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# HENNEPIN COUNTY DOMESTIC VIOLENCE COURT REPORT

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## Introduction

With the establishment of the Hennepin County domestic violence court in November 2000, Hennepin County made a significant step towards acknowledging the importance of effectively prosecuting domestic violence crimes at the misdemeanor level. This specialized court was created to handle domestic violence crimes, including assaults, violations of orders for protection, interference with 911 calls, violations of conditions of release, and probation revocations.

One year later, in November 2001, WATCH published its first domestic violence court report, *Judicial Demeanor and Response in Domestic Violence Court*. The 2001 report highlighted a variety of themes and patterns of inconsistency within the new court and offered recommendations for improvement. In this report, five years later, WATCH revisits those recommendations and takes a closer look at how the domestic violence court is handling misdemeanor domestic abuse cases today.

## Project Design

WATCH has been monitoring domestic violence court cases since the court's inception. Typically, volunteer monitors or staff members observe these court proceedings three times a week. This report reflects data gathered from seven weeks of daily monitoring from April to May 2006 as well as research on defendant criminal histories and case outcomes. An additional 15 days were spent observing the specific functioning of the court, with special attention to courtroom decorum, interactions among court personnel, audibility, and safety issues.

WATCH volunteers monitored 234 cases in front of nine different judges. Of those, 156 were completed, either through sentencing or dismissal, at the time of publication. Additionally, WATCH staff interviewed or spoke with nine judges, two city attorneys, a public defender, a probation officer, and several advocates to obtain their perspective on the court and its impact. WATCH staff also attended regular meetings of the Family Violence Coordinating Council and the Domestic Violence Court Steering Committee, which was specifically created to focus on the court's day-to-day operations.

## History of Domestic Violence Courts in the United States

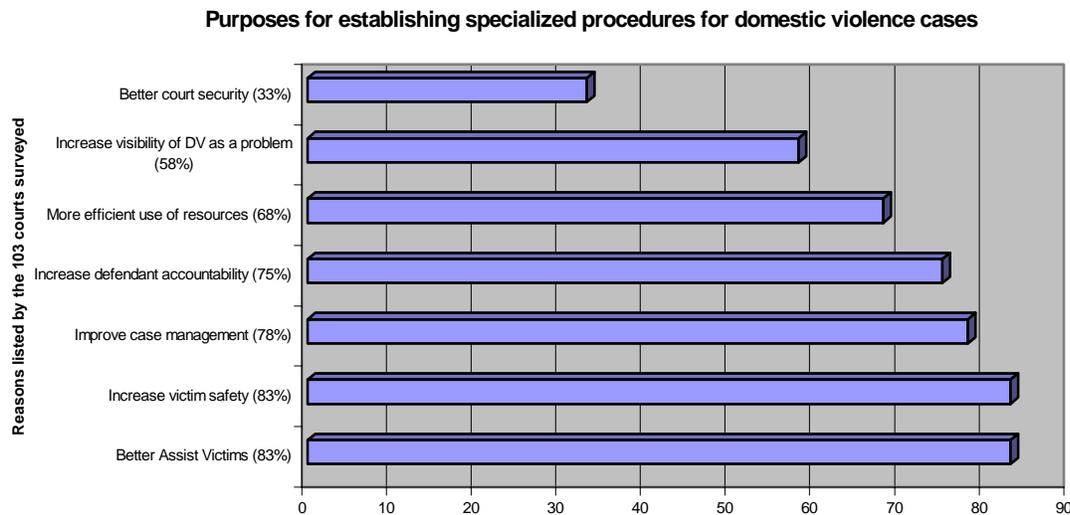
Specialized domestic violence courts are one tool being used around the country to improve the criminal justice system's response to both misdemeanor and felony domestic violence cases. The first county in the nation to establish a separate court to specifically address domestic violence misdemeanor cases was Cook County, Illinois, in 1984.<sup>1</sup> Since then, over 300 counties across the nation, including Hennepin County, have created specialized courts to confront the unique nature of domestic abuse.

In January 1999, the National Center for State Courts (NCSC) sought to obtain a picture of specialized court processes and services for domestic violence cases across the country. Through a written survey, the NCSC obtained snapshots of 103 courts from 22 states with varied jurisdictions, organizational structures, and resources. The study found consistency in the original stated purposes and needs for these specialized courts, with victim safety and accessibility to services the top priorities.

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<sup>1</sup> Terzieff, Juliette. *New York Courts Untangle Domestic Violence*, Women's eNews, June 6, 2005.

The following graph from the NCSC report highlights the reasons listed by the study respondents for establishing specialized domestic violence courts.



## Types of Specialized Domestic Violence Courts

The creation of specialized domestic violence courts symbolizes the recognition that domestic violence is a serious issue that needs to be addressed in a separate forum by the judicial system. A myriad of factors influence the success of a specialized court and the extent to which it is supported within the criminal justice system. In her 2000 report, *Specialized Criminal Domestic Violence Courts*,<sup>2</sup> researcher Julia Helling found that proponents of domestic violence courts pointed to several major areas where such courts contributed to system improvements:

- Specialized courts have specialized judges and specialized court staff who understand the unique nature of domestic violence and promote defendant accountability;
- A specialized and integrated court structure and organization create a more informed judge, make resources more easily and readily available to victims and are better able to hold defendants accountable through more intensive reviews and monitoring.

Helling found that opponents' concerns regarding specialized domestic violence courts included:

- The perception that the formation of a specialized court led to increased jail time and penalties for defendants and that judges had become advocates for women and were no longer impartial arbiters of the law;
- The fact that judicial incompetence had a much greater impact in a specialized court than in a system where judges frequently rotated and handled all kinds of cases. When the court did not work well, battered women had nowhere else to turn for legal protection.

<sup>2</sup>The full report can be found at [www.vaw.umn.edu/documents/helling/helling.html](http://www.vaw.umn.edu/documents/helling/helling.html).

Among established courts, Helling identified four basic organizational models according to types of appearances heard. They are as follows:

**Model One:** *Pre-trial conferences only*

Plea-bargains only with all other case-specific court appearances scheduled on regular criminal calendars.

**Model Two:** *All non-evidentiary appearances*

All non-evidentiary hearings, including arraignments, pretrial conferences, pleas, and sentencing.

**Model Three:** *All appearances*

All appearances for criminal cases.

**Model Four:** *Combined criminal and civil jurisdictions*

All criminal and civil domestic violence case appearances.

Hennepin County's domestic violence court most closely resembles model two as it only hears criminal cases and trials are heard by another judge in another court location. It would be interesting to consider the addition of civil cases, as in model four, to the court's docket. Advantages could include cutting down appearance time for victims, defendants, and court personnel as well as greater consistency in issuing no contact orders and handling violations of court orders.

### **2001 WATCH Report: General Summary**

*The most obvious and troubling theme permeating these findings is the lack of consistency in the way the judges presiding over the court handled the domestic violence calendar... [S]ome judges demonstrated an in-depth knowledge of the complicated dynamics of domestic violence and presided over calm, orderly courtrooms. Others appeared to have less understanding of domestic violence issues, including critical issues of safety. The absence of a set of standard bench policies and procedures regarding the domestic violence court, combined with the revolving door of judicial assignments, resulted in a court in which unpredictability and inconsistency were defining characteristics. These factors reduced the court's ability to assure the safety of victims and accountability of offenders—characteristics that should be hallmarks of any domestic violence court. These factors also risked negatively affecting participants' and the public's perception of the court's fairness.*

### **2006 WATCH Report: General Summary**

WATCH's 2001 study, excerpted throughout this report, found a variety of problems and inconsistencies in domestic violence court to which WATCH has been paying particular attention and advocating for change over the past five years. Bench members and court personnel have also been working towards improving the functioning and orderliness of the court.

This report shows that, overall, the court has achieved greater consistency in the quality of services and the handling of cases. The following are some of its successes:

- Domestic violence court moved to its new space at the public safety facility in 2004. This dedicated space is closer to the jail and has more meeting rooms and fewer interruptions than the court's former home at the government center.
- New recording devices contribute to a quieter and more orderly courtroom when coupled with clerks' announcements that the proceedings are being recorded and conversations in the gallery may be picked up.
- A new slate of domestic violence court judges with a particular interest in hearing domestic violence cases has been appointed. The roster includes Judges Heidi Schellhas, Susan Burke, Francis Connolly, Richard Hopper, William Howard, Janet Poston, Marilyn Rosenbaum, Richard Scherer, Mark Wernick, and Lloyd Zimmerman.
- The bench has better knowledge of the complicated dynamics of domestic violence and greatly improved consistency in the explanation and clarity of no contact orders.
- The courtroom is orderly and well run; judges and deputies assist in maintaining a calm and controlled process.
- Monthly Domestic Violence Court Steering Committee meetings provide a forum for reviewing policies and procedures. The committee is currently reviewing best practices and procedures for the domestic violence court bench.
- A domestic violence court revocation grid, developed by presiding domestic violence court Judge Heidi Schellhas and approved by the domestic violence court bench, is now in place. The grid provides a framework for handling domestic abuse probation violations and creates greater consistency among judges in revocations.

Ongoing problems that still need improvement include violations of no contact orders by defendants in the courtroom, long wait times and delays, and audibility during cases that require interpreters.

WATCH monitors noted the following:

- Violations of no contact orders in the courtroom continue to present a problem for both victims and court personnel. Monitors observed such violations and heard from court personnel about the difficulties in dealing with them.
- Clerks and judges do a better job today of informing the gallery of the reason for delays compared with 2001, but delays are still significant. The wait time for cases has not improved, and many victims spend several hours waiting for their cases to be heard.
- While overall audibility in the courtroom was good, routine audibility problems were noted in cases involving language interpreters. The regular noise level of the court made it difficult for interpreters to hear the proceedings and for judges to hear the interpreters.
- Though not a widespread problem, WATCH monitors did witness several instances when court personnel made comments in the presence of the public regarding their frustrations with the process or with other staff. Unfortunately, such comments set a negative tone and may erode the public's trust in the criminal justice system.

**Summary of 2001 WATCH Report: Courtroom**

*Judges had the ability to create a calm and serious atmosphere; however, that was not consistently achieved. Courtroom decorum ranged from orderly and respectful, to noisy and chaotic. Too frequently, courtroom decorum was casual and unprofessional, lending an informal air that detracted from the seriousness of the proceeding.*

**2001 WATCH Report Recommendations**

*Policies and procedures should be established which permit systems personnel—including prosecutors, defense attorneys, bailiffs and clerks—to do their work without disrupting the proceedings. Bailiffs should consistently enforce courtroom rules. Judges and courtroom personnel should always use microphones to enable all participants to hear clearly.*

**Summary of 2006 WATCH Report Findings: Courtroom Audibility and Decorum**Overall Audibility

WATCH monitors noted ten days in which poor audibility in the courtroom affected their ability to monitor the proceedings. It can be assumed that parties and other observers in the courtroom were similarly challenged in trying to hear what was going on in court. Audibility problems increased when the judge was on the bench hearing a case and attorneys from other cases were attempting to locate clients or discuss cases with court personnel. It was generally more difficult to hear when cases were being interpreted, leading to difficulties for both interpreters and staff.

The following excerpts from monitoring notes reflect the audibility difficulties encountered:

*Conversations between court staff became distracting for those of us in the gallery. Court personnel nearby were talking while the judge was addressing the defendant at the bench; at the conclusion of the case, a probation officer and the same defendant were talking, and the judge and the prosecutor were having a separate discussion, all while a new case was being called. Isn't there another room where some of these conversations could take place?*

*I observed two instances today in which defendants clearly had problems hearing. I found it generally more difficult to hear when cases were being interpreted.*

*Court personnel were talking so loudly, I couldn't hear very well, but nothing was done about it.*

*The interpreter had a problem hearing the defense attorney at first, but the problem was fixed fairly quickly.*

*The defense attorney had a hard time speaking with the simultaneous interpreting in the background.*

*The fire alarm was being tested today and went off four times, once at the end of a hearing.*

On a positive note, some court personnel went out of their way to avoid disrupting the proceedings:

*The defense attorney was very respectful and courteous to both her clients and the court. She would only speak with or ask for her clients when court appearances were not in progress and made sure each of her defendants knew what was going to happen.*

### Overall Decorum

WATCH monitors noted a variety of factors related to the overall decorum of the courtroom. Judges played a major role in maintaining courtroom decorum when they were on the bench, but spent a substantial amount of time in chambers waiting for cases to be ready, leaving this responsibility to other court personnel. In the judges' absence, clerks, sheriff's deputies, attorneys, probation staff, and advocates all contributed in some way to the atmosphere and professionalism of the courtroom.

### *Judicial Demeanor*

When judges were on the bench, they set the tone for the court through their presence and demeanor. Overwhelmingly, the judges WATCH monitors observed were professional and appropriate in their demeanor and created a calm, smooth-running courtroom.

*The judge continually stated concern for the victim and wanted to ensure that interpreters had time to translate.*

*The judge was bureaucratic and stern.<sup>3</sup>*

*The judge was thorough in explanations to defendants each and every time.*

*The judge was good at explaining no contact orders and demonstrated concern for victims.*

*The judge poured a cup of water for a coughing woman in gallery; he is polite yet stern when appropriate with defendants and keeps the gallery quiet.<sup>4</sup>*

*The judge recalled a defendant who screamed, "F--- you!" and other things at the deputies. He was very stern with the defendant, which was surprising given this judge's usual kind demeanor. He even threatened to hold the defendant in contempt of court.<sup>5</sup>*

*The judge told the defendant that drinking was like killing yourself. The defendant started to cry.*

There was one instance when a judge's absence caused court personnel to discuss their concerns within hearing range of the gallery:

*The judge was not on time. Court staff kept asking the clerk if the judge had arrived yet and expressed concern about her ongoing tardiness. Eventually, she did arrive and announced that she had been ill.*

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<sup>3</sup> The WATCH monitor in this case saw these attributes as positive and reflective of the seriousness of the proceedings.

<sup>4</sup> The monitor used the word "stern" positively to describe how the judge held defendants accountable for their behavior.

<sup>5</sup> The monitor thought the judge's handling of this defendant was appropriate.

*Attorney Demeanor*

Monitor comments related to attorneys were limited since most of the attorneys' work is outside of the view of monitors. Monitors are waiting inside the courtroom and attorneys are often out in the hall, in the defendant waiting room or in the meeting room behind the gallery working on cases. The following are attorney-related comments from monitoring notes:

*The prosecutor was very prepared and eloquent.*

*The prosecutor often spoke personally with the victims while preparing for hearings. The advocate thanked the prosecutor for doing so and stated that allowing the victims to make decisions helped to empower them.*

*Four new attorneys in the public defender's office. All did well except one, but it is possible she was nervous for her first appearance.*

There was one instance in which an attorney's frustration flared up in court:

*The defense attorney was visibly angry about missing the 10 a.m. deadline for sentencing and sarcastically uttered to no one in particular, "I love my job."*

Negative comments like the one above were not the norm, but they were uttered by court personnel from time to time within earshot of parties and observers in the gallery. While working under pressure at an often hectic pace, court personnel still need to remember that they are always in the public eye while in the courtroom.

*Deputy Demeanor*

Generally, WATCH monitors recorded that deputies were attentive to the safety and orderliness of the court and to the needs of judges.<sup>6</sup> Monitors noted the following:

*A defendant and his mother were talking during other cases; a deputy approached them and asked them to whisper.*

*The deputy asked the out-of-custody defendant not to stand so close to the prosecutor during his appearance.*

*The deputies advised a group of defendants not to gesture at or have eye contact with members of the gallery.*

*The deputy woke up a sleeping man and told him he couldn't sleep in court.*

*A noisy child could be heard in the entryway just outside the courtroom. The deputy went out to speak with the child's mother.*

The majority of comments about deputies were positive, but one monitor noted the following unfortunate incident:

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<sup>6</sup> Occasionally, judges asked deputies to provide information about jail procedures (e.g., the process for distributing medication) or whether a defendant had holds in other counties.

*In one instance, the wrong defendant was brought up. The prosecutor started the hearing by describing the incident. The defendant, who had the same surname as the defendant in the case, looked confused. Realizing the mistake, the deputy stopped the proceeding and informed the judge. The judge apologized to the defendant and had him transported back to the jail. The deputy returned shortly with the correct defendant.*

Additionally, one monitor noted the following scenario from their view in the gallery:

*An out-of-custody defendant was "hitting on" a victim from a different case while they were both waiting in the gallery. In addition to talking to her, the defendant kept scooting closer and closer to her. She was visibly uncomfortable. Neither the advocates sitting nearby nor the deputies intervened.*

While it is not the deputies' job to protect women from unwanted advances, it is their job to maintain courtroom decorum, including discouraging unnecessary conversations and unsolicited distractions. In scenarios like the one above, it is WATCH's hope that deputies and other court personnel will intervene to allow victims to concentrate on the proceedings instead of thwarting unwanted advances.

#### *Clerk Demeanor*

In the judge's absence, the clerk is the primary point of contact for attorneys, out-of-custody defendants, and victims seeking information about hearings. Monitors noted 10 occasions when the clerks' skill in explaining the proceedings to the public and efficiency in moving the calendar along were outstanding. Clerks overall did an excellent job of announcing the use of recording equipment, contacting judges when cases were ready, and working with prosecutors and public defenders in scheduling their cases.

*This clerk does a fantastic job. She is efficient, attentive, and very approachable. It is obvious she is well liked and respected by everyone in court and is, I think, primarily responsible for the court's smooth running.*

*The clerk was good at informing the gallery of cases that were dismissed.*

*The clerk gave a pro se defendant a list of private attorneys he could contact if he desired representation.*

Only twice during our study were monitors unable to hear the clerk call out the line numbers on the calendar. The vast majority of clerks made their announcements clearly and went out of their way to make sure that the needs of the public and court personnel were met. One clerk went so far as to have the water pitcher filled for the judge, posting a "fresh water" sign to the front. Several court personnel teased the clerk for seemingly attempting to win favor with the judge, to which she replied, "If I was appearing in front of a judge, I would want to make sure they were fully hydrated and ready to go."

#### *Other Court Personnel*

Monitors noted other moments of exceptional service in the courtroom, such as the following:

*A pregnant woman left the courtroom because her young child was crying. The victim was visibly upset. When her case was called, the probation officer went out to get her and watched*

*the child so the mother could be present during the proceedings. The probation officer even got the child to sleep!*

### Courtroom Audibility and Decorum Recommendations

WATCH recommends that audibility announcements be made periodically throughout the morning as new people arrive in the gallery. These announcements should specifically ask attorneys to keep their voices down and to move into the hallway when speaking with clients. Announcements should also be made prior to every case in which an interpreter is required, reminding the gallery to remain quiet. Finally, court personnel should be careful not to discuss personnel issues or air personal grievances within hearing range of the gallery.

### **Summary of 2001 WATCH Report: Delays**

*WATCH observed frequent and extended delays in the domestic violence court to the point where a calendar starting on time was the exception not the rule. Delays diminished the efficiency and effectiveness of the court.*

### **2001 WATCH Report Recommendations**

*Identify the most prevalent causes for delays in courtroom proceedings and develop a plan of action with systems personnel—including prosecutors, public defenders, probation officers, advocates, and courtroom staff—to address those causes and eliminate delays. The court should re-evaluate the official start time for the court and determine if that time is realistic in light of the participants' preparation time (such as communicating with defendants and victims) and the logistics of transporting in-custody defendants. In the event of a delay, judges should acknowledge the delay on the record and explain its cause.*

### **Summary of 2006 WATCH Report Findings: Delays**

Late-running calendars were so much the norm that most monitors were pleased if cases were only half an hour late. Cases in domestic violence court are scheduled for either 8:30 or 9:30 a.m.<sup>7</sup> The average start time for the calendar was 9:40 a.m., with the earliest start at 9 and the latest at 10:05 a.m.<sup>8</sup> During the course of WATCH's monitoring last spring, the average calendar was 28 cases.<sup>9</sup> If every case on the calendar were to be heard during a normal 3½-hour session, only 7½ minutes on average would be spent on each case. One monitor aptly noted:

*Do the assigned prosecutor and public defender have enough prep time with so many cases in domestic violence court?*

Delays arise if there is a problem in bringing defendants from the jail or if the judge, attorneys, or other staff are late. Monitors were sometimes able to identify the cause of the delay, but not always. Some court personnel were observed to frequently arrive late, but they may have been meeting with clients in

<sup>7</sup> Sentencing appearances are scheduled for 2 p.m. For the purposes of this report, WATCH only monitored cases heard in morning court.

<sup>8</sup> Many times only one or two cases were heard, followed by a recess until other cases were ready.

<sup>9</sup> The smallest calendar had six scheduled appearances, the largest had 33. Six cases was atypical for a smaller calendar; usually, a smaller calendar had 14 or 15 cases.

other rooms. Unfortunately, as in 2001, those who work in domestic violence court have become accustomed to the delays. Tellingly, a monitor who arrived for court at 8:30 a.m. was greeted by a sheriff's deputy with:

*A little early for the red clipboards, isn't it? Have you ever found a courtroom that started at 8:30 a.m.?*

### Delay Recommendations

WATCH is unaware of any plans by the court, as recommended in the 2001 report, to identify the most prevalent causes for delays or to reevaluate the official start time. It is also unclear if victims or defendants are given information prior to appearances about how the court calendar works and how much time they might reasonably be expected to wait. WATCH again encourages the court to look into this issue and develop a plan of action.

### **Summary of 2001 WATCH Report: Issuance of No Contact Orders**

*Judicial practice and demeanor when issuing no contact orders and relaying the terms of the orders also varied widely among judges. Some judges were clear and firm when issuing orders, communicating their seriousness and the consequences for violations; other judges were not.*

### **2001 WATCH Report Recommendations**

*Develop guidelines regarding the issuance of a no contact order in circumstances where the victim has stated that she approves of contact. Implement measures to ensure, to the extent possible, that the victim's statement was not coerced and that the victim had received appropriate advice and assistance from an advocate prior to making statements relied on by the court.*

### **Summary of 2006 WATCH Report Findings: Issuance of No Contact Orders**

No contact orders were issued in 65% of the cases WATCH monitored. Compared to the 2001 study, monitors reported greater consistency among judges in both the explanation of these orders and the seriousness of the tone employed while discussing them. WATCH monitors noted eleven occasions when they felt judges did an exceptional job when issuing no contact orders in terms of clarity and tone. The following are some of the monitors' comments:

*The judge was very thorough and repeated the terms of the no contact order to each defendant who received one.*

*The judge gave very clear no contact instructions.*

*The no contact order was explained to the defendant in great detail, with the judge stopping several times to ask if he understood. The judge's demeanor was very serious.*

*A judge told a defendant that until the case is resolved, the victim does not exist.*

*The judge stated that the only way he would consider allowing contact was if the alleged victim came to court and swore under oath that the defendant did not strike her.<sup>10</sup>*

It appears that even when victims requested contact, judges erred on the side of caution and issued no contact orders instead:

*There was a request to allow contact in order to set up visitation. The judge denied the request and ordered no contact.*

*The victim stated she was not afraid of the defendant and wanted the case dismissed. The judge instead issued a no contact order.*

*The victim stated that she was physically harmed by the defendant, but does not fear him now. The judge ordered no contact.*

*The victim said she does not fear the defendant. The judge still ordered no contact.*

Limited contact was allowed in some instances, such as:

*No contact was ordered until probation recommends otherwise.*

*Phone contact only was allowed.*

*No contact was ordered with the stipulation that the defendant can attend the birth of his child.*

During the course of the study, WATCH monitors noted only two instances, both concerning the same judge, when an adequate response and/or explanation of a no contact order was not provided:

*The judge did not adequately describe the scope of the no contact order and did not clarify any of its conditions.*

*The judge didn't ask any additional questions [to determine what conditions should be attached to the order]. It was barely noticeable that the judge was even issuing a no contact order.*

There was a related instance when a judge made an inappropriate comment while issuing a no contact order and another instance when a different judge demonstrated a troubling lack of understanding of the dynamics of domestic abuse:

*When the judge was explaining the no contact order to the defendant, he said, "If she calls, hang up." He added, "That's what I do when my wife calls."*

*The judge stated, "It indicates to me that the victim is not afraid if she let someone who is banging, threatening, and throwing rocks into the residence."*

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<sup>10</sup> It is not clear in this case if the judge was responding to the victim's request to have contact or the defendant's request to have the no contact order lifted.

Comments such as the first detract from the seriousness of the order; comments such as the second indicate that some judges still need to be educated about why a victim with limited options may choose to allow a batterer back into the home in an attempt to de-escalate a violent situation.

#### No Contact Order Recommendations

Clarity and consistency in the description of no contact orders are of the utmost importance in domestic violence court, perhaps more so than any other part of the process. Overall, WATCH is encouraged by the work of the domestic violence court judges in this area and pleased to see that the issuance of no contact orders has greatly improved since 2001. At no point should any judge, however, make light of the seriousness of the order by making jokes, especially at a woman's expense.

#### **Summary of 2001 WATCH Report: Violations of No Contact Orders in the Courtroom**

*WATCH monitors regularly observed violations of no contact orders occurring in the courtroom. There appeared to be no consistent judicial or courtroom policy regarding these violations.*

#### **2001 WATCH Report Recommendations**

*Develop guidelines that clearly establish a no tolerance policy for violations of no contact and protection orders, and that set a tone of safety and respect in the courtroom. In particular, this means that no contact and protection orders should be enforced in the courtroom and in the surrounding hallways, and appropriate and consistent sanctions should be imposed for any violations. Guidelines should be developed that address appropriate methods of communicating with the victim in the proceeding (for example, as related to no contact orders or bail) so as not to create the perception that the victim's input is the sole cause of the court's order.*

#### **Summary of 2006 WATCH Report Findings: Violations of No Contact Orders in the Courtroom**

WATCH paid particular attention to the extent of no contact order violations in court and to the system's response. Violations that were ignored or tolerated were especially concerning since the message victims and defendants take away is that the system will not enforce such orders outside the courthouse if it does not enforce them inside it. WATCH monitors were aware of six separate no contact order violations in court, although many more likely went undetected in the gallery or outside the courtroom doors. Four of those instances are described here:

*An in-custody defendant made a pointed gesture towards the victim in the gallery demanding that she stand up.*

*An in-custody defendant made three or four gestures to the victim in the gallery before the prosecutor and the victim advocate told him he couldn't make contact with the victim in the courtroom.*

*An in-custody defendant repeatedly mouthed something to and glared at the victim in the gallery; no court personnel said anything to him.*

*A defendant was handcuffed in the entryway after he and the victim had an argument before court.*

These examples illustrate the pressing need for greater consistency in the court's explanation of no contact orders as they apply to hearings and in its response to their violations. Last spring, the Domestic Violence Court Steering Committee began addressing these needs. One can understand the confusion a victim or defendant might feel regarding the scope of a no contact order in court. At the outset of the case, the defendant is told not to have contact with the victim. Then, the defendant receives a summons to appear in court, where the victim will also likely be present. Is the defendant in violation of the order under these circumstances? Technically, this proximity is a violation of the order. Generally, though, court personnel intervene only if they witness the defendant and victim sitting together or talking.<sup>11</sup>

#### Violations of No Contact Orders in the Courtroom Recommendations

The court needs to recognize that violating a no contact order in the courtroom is part of the defendant's pattern of abuse. The clerk should announce that no contact orders apply in the courtroom at the start of each calendar and throughout the morning. In this announcement, defendants with no contact orders should be told to refrain from communicating with victims, and those who are out-of-custody should be directed to sit on the opposite side of the gallery from their victim. Announcements should also state that violating a no contact order in the courtroom is a criminal offense. These announcements would serve to clarify and reinforce the scope of no contact orders in the courtroom and serve as a first warning from the court, making a courtroom arrest less likely and less surprising.

#### **Summary of 2001 WATCH Report: Violations of Court Orders**

*Consequences for violations of court orders were imposed inconsistently, ranging from defendants being taken into custody to no consequences at all. Most importantly, there was inconsistency in the extent to which victim and public safety were taken into account when dealing with violations of court orders.*

#### **2001 WATCH Report Recommendations**

*Policies and procedures should be consistent and predictable, with offender accountability and victim safety at their core.*

#### **Summary of 2006 WATCH Report Findings: Violations of Court Orders**

One of the most important changes in domestic violence court since the 2001 study was the development of the probation revocation grid.<sup>12</sup> In November 2005, the domestic violence court bench, under the direction of Judge Heidi Schellhas, created and approved a set of guidelines for the amount of time to revoke for certain probation violations. The grid includes the most common types of violations: a new assault charge against the same or another victim, violation of a no contact order, violation of an order for protection, failure to attend/complete domestic abuse treatment or anger management, failure to complete a chemical health assessment or attend treatment, use of alcohol or drugs, and failure to meet with probation. The grid provides guidelines for first time as well as second

<sup>11</sup> In this and other courtrooms it is not uncommon for a victim and defendant with a no contact order in place to arrive at court together. The author noted one such instance during the course of the study. Not only did the victim and defendant arrive together, but they also sat together in court and shared childcare responsibilities throughout the morning.

<sup>12</sup> A copy of the grid is included at the end of this report.

and third violations. It has been in use since November, and has proven effective in creating a systematic, consistent approach to handling probation violations in domestic violence court.

WATCH applauds the work of the domestic violence court bench for providing greater accountability for defendants and clarity for judges in handling probation revocations.

### **2006 Hennepin County Domestic Violence Court Report Recommendations**

WATCH is pleased with the progress that has been made by the domestic violence court since its last report in 2001. Notable improvements have been made in many major areas of concern. WATCH's recommendations for improvement at this time, based on reviewing its 2001 report and 2006 observations, include the following:

- In every case that involves an interpreter, the court clerk and/or judge should announce that a case is being interpreted and remind everyone in the gallery, including attorneys, to refrain from talking.
- Court personnel should refrain from discussing any court-related frustrations within hearing range of members of the gallery. Personnel should instead follow the appropriate chain of command for dealing with ongoing frustrations and problems. Additionally, no court personnel should engage in joking or casual conversation that can be heard in the gallery while court is in session or when members of the public are present.
- The court should identify the most prevalent causes for delays in courtroom proceedings and develop a plan of action with systems personnel to address those causes and eliminate delays. The court should work to identify any staff that are consistently late and address them individually. The court should re-evaluate the official start time for the court and determine if that time is realistic in light of the participants' preparation time and the logistics of transporting in-custody defendants.
- Judges and/or clerks should periodically update members of the gallery with reasons for delays and an explanation of the court process. As members of the gallery frequently enter and exit, these ongoing announcements are critical to the public's understanding of the process.
- All court personnel should remain vigilant to no contact order violations in the courtroom and identify ways, such as the following, to reduce them:

When a no contact order is imposed, the judge should explain that court is a special circumstance in which the victim and defendant may be required to be in the same place, but are not allowed to arrive together, sit together, or talk to each other.

Written information explaining this special circumstance should be included in any forms defendants and victims receive concerning pending court dates.

Court personnel, possibly deputies, should announce as the proceedings get underway that no contact violations will not be tolerated in court and that violators may be subject to arrest or additional charges.

Signs explaining that no contact orders apply to the courthouse with the potential for arrest if the order is violated should be posted in plain view in the courtroom and hallway.

## 2006 WATCH Report Selected Case Summaries

### Case Summary

#### **State v. Kenneth Jerome Brunner**, Case # 06026260

Kenneth Jerome Brunner appeared in domestic violence court on a gross misdemeanor domestic assault charge for threatening and assaulting his ex-girlfriend and her male friend.

In April 2006, Brunner, his ex-girlfriend, and her friend were playing a game of cribbage at the ex-girlfriend's apartment when an argument became heated. Brunner hit his ex-girlfriend in the face several times, and she and her friend fled outside. Brunner followed them to their car and attempted, unsuccessfully, to pull his ex-girlfriend out of the car. Brunner punched the side window several times, eventually breaking the window and striking his ex-girlfriend in the face. Brunner then ran back into the apartment, where his two children were sleeping. The two victims called the police, who arrested Brunner. Brunner pleaded guilty to misdemeanor domestic assault and was sentenced to 90 days in the workhouse with 45 days stayed for one year and credit for seven days served. Brunner's criminal history dates to 1988 and includes damage to property, first degree burglary, violation of an order for protection, five disorderly conduct, and six fifth degree assault charges.

### Case Summary

#### **State v. Joseph Allen Whitney**, Case # 06022225

Joseph Allen Whitney appeared in domestic violence court on a fifth degree misdemeanor domestic assault charge against his girlfriend.

On April 2, 2006, Whitney, his girlfriend, and several other friends were drinking at a bar and intended to spend the evening at a local hotel where Whitney had rented a room. At the bar, Whitney became angry with the victim and left for the hotel. The victim followed him to the hotel, and they began to fight. Whitney pulled the victim's hair, threw her out of the room, and dragged her down the hallway, causing carpet burns on her wrist. The police were notified and Whitney arrested. The victim wrote a letter to the court stating that nothing happened. The charges were dismissed by motion of the prosecutor.

### Case Summary

#### **State v. Anthony Marcellus Richmond**, Case # 06024767

Anthony Marcellus Richmond first appeared in domestic violence court for fifth degree domestic assault and appeared several days later for violating the resultant no contact order.

On April 5, 2006, Richmond was visiting the victim, his girlfriend, in her home. He had a wound on his forehead and complained to her that, "Even strangers were more concerned about him than his girlfriend." The two fought, and the victim asked Richmond to leave, which made him angrier. When the victim called the police, Richmond punched her in the stomach. Richmond told the police, who arrested him, that the victim hit him on the head with a stick, causing his wound. He was charged with fifth degree misdemeanor domestic assault released without bail. Richmond was ordered to have no contact with the victim pending the outcome of the case.

On April 9, 2006, the victim called the police to report that Richmond had broken into her home through her basement window and was hiding in her attic. When officers arrived, she stated that Richmond had just fled out the back door and that he had taken her phone modem with him. The officer informed her that Richmond was listed in the National Crime Information Center as a sexual offender. The victim, who has two small children, was unaware of this fact and was very concerned. Richmond was located, arrested, and charged with misdemeanor violation of a no contact order and misdemeanor damage to property.

Both the April 5<sup>th</sup> and April 9<sup>th</sup> cases were continued together. Charges from the April 5<sup>th</sup> case were dismissed by motion of the prosecutor. At the bail hearing for the April 9<sup>th</sup> case, Richmond pointed to the victim in court and told her to “say something” in his defense. The judge warned him to refrain from talking to the victim. Richmond pleaded guilty to violating the no contact order and was sentenced to 90 days in jail with 86 days stayed for one year and credit for four.

### **Case Summary**

#### **State v. Kenneth Lakewood Turner, Case # 06019635**

Kenneth Lakewood Turner appeared in domestic violence court on two counts of misdemeanor domestic assault and one count of misdemeanor disorderly conduct.

On March 22, 2006, Turner became angry when his ex-girlfriend would not let him see their child. Turner called the victim and threatened to come over and shoot open the front door and shoot everyone inside. The victim had previously obtained an order for protection against him, but it was not clear if he had been served at the time of this incident. A WATCH court monitor noted that at the time of his appearance, Turner was on probation for hitting a girl in the head with a shovel. The case was continued one year for dismissal. Turner was ordered to have no contact with the victim and to complete anger management programming.

### **Case Summary**

#### **State v. Avery Junior Vann, Case # 06027749**

Avery Junior Vann appeared in domestic violence court on a fifth degree misdemeanor assault charge for threatening to kill his wife.

In April 2006, police were dispatched to the Vann residence following a 911 hang-up call. When police arrived, a juvenile female met them and said that her mother and step dad were arguing. As police entered, Vann came downstairs carrying several suitcases with his belongings. The victim informed the police that Vann had threatened her, stating, “You might go to sleep tonight and you don’t know what’s going to happen to you. I’m going to get a knife and stab you while you are sleeping. I can kill my kids, too. I can burn down the whole house.” Vann pleaded guilty and was sentenced to four days with credit for four days served.

### **Case Summary**

#### **State v. Rogelio nmn Garza, Case # 06023837**

Rogelio Garza appeared in domestic violence court for violating the conditions of his probation with a new assault against the same victim.

Garza was convicted in 2003 of gross misdemeanor domestic assault against his wife and sentenced to 365 days at the workhouse with 184 days stayed for two years and no contact with the victim.

In April 2006, Garza was charged with a new felony assault against his wife in her home, where she lived with their 12-year-old daughter and two-year-old granddaughter. The victim saw Garza at a bar, an argument ensued, and Garza left. When the victim returned home later that night, Garza was inside waiting for her with the two girls. He punched her in the face several times and called her a “f--ing bitch.” The altercation continued into the daughter’s bedroom. The child attempted to intervene by getting in between her parents as they struggled on top of her bed. Garza then pulled out a knife and attempted to stab the victim. The daughter remained between the two, acting, as the victim later stated, as a “human shield between my husband and I.” When Garza failed to get his daughter away from the victim, he left the room. The victim called her brother, and the brother notified the police. Garza was sentenced to 26 months at the workhouse with credit for 54 days. Ninety days of his 2003 sentence were revoked for violating the terms of his probation by failing to remain law-abiding.

### **Case Summary**

#### **State v. Joseph Allen Conklin, Case # 06020444**

Joseph Allen Conklin appeared in domestic violence court for violating the conditions of probation for two previous assault cases.

In December 2005, Conklin was arrested and charged with two counts of fifth degree misdemeanor domestic assault against his girlfriend and her sister. The girlfriend told officers that Conklin had an extensive history of assaults and terroristic threats and that he had spent five years in prison in North Dakota. Conklin pleaded guilty to one count and was sentenced to 45 days at the workhouse with 43 days stayed for one year and credit for two days served. He was ordered to have no contact with the victim.

In January 2006, Conklin was arrested and charged with a fifth degree misdemeanor domestic assault against the same victim, now his ex-girlfriend. Conklin pleaded guilty to violating the no contact order and was sentenced to 60 days at the workhouse with 52 days stayed for one year. Eight days were revoked for violating the terms of his December 2005 probation.

In March 2006, Conklin was arrested again after an altercation with two men. While in the police squad car, Conklin kicked out a window and was subsequently charged with and convicted of a justice crime. He was sentenced to 52 days at the workhouse and ordered to pay restitution for the damage. Fifty-two days were revoked for violating the terms of his January 2006 probation and 35 days for violating the terms of his December 2005 probation with the time to be served concurrent with the new sentence.

**Summary of 2006 WATCH Report Data and Selected Case Summaries**

Defendant Gender

86% male (201)  
14% female (33)

Victim Gender<sup>13</sup>

58% female (137)  
11% male (27)  
31% unknown (72)<sup>14</sup>

Priors

58% (135) of defendants had prior assault or domestic abuse charges with 62.2% (84) of those having two or more domestic assault priors.

Outcome

42% sentenced (97)  
25% dismissed (57)  
33% pending (80)

Sentencing Information

Of the 42% sentenced:

54% received stayed sentences (52)  
23% received a stay of imposition of the sentence to be vacated and dismissed in one year (22)<sup>15</sup>  
13% were required to serve time (13)  
10% were given credit for time served (10)  
61% of those sentenced (59) pleaded guilty to lesser charges.<sup>16</sup>

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<sup>13</sup> Monitors were not always aware of the victim's gender since it was not always identified in court proceedings nor was the victim always present in court or identifiable by monitors. It is common for victims not to attend hearings, and the high-unknown count may reflect that.

<sup>14</sup> Eight cases had more than one victim.

<sup>15</sup> A stay of imposition is a court-ordered delay in carrying out a sentence of incarceration. The defendant is given incarceration time, but does not have to serve it unless a condition of probation is violated and the judge decides to impose the sentence. If the stay is to be vacated and dismissed, it means that if no conditions are violated during the duration of the stay, the judge will annul and drop the judgment of guilt.

<sup>16</sup> One important distinction to note is the number of defendants who pleaded guilty to non-domestic charges. This practice may mask a defendant's past history of assaults. Of the total number of cases sentenced, 64% (62) included a final domestic abuse or assault charge while 36% (35) did not. The most common non-domestic assault charge pleaded to was disorderly conduct.

**Conclusion**

WATCH is encouraged by the progress that the Hennepin County domestic violence court has made since 2001 and hopeful that the information and recommendations contained in its 2006 report will contribute to the court's further improvement. WATCH looks forward to continuing to advocate for change and invites all of those involved with the courts to join us in these efforts.

# Domestic Violence Court Probation Revocation Grid<sup>1</sup>

Approved by DV Judges 11/05

Probation Violation	First Arrest & Detention Order		Second A & D		Third A & D	
	Misdemeanor	Gross Misdemeanor	Misdemeanor	Gross Misdemeanor	Misdemeanor	Gross Misdemeanor
New assault <sup>2</sup> against same victim	Revoke all time	Revoke 90 days; reinstate probation	Revoke any remaining time	Revoke 180 days; reinstate probation	Revoke all remaining time	Revoke all remaining time
New assault against another domestic victim	Revoke 30 days; reinstate probation	Revoke 60 days; reinstate probation	Revoke remaining time	Revoke 120 days; reinstate probation	Revoke all remaining time	Revoke all remaining time
Violation of No Contact Order or OFP or Harassment Restraining Order; Interference with 911 call	Revoke 15 days; reinstate probation	Revoke 30 days; reinstate probation	Revoke 30 days; reinstate probation	Revoke 45 days; reinstate probation	Revoke all remaining time	Revoke all remaining time
Commission of new offense that is a violation of probation <sup>3</sup>	Revoke 15 days; reinstate probation	Revoke 30 days; reinstate probation	Revoke 30 days; reinstate probation	Revoke 45 days; reinstate probation	Revoke all remaining time	Revoke all remaining time
Failure to attend/complete DA treatment or anger management program	Revoke 10 days; reinstate probation	Revoke 15 days; reinstate probation	Revoke 20 days; reinstate probation	Revoke 30 days; reinstate probation	Revoke all remaining time	Revoke all remaining time
Failure to attend/complete complete chemical or CD treatment or other rec's	Revoke 10 days; reinstate probation	Revoke 15 days; reinstate probation	Revoke 30 days; reinstate probation	Revoke 45 days; reinstate probation	Revoke balance; in-custody transfer to ACF and/or furlough to inpatient treatment	Revoke 120 days; treatment at ACF and/or in-custody transfer to ACF with furlough to inpat. treatment
Use of alcohol or drugs, if use is a violation of probation	Revoke 5 days; reinstate probation	Revoke 10 days; reinstate probation	Revoke 10 days; reinstate probation	Revoke 15 days; reinstate probation	Revoke 20 days; reinstate probation	Revoke 20 days; reinstate probation
Failure to meet with probation; whereabouts unknown	Revoke 5 days; reinstate probation	Revoke 10 days; reinstate probation	Revoke 15 days; reinstate probation	Revoke 20 days; reinstate probation	Revoke 25 days; reinstate probation	Revoke 30 days; reinstate probation

<sup>1</sup> Each Judge must exercise his and her own discretion on the Bench. Additionally, all revocations must be based upon findings consistent with State v. Modtland, 695 N.W.2d 602 (Minn. 2005) and State v. Austin, 295 N.W.2d 246 (Minn. 1980).

<sup>2</sup> New assault need not result in charge or conviction, as long as it is proven by clear and convincing evidence.

<sup>3</sup> The standard Domestic Violence Order (Form HC2806, Rev. 12/03) includes the following offenses: Assault, Disorderly Conduct, Violation of Protection Order, Harassment, Interference with an Emergency Call, and Weapons. Additionally, the Court can check alcohol and drug offenses and write in other offenses.