

Appendix C Sector Responses

PART A: JUSTICE

Victims' Bill of Rights

Police

Victim / Witness Assistance Program

Assistant Crown Attorney

Probation and Parole Services

Linking Police, Crown, V/WAP and Probation

Victims' Bill of Rights , 1995
Ontario Ministry of the Attorney General
Amended by: S.O. 1999. c. 6, s. 65

Preamble

The people of Ontario believe that victims of crime, who have suffered harm and whose rights and security have been violated by crime, should be treated with compassion and fairness. The people of Ontario further believe that the justice system should operate in a manner that does not increase the suffering of victims of crime and that does not discourage victims of crime from participating in the justice process.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

DEFINITIONS

1. In this act,

“crime” means an offence under the Criminal Code (Canada),

“victim” means a person who, as a result of the commission of a crime by another, suffers emotional or physical harm, loss of or damage to property or economic harm and, if the commission of the crime results in the death of the person, includes:

- a. a child or parent of the person, within the meaning of section 1 of the Family Law Act, and
- b. a dependant, spouse or same-sex partner of the person, all within the meaning of section 29 of the Family Law Act, but does not include a child, parent, dependent, spouse or same-sex partner who is charged with or has been convicted of committing the crime.

PRINCIPLES

2. (1) The following principles apply to the treatment of victims of crime:

1. Victims should be treated with courtesy, compassion and respect for their personal dignity and privacy by justice system officials.
2. Victims should have access to information about,
 - i. the services and remedies available to victims of crime,
 - ii. the provisions of this Act and of the Compensation for Victims of Crime Act that might assist them,
 - iii. the protection available to victims to prevent unlawful intimidation,
 - iv. the progress of investigations that relate to the crime,
 - v. the charges laid with respect to the crime and, if no charges are laid, the reasons why no charges are laid,
 - vi. the victim's role in the prosecution,
 - vii. court procedures that relate to the prosecution, the dates and places of all significant proceedings that relate to the prosecution,
 - The outcome of all significant procedures, including any proceedings on appeal,
 - any pre-trial arrangements that are made that relate to a plea that may be entered by the accused at trial,
 - the interim release and, in the event of conviction, the sentencing of an accused,
 - any disposition made under section 672.54 or 672.58 of the Criminal Code (Canada) in respect of an accused who is found unfit to stand trial or who is found not criminally responsible on account of mental disorder, and
 - their right under the Criminal Code (Canada) to make representations to the court by way of the victim impact statement.

3. A victim of a prescribed crime should, if he or she so requests, be notified of,
 - i. any application for release or any impending release of the convicted person, including release in accordance with a program of temporary absence, on parole or on an unescorted temporary absence pass, and
 - ii. any escape of the convicted.
4. If the person accused of a prescribed crime is found unfit to stand trial or is found not criminally responsible on account of a mental disorder, the victim should, if he or she requests, be notified of,
 - i. any hearing held with respect to the accused by the Review Board established or designated for Ontario pursuant to subsection 672.38(1) of the Criminal Code (Canada)
 - ii. any order of the Review Board directing the absolute or conditional discharge of the accused, and
 - iii. any escape of the accused from custody.
5. Victims of sexual assault should, if the victim so requests, be interviewed during the investigation of the crime only by police officers and officials of the same gender as the victim.
6. A victim's property that is in the custody of justice system officials should be returned promptly to the victim, where the property is no longer needed for the purposes of the justice system.

Limitations

- (2) The principles set out in subsection (1) are subject to the availability of resources and information, what is reasonable in the circumstances of the case, what is consistent with the law and the public interest and what is necessary to ensure that the resolution of criminal proceedings are not delayed.

Regulations

- (3) The Lieutenant Governor in Council may make regulations,
 - a. Prescribing standards, other than for police services, to be followed in giving effect to the principles set out in subsection (1);
 - b. Prescribing crimes for the purposes of paragraphs 3 and 4 of subsection (1).

Same

- (4) Standards for police services may be prescribed under paragraph 1 of subsection 135(1) of the Police Services Act.

No new cause of action

- (5) No new cause of action, right of appeal, claim or other remedy exists in law because of this section or anything done or omitted to be done under this section.

Police

In domestic violence (police term which includes woman abuse) cases, the primary responsibility of the police is to investigate all reported cases and determine if there are reasonable grounds to lay charges against the abuser.

If reasonable grounds exist to believe a criminal offence occurred, **police are mandated** to lay charges against the abuser. ***It is not the woman's responsibility or decision to lay charges.***

Enforcing the law against abusers makes them accountable for their behaviour. It also sends the message that assault and other criminal offences are unacceptable to society. Importantly, enforcing the law is a means of increasing the protection of women. The priority in all police investigations of woman assault is the woman's safety and, if she has children, her children's safety. Police ensure women's and children's safety by:

- Laying charges against the abuser when there are reasonable grounds that an assault or another criminal offence has occurred, without intimidating the abused woman or suggesting she speak to the abuser, and without inquiring if she wishes charges be laid.
- Informing women of their legal rights and giving them information about the charges laid against the abuser, and about the abuser's arrest and release conditions, including the services of the Victim/Witness Assistance Program. **It is important for the woman to have information about the criminal proceedings against the abuser for her and her children's safety.**
- Providing women with information about community resources (e.g. counselling agencies, shelters and Victim Crisis Assistance Referral Service).
- Accompanying a woman and her children to a safe place (e.g. women's shelter or family friend) or to her home to retrieve her belongings.
- Cooperating with other systems such as counselling agencies and shelters by providing information about the functions and responsibilities of the police.
- Calling an ambulance or accompanying a woman to a hospital, which may include the Domestic Abuse and Sexual Assault Care Centre.
- Maintaining confidentiality about the woman's whereabouts.

The justice section of the protocol reflects more accurately the typical procedures followed when abuse occurs within an intimate relationship, which includes same-sex partners, current or past, dating relationship, ex-spouses, and people who have had a child in common. There are particular legal procedures when a woman is sexually assaulted outside an intimate adult relationship. For further information about this topic the reader is directed to METRAC's *Sexual Assault Handbooks*, see Appendix A.

DOMESTIC VIOLENCE

In accordance with the criminal justice system, police refer to a specific legal definition that includes woman abuse, which they are obligated to follow. This definition varies somewhat from the definition of woman abuse that was defined earlier in this protocol.

Domestic Violence is any use of physical or sexual force, actual or threatened, in an intimate relationship. Intimate relationships include those between the opposite-sex and same-sex partners. These relationships vary in duration and legal formality, and include current and former dating, common-law and married couples.

Although both women and men can be victims of domestic violence, the overwhelming majority of this violence involves men abusing women.

These crimes are often committed in a context where there is a pattern of assaulting and controlling behaviour. This violence may include physical assault, and emotional, psychological and sexual abuse. It can include threats to harm children, other family members, pets and property. The violence is used to intimidate, humiliate or frighten victims, or to make them powerless. Domestic violence may include a single act of abuse. It may also include a number of acts that may appear minor or trivial when viewed in isolation, but collectively form a pattern that amounts to abuse.

Offences related to domestic violence:

According to the Criminal Code of Canada, charges relating to domestic violence may include:

- assault
- murder
- assault with a weapon or assault
- causing bodily harm
- aggravated assault
- sexual assault
- sexual assault with a weapon
- aggravated sexual assault
- uttering threats
- criminal harassment (known as stalking)
- forcible confinement
- kidnapping
- hostage taking
- administer noxious substance
- strangle, choke, suffocate
- fail to comply with condition of recognizance (bail)
- being unlawfully in dwelling-house
- forcible entry
- fail to provide necessities of life
- harassing telephone calls
- obstruction of justice
- breach of probation
- break and enter with intent
- mischief
- intimidation

In addition to Criminal Code offences there are other Provincial Act offences that may apply in a domestic violence situation. Contravention of valid court orders under the Family Law Act, and Children's Law Reform Act in connection with a domestic violence incident are also included.

Charges can also be laid in regards to trespassing, under the Trespass to Property Act. The Trespass to Property Act is a provincial statute, not a federal statute such as the Criminal Code. The penalties for provincial statutes vary from criminal statutes.

STEPS POLICE FOLLOW TO INVESTIGATE DOMESTIC VIOLENCE

There are a number of procedures that the police follow when investigating domestic violence. Each step is explained in detail:

STEP 1. INITIAL RESPONSE

A call comes into the police Communications Centre. The police are dispatched in patrol cars to investigate a domestic violence incident. Police are obligated to respond to every domestic violence related incident reported. This initial reporting can make police the first point of contact in many cases of woman abuse. Call takers and dispatchers working in the Communications Centre will attempt to gather a variety information on the incident. Some of this information will include the caller's name and particulars, alcohol and/or drug use, injuries, weapons, and previous history of violence. After this information is gathered it is then forwarded to the officers receiving the radio call. Domestic Violence incidents are very unpredictable and it is necessary that officers be provided with as much information as possible in order to ensure the safety of all persons involved. It is standard practice for two officers to attend at every domestic violence incident.

Every domestic violence incident is considered a priority call for service and officers will attend even if the initial call is withdrawn. If there is information indicating that there is a domestic violence history and the police have been called on several occasions, **police will continue to respond to each call with the same response time as a first time call.**

When police arrive at the scene of the domestic violence incident, they will quickly conduct an assessment of the situation. If the abused woman requires immediate medical attention an ambulance will be called. If children are in the home, the police will assess if they have been harmed in any way. Police will separate all parties involved in order to conduct a thorough investigation. If a language barrier exists, police will access official interpreter services. The police will refrain from using children, other family members or family friends as interpreters.

STEP 2. INITIAL INVESTIGATION: INTERVIEWING EACH PERSON SEPARATELY

The police begin their investigation by interviewing each of the parties separately. It is important for officers to be aware of the abused woman's emotional and physical condition when they arrive on the scene of an assault. Having just been assaulted, the woman may feel angry, scared, confused, depressed, or physically hurt. Consequently, she may present herself as being defiant, uncooperative, irrational or despondent, which is actually a reflection of her fear for her safety, rather than her attitude towards police officers. Keeping this information in mind, ***the manner in which officers approach abused women is extremely important in making the woman feel safe, and in obtaining an accurate account of what occurred.***

Women may not feel safe reporting domestic violence if the abuser is present in the same room or within earshot. If the abuser is present, it becomes necessary for one officer to accompany the abuser to another room to be questioned away from the victim. The safety of all persons involved in the incident must always be of primary consideration.

The abuser may offer an explanation that differs dramatically from the woman's account, denying that the altercation was an assault against the woman, accusing the woman of fabricating the story, claiming the woman is mentally unstable or hysterical, or arguing that the woman initiated the attack. These are common tactics used by the abusers. In spite of the abuser's explanation, and provided "reasonable grounds" exist, police are mandated to lay a charge.

A common tactic used by abusers is to attempt to have counter charges laid against the abused woman. In the event that the accused seeks to lay counter charges against the abused woman, officers must assess the situation and decide whether reasonable grounds exist to lay such a charge. If a primary aggressor in the incident can be determined, officers will only charge the primary aggressor.

The police need to inform the woman that the abuser may try to lay a charge against her privately.

Conducting an investigation with women who may have language, immigration, or disability concerns

Some women may require an interpreter to assist them in giving their statement. Others may fear their immigration status will be at risk if they give a statement. Police inform these women that:

- there is an official interpreter service known as MCIS (Multilingual Community Interpreter Services) available to the police and woman experiencing domestic violence. Other interpreter services available include AT & T and in some cases police officers fluent in the particular language. It is important that police officers do

not use children, family members or family friends as interpreters during an investigation or when responding to a call.

- if they are not Canadian citizens but are in the country legally, their status in Canada will not change in any way as a result of their participation in the judicial process
- they will assist them in collecting their documents such as: landed immigrant records, birth certificate, passport, health card and S.I.N. card. If the documents cannot be recovered, police will advise the victim that these documents can be replaced upon application to the appropriate agencies.
- it may be necessary for her to obtain independent legal advice regarding her immigration status in Canada
- they will refer the woman to Victims Assistance to ensure appropriate community services/resources are contacted to assist marginalized women

If children reside in the household police need to:

- inquire about and determine the children's involvement in the domestic violence incident, whether the children were witnesses, direct victims or indirect victims
- ensure the children's safety by calling the Children's Aid Society

The Child and Family Services Act includes a duty to report a child in need of protection. This duty extends to any person, and includes a person who performs professional or official duties with respect to children. Police are directed to call the Children's Aid Society whenever they attend a domestic violence incident where children under the age of 16 are residing. The Children's Aid Society will make the determination as to how they will follow up the case.

STEP 3. LAYING CHARGES

A. Police determine charges should be laid against the abuser

If there is enough evidence or "reasonable grounds" to believe an offence has occurred in relation to domestic violence the police are mandated through provincial legislation to lay a charge. The provincial legislation has also provided guidelines for officers in the Province of Ontario when investigating domestic violence incidents. Police services in the province of Ontario are following these guidelines, which refer to an "Enhanced Domestic Violence Investigation".

During the investigation police will encourage the woman to provide a statement to assist with the investigation. In some incidents there is enough evidence to proceed with charges regardless of the victim providing a statement, but the Enhanced Domestic Violence Investigation that police are currently undertaking does include police encouraging the woman to provide a statement. During prosecution of the charges in court the woman's statement may be the best evidence that is supported by other corroborating evidence. There are a variety of reasons that a woman may not want to provide a statement. The police encourage the woman to voice her concerns regarding the statement and will attempt to do what is necessary to alleviate the concerns. If a woman refuses to provide a statement the police will certainly continue to pursue the investigation of the incident to the best of their abilities under the guidelines of the Enhanced Domestic Violence Investigation.

i) "Reasonable Grounds"

Reasonable grounds are facts or evidence to support the officer's belief that an offence has most likely occurred. Police consider several factors in determining whether reasonable grounds exist to lay charges against the abuser. Some of the factors include:

- the physical injuries sustained by the woman
- the emotional condition of the woman
- the woman's statement that the abuser committed the offence
- statements by any witnesses
- an examination of the dwelling where the offence occurred, which may indicate that the offence took place (e.g. broken furniture, torn clothes, room is in disarray)
- an understanding that if the abuser has injuries it may be from the woman's attempt to defend herself
- the original call for service (911 call)
- previous domestic violence history
- inquiring if the woman had received medical attention for previous domestic violence incidents

ii. Determining "reasonable grounds" in cases where there are no visible physical injuries to the woman

In cases where there are no visible physical injuries to the woman, the woman's verbal statement that an offence occurred may be sufficient for reasonable grounds. The Enhanced Domestic Violence Investigation will again consider all of the above listed points under "Reasonable Grounds".

When police have determined "reasonable grounds" exist to lay a charge in relation to domestic violence the abuser will be arrested.

There are situations where the police require additional time to complete their investigation, but once the police have determined there are reasonable grounds to believe an offence has occurred in regards to domestic violence the abuser will be arrested. If the abuser cannot be

located, officers will search for the abuser and take the steps to have a warrant issued for the arrest of the abuser.

If further time is required for the investigation or the abuser cannot be located, it's imperative that the police inform the woman of the possible risks to her safety, and that she has the option to leave the residence and the police will assist her in locating a place of safety.

B. When police do not lay charges against the abuser

When the police determine there are insufficient grounds to believe an offence has occurred regarding domestic violence and charges will not be laid against the abuser, the police need to provide the woman with information about:

- the lack of grounds to lay charges against the abuser
- the Victim Crisis Assistance and Referral Service (ViCARS). ViCARS will attend the residence and provide short-term crisis intervention. If the woman refuses this assistance, a ViCARS business card noting the officer's name, badge number and incident number will be left. The woman may call this number for referrals later. It is possible the woman may receive a call from ViCARS to follow up and provide referrals.
- additional community services/resources that may assist her, including shelters, counselling and legal assistance
- the officer's names, badge numbers and incident number
- the fact that an incident report will be completed and other precautions on the police resource systems may be taken, including flagging the location of the abuser should the police get a call in the future
- what to do in the future if the abuse reoccurs (i.e. develop a safety plan with the woman or refer her to services that can assist with the safety planning)
- shelters or another place of safety. The police can assist the woman with accessing these locations

Police will not arrest or charge an abuser if there are no reasonable grounds to believe that an offence related to domestic violence has been committed. It is imperative that the police inform the woman of her option to leave the residence, and assist her to safety, if necessary.

Additional options for women when police do not lay charges

There are a number of options available to a woman when police do not lay charges including:

- the woman may present her case to a Justice of the Peace, located in the Newmarket Court House, 50 Eagle Street West, Newmarket, in an attempt to lay charges against the abuser
- the woman may apply for a restraining order through the family court
- the woman may apply for interim custody in family court when there are concerns about the safety of the children that she shares with the abuser. It is suggested that women consult with a family law lawyer, legal aid, local shelters or counselling agencies for further information.

STEP 4. ARREST

An arrest is made when the police have detained an individual, which may include taking the person into custody.

When police have determined charges are going to be laid and the abuser has been arrested it is important that the police inform the abused woman that:

- it is the police officer's responsibility to lay charges based on the evidence (it is not her decision). Police are mandated through provincial legislation to lay charges where reasonable grounds exist to believe that an offence has occurred in a domestic violence incident.
- police will explain the laying of charges to the abuser
- police will explain that a statement from the woman would be very helpful with the investigation. The Enhanced Domestic Violence Investigation supports the taking of a sworn video statement. In the near future mobile video cameras will be available to the police so that a video statement may be taken at the actual scene or location of the victim. The use of mobile video cameras can accommodate situations that may not allow a woman to attend the police station for a sworn video statement. The mobile video camera can also assist in capturing possible evidence of the incident at the scene. Verbal or written statements can also be taken from the woman. It is the woman's decision to complete a statement.
- a support person may accompany the victim during the interview. This support person should be aware that they are there for the purpose of support and are not to get involved in or interfere with the taking of the statement.

- if she is too distraught to complete a statement, she may do so at a later date
- photographs of her injuries may be taken immediately at the scene of the assault, the police station or a hospital and again at the police station 24-48 hours following the assault
- the victim can choose to attend The Domestic Abuse and Sexual Assault Care Centre for York Region, located at York Central Hospital, 10 Trench Street, Richmond Hill. This centre has specially trained domestic violence nurses who can provide medical treatment and support. The nurse will document injuries and take photos. This evidence can then be provided to the police for their investigation. The nurse can also provide risk assessment, safety planning and follow up counseling.
- they require the woman's assistance in completing the Domestic Violence Supplementary Report. This report provides the officers with information necessary to determine safety issues surrounding the woman.
- they will accompany her to a shelter, if she deems it necessary and stress the importance of bringing her children to the shelter at this time.
- the Victim Crisis Assistance and Referral Service (ViCARS) will attend the residence and provide short-term crisis intervention. If the woman refuses this assistance, a ViCARS business card noting the officer's name, badge number and incident number will be left. The woman may call this number for referrals later. It is possible the woman may receive a call from ViCARS to follow up and provide referrals.
- she should have a safety plan. The police can refer her to services that can assist with a safety plan.
- there are various resources and community services in the area that the woman can access and that the woman will be provided with that information if she requests it
- the Victim/Witness Assistance Program (VWAP) is available to her if criminal charges have been laid. This service provides support and resources and will keep the woman advised on court proceedings.
- the accused will in most circumstances be held in custody for a bail hearing
- if the accused is released on bail conditions the Victim Notification Officer from the Newmarket Court House will contact the woman advising her of the release conditions

It is important for the police to advise the woman of the future risks. Those risks include the abuser continuing the violence, and that the woman should not to take the abuser's word as a guarantee. Many women are not safe from the abuser after police leave the premises. The victim's safety may still be in jeopardy. The first 6 months after a woman leaves the abuser are the most dangerous for her.

When the abuser is arrested and taken into custody

When the police arrest the abuser, the abuser is now referred to as the accused. It is important for the police to keep the woman informed of the process that may occur once the accused has been arrested. The Victim/Witness Assistance Program (VWAP) can also assist the woman when criminal charges have been laid. VWAP will attempt to make contact with the woman or the woman can contact VWAP. Once the contact is made VWAP will keep the woman informed of the court proceedings. (It is sometimes difficult for the police to keep the victim informed due to shift work and the officer's caseload).

The majority of domestic violence arrests will result in the accused being held in custody for a bail hearing.

If the accused is not held in custody for a bail hearing the accused may be released on a Form 10 known as a "promise to appear" in conjunction with a Form 11.1 known as an "undertaking". The accused will be released with an agreement to attend court on a set date and the accused will agree to abide by certain conditions. Those conditions may include:

- to remain within a specified territorial jurisdiction
- notifying a designated police officer or unit of any change in address, employment or occupation
- to abstain from communicating directly or indirectly with the woman and any other possible witnesses, or from going to a particular location such as the residence, place of employment or school of the victim and/or witnesses
- to deposit their passport with the police
- to abstain from possessing a firearm and to surrender any firearm or firearm license that enables them to acquire or possess a firearm
- to report at times specified to the police
- to abstain from the consumption of alcohol, other intoxicating substances or drugs
- to comply with any other condition specified to ensure the safety and security of any victim of or witness to the offence

When charges are laid in a domestic violence investigation the police will complete a Domestic Violence Supplementary Report. This report will capture risk indicators that the police will take into consideration when determining the release issues of the accused and most importantly this report can assist the police in determining the safety issues surrounding the woman. This report is a necessary step in the investigation that is relied upon by the police, Crown Attorney and Justice of the Peace or Judge.

STEP 5. THE BAIL HEARING

A bail hearing is also known as a show cause hearing or judicial interim release hearing.

According to the Criminal Code, a police officer shall not release a person from custody if the police officer believes on reasonable grounds that:

- the abuser will not show up for court appearances
- more evidence needs to be gathered, secured or preserved
- the abuser's identity is unknown
- there is an indication that the abuser may continue or repeat the offence or the commission of another offence
- there are concerns regarding the safety and security of any victim and/or witness to the offence

Following the arrest of the accused, if the police believe that any of the above conditions are met the accused will remain in custody and the officers will prepare the paperwork necessary for a bail hearing. Taking into consideration the evidence before them and safety issues after consulting with the woman, the police may oppose the accused being released or recommend the release of the accused with certain conditions. The accused will be brought to court within 24 hours of the arrest. At the bail hearing the accused will be brought before a Justice of the Peace or a Judge. After hearing the information from the Crown Attorney and any other witnesses that have testified, the Justice of the Peace or Judge will determine that the accused can be released with conditions or remanded into custody.

Police will:

- inform the woman that a bail hearing will occur
- consult with the woman in order to determine recommendations for release conditions or recommendations that the accused not be released
- inquire about the woman's safety concerns and take this information into consideration when determining detention or release conditions
- inform the woman that she can attend the bail hearing, but she is not required to
- inform the woman that she may speak with the Crown Attorney prior to the bail hearing

- explain to the woman whether the police will be opposing the release of the accused or recommending the release of the accused with conditions
- advise the woman that if the accused is released on conditions that the Victim Notification Officer at the Newmarket Court House will contact her and provide her with the conditions of the accused's release (it is suggested the woman provide possible alternate addresses and phone numbers that she can be reached at to ensure she can be contacted and notified)
- advise the victim that if the accused's release includes a condition indicating the accused should not communicate with her directly or indirectly that she should not initiate or receive communication from the accused. **The court has imposed a condition.** The accused will be arrested and charged if an incident is reported to the police and the investigation reveals that the accused has failed to comply with the condition of his bail.
- advise the woman that she can receive court support and referrals from the Victim/Witness Assistance Program (VWAP). The VWAP service is available to all women when criminal charges have been laid against the abuser.
- refer her to the services that can assist her with safety planning

Police Report to the Crown Attorney

Police officers prepare a report for the Crown Attorney. This report is also known as a Crown Brief. The Crown Brief is used for the bail hearing as well as any other court appearances. The Crown Brief includes all the information and evidence the police have gathered during the investigation including:

- the incident report
- information obtained from the interviews with the abused woman, witnesses and the abuser
- statements taken from the abused woman, witnesses and abuser
- photos of the woman's injuries
- any medical/forensic reports pertaining to the incident or other previous incidents
- information regarding any weapons used in the domestic violence incident (can include photos or the actual seized weapon)
- recording of the original call for service

- any history regarding domestic violence that the abuser has been involved in (previous charges, convictions, reports)

The woman has the right to read or review any statement she has given the police and ask the police to make any additions or deletions prior to signing the statement.

Victim/Witness Assistance Program Ministry of the Attorney General

The mandate of the Victim/Witness Assistance Program is to provide information, assistance and support to victims and witnesses of crime throughout the criminal justice process in order to improve their understanding of, and participation in, the criminal justice process. The primary goals are:

- To enhance victim/witness understanding of and participation in the criminal justice process;
- To assist the victim/witness to regain a sense of well-being; and
- To encourage the development of community support structures for the assistance of victims of crime.

Services are available to victims and witnesses of crime after charges have been laid. Most services terminate upon disposition of the criminal case, but may, on occasion, extend to follow-up after final disposition. The Victim/Witness Assistance Program (VWAP) is located in the Newmarket Courthouse and can be accessed by victims/witnesses, if they choose, free of charge.

Although the Program is open to all victims or witnesses, VWAP offers services on a priority basis to those who have been most traumatized by crime. The following types of victims will be offered services on a priority basis:

- victims of child abuse
- victims of sexual assault
- victims of partner assault/domestic violence
- families of homicide victims
- families of victims of “impaired causing death”
- vulnerable victims with special needs and,
- elderly victims

VWAP endorses and adopts as part of its operational policies, the principals set out in the *Victims’ Bill of Rights* (included in this document, p. 16) that applies to the treatment of victims of crime.

Scope of services:

Services to clients can be divided into four main categories:

- provision of information on cases before the courts to victims and witnesses to keep them up-to-date on the current status of the cases;

- familiarization with the criminal justice process and support services to directly assist victims and witnesses to participate effectively in the criminal justice process while protecting their rights and well-being;
- community coordination of services for victims of crime, and
- community education about the Program and the operation of the criminal justice system.

The Victim/Witness Assistance Program is designed to provide court-based services to victims/witnesses during the criminal court process. It does not provide counseling services and does not provide long-term therapeutic intervention. VWAP has an obligation to the administration of justice, which requires VWAP staff to convey to the Crown Attorney any information that comes to their attention that may affect the administration of justice.

VWAP staff explain the role of the Victim/Witness Assistance Program. At the earliest opportunity, VWAP staff will make clients aware that their information may be forwarded to the Crown Attorney. The Crown Attorney will make a decision whether to forward that information to the Defense.

Although the Victim/Witness Assistance Program and Crown Attorney's Office are both offices of the Ministry of the Attorney General, it is important to note that they are separate and distinct. The relationship between VWAP and the Crown Attorney's Office is, however, cooperative and respectful. VWAP staff can speak with the Crown Attorney's Office at any time on the victim/witness' behalf.

Core Victim/Witness Assistance Program services include:

- Contact client by letter or telephone
- Ongoing outreach to client
- Information about the client's case
- Information about the court process
- Emotional support, including crisis intervention, advocacy and debriefing
- Needs assessment and referrals to community agencies, including discussion of safety issues and referrals to agencies for comprehensive safety planning
- Liaison with the Crown and police, including providing information about the client's views on sentencing
- Court preparation and orientation
- Information about Victim Impact Statements and the Criminal Injuries Compensation Board
- Court accompaniment at the request of clients, resources permitting
- Accompaniment to Crown interviews with clients, at the request of clients, resources permitting
- Assistance in completing Victim Impact Statements and Criminal Injuries Compensation

Board forms at the request of clients, resources permitting

- Providing a safe waiting area for victims/witnesses during court proceedings

Crown ASSISTANT CROWN ATTORNEY

The role of the Crown is to prosecute criminal charges. The Crown's office becomes involved once the police or a private victim has laid a charge.

In prosecuting a matter, the Crown represents the public interest. An Assistant Crown Attorney is not the victim's lawyer, although the victim's interests form part of the broader public interest. The victim of an assault will be a necessary witness at a trial. Therefore, the victim is also a witness. As a witness, the victim does not generally require his or her own lawyer.

The Crown Attorney's Office defines domestic violence as any use of physical or sexual force, actual or threatened, in an intimate relationship. Intimate relationships include those between the opposite-sex and same-sex partners. These relationships vary in duration and legal formality, and include current and former dating, common-law and married couples.

Although both women and men can be victims of domestic violence, the overwhelming majority of this violence involves men abusing women.

These crimes are often committed in a context where there is a pattern of assaultive and controlling behaviour. This violence may include physical assault, and emotional, psychological and sexual abuse. It can include threats to harm children, other family members, pets and property. The violence is used to intimidate, humiliate or frighten victims, or to make them powerless. Domestic violence may include a single act of abuse. It may also include a number of acts that may appear minor or trivial when viewed in isolation, but collectively form a pattern that amounts to abuse.

Criminal Code offences include but are not limited to homicide, assault, assault causing bodily harm, aggravated assault, sexual assault, threatening death or bodily harm, forcible confinement, criminal harassment/stalking, abduction, breaches of court orders, break and enter and property-related offences.

After charges have been laid, sometimes a victim of domestic violence requests that the charges be withdrawn. It is recognized that great pressure may be placed on a victim after charges have been laid to withdraw the charges. As a victim, a victim is not able to withdraw the charges against the person who has been charged (accused). The Crown makes all decisions in a prosecution and only an Assistant Crown Attorney can withdraw charges. Because the victim does not have the discretion to withdraw charges, it is hoped less pressure will be put on the victim to withdraw the charge. The prosecution will not withdraw charges, unless exceptional circumstances exist, or there is no reasonable prospect of conviction.

In York Region, the Crown Attorney's office has a "domestic violence team". The domestic violence team is a group of Assistant Crown Attorneys who have had some specialized training in domestic violence. The domestic violence team maintains a level of expertise and serves as a resource to colleagues.

The Role Of The Assistant Crown Attorney

A victim may make an appointment to speak with an Assistant Crown Attorney. Typically, however, the victim meets initially with the Victim Witness Assistance Program worker and if the victim needs further questions answered, then the worker will schedule a meeting with an Assistant Crown Attorney. If the victim does not have a VWAP worker, the victim may telephone the Crown Attorney's office to request a meeting. Services of the Assistant Crown Attorney's office may include:

- support and reassure the victim about going to court;
- inform the victim of the VWAP if the victim is not already connected;
- listen to the victim's/witness's concerns, and questions, such as his/her safety concerns or concerns about breaches of condition;
- provide the victim with information about the court proceedings, and his/her responsibilities;
- explain the charges and any bail conditions;
- inform the victim of what may take place if the accused is found guilty;
- inform the victim that any information that he/she shares with an Assistant Crown, where it is relevant to the charges, must be disclosed (given) to the defence counsel, who, in turn, may provide it to the person charged;
- inform the victim that only an Assistant Crown Attorney may decide whether to proceed with or to withdraw the charges;
- inform the victim of his/her opportunity to provide a Victim Impact Statement, if the accused is found guilty.

An Assistant Crown Attorney will not take evidence from a victim. If a victim wishes to change his/her original statement, or provide a supplementary statement, the Assistant Crown Attorney will request the victim to speak to the investigating police officer. An Assistant Crown Attorney cannot take a statement because this may cause him/her to become a witness in the proceedings.

Disclosure

Assistant Crown Attorneys have a legal obligation to disclose any relevant information they receive about a case to the accused. Thus, any relevant information provided by a service provider or the victim to the crown about the domestic violence incident must be disclosed by the Crown to the defence. In sexual abuse cases, the Crown does not disclose records as defined in Section 278 of the *Criminal Code*. Section 278 restricts the disclosure of certain private records for which a victim may have a reasonable expectation of privacy, such as

diaries, counselling, or psychiatric records. These records may only be disclosed by order of a Judge following a hearing. The Crown does not disclose the address or phone numbers of victims if they have moved following the incident of violence.

Court Appearances

There may be a series of court appearances for the accused. The victim may attend all court appearances. However, ***the victim is required to attend only the preliminary hearing*** (if there is one), ***and the trial***. During court appearances of the accused, other than the trial or preliminary hearing, the Assistant Crown Attorney, due to the volume of cases in the court, may not be in a position to meet the victim. On such occasions the V/WAP is available to assist the victim. The victim may contact the V/WAP to obtain court date appearances. The V/WAP worker may call if court dates or other information come to their attention on the case.

1a. The Bail Hearing/Judicial Interim Release Hearing

A bail hearing is also called a **show-cause hearing** or a **judicial interim release hearing**. After someone is arrested, the police officer may release the individual and issue an appearance notice, which requires the accused to attend court. Or, the officer may hold the individual in custody for a bail hearing. In cases of domestic violence, the police generally hold an accused person in custody for a bail hearing. The police will bring the accused person to court typically within 24 hours of the arrest for the bail hearing.

At a bail hearing a Justice of the Peace or Judge will decide if the accused person will be released while awaiting the trial, or if the accused must remain in custody pending the trial. To assist the court in making this decision, the Assistant Crown Attorney will review the facts of the case (which have been provided by the police) and the background of the accused, with the court. The facts of the case will include information about the victim including his/her concerns that have been relayed to the police. The Assistant Crown Attorney will make a recommendation to the court about whether the accused should remain in custody or be released pending trial. The lawyer for the accused may also present evidence to the court, and ask the court to consider reasons why the accused should be released. After hearing the submissions of both sides, the Justice of the Peace or Judge will decide whether to detain or release the accused. If the accused is released, the judicial officer must then determine the most appropriate form of release that is often formulated on the basis of recommendations by the Crown and defence.

The most common forms of release include:

- ***A recognizance with sureties and conditions***
(a surety is an individual who agrees to take responsibility for an accused and to ensure that the accused attends court when required and abides by any conditions ordered by the court. If the accused does not abide by the conditions, a surety may forfeit a predetermined amount of money to the court)
- ***A recognizance without sureties with conditions***
- ***An undertaking with conditions***

If it is ordered by the Justice of the Peace or Judge that the accused be released, there may be conditions placed upon the release. When a release order is made, the accused signs it, promising to follow the specific conditions outlined in the release order. Failure to comply with any conditions of a release order is a criminal offence. The accused can be arrested and charged for failing to comply with an undertaking or recognizance. If arrested for failing to comply, an accused will be held in custody for a bail hearing.

Common Conditions in a Release Order (Bail Order) Include:

- a non-contact order in which the accused is ordered to have no contact (physical or verbal) directly or indirectly with the victim. If the accused must have contact regarding children or other household matters, an exception may be made for contact through a third party such as a parent or lawyer;
- the accused may not attend any residence, place of employment or education of the victim. Other locations where the victim frequently attends may be specified. An order prohibiting the accused from attending a particular location will often include a perimeter restriction which states that the accused must not be within a specified distance i.e. 500 m of the location;
- the accused must reside at an address specified by the court;
- if the court allows a change of address, the accused must notify the police within 24 hours of any change of residence;
- an order to surrender all firearms and any firearms license to the York Regional Police;
- an order prohibiting the possession of any firearm, ammunition or explosive substance or any weapon, or firearms license;

- an order directing the accused to report to the police on a regular basis i.e. weekly, monthly;
- an order prohibiting the accused from consuming alcohol (if this appears to have been related to the offence) and/or directing the accused to seek treatment for alcohol/substance abuse;
- an order directing the accused to carry bail papers;
- and order directing the accused to keep the peace and be of good behaviour;
- there may be other conditions included that are particular to each case.

Where an accused has been detained, the Crown can request an order prohibiting the accused from contacting the victim directly or indirectly while he/she is in custody.

The initial order (of detention or release) remains in effect until the completion of the trial, unless the Ontario Court of Justice varies it with the consent of the Crown or by order of a Superior Court. The victim may attend the bail hearing, but is not required to attend. If the victim chooses not to attend, she will be notified of the outcome of the bail hearing, and in the event of a release, of the terms of release by the Crown's office or a police officer. In certain cases the woman may be specifically requested to attend if it is believed the court will not have sufficient information without hearing directly from her.

1b. The Bail Review

The accused or the Assistant Crown Attorney may bring a bail review in a higher court to request that the court change the original bail order. If an accused has been ordered detained in custody until the trial, the accused may bring a bail review to seek release. If an accused does not agree with certain conditions imposed at the bail hearing, a bail review may be sought to have those conditions varied or removed. Where the accused has been released and the Assistant Crown Attorney opposed the release, the Assistant Crown Attorney may bring a bail review to seek to have the accused detained in custody. Only the accused or the Assistant Crown Attorney can initiate a bail review (or a bail variation). A victim cannot initiate a bail review (or a bail variation). If a victim has a concern about a bail order, the victim may advise the V/WAP or the Crown's office of the concern. The Crown will consider any input from the victim in determining if a bail variation or review is appropriate.

In some situations, the victim may also want the variation of the condition where an accused has requested a bail variation (i.e., a non-contact provision). The Crown's office makes the decision on whether or not to consent to any variation to the original bail order. If the Assistant Crown Attorney believes that the accused poses a danger to the safety of the victim, although the victim may desire the variation of a non-contact order, the Crown may not consent to the variation. The victim is often coerced to request a variation of bail or withdrawal of charges, and

any variation is approached with caution. A victim cannot vary any condition by giving permission to the accused to engage in activity contrary to his/her bail.

A victim could be charged for knowingly participating with an accused with the breach of a non-contact order.

2. The Set Date

The set date is sometimes referred to as a remand. The purpose of this court appearance is to determine if the accused will be retaining a lawyer and is ready to set a date for the pre-trial. The first set date generally takes place a few days or a week after the bail hearing. There may be a number of set dates that take place as the accused is attempting to retain a lawyer and prepare for a pre-trial. A victim is not required to attend a set date. The V/WAP worker may notify the victim of the next court date. The victim is encouraged to contact the V/WAP office for updates.

The Assistant Crown Attorney at the set date may not necessarily be the Assistant Crown Attorney who handles the case at the pre-trial or trial. The Assistant Crown Attorney who will prosecute the trial is assigned after the trial date is set. In the most serious cases of domestic violence, an Assistant Crown Attorney is assigned well in advance of the trial, and will arrange to meet with the victim prior to trial.

3. The Pre-Trial

A pre-trial is a meeting between a Judge, an Assistant Crown Attorney and the defence counsel, or a meeting between the Crown and defence only. At a pre-trial, discussions are held to establish if the case can be resolved without a trial. A case is resolved without a trial by either the accused entering a guilty plea, or the Crown withdrawing the charges where there is no reasonable prospect of conviction. If it appears that there will be a guilty plea, the appropriate penalty is discussed. If there will be a trial, a pre-trial assists to determine the length of time required for trial, the witnesses required, and the potential issues at the trial. A victim is not required to attend the pre-trial. The victim may contact the V/WAP to determine the outcome of the pre-trial.

4. The Preliminary Hearing

In most cases of domestic violence there is not a preliminary hearing. A preliminary hearing is only held where the Assistant Crown Attorney has proceeded by indictment. In certain cases, the Assistant Crown Attorney can elect to proceed by indictment or by summary conviction. Where the Assistant Crown Attorney proceeds by indictment, the maximum penalty available for sentencing increases and the accused has the option to be tried in provincial court, or in the

superior court after having a preliminary hearing with a judge and jury, or by a judge alone. Generally, the Crown will only elect by indictment in the most serious cases of domestic violence.

The purpose of the preliminary hearing is for a judge to determine if there is sufficient evidence for a trial to be held. A victim must attend the preliminary hearing, and will be required to testify. When the victim testifies, the victim will be asked about the offence by the Assistant Crown Attorney and by the defence counsel, in the presence of a judge. The accused will be present during the preliminary hearing. If an accused is unrepresented, the accused is entitled to ask the victim questions. If the victim has previously given a videotaped statement, this cannot be admitted in place of testimony. The victim must testify. Both Crown and defence can call other witnesses at a preliminary hearing.

The victim may receive a subpoena to attend the preliminary hearing from the police. The V/WAP worker will also notify the victim about the preliminary hearing. The Assistant Crown Attorney will make every effort to meet with the victim prior to the preliminary hearing.

5. The Trial

The purpose of the trial is for the Judge, or in some cases, the jury, to determine if the accused is guilty "beyond a reasonable doubt". The prosecutor will call all the witnesses who have relevant evidence. This will include the victim and other witnesses to the offence including police officers.

The victim must testify at the trial, even if she has previously testified at a preliminary hearing. Both the Assistant Crown Attorney and the defence counsel will ask the victim questions. If an accused is unrepresented, the accused is entitled to ask the victim questions. After the Assistant Crown Attorney has called any witnesses he/she wishes to call, the defence may call witnesses, which may include the accused.

The accused is not required to give evidence and may choose to remain silent. If the accused does testify, both the defence counsel and the Assistant Crown Attorney will ask the accused questions. On the day of trial there may be more than one trial in the courtroom.

At the completion of the trial, the judge or jury will render a verdict of guilty or not guilty. If there is a finding of guilt there will be a sentencing hearing. If the offender is found not guilty, the Assistant Crown Attorney will explain the verdict to the victim.

Victims should be given an opportunity to attend court at the time of plea and sentence, and should be informed of their right to do so. Victims should be consulted regarding significant decisions made by the Crown with respect to sentence, plea, withdrawal of charges, including any decisions that may result from resolution discussions.

6. Victim Impact Statement

Section 722 of the *Criminal Code of Canada* recognizes that a victim may make an impact statement to be presented at sentencing. A Victim Impact Statement provides information to the court from the victim about the impact of the offence. The victim may provide information about the impact on such things as the victim's emotional, physical and financial well being.

At the earliest opportunity, Crown counsel should ensure that the victim (or family of the victim where a death is involved) knows that a Victim Impact Statement may be made, how to make it and the possible consequences of making it. The V/WAP can provide assistance to a victim in completing a Victim Impact Statement. As part of the Crown's continuing disclosure obligation, a Victim Impact Statement must be disclosed to the accused. If the Victim Impact Statement is filed with the court, it becomes part of the public record of the proceedings. In certain circumstances, a victim may be required to testify about the contents of the Victim Impact Statement. The Crown will recommend that a victim wait until there has been a finding of guilt before completing a Victim Impact Statement.

In the absence of compelling reasons for doing otherwise, Crown counsel will apprise the Court of this information by:

- making oral submissions based on information provided by the victim;
- calling *viva voce* evidence (live evidence); **or**
- filing the written statement by the victim.

The making of a Victim Impact Statement is voluntary and if the victim does not wish to present a Victim Impact Statement to the court, this can be indicated to Crown counsel who can then advise the court that the victim does not wish the court to hear this information.

Where a case has been identified as requiring victim impact information and it appears that a victim has not had an opportunity to respond to a request for victim impact information, Crown counsel appearing on sentencing should attempt to contact the victim with respect to providing information on the issue. If an accused enters a plea of guilty at an early point in the proceedings, Crown counsel should consider requesting an adjournment for sentencing in order to obtain victim impact information. When necessary, interpretation/translation services will be provided to assist with the preparation or presentation of a Victim Impact Statement. The judge will take the Victim Impact Statement into account when deciding the appropriate sentence. Ultimately, it is the sentencing judge who will decide on what the appropriate sentence is, after hearing submissions from both the Assistant Crown Attorney and the defence.

7a. The Sentence Hearing

Sentencing occurs after a guilty verdict is rendered, either after a trial or upon the accused entering a guilty plea. Sentencing may occur on the same day that the court delivers its verdict or it may be delayed. In some cases a probation officer may provide further information in a report to the court about the offender. The report prepared by the probation officer is called a pre-sentence report. The victim may be contacted by the probation officer to obtain her input into the pre-sentence report.

At a sentencing hearing, both the Assistant Crown Attorney and the defence lawyer make "submissions" to the judge regarding the appropriate sentence. The Assistant Crown Attorney will make a recommendation of sentence to the court, taking into account the views of the victim, together with other factors relevant to sentencing such as any prior criminal history of the accused, and the public interest in the deterrence of similar offences.

The judge will take the Victim Impact Statement into account when deciding the appropriate sentence. Ultimately, it is the sentencing judge who will decide on what the appropriate sentence is, after hearing submissions from both the Assistant Crown Attorney and the defence.

The Crown Attorney's office and V/WAP is presently implementing a domestic violence initiative. There are two components to the domestic violence initiative.

Early Intervention Component

The early intervention model is designed for first-time offenders where no injury occurred, no weapon was used, and no significant harm was caused to the victim. The accused receives early attention designed to break the cycle of violence and the victim receives ongoing support and information in the following ways:

- Eligible first offenders can plead guilty and immediately begin to receive counselling through the Partner Assault Response program (PAR), to address their abusive behaviour.
- Victims receive early and ongoing information and support from the Victim Assistance Program (V/WAP). The PAR program also contacts the victim to give ongoing support and to monitor the offender's behaviour for the duration of the program.

Coordinated Prosecution Component

The coordinated prosecution model is designed for cases not meeting the criteria for the Early Intervention component. When the accused chooses to plead not guilty, the specially trained team of police and Crowns work together to provide accountability and consistency in dealing with these cases in the following ways:

- Crowns can be assigned to these cases and follow them through to final disposition. This minimizes the number of Crowns with whom the victim must meet.
- When the case goes to trial, all admissible evidence is presented, such as 911 tapes, photos, videotaped statements and medical records.
- Victims receive early and ongoing information and support from V/WAP staff
- If found guilty, the offender can be ordered to receive counseling through the PAR program to address the abusive behaviour. The PAR program also contacts the victim to give ongoing support and to monitor the offender's behaviour for the duration of the program.

7b. Types Of Sentences

The most common types of sentences in cases of domestic violence include:

- conditional discharge and probation
- suspended sentence and probation
- conditional sentence
- custody/jail and probation

Each of these sentences will be explained in turn.

Conditional Discharge

Where an offender receives a conditional discharge, **the offender is found guilty, but there is no "conviction" registered.** There is a record kept by the police of the finding of guilt, which is accessible if the accused commits another offence. However, the offender is not considered to have a criminal record. The effect of a criminal record on employment is sometimes of concern to both the victim and the offender in cases where the offender would lose employment upon receiving a criminal record. If an offender has been approved for the early intervention program,

Appendix C: Sector Responses
JUSTICE

PART A:

Crown

and successfully completes the PAR program, the Crown will recommend a conditional discharge and probation.

Suspended Sentence

When an offender receives a suspended sentence, the offender is found guilty and convicted of the criminal offence. This means the offender will have a criminal record, however, the offender will not serve jail time. A probation order will be imposed in conjunction with a suspended sentence.

Probation

Probation is always imposed with a conditional discharge, or a suspended sentence. Probation may be imposed following a period of custody (jail). There are several conditions that frequently form part of a probation order. They may include:

- no contact with the victim, directly or indirectly
- not to attend at the residence, place of employment, or place of education of the victim
- a direction to attend a Partner Abuse Response Program
- a direction to attend counseling for alcohol or drug abuse
- not to possess any firearm, ammunition or explosive substance, or any weapon
- report to a probation officer as directed by the probation officer

If the offender breaches any terms of a probation order, the offender can be charged criminally with breach of probation. The duration of a probation order can be up to three years.

Prohibition Orders

Section 109 and section 110 of the Criminal Code allow a court to impose a prohibition order. Where an offence of violence has occurred a Judge may impose a prohibition order which prohibits the offender from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance during a specified period.

Conditional Sentence

If an offender receives a conditional sentence, the offender is sentenced to a term of custody to be served in the community. Similar to a probation order, a conditional sentence will have a number of terms with which the offender must comply. These terms may include a curfew, a non-contact provision with the victim of the offence, or a term prohibiting the offender from leaving their home. A conditional sentence has a set period of duration, which cannot exceed two years less one day. If an offender violates any terms of a conditional sentence, the offender may be ordered to serve the remainder of the conditional sentence in a custodial facility.

Custody

When an offender is sentenced to custody, it means that the offender will go to jail for a period of time. If an offender is sentenced to an intermittent custodial sentence, it means the offender may serve the sentence in custody on weekends, or on certain days of the week, and be out of custody for the other portion of the week. An offender may only receive an intermittent sentence when the length of the sentence is 90 days or less. An intermittent sentence is usually imposed where the sentencing court believes there is a compelling reason to allow the offender to serve the sentence on weekends, such as to maintain employment. An offender will always be placed on probation while serving an intermittent sentence.

An offender will serve a custodial sentence in a provincial reformatory if a sentence of less than two years has been imposed. An offender will serve a sentence in a federal penitentiary where the sentence is two years or greater. Provided that the sentence is less than two years, a period of probation of up to three years may follow the custodial sentence.

Probation

Probation and Parole Officers (PPOs) have a key role in linking the criminal justice system with community resources. PPOs have three main roles in working with offenders:

- preparation of pre-sentence reports as ordered by the courts
- assisting with the rehabilitation of offenders through supervision and by referring them to appropriate counselling programs
- supervising offenders so that the conditions of the probation are met

The Pre-Sentence Report

If the court requests a pre-sentence report:

- the police will provide the following information to the PPO (Probation and Parole office), if requested:
- police synopsis of the current offence
- offender's criminal record
- V/WAP will provide, subject to the woman's consent:
- information to enable the PPO to contact the victim
- a copy of the victim impact statement

In addition to the standard sections in the pre-sentence report, the PPO will include the following information and comments (subject to receiving the appropriate release of information):

- terms of any existing family court order regarding communication
- restrictions from a current community service placed on the offender
- any assessment and history of prior rehabilitation or counselling
- any appropriate and available program for counselling or rehabilitation
- a recommendation to the court for focused supportable and enforceable conditions
- where the offender is already in a rehabilitative program or counselling program, reference should be made to that specific program in the named agency

The PPO preparing the report should request a written "Release of Information Form" from the offender, specifying information from any relevant service agency that has had prior involvement.

In the recommendation section of the pre-sentence report, the PPO should address provisions restricting access to the victim, keeping in mind any current prohibitions that may exist. Furthermore, if a recommendation for rehabilitation or counselling as a condition of probation is made, it should be as specific as possible and include that the offender:

- attend, participate in, and complete a rehabilitative program or counselling program as directed by the PPO
- provide proof of participation in the program(s) to the PPO

Additionally, during the interview with the offender, the PPO should discuss the offender's willingness to sign any necessary release of information forms to facilitate rehabilitation and determine the offender's ability/willingness to pay any necessary costs for counselling. The offender's comments on these matters should be reflected in the pre-sentence report.

The probation order or the conditional sentence order

Sentencing may specifically involve probation or a conditional sentence order, which sets out certain conditions the offender must follow. Examples of conditions that may be included on community supervision orders are:

- reporting to a PPO
- not attending within 100 metres of the woman's residence, workplace or place of education
- attend and actively participate in such rehabilitative programs as recommended by PPO (i.e., Partner Abuse Response Program P.A.R., substance abuse programs)
- not associating or communicating with the woman
- requiring the victim's written consent for association or communication with the victim which is revocable by the victim or PPO

The intake process

The offender reports to a PPO for a complete assessment interview, which is used to develop a supervision plan. As part of the assessment process, the PPO verifies the offender's responses by conferring with collateral sources that may include the woman, the offender's current partner, the investigating police officers, and community professionals. Once the PPO formulates a supervision plan, it is reviewed with the offender. The woman's participation with the PPO is voluntary; she is not obligated to speak to the officer.

PPO's are required to contact the victim, whenever possible, in order to:

- assess the risk to the victim
- support the woman by informing her of community services
- discuss limits of confidentiality (the woman is entitled to know for example, whether or not the offender is in custody, and, if so, the release date, whether or not the offender is on probation and parole or conditional sentence, the parole eligibility date, standard conditions of probation/parole conditional sentence order, specific information pertaining to the victim, and the general geographic area where the abuser has been released from custody). **The PPO cannot discuss the offender's ongoing supervision, and progress or participation in rehabilitation.**
- advise the woman to obtain a copy of the probation order or the conditional sentence order from the court
- make the woman feel comfortable to pose questions and discuss her concerns about the offender's probation order or conditional sentence order.
- provide her with information about any subsequent court proceedings which may involve her
- identify the woman's specific concerns (e.g. offender's access to children)
- obtain the woman's account of the offence
- explain the role of PPO in woman abuse cases, develop a working relationship with the woman so that she knows she can phone the PPO with questions or concerns, provide her with the PPO's name and work telephone number
- inform the woman of the Victim Support Line

Interpretation Services are available when necessary to effectively communicate with non English speaking women.

The Victim Information Service offers a **Victim Support Line** for victims and service providers to get general information about the criminal justice system, supports and services. It also offers specific information about the offender, including when the offender is released from prison, if the offender escapes, or if the offender receives any temporary releases.

There is a provincial victim support line for offenders serving a custodial sentence of 2 years less a day, which is 1-888-579-2888. There is a federal victim support line for offenders serving more than 2 years, which is 1-800-518-8817. Probation services or V/WAP will provide the woman with this information.

Supervision

If one of the conditions of the offender's supervision document is to participate in some form of counselling, it is the PPO's responsibility to refer the offender to an appropriate rehabilitation program and monitor the offender's attendance and participation in that program. **The PPO maintains ongoing communication with the rehabilitation providers.** Rehabilitation may include one or more of the following:

- Partner Abuse Response Program (P.A.R.)
- anger management *
- individual therapy *
- substance abuse program
- Sex Offender Intervention Program

If the offender does not attend or has demonstrated sporadic attendance, the PPO will consider various actions to encourage the offender to comply, including a possible failure to comply charge.

* Please see intervention section - Abusers

Enforcement

One of the PPO's responsibilities is to ensure that the offender abides by the conditions of the probation or conditional sentence order. The enforcement of the order is important to try to make every attempt to **ensure the safety of the woman and to make the offender responsible for fulfilling the conditions of the order.**

The PPO may enforce the orders by one or more of the following actions:

- increasing the offender's supervision
- giving the offender a verbal or written warning

- laying an allegation of breach of a conditional sentence order
- laying a charge of failure to comply with a probation order
- enrolling the offender in a different therapeutic program
- applying for a revocation of a probation order where the offender has been charged and convicted of a new offence during probation (This applies to a probation order that originates from a conditional discharge or a suspended sentence.)

The PPO needs to consider several factors to determine the appropriate enforcement action including:

- the level of risk of harm to the woman, her children, and the community
- the woman's degree of fear of the offender
- any injuries sustained by the woman
- the woman's degree of trauma and/or stress
- the type of violation committed
- the offender's attitude towards violation of orders or degree of wilfulness
- any new charges while on probation or conditional sentence
- the consideration of additional variables particular to the case

Choosing the Appropriate Enforcement Option

When a PPO becomes aware of new allegations of abuse (physical, sexual, threatening and/or harassment) by the offender, or if the woman is at risk, feels at risk or is deemed at risk by the offender, the PPO will ensure that the police are advised immediately. The PPO will also inform the victim of available community supports such as shelters and counselling agencies.

If the offender has violated a condition of the order specific to partner abuse issues, the PPO will take action, which may include a charge of failing to comply with probation or an allegation of breach of a conditional sentence order.

Parole

Parole is an option to offenders who were sentenced to jail for a term of two years less a day. Parole may be granted to offenders after they have completed one-third of their jail term. After this time, the offender is eligible to complete the remainder of the jail term in the community under the supervision of a parole officer.

The Ontario Parole and Earned Release Board is the governing body that oversees parole requests. Parole is typically granted to those offenders who are less likely to commit another offence, and who do not pose any risk to the woman or community.

The role and responsibility of the PPO is to contact the woman when an offender is applying for parole.

The PPO contacts the woman to:

- inform her that the offender has applied for parole;
- inform her that the offender has the right to read the parole report;
- explain the parole process to the woman;
- explain that she may request, but is not required, to attend the parole hearing;
- assess her concerns, requests, level of risk, safety issues, feelings, and thoughts about the impact of the assault on her;
- discuss the importance of the woman maintaining contact with the PPO;
- discuss the limits of confidentiality (the information the woman shares with the PPO will be kept confidential should the woman request the abuser not be informed of her concerns);
- inform her of her right to complete and submit a victim impact statement to the Ontario Parole and Earned Release Board, and explain to her that she may include her concerns about the offender reading this statement.

Conditions of Parole

The Ontario Parole and Earned Release Board will consider the woman's requests when determining the conditions of the offender's parole.

The PPO will supervise the offender to ensure the offender is complying with the conditions of the parole.

If the offender does not comply with the conditions:

- the PPO will inform the Board which may authorize a warrant for the suspension of parole;
- if there are reasonable and probable grounds supporting the violation of the conditions, the offender will be arrested and returned to custody;
- the PPO will complete a post-suspension report to be submitted to the Ontario Parole and Earned Release Board; and
- the offender is entitled to a post-suspension hearing before the Ontario Parole and Earned Release Board at which time a decision will be made to either revoke parole or reinstate it.

Linking Police, Crown Attorney, Victim/Witness Assistance Program and Probation

There are a number of functions in the legal system, which require the integration of services between the Police, Crown Attorney, VWAP and Probation. The functions that require a coordinated response includes: victim assistance, release conditions, preparation of a case for court, procedures after sentencing, breach of probation conditions, release provisions for a breach of probation and trials for breach of probation.

A. Victim Assistance

When criminal charges have been laid the Police, Crown Attorney and VWAP will work in partnership to ensure that the woman is advised of the various resources that can assist her during the court process. The goal of this partnership is that the woman will be aware of the proceedings surrounding the incident she was involved in, and that she can have input into this process.

B. Release Conditions

1. The Records Bureau of a police service is responsible for inputting information about the offender's charges and release conditions onto a computer program known as the Canadian Police Information Centre (CPIC).
2. The court officer for bail court will screen the custody list for domestic violence charges. The court officer will then obtain a police synopsis of the incident for VWAP. Those identified, as domestic violence cases will be monitored by VWAP staff.
3. If the accused is released or to be released with conditions, the York Regional Police Victim Notification Officer will contact the woman and advise her of the conditions of release. The Victim Notification Officer will work in a coordinated response with VWAP. The majority of women will be notified by the Victim Notification Officer. Copies of the bail conditions can be obtained by VWAP staff to be forwarded to the woman.
4. The recognizance, which states the conditions of release, will be attached to the court information by the court clerk and filed in the court office. The next court date is then recorded on the Integrated Court Offences Network (ICON). The Crown Attorney will record the conditions of release in the Crown Brief.

C. Case Preparation

1. The investigating officer will prepare the Crown Brief and send it to the Police Court Office. The Crown Brief will then be forwarded to the Crown Attorney's Office for screening. In the case of a bail hearing the Crown Brief is sent immediately to the Court Office so that it can be available to the Crown Attorney immediately. When disclosure for the incident is requested by the accused or a lawyer this disclosure is available at the Police Court Office.
2. The police officer preparing the Crown Brief will record and include all relevant information and evidence gathered throughout the investigation. The Crown Brief may contain interviews/statements with the victim, accused and witnesses, 911 tapes, medical documents, previously reported incidents and a domestic violence supplementary report. Each Crown Brief contains a checklist that will indicate the evidence and information gathered. The Crown Attorney uses the evidence and information to prepare the case and further information and evidence may be added to the Crown Brief as it is gathered.
3. The police or Crown Attorney will make efforts to advise the woman of VWAP and their role. The Crown Attorney is currently available to meet with victims of domestic violence cases on Tuesdays from 2pm-4: 30pm.

3. Procedures After Sentencing

1. The Court Probation Officer (also known in the Ministry of Correctional Services as the Court Liaison Officer) will attach the original probation order to the arrest synopsis and offender's criminal record. This paperwork will then be sent to the accused's assigned Supervising Probation Office.
2. The Record Bureau of a Police Service receives a copy of the offender's probation order and is responsible for inputting all probation orders and the conditions of probation onto a computer program known as the Canadian Police Information Centre (CPIC).
3. If the offender receives probation, the offender reports to the Probation Officer located in the probation office in the courthouse to review the conditions of the probation order and the legal consequences if the offender violates the conditions. The offender signs the probation order and the court liaison officer witnesses it.
4. The Probation Officer will arrange an appointment or give specific reporting instructions for the offender to attend the local probation office. There is an attempt to have the arrangements made within five days.
5. The woman may request a copy of the probation order (which is a public document) from the court office or VWAP.

E. Breach of Probation Conditions

1. When there is sufficient evidence to support a breach of probation in a case of domestic violence, a "Probation Order: non-compliance" charge will be laid. Local arrangements will determine whether this action is taken by the Probation Officer or the Police.
 - (a) If the police are called to the scene where a breach of probation has been reported they will conduct an investigation. If there are reasonable grounds to believe that a breach of probation has occurred the suspect will be arrested and charged with "Probation Order: non-compliance". The accused may be held for a Show Cause Hearing or released with conditions to appear in court on a future date.
 - (b) In situations where the Probation Officer has first hand knowledge of the offence (such as not reporting or not attending/participating in a group-counselling program), the Probation Officer will initiate charges by way of a summons or a warrant, as appropriate.
2. When a file comes to court as a result of (a) noted above, a designated staff person with the Case Administration Co-ordinator's office will photocopy the front and back of the Crown Brief which indicates the name of the accused, charges, next court date, and police incident number. This information will be forwarded to the Court Probation Officer to forward to the supervising probation officer.
3. If the police officer determines, on reasonable grounds, that a condition of the probation order exists prohibiting the offender from contact with the woman, and the offender is in contact with the woman - the offender is breaching that condition and may be charged whether or not the woman named in the order consented to the offender's presence.
4. It is the responsibility of the police officer to confirm that a probation order exists and to confirm the conditions of that probation order. This confirmation is usually verified through the Police Records Bureau where a copy of the Probation Order is on file.

F. Release Provisions For A Breach Of Probation

1. If the supervising Probation Officer is advised of the arrest, a written or verbal summary of the offender's response to their probation supervision will be provided to the Crown Attorney, and if time permits, the Probation Officer may assist the Crown Attorney with determining release provisions for the accused.
2. In the absence of this information, the police officer in charge of the case will attempt to contact the offender's Probation Officer or in their absence the Probation Duty Officer who can access the probation file to determine the offender's response to their probation supervision.

Linking Police, Crown Attorney, V/WAP and Probation

3. In consideration of release provisions, the Crown Attorney will take into account the probation officer's comments, the offender's previous record, and the woman's safety concerns.

G. Trial for Breach of Probation

In cases where the Probation Officer has not been involved with laying the charge, the police officer in charge of the case will ensure that information has been provided by the supervising probation officer to the Crown Attorney by way of written submission, verbal report or court appearance.