



**SPECIAL REPORT**

**Diversion Programs for Domestic Violence:  
From Retribution to Rehabilitation**



*We have failed to listen to persons “who cautioned us against the consequences of choosing increased policing, prosecution, and imprisonment as the primary solution to gender-based violence.” – Moment of Truth statement, endorsed by 46 state domestic violence and sexual assault coalitions<sup>1</sup>*

Should the criminal justice system emphasize the *retribution* or *rehabilitation* of persons found guilty of committing a crime such as domestic violence? For decades, criminal justice experts, lawmakers, and penal reformers have engaged in a spirited debate regarding this question. The history of correctional programs in the United States has been marked by successive waves of reform efforts designed to reinvigorate rehabilitative philosophies, followed by slippage back to retributive approaches.

This debate carries enormous implications for society, communities, and for persons accused of crimes. This Special Report briefly reviews the history of retributive versus rehabilitative penal approaches, analyzes the impact of the Violence Against Women Act, presents 18 domestic violence diversion programs around the country, and makes recommendations for lawmakers and policy makers.

### **Successive Waves**

Over the years, the treatment of criminal offenses has vacillated between retribution and rehabilitation. In colonial America, the retributive model predominated. Persons found guilty of a crime were subjected to harsh punishments that involved infliction of physical pain such as whipping, branding, cutting off of ears, or placing persons in the pillory. Perpetrators of severe crimes were subject to capital punishment.

In 1787 the Philadelphia Society for Alleviating the Miseries of Public Prisons was established to campaign against the physical punishment of offenders. Inspired by the goal of rehabilitation, they believed imprisonment and solitary confinement could reform criminals by requiring them to ponder their wrongful action, repent, and reform.<sup>2</sup> Hence a “penitentiary” became a place for offenders to seek repentance.

In 1870 the National Prison Association issued a Declaration of Principles emphasizing the rehabilitative role of incarceration.<sup>3</sup> The Declaration emphasized, “The supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering.”

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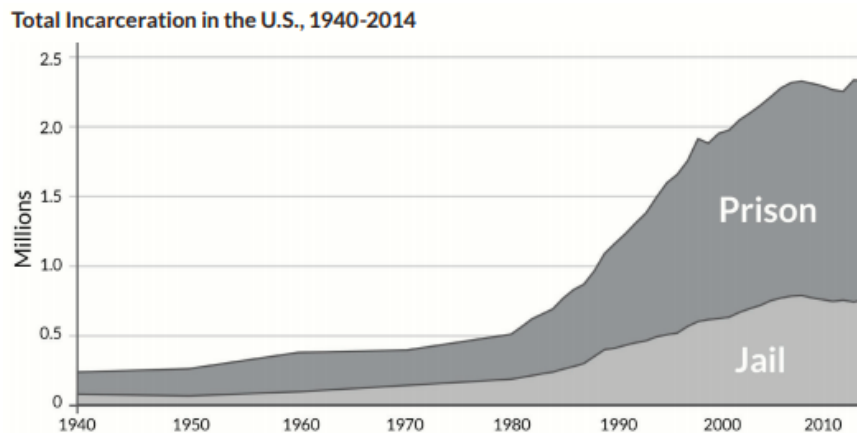
<sup>1</sup> 46 State Coalitions (2020). *Moment of Truth*. <https://www.violencefreecolorado.org/wp-content/uploads/2020/07/Moment-of-Truth.pdf>

<sup>2</sup> Ms. Coll 741. *Philadelphia Society for Alleviating the Miseries of Public Prisons records*, [http://hdl.library.upenn.edu/1017/d/ead/upenn\\_rbml\\_PUSpMsColl741](http://hdl.library.upenn.edu/1017/d/ead/upenn_rbml_PUSpMsColl741).

<sup>3</sup> *Declaration of Principles Adopted and Promulgated by the 1870 Congress of the National Prison Association* [http://www.aca.org/aca\\_prod\\_imis/docs/Exec/1870Declaration\\_of\\_Principles.pdf](http://www.aca.org/aca_prod_imis/docs/Exec/1870Declaration_of_Principles.pdf)

The rehabilitation model experienced another renaissance in the 1930s. Prison staff were enjoined to diagnose the cause of an offender's behavior and prescribe appropriate treatment. Group therapy, counseling, and behavior modification were emphasized.

In 1965, President Lyndon Johnson declared a “War on Crime” that was aimed at stemming the rise in crime rates. Three years later the Omnibus Crime Control and Safe Streets Act was enacted. As a result, our nation witnessed an unprecedented increase in the number of persons behind bars:<sup>4</sup>



Passage of the First Step Act in 2018 reflected broad disenchantment with an over-emphasis on incarceration.<sup>5</sup> Contemporary efforts to reform the criminal justice system are marked by an awareness that the United States has the highest incarceration rate of any country in the world,<sup>6</sup> the knowledge that many persons behind bars were wrongfully convicted,<sup>7</sup> and broader concerns regarding the problem of “over-criminalization.”<sup>8</sup>

### Violence Against Women Act: Return to Retribution

Against this historical background, the Violence Against Women Act was enacted in 1994. Consistent with the “get-tough-on-crime” ethos of the era, VAWA-funded programs implemented pro-arrest policies,<sup>9</sup> vigorously enforced restraining orders,<sup>10</sup> and strengthened prosecutorial efforts. One national survey of 129 domestic violence courts

<sup>4</sup> Center for Health and Justice (2017). *A Survey of Prosecutorial Diversion in Illinois*. <http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/IL-ProsecutorialDiversionSurvey-2017.pdf>

<sup>5</sup> Bureau of Prisons (2018). *On Overview of the First Step Act*. <https://www.bop.gov/inmates/fsa/overview.jsp>

<sup>6</sup> William J. Sabol, Heather C. West, Mathew Cooper (2009). *Prisoners in 2008*. NCJ 228417

<sup>7</sup> National Registry of Exonerations (2014). <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>

<sup>8</sup> Marvin Zalman and Julia Carrano (eds.) (2014), *Wrongful Conviction and Criminal Justice Reform*. New York: Routledge.

<sup>9</sup> Coalition to End Domestic Violence (2021). *Justice Denied: Arrest Policies for Domestic Violence*. <http://endtodv.org/wp-content/uploads/2021/04/Arrest-Policies.pdf>

<sup>10</sup> Coalition to End Domestic Violence (2021). *The Use and Abuse of Domestic Restraining Orders*. <http://endtodv.org/wp-content/uploads/2021/04/Restraining-Orders.pdf>

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found that 60% of respondents believed that penalizing offenders was “extremely important,” while only 27% identified rehabilitation as a “extremely important.”<sup>11</sup>

But many victims of domestic violence do not favor the tough-on-crime approach; in most cases they do not want the abuser to be arrested, prosecuted, and incarcerated. As one victim advocacy group noted, many victims “want the abuse to stop and to be taken seriously, but they do not want their partners to spend time in jail.”<sup>12</sup>

The shortcomings with VAWA’s retributive philosophy are significant:

1. Because of the widespread implementation of mandatory arrest and no-drop prosecution policies, victims have come to see law enforcement officials as “the enemy,” leaving them with no other option other than to refuse to cooperate.<sup>13</sup> According to an analysis from the National Crime Victimization Survey, 52% of victims refused to sign a criminal complaint against the offender.<sup>14</sup>
2. As a result of rigid criminal justice procedures, victims come to feel disempowered. As the Ms. Foundation for Women noted, “Unfortunately, when state power has been invited into, or forced into, the lives of individuals, it often takes over.”<sup>15</sup>
3. Broader collateral consequences -- particularly family dissolution, father absence, and chronic unemployment -- emerge, especially in low-income communities: “Women of color, in particular, are reluctant to see men in their communities incarcerated or further penalized by conviction records. Women want their partners to continue employment and child support, and they want them to ‘get help.’”<sup>16</sup>

Even though research reveals a broad range of risk factors,<sup>17</sup> activists ascribe domestic violence to a single motive: men’s need for patriarchal power, as reflected in the popular

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<sup>11</sup> Center for Court Innovation (2009), *A National Portrait of Domestic Violence Courts*, Table 4.1. <https://www.ncjrs.gov/pdffiles1/nij/grants/229659.pdf>

<sup>12</sup> Jane Sudosk (2003). *Prosecution Diversion in Domestic Violence: Issues and Context* [http://www.bwjp.org/assets/documents/pdfs/prosecution\\_diversion\\_domestic\\_violence\\_cases.pdf](http://www.bwjp.org/assets/documents/pdfs/prosecution_diversion_domestic_violence_cases.pdf).

<sup>13</sup> Nasheia Conway (2018). *Why Domestic Violence Victims Have Come to View Prosecutors as the ‘Enemy’* <http://www.saveservices.org/2018/03/why-domestic-violence-victims-have-come-to-view-prosecutors-as-the-enemy/>

<sup>14</sup> Brian A. Reaves (2017). *Police Response to Domestic Violence*. Bureau of Justice Statistics. NCJ 250231. <https://bjs.ojp.gov/content/pub/pdf/prdv0615.pdf>

<sup>15</sup> Ms. Foundation for Women (2003). *Safety and Justice for All*. [http://www.ncdsv.org/images/Ms\\_SafetyJusticeForAll\\_2003.pdf](http://www.ncdsv.org/images/Ms_SafetyJusticeForAll_2003.pdf).

<sup>16</sup> Jane Sudosk (2003). *Prosecution Diversion in Domestic Violence: Issues and Context*. <https://www.bwjp.org/resource-center/resource-results/prosecution-diversion-in-domestic-violence-issues-and-context.html>

<sup>17</sup> Stith SM, Smith DB, Penn CE, Ward DB, Tritt D (2004). *Intimate Partner Physical Abuse Perpetration and Victimization Risk Factors: A Meta-Analytical Review*. *Aggression and Violent Behavior*. [https://www.researchgate.net/publication/223225227\\_Intimate\\_partner\\_physical\\_abuse\\_perpetration\\_and\\_victimization\\_risk\\_factors\\_A\\_meta-analytic\\_review](https://www.researchgate.net/publication/223225227_Intimate_partner_physical_abuse_perpetration_and_victimization_risk_factors_A_meta-analytic_review)

phrase, “domestic violence is all about power and control.” This formulation creates several problematic effects:

1. Men are presented as the sole or predominant instigators of partner abuse, thereby subjecting them to negative social stereotypes.
2. Abusive women do not receive treatment.
3. VAWA does not provide funding for treatment programs to address substance abuse, mental illness, or marital conflict.

These considerations led Alan Edwards and Susan Sharpe to conclude: “Current strategies and laws are not yet achieving the success that reformers had hoped.”<sup>18</sup>

### **Broad Base of Support**

Diversion programs have been shown in general to confer a range of benefits including ameliorating court dockets,<sup>19</sup> reducing criminal justice costs,<sup>20</sup> lowering incarceration rates,<sup>21</sup> improving mental health outcomes,<sup>22</sup> and reducing recidivism rates.<sup>23</sup> Accordingly, the American Bar Association has endorsed the use of diversion programs. ABA Standard 10-1.5 on Pre-Trial Release states:<sup>24</sup>

“In addition to employing release conditions outlined in Standard 10-1.4, jurisdictions should develop diversion and alternative adjudication options, including drug, mental health and other treatment courts or other approaches to monitoring defendants during pretrial release.”

Such programs are supported by resources such as the Association of Prosecuting Attorneys’ “Prosecutor-Led Diversion Toolkit” that includes planning guides, sample documents, and other resources.<sup>25</sup> The National District Attorneys Association likewise

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<sup>18</sup> Alan Edwards and Susan Sharpe (2004). *Restorative Justice in the Context of Domestic Violence: A Literature Review*. [https://s3.amazonaws.com/mrjc/restorative\\_justice\\_DV\\_Lit\\_Review.pdf](https://s3.amazonaws.com/mrjc/restorative_justice_DV_Lit_Review.pdf)

<sup>19</sup> Tanner, M., Wyatt, D., and Yearwood, D.L (2008). *Evaluating pretrial services in programs in North Carolina*. Federal Probation 72(1). <https://www.uscourts.gov/federal-probation-journal/2008/06/evaluating-pretrial-services-programs-north-carolina>

<sup>20</sup> Cowell, A.J., Broner, N., and Dupont, R (2004). *The cost-effectiveness of criminal justice diversion programs for people with serious mental health illnesses co-occurring with substance abuse: Four case studies*. Journal of Contemporary Criminal Justice 20:292.

<sup>21</sup> Camilletti, C. (2010). *Pretrial diversion programs: Research summary*. Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice <https://www.bja.gov/Publications/PretrialDiversionResearchSummary.pdf>

<sup>22</sup> Broner, N., Mayrl, D.W., and Landsberg, G. (2005). *Outcomes of mandated and nonmandated New York City jail diversion for offenders with alcohol, drug, and mental disorders*. The Prison Journal 85(18).

<sup>23</sup> Wilson, D. B., Mitchell, O., and MacKenzie, D. L. (2006). *A systematic review of drug court effects on recidivism*. Journal of Experimental Criminology 8 (2), 459-487. <https://pdfs.semanticscholar.org/96f5/131da15e3d9164fee9de954fcb4d78ca4d0e.pdf>

<sup>24</sup> American Bar Association (2007). *ABA Standards for Criminal Justice: Pretrial Release*. [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_pretrialrelease\\_toc/](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_toc/)

<sup>25</sup> Association of Prosecuting Attorneys (2021). *Prosecutor-Led Diversion Toolkit*. <https://www.diversiontoolkit.org/getting-started/>

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has endorsed diversion programs because they allow for the “unburdening court dockets and conserving judicial resources,” as well as reducing recidivism.<sup>26</sup>

Diversion programs can be police-led, prosecutor-led, or court-led. Diversion programs typically operate on a pretrial basis. Some require a guilty plea to be entered, others not.<sup>27</sup>

Specific to domestic violence, the need for diversion programs has been recognized for decades. As early as 1984, the U.S. Attorney General’s Task Force on Family Violence recommended that “[a] wide range of dispositional alternatives should be considered in cases of family violence.”<sup>28</sup>

Domestic violence diversion programs appear to be widespread -- a 1994 survey of large jurisdictions found over half utilized some sort of domestic violence diversion program.<sup>29</sup> Such programs are supported by victim advocates, attorneys, and judges who observed the same persons cycling through the justice system.<sup>30</sup>

Only one controlled study of the effectiveness of domestic violence diversion programs has been located. The study compared persons who participated in the diversion program on a voluntary versus on a court-mandated basis.<sup>31</sup> The study found:

- Program completion rates:
  - Voluntary enrollees: 43.0%
  - Court-mandated participants: 9.4%
- The odds of a defendant being charged with another DV offense were 82% less for offenders who voluntarily enrolled in the diversion program, compared to defendants who participated on a mandatory basis.

The law review article, “*Applying the Law Therapeutically in Domestic Violence Cases*” concludes,

“Rather than being merely adjudicatory, the domestic violence court can play a more proactive role, reaching out to both offenders and victims and stimulating community resources to deal with this devastating social problem. Instead of being merely a band aid approach to the latest manifestation of violence, domestic

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<sup>26</sup> National District Attorneys Association (2009). *National Prosecution Standards*. Alexandria, VA. <https://www.ndaa.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>

<sup>27</sup> Camilletti, C. (2010), *Pretrial diversion programs: Research summary*. Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice. <https://www.bja.gov/Publications/PretrialDiversionResearchSummary.pdf>

<sup>28</sup> U.S. Department of Justice (1984). *Attorney General’s Task Force on Family Violence Final Report*. Washington, DC. <https://files.eric.ed.gov/fulltext/ED251762.pdf>

<sup>29</sup> Rebovich DJ, (1996). *Prosecution Response to Domestic Violence: Results of a Survey of Large Jurisdictions*. In Buzawa and Buzawa (eds.): *Do Arrests and Restraining Orders Work?* Thousand Oaks, CA: Sage Publications.

<sup>30</sup> Office of Justice Programs (2011). *Domestic Violence Courts*. <https://nij.ojp.gov/topics/courts/domestic-violence-courts>

<sup>31</sup> Thomas McClure (2013). *A Comparison of Domestic Violence Recidivism Rates of Defendant-Initiated Diversion and Court-Mandated Treatment Partner Abuse*. Volume 4, Number 4.

violence court holds out the promise of dealing with the root of the problem, thereby avoiding what otherwise would be the high likelihood of repeated abuse.”<sup>32</sup>

Thus, domestic violence diversion programs should ensure that participants are genuinely motivated to change abusive behavior, and that limited resources are allocated to yield positive results.

### **Program Descriptions**

Internet searches located descriptions of 18 domestic violence diversion programs around the country. A description of each of program is seen in the Appendix. A review of the program descriptions reveals the most common sequence of steps is as follows:

1. Arrest is made.
2. Accused appears for first trial date.
3. Accused is screened for eligibility to participate in domestic violence diversion program.
4. Defendant enters a guilty plea.
5. A treatment program is agreed upon, and the offender begins participation.
6. Upon completion, defendant appears back in court and provides a certificate of completion.
7. Case is dismissed by the prosecutor/court.
8. Defendant can file to have the charges expunged.

A review of these program descriptions reveals a number of similarities and differences:

*No Prior Convictions:* In the following jurisdictions, diversion programs require that the defendant have no prior convictions for domestic violence: Orange County, CA, Lakewood, CO, Delaware, Butler County, KS, Kootenai County, ID, Kane County, IL, Michigan, Cape Girardeau County, MO, and Philadelphia, PA.

*Length of Program:* The time period differs dramatically:

- Lakewood, CO – 12 months
- Broward County, FL – 26 weeks
- Michigan – 26 weeks
- Washington County, OR – 18 months

*Prosecutorial Supervision:* Except for the Idaho program, all operate under prosecutorial supervision.

*Guilty Plea:* Most of the domestic violence diversion programs require the defendant to enter into a guilty plea. Only three programs are pre-trial: Connecticut, Dekalb County, GA, and Winnebago County, WI.

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<sup>32</sup> Bruce J. Winick (2000). *Applying the Law Therapeutically in Domestic Violence Cases*. 69 UMKC L. Rev. 33. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/umkc69&div=12&id=&page=>



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### *Program Fees:*

- Kane County, IL – \$795
- Michigan – \$625

*Effectiveness:* Evidence from three programs suggests lower recidivism rates:

- *California -- Orange County:* Among the 12 veterans who qualified to be enrolled in the diversion program, no re-offenses occurred within the timeframe observed.<sup>33</sup>
- *Connecticut:* The Family Violence Education Program reported that 83% of offenders enrolled complete the diversion program. Over a 16-year period, 69% of persons who finished the program have not been rearrested on a domestic violence-related charge.<sup>34</sup>
- *Missouri -- Cape Girardeau County:* Among the first 40 people who completed the program during its first four years, only two (5%) subsequently assaulted their victim.<sup>35</sup>

### **Win-Win Situation for All**

The cycle of domestic violence is complex and multi-faceted. Violence that occurs between parents may be repeated by their adult children. The violence may be unilateral or mutual. The person who is a victim in one relationship may become the abuser in a subsequent relationship.

Based on the descriptions of 18 domestic violence diversion programs and on analyses by others,<sup>36</sup> the Coalition to End Domestic Violence makes the following recommendations:

1. Federal and state lawmakers should enact legislation to make domestic violence diversion programs integral to the overall criminal justice response. Domestic violence diversion programs should be made available in all jurisdictions.
2. Police response:
  - a. In general, incidents that are non-physical in nature and no previous domestic violence calls to police should be referred for mental health treatment. Recognizing that half of all abuse incidents are mutual in

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<sup>33</sup> Orange County Superior Court (2015). *Family Law Veterans' Domestic Violence Diversion Program*. [https://nfrc.ucla.edu/sites/default/files/Hurwitz\\_sml.pdf](https://nfrc.ucla.edu/sites/default/files/Hurwitz_sml.pdf).

<sup>34</sup> Jane Sudosk (2003). *Prosecution Diversion in Domestic Violence: Issues and Context*. [http://www.bwjp.org/assets/documents/pdfs/prosecution\\_diversion\\_domestic\\_violence\\_cases.pdf](http://www.bwjp.org/assets/documents/pdfs/prosecution_diversion_domestic_violence_cases.pdf).

<sup>35</sup> Morley Swingle and Betsy McCoy (No date), *Cape Girardeau County, Domestic Violence Diversion Program* <http://www.capecounty.us/ProsecutingAttorney/Domestic%20Violence%20Diversion.aspx>

<sup>36</sup> Jane Sudosk (2003). *Prosecution Diversion in Domestic Violence: Issues and Context*. [http://www.bwjp.org/assets/documents/pdfs/prosecution\\_diversion\\_domestic\\_violence\\_cases.pdf](http://www.bwjp.org/assets/documents/pdfs/prosecution_diversion_domestic_violence_cases.pdf)

- nature,<sup>37</sup> information on victim services should be provided to both parties. No arrest should be made.
- b. In general, DV offenses that are first-time and do not involve the infliction of, or the threat of, serious physical injury should result in a referral for assessment by a mental health professional and possible mental health treatment. Information on victim services should be provided to both parties. No arrest should be made.
  - c. In general, DV offenses that are **not** first-time and do **not** involve the infliction of, or the threat of, serious physical injury should be eligible for a diversion program. If state law allows, the police officer should issue a civil citation – not make an arrest – that refers the offender to the diversion program.
  - d. In general, DV offenses that **do** involve the infliction of, or the threat of, serious physical injury should be processed according to traditional criminal justice procedures.
3. Initial assessment of program participants should include:
    - a. Drug and alcohol dependence
    - b. Mental health issues
    - c. History of assaults/acts of violence
    - d. Need for social services
  4. Treatment services should address substance abuse, anger management, employment skills, trauma counseling, and conflict resolution. Treatment programs should not rely on the ideological “Duluth Model,” which has been characterized as impervious to data.<sup>38</sup> Treatment programs should charge participants reasonable fees and reduce charges for low-income persons, whenever possible.
  5. Upon successful completion of the program, the plea should be vacated and the case dismissed. The offender may then apply to seal or expunge the criminal record.

Prosecution and incarceration play an established role in addressing repeated and severe cases of domestic violence. But programs that incarcerate offenders, without recognizing the myriad causes of the offense, are only doomed to perpetuate the cycle of violence.

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<sup>37</sup> Jennifer Langhinrichsen-Rohling (2012). *Rates of bi-directional vs. uni-directional intimate partner violence: A comprehensive review*. Partner Abuse Vol. 3, No. 2.

<http://www.springerpub.com/content/journals/PAKnowledgeBase-41410.pdf>

<sup>38</sup> Donald Dutton (2007). *The Duluth Model: A Data-Impervious Paradigm and a Failed Strategy*. Aggression and Violent Behavior, Vol. 12, No. 6.

[https://www.researchgate.net/publication/222822395\\_The\\_Duluth\\_Model\\_A\\_data-impervious\\_paradigm\\_and\\_a\\_failed\\_strategy](https://www.researchgate.net/publication/222822395_The_Duluth_Model_A_data-impervious_paradigm_and_a_failed_strategy)

## **Diversion Program Descriptions**

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The following descriptions, obtained from internet descriptions, were edited for consistency and conciseness. Program descriptions are occasionally updated, so interested readers should visit the relevant web page for updated information. The programs are organized alphabetically, by state.

### ***1. Arizona – Maricopa County***

The Domestic Violence Excessive Response Diversion Program (DVER) program begins by an assessment of referred offenders, who are then placed into a “track” depending upon the overall risk to reoffend which varies by sex. The research-based treatment includes exploring the context and use of violence, challenging attitudes and beliefs, and understanding healthy boundaries. If applicable, restitution must be paid to the victim to earn a successful completion.

Eligibility:

- Determined by the Deputy County Attorney (DCA) for adult offenders with specific lower-level eligible domestic violence related felonies;
- Offense is committed against an intimate domestic partner, but the offender can demonstrate (by other means than just mere self-reporting) that the victim has a history of committing acts of domestic violence against the offender; and
- The case does not involve the infliction of serious physical injury.<sup>39</sup>

### ***2. California -- Orange County***

Veterans can participate in domestic violence diversion as long as the following conditions are met:

- No history of DV prior to first deployment.
- Service member returns from deployment(s).
- Significant other was left in charge of household at time of deployment.
- Service member returns with undiagnosed PTS/TBI.
- Significant other receives no counseling prior to service member’s return re PTS/TBI symptomology.
- No clash with victim requesting protection.<sup>40</sup>

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<sup>39</sup> Maricopa County Arizona Attorney (2021). *Domestic Violence Excessive Response Diversion Program* <https://www.maricopacountyattorney.org/DocumentCenter/View/1810/MCAO-Domestic-Violence-Excessive-Response-Diversion-Handout---Public>

<sup>40</sup> Orange County Superior Court (2015). *Family Law Veterans’ Domestic Violence Diversion Program*. [https://nfrc.ucla.edu/sites/default/files/Hurwitz\\_sml.pdf](https://nfrc.ucla.edu/sites/default/files/Hurwitz_sml.pdf).

### ***3. Colorado -- Jefferson and Gilpin Counties***

The Misdemeanor Domestic Violence Program is designed to assist first-time, low-level offenders in becoming last-time offenders, by providing the counseling services they need, and giving them an opportunity to have their criminal case dismissed. Generally, a twelve-month program, it serves domestic violence offenders and assures that offenders receive the Domestic Violence Offender Management Board's (DVOMB) recommended treatment for their offenses. The program is supervised by a licensed clinical professional and is staffed by a combination of paid and volunteer diversion officers.<sup>41</sup>

### ***4. Connecticut***

The Pretrial Family Violence Education Program (FVEP) is available for defendants who are charged with certain family violence crimes. The FVEP gives eligible defendants the opportunity to attend programs that provide education about family violence, instead of going to trial. Any defendant who wants to take part in the FVEP must meet the eligibility requirements in sections 46b-38c (h) and (i) of the Connecticut General Statutes and submit an application to the court.

Defendants taking part in the FVEP must accept these conditions and must also agree to the tolling of the statute of limitations (to give the state more time to prosecute the case if the defendant does not successfully finish the program) and to waive the right to a speedy trial. If the defendant agrees to these conditions, the defendant enters the FVEP and is released to the custody of the family violence intervention unit of the Court Support Services Division (CSSD). The family violence intervention unit of CSSD keeps track of the defendant for up to two years to make sure that the defendant is following the conditions set by the court. If the defendant finishes the FVEP successfully, the court dismisses the charges.<sup>42</sup>

An evaluation of the program found that 83% of persons in the program complete it. During the 16 years following the legislation that established the FVEP, 69% of persons who completed it have not been rearrested on a domestic violence-related charge.<sup>43</sup>

### ***5. Delaware***

Delaware's Domestic Violence Diversion Program is a program designed to facilitate treatment. It involves completing an anger management class and intensive therapy, in addition to supervised probation. Offenders who enter into this program may have to refrain from alcohol and drugs and cannot own a firearm until completion.

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<sup>41</sup> District Attorney Jefferson and Gilpin Counties, *Domestic Violence Program*.  
<https://www.jeffco.us/2211/Domestic-Violence-Program>

<sup>42</sup> Judicial Branch of the State of Connecticut (2014). *Family Violence Education Program*.  
<https://www.jud.ct.gov/Publications/CR137H.pdf>

<sup>43</sup> Jane Sudosk (2003). *Prosecution Diversion in Domestic Violence: Issues and Context*.  
[http://www.bwjp.org/assets/documents/pdfs/prosecution\\_diversion\\_domestic\\_violence\\_cases.pdf](http://www.bwjp.org/assets/documents/pdfs/prosecution_diversion_domestic_violence_cases.pdf).

While there are some variations, generally, anyone who is a first-time domestic violence offender qualifies for the program. A recent felony conviction, failure to complete a diversion program, or previously violated restraining order or protective order are disqualifying. People who participate in the diversion program avoid jail time. If they complete the program under good terms, the defendant can file to have the arrest expunged from their criminal record.<sup>44</sup>

### **6. Florida -- Broward County**

Domestic Violence Misdemeanor Diversion is designed for those offenders who wish to participate in a program aimed at reversing the cycle of domestic violence and keeping the family unit intact. This program requires the offender to complete a 26-week Intervention Program, as well as a substance abuse evaluation and/or other recommended treatment if deemed necessary. The defendant must enter a guilty plea to the charges in order to participate in this eight-month program. If the defendant successfully completes the program, the plea will be vacated and the case will be nolle prossed (dropped). The offender may then apply to the Florida Department of Law Enforcement in a separate proceeding to seal or expunge their criminal record if otherwise legally eligible.

Eligibility for the Domestic Violence Misdemeanor Program includes the following offenses: battery, assault, stalking, criminal mischief, and disorderly conduct. Whether the battery charges are eligible for diversion is determined on a case-by-case basis dependent upon the facts surrounding the charge. The defendant must have no prior adult felony arrests and/or convictions and not more than one prior conviction for a non-violent misdemeanor crime. A defendant is only permitted to participate in this program once in a lifetime. Additionally, the victim must consent to the defendant's participation in the program.<sup>45</sup>

### **7. Georgia -- Dekalb County**

The Domestic Violence Pre-Trial Intervention Initiative (DV PTI) is a diversion program that gives selected defendants of domestic violence offenses the opportunity to learn alternatives to violence. The initiative strengthens families by allowing defendants, through counseling, to learn how to stop the cycle of domestic violence. The Office of the Solicitor-General's Pre-Trial Intervention Program requires the defendant to attend and complete weekly family violence intervention classes or anger management education classes.

Other conditions may be imposed as well, and the defendant's progress in the program is closely monitored. If the defendant successfully completes the program without committing any further acts of violence or any other crimes, no criminal charges are filed. Victims are afforded the opportunity to voice opposition to the offer of Pre-Trial

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<sup>44</sup> Delaware Domestic Violence Lawyer. <http://www.rahaimandsaints.com/practice/criminal/domestic-violence>.

<sup>45</sup> Office of the State Attorney (No date). *Domestic Violence Misdemeanor Diversion Program*. Broward County, FL <http://www.sao17.state.fl.us/diversion-programs.html>

Intervention to a defendant, and if they do so, the opposition will be considered. If the offer of Pre-Trial intervention is rejected by the defendant or if the defendant does not successfully complete the program, the matter is investigated for the formal filing of criminal charges.<sup>46</sup>

### ***8. Idaho – Kootenai County***

The Domestic Violence Diversion Program is a pre-trial intervention program in which individuals believed to have committed a crime of domestic violence are supervised by the domestic violence probation officer. In order to be a candidate for the program the individual must meet be a first-time offender, or offender with no violent crimes on their record. It runs from 12-24 months, depending on when all recommended treatments are completed. The individuals are also on a supervised probation during the contract which insures they complete everything successfully.<sup>47</sup>

Individuals on the diversion program meet monthly with a misdemeanor probation officer. In addition, they are required to obtain a domestic violence evaluation and successfully complete the recommended treatment. If the individual successfully completes the program, the charge is dismissed. However, if the individual fails to satisfactorily complete the program or is terminated from the program, he or she is taken back into court and immediately sentenced.<sup>48</sup>

### ***9. Illinois -- Kane County***

This program began in 2010 with collaboration among the Kane County State's Attorney's Office, victims' rights groups, Community Crisis Center of Elgin, Mutual Ground of Aurora, and criminal defense attorneys. This program is the first domestic violence diversion program in Illinois. It is designed to hold first-time domestic violence offenders accountable and provide tools, such as counseling, to prevent them from becoming repeat offenders. Some participants learn to improve their home and family situation, and their victims won't have to risk choosing between their family or their safety. Successful completion will prevent a permanent conviction from being placed on the offender's record.

#### *Program Requirements*

Participation is one year. Fees and fines are \$795, \$100 of which goes to a domestic violence shelter. Offender must receive domestic violence or anger management counseling and might be required to receive other counseling and follow certain conditions. Bond conditions apply.

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<sup>46</sup>Office of the DeKalb Solicitor-General (No date). *Domestic Violence Pre-Trial Intervention*. <http://dekalbsolicitorgeneral.com/diversion/domestic-violence-pre-trial-intervention/>

<sup>47</sup> Kootenai County, ID. *Domestic Violence Court*. <https://www.kcgov.us/470/Domestic-Violence-Court>

<sup>48</sup> Kootenai, Idaho. *Domestic Violence*. <https://www.kcgov.us/153/Domestic-Violence>

Upon successful completion of all requirements, the plea will be vacated at the final court date, and the case will be dismissed. If terms of the program are not followed, or if a new offense is committed, the offender will be terminated from the program, a conviction will be entered, and the criminal case will proceed to sentencing.<sup>49</sup>

### ***10. Kansas***

County Attorney Darrin C. Devinney of the 13th Judicial District of Kansas established a pretrial diversion program for qualified defendants charged with certain misdemeanor criminal and traffic offenses. Upon the defendant entering into an Agreement for Pretrial Diversion, the criminal proceedings are suspended, pending completion of the filed Diversion Agreement.

When the defendant successfully fulfills the terms and conditions of Diversion, the County Attorney moves to have the criminal charges dismissed with prejudice. No felony offenses are considered for a diversion. For a Domestic Violence Battery offense, the diversion period is 12 months and has a \$250 agreement fee.<sup>50</sup>

### ***11. Michigan***

The Domestic Violence Diversion Program was implemented in 1998 by the 57th District Court in cooperation with, and with the support of, the Allegan County Coordinating Council on Domestic Violence, the Allegan County Prosecutor's Office, and the Allegan County Board of Commissioners. In 1998, the Board of Commissioners approved funding. Charging the defendant a \$625 oversight fee also generates funding for the program.

The program is designed for qualified first-time offenders charged with domestic violence. It allows a defendant to plead guilty and be placed on voluntary probation status for a period of 9-12 months, provided the victim consents. During this time, the defendant is required to attend domestic violence counseling sessions scheduled over a period of 26 weeks. If the defendant successfully completes the probation and required counseling, they are discharged from probation and the original charge of domestic violence is dismissed. If a defendant fails to complete the counseling, or for any other reason violates the probation, they are required to immediately appear in court and be sentenced.<sup>51</sup>

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<sup>49</sup> Kane County State's Attorney (No date). *Domestic Violence*. <http://saopublic.co.kane.il.us/Pages/DomesticViolence2.aspx>

<sup>50</sup> Butler County Kansas (No date). *Adult Diversion Program*. <https://www.bucoks.com/167/Adult-Diversion-Program>

<sup>51</sup> Allegan County, Michigan (No date). *Domestic Violence Diversion Program*. <http://cms.allegancounty.org/sites/Office/DC/SitePages/Probation.aspx>

### ***12. Missouri -- Cape Girardeau County***

Since March 19, 1996, the Cape Girardeau County Prosecuting Attorney's Office and the Missouri Board of Probation & Parole have used a Diversion Program in certain domestic violence cases conforming to applicable guidelines.

The policy gives victims of domestic violence, usually wives, the option of dropping charges against their spouses if the spouse agrees to admit his criminal offense in writing and follow special probation requirements, including taking classes about anger management or related subjects. The advantage of participation in the program is that an abuser undergoes supervised probation aimed at ending the "cycle of violence" in his household without suffering the stigma and financial consequences of having a criminal conviction or guilty plea on his record.

Not everyone qualifies for the program. Guidelines require that the defendant may not have previously been convicted of a felony or misdemeanor. As a condition of participating in the program, a person must agree not to use alcohol for a year. Applicants must express their interest to the prosecutor's office, which will refer them to the Board of Probation & Parole for screening.

In its first four years of operation, the program had a 95% success rate in curtailing domestic violence. Of the 40 people who completed the one-year program during its first four years, only two were expelled from the program for assaulting their victims again.<sup>52</sup>

### ***13. New Mexico – San Juan County***

The Pre-Prosecution Diversion Program (PPD) is an alternative to prosecution offered to selected adult first offenders charged with certain nonviolent felony crimes. To be eligible for the program the defendant must be represented by an attorney and the current charge against defendant must be for a first time misdemeanor domestic violence related offense not involving a minor. If defendant successfully completes DVPPD, there will be no further criminal proceedings against the defendant by the district attorney's office on the charges for which defendant participated in DVPPD.<sup>53</sup>

The program requires the defendant to agree and abide by all requirements of the DVPPD:

1. Booking. Provide fingerprints and photographs at the San Juan County Detention Center.
2. Community service work. Perform and document community service work, 25 to 100 hours.

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<sup>52</sup> Cape Girardeau County (No date), *Domestic Violence Diversion Program*.

<http://www.capecounty.us/ProsecutingAttorney/Domestic%20Violence%20Diversion.aspx>

<sup>53</sup> Office of the District Attorney Eleventh Judicial District, Division One – San Juan County, New Mexico, *Pre-Prosecution Diversion Program Domestic Violence Information Packet*.

<http://11th1.nmdas.com/new/wp-content/uploads/2014/08/Domestic-Violence-Information-Packet.pdf>



## COALITION TO END DOMESTIC VIOLENCE

3. Driver license. Must have a valid New Mexico driver license or photo identification card.
4. Drug evaluation. Submit to alcohol and / or drug evaluation.
5. Drug testing. Pay for and submit to drug testing as directed.
6. Employment. Maintain employment.
7. Extradition. Pay extradition costs to the county.
8. Financial. Meet all financial obligations and support all dependents.
9. GED. Enroll in a GED program.
10. Law abiding. Observe and obey all laws.
11. Life Skills. Pay for and attend Life Skills for Offenders class.
12. Parenting. Attend parenting classes.
13. Penitentiary tour. Attend a group pen tour.
14. PPD fees. Pay monthly PPD fees, \$15.00 to \$85.00.
15. Probation term. Participate in PPD for 6 to 12 months
16. Psychological evaluation. Pay for and submit to psychological evaluation.
17. Reporting. Report to the PPD staff as directed.
18. Restitution. Pay restitution for damages or losses suffered by victim(s).
19. Statement. Provide an adequate written statement of guilt.
20. Travel. Remain in San Juan County unless permission granted for travel out of county.
21. Other. Abide by any additional reasonable conditions deemed necessary.

### ***14. Oregon -- Washington County***

Domestic Violence Deferred Sentencing (DVDS) is a criminal court program designed for first time domestic violence offenders who are willing to take responsibility for their crime early in the criminal process. If a defendant meets the eligibility criteria, they are given the option to enter into DVDS.

To enter the program, a defendant needs to plead guilty and make a statement to the Court detailing their actions which hold them guilty for the crime. Once in the program, a defendant is required to complete various requirements including complete a qualified domestic violence treatment program, abstain from alcohol and drugs, complete alcohol or drug treatment or parenting classes if applicable, and have no contact with the victim until allowed by the Court. If the defendant successfully completes all of the requirements, the charges they plead guilty to will be dismissed. If the defendant fails any requirement, they will be revoked from the program and sentenced for the crime.

As part of the program, the Court will order a series of conditions and release the participant pending completion of the Court-ordered conditions for a period of 18 months. If the participant completes all of the conditions ordered by the Court in the 18-month period, then the court will dismiss the participant's charges.<sup>54</sup>

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<sup>54</sup> Washington County Circuit Court, *Domestic Violence Deferred Sentencing*.  
<https://www.washingtoncountyda.org/domestic-violence-deferred-sentencing-dvds>

### ***15. Pennsylvania -- Philadelphia***

Eligibility for the Domestic Violence Diversion Program consists of the following:

- The target participant is a defendant charged with a first-time domestic violence misdemeanor.
- The charged offense cannot be a felony, nor can it involve strangulation, the use of a weapon, serious injury, or sexual abuse.
- Defendants must not have any previous arrests or convictions for domestic abuse-related charges.
- Defendants cannot be on probation/parole for a felony, have records of revoked probation, have two or more open misdemeanor cases, have been sentenced to a prison term for a violent felony within the past 10 years, or have an extensive bench warrant history.

Eligible cases and participants are identified by the District Attorney's Office Charging Unit. Referral requests for defendants who were not initially flagged by DACU for diversion will be considered for participation; however, these referrals must be received by the District Attorney's Office DV Diversion ADA within two weeks of arrest and/or at least one week before the trial listing in order to be considered. Continuances at the first trial listing for DV Diversion Court referrals and consideration will not be granted absent extenuating circumstances. There are two Tiers to this program. The defendant's prior history of arrests, convictions, and severity of the incident are used in making a determination of either Tier I or Tier II.<sup>55</sup>

### ***16. Texas -- Tarrant County***

The Domestic Violence Diversion Program, which targets domestic violence, or violence between intimate partners, is funded by a grant from the Criminal Justice Division of the Governor's office. Selected defendants charged with family violence in Tarrant County Criminal Court No. 5 are placed into the pre-trial diversion court which monitors the defendant's progress in a non-adversarial manner and is in lieu of traditional case processing. Defendants are selected for program participation after undergoing a comprehensive screening and assessment process and meeting the following eligibility criteria:

- No current or prior violations of protective orders
- No stalking activity
- No open warrants
- No other pending charges
- No prior history of diversion
- Commitment to completing a prescribed program
- Consent of victim for offender participation

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<sup>55</sup> Philadelphia District Attorney's Office. *Pre-trial Diversion Programs*. <http://phlcouncil.com/wp-content/uploads/2016/04/Pre-Trial-Diversion.Philadelphia.pdf>.

This court is unique because it combines the judicial function with case management, victim assistance, and an assessment process. The project includes services specifically dedicated to preventing, identifying, and responding to violent crimes against women as they relate to domestic violence.<sup>56</sup>

### ***17. Washington -- King County***

Domestic Violence intervention focuses on behavior modification and instilling a sense of self responsibility in the offenders. Treatment methodologies often focus on getting the offender to understand that their behavior was a choice, and that they are fully accountable for their actions. Some studies have shown that providing mental health, chemical dependency, and other forms of treatment are successful additional interventions in what is largely a systemic family issue.

In each case, the DV Court and judges work to craft sentences that address the offenders' underlying rehabilitation needs, while victims are encouraged to develop safety plans and are referred to a variety of social service resources on a voluntary basis. Victims are also provided the opportunity to speak to the Court and are assisted throughout the Court process by a DV Advocate who works with the Prosecutor. The goals of the DV Court are to promote fairness, accountability for offenders, and the coordination of services for victims and their families.<sup>57</sup>

### ***18. Wisconsin -- Winnebago County***

This program is converting from a standing diversion program to a condition within our general diversion program. This program was formally the Family Violence Diversion Program. This program now utilizes an independent counselor that administers cognitive behavioral therapy to participants. A participant is required to complete a comprehensive needs assessment and 16 weeks of combined cognitive behavioral therapy in a group setting. Participants must remain crime free, and avoid violent, threatening, or abusive contact with any victim(s).<sup>58</sup>

## **ACKNOWLEDGEMENTS**

This report was researched and drafted by Nasheia Conway, Esq., with assistance from Christopher Perry, Esq. and Destiny Blume.

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<sup>56</sup> Tarrant County, TX (No date). *Domestic Violence Diversion Program*.

<http://access.tarrantcounty.com/en/criminal-courts/specialty-programs/family-violence-diversion-program.html>

<sup>57</sup> King County, WA (No date). *Domestic Violence Court*. <https://www.kingcounty.gov/courts/district-court/domestic-violence.aspx>

<sup>58</sup> Winnebago County, Wisconsin District Attorney (No date). *Pre and Post-Charge Healthy Interactions Group*. <https://www.co.winnebago.wi.us/district-attorney/criminal-prosecution/alternative-diversion-programs/domestic-violence-diversion-pr>

