
- Giving the probationer the opportunity to tell the story of his success to new probationers.

Mr. Brown interrupts her. “Yes, Judge. She agreed to talk to me. She’s the one who asked me to come over.”

“Excuse me, Mr. Brown,” the judge retorts, “Are you saying that you went to Mrs. Brown’s residence?”

“Yes, but only because she asked me to,” Mr. Brown replies, against the advice of his attorney.

Mrs. Brown jumps in. “Judge, I told him not to come over, but I was afraid that if I didn’t talk to him when he showed up that he would get even angrier about the divorce papers. I was worried that if I didn’t talk to him that he might also hurt himself or come after the kids and me. I just can’t live like this anymore. All this just has to stop.”

The judge interrupts as Mrs. Brown pauses to catch her breath. “Excuse me, Mrs. Brown. Before you go any further I think that I need to be clear about something.” (Turning to Mr. Brown and raising his voice.) “Sir, this court has made itself very clear to you about what NO contact means and what this order is about. I made this order, Sir. It’s between you and me and this court—NOT between you and Mrs. Brown. What you’ve done here, Sir, is break your arrangement with ME and MY order. Do you understand that, Sir?”

Turning in his chair and lowering his voice, the judge addresses Mrs. Brown again: “I’d like to thank you for coming down here today and letting us know about this incident. But, before you say anything further, what I’d like to do now is take Mr. Brown into custody and to hold over

this hearing until the lawyers have a chance to discuss this further. I assure you, Mrs. Brown, that this no-contact order will stay in effect and that if you ever have problems like this again, you can always

tell me, Ms. Shaffer, the police, or anybody you need in order to keep yourself safe. Mr. Myers, I'm ordering your client held until a full hearing and investigation can be done. Bailiffs, please take Mr. Brown into custody. This matter is closed for now."

## Conclusion

Across the nation, large numbers of misdemeanor domestic violence cases fall through the cracks of the criminal justice system. For the most part, this happens because many jurisdictions have mixed success in holding convicted offenders to the terms of their probation, and thus ensuring the safety of the victims of domestic violence who turn to the criminal justice system for help. A number of factors contribute to this problem, including limited resources; faulty communication between courts, probation agents, and community service providers; and the difficult nature of many domestic violence offenders, who can exhaust and frustrate even the most capable helping professionals.

Judicial review hearings were designed to address such problems. Over the course of the five-year Judicial Oversight Demonstration Initiative, they have proven to be effective tools for improving the system's ability to hold offenders accountable. This report has sought to give readers a sense of how these hearings work. Judicial reviews give judges a new role by allowing them to craft tailored responses to each offender. The reviews also require probation agents, prosecutors, defense attorneys, victim services staff from nonprofit and government agencies, and others to collaborate on an ongoing basis—a challenge that, as we have seen, can lead stakeholders to a deeper understanding of both their colleagues' roles and their own responsibilities. Finally, while judicial reviews follow the same broad format at each of the three demonstration sites, each site has adapted that format to its own particular needs and circumstances.

Long-term evaluation of JOD, which is still underway, should help determine whether judicial review hearings achieve their ultimate goal of reducing recidivism among those convicted of crimes committed against an intimate partner. Whatever the results of the recidivism study, the professionals involved in conducting review hearings have already deemed review hearings a success. Their enhanced ability to hold offenders to the terms of their sentences, to more quickly respond to those who do not comply, and to more adequately engage victims has boosted professional and public confidence in the criminal justice system's ability to address crimes of violence between intimate partners.

For more information about the Judicial Oversight Demonstration Initiative, see the Resources section.



*Judicial reviews give judges a new role by allowing them to craft tailored responses to each offender.*



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For general information on violence against women programs, visit the Office on Violence Against Women's web site at [www.usdoj.gov/ovw](http://www.usdoj.gov/ovw).

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