



THUNDER BAY WOMEN'S COURT WATCH PROGRAM

2009

2nd Annual Report

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*In collaboration with
the Northwestern Ontario Women's Centre
and Faye Peterson Transition House*

The Thunder Bay Women's Court Watch Program is a joint initiative of the Northwestern Ontario Women's Centre and Faye Peterson Transition House.

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Acknowledgements

The Thunder Bay Women's Court Watch Program has been successful largely due to the many volunteers who monitor woman abuse cases in Thunder Bay Provincial Court.

Volunteers have been made up of an incredible group of women including retired professionals, students, victims/survivors, as well as interested community members.

Thank you for the countless hours you have committed to our program and for your continued dedication to the issue of violence against women. The volunteers responsible for data collection for our 1st annual report returned to participate in this second cycle of data collection. We are very fortunate to benefit from the continuity in data collection and accuracy afforded by their multiple years of participation in the Court Watch program.

Thank you to the women who share their personal stories to assist our work. Your courage and strength in speaking your experience is invaluable and will impact the experience of future survivors as they go through the criminal court process.

Finally, we greatly appreciate the dialogue and discussion with members of the justice system in the preparation of this report.

Highlights

Accused Characteristics

- The majority of perpetrators are male (89%) and the majority of victims are female (87%)
- Sixteen percent of accused have a known history of domestic violence charges, based on previous charges – other history may exist but is difficult to document
- More than 50% of the charges laid against the accused relate to assault, assault+¹, assault with a weapon, or uttering threats
- Twenty-seven percent of accused are allegedly in violation of an already existing bail and/or probation condition
- More than half of the accused (58%) are being released on bail
- Accused with a history of domestic violence charges (16%) are being released on bail in 48% of cases
- There is no clear trend of increasing sanctions for accused with previous charges or breaches of bail or probation conditions

Bail Conditions

- Of those being released on bail, 50% require no surety and 85% require no bail deposit (some of these accused may be subject to supervision by John Howard Society)
- Breaching an existing bail or probation condition is resulting in conditions, but not necessarily remand
- Referrals to Partner Assault Response programs are low at all stages of the Criminal Justice process, from bail court to sentencing. There is no evidence of the use of an Early Intervention process for first time or minor offenses.

¹ This category includes a charge of assault plus additional charges such as breaking and entering, uttering threats, assault with a weapon, trespassing, etc.

Non-Caucasian Accused

- Non-Caucasian accused are detained more often, imposed with more conditions of release, and imprisoned more often, than Caucasian accused

Female Accused

- Women are identified as perpetrating violence in 11% of cases (35 cases)
- Female accused received 86% more bail conditions, in the recorded cases, versus 71% of male accused.

Sexual Assault

- Eleven cases were identified as sexual assaults; the perpetrator was male in all cases.
- In four of these cases, the perpetrator was released on bail.

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INTRODUCTION

About the Program

Established in 2007/08, the Thunder Bay Women's Court Watch Program critically examines the role and impact of the criminal justice system in the lives of women who experience violence. The first Women's Court Watch Program in Ontario was developed by the Woman Abuse Council of Toronto in 1996. The need for such a program stemmed from anecdotal evidence which demonstrated criminal cases relating specifically to woman abuse were not being appropriately addressed by the criminal justice system. Local and regional women's advocates have observed similar inconsistencies and noted the impact on the safety and well being of women experiencing violence, and it was the expression of their concerns that spurred the development of a local Court Watch program.

Program Goals

The goals of the Thunder Bay Women's Court Watch Program are fourfold:

1. Examine trends in the criminal justice system response to woman abuse.
2. Fully understand the impact of the criminal court process on women based on observations of court proceedings and judicial response to 1) offenders and 2) survivors of woman abuse.

3. Raise awareness in the City of Thunder Bay about the issue of woman abuse and our criminal court's response to these cases, encouraging community input into how woman abuse cases should be handled by the justice system.
4. Empower survivors of woman abuse to participate in making changes to the criminal justice system, giving voice to their personal experience of the criminal justice process

Limitations of the Research

It is important to note that the data collected has limiting factors:

1. Lack of access to the criminal record of the accused may influence the understanding of a particular case.
2. Court watch monitors are not always privy to the reasoning behind decisions or screening and information gathering processes that happen outside the courtroom, which could provide a more complete picture of any given case.
3. Not all cases were seen through to decision which precludes a definitive analysis of the data, but rather provides trends through which an analysis can be developed.
4. While 377 bail surveys were completed during 2008-09, information for the entire sample (N=377) is not always collected or able to be collected for each item we would like to report on. When data is missing or unavailable, we report on the available information. For example, we may only have information about a particular variable for 100 offenders (i.e. N=100) and this smaller sample is reported on. It is important to keep this in mind when interpreting the percentages reported. Wherever possible, we have noted the sample size.

Errors and Omissions from the First Annual Report

Following the publication of the first annual report, some raised questions about the systemic limitations of the criminal justice response. We acknowledge the legislative realities and institutional limitations members of the criminal justice system (such as the Crown and other court personnel) are bound by. While these limitations do not excuse or exclude members of the criminal justice system from working to eliminate unintended negative consequences for women, we do acknowledge these limitations and systemic patterns of bias are rooted in larger systems of legislative and judicial policy and are unlikely to be shifted at the local level, even with a Court Watch program requesting accountable and informed criminal justice response.

Methodology

The primary purpose of the Thunder Bay Court Watch project is to gain an in-depth understanding of the varied ways in which the criminal justice system responds to cases involving violence against women. We hope that regular observation of court proceedings will provide a clearer understanding of how MAG policies regarding incidences of violence against women are being delivered in a court room environment, and how those policies and their delivery is impacting women who have, and continue to experience violence at the hands of intimate partners.

To document what we observe during the court proceedings, we utilize a survey tool to provide focus and continuity of information collected during the participant observation process.² Quantitative data from the survey tool were tabulated in a database and analyzed by queries across cases for summaries of criteria such as case type, the criminal

² For more information about the development of our Survey Tool, please see our 1st Annual report.

history of accused, case disposition, etc. Discussions among staff from Faye Peterson Transition House, Northwestern Ontario Women's Centre, and members of the Thunder Bay criminal justice system generated a number of questions related to the criminal justice response to perpetrators of woman abuse. These questions guided the data analysis:

1. What are the characteristics of the accused?
2. What is the trajectory of the case through criminal justice system? Is the Bail Safety Program being used to its full potential? Are the MAG goals of early intervention and coordinated prosecution for the Domestic Violence Court Process being met?
3. Do the conditions of release match and seek to mitigate the level of risk the accused poses to the victim? Do sentencing outcomes adequately address safety and accountability concerns?
4. Are conditions of release being applied appropriately to accused who breach existing bail or probation conditions? I.e. is an increased level of risk being recognized by the criminal justice system, and are there increasingly serious consequences for repeat offenders, or high risk accused?
5. What are the characteristics of female accused? How is the criminal justice response similar and different for female accused?
6. How is the criminal justice response similar and different for Non-Caucasian accused?
7. What are the case characteristics for sexually violent offences?

Scope of the Report

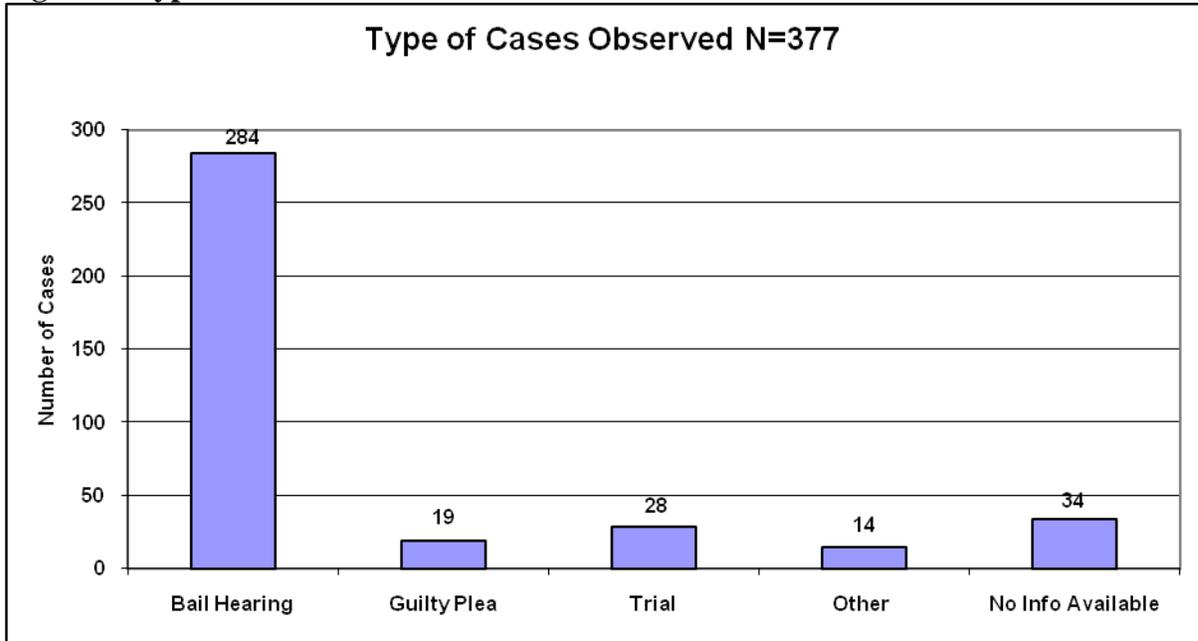
Similar to the first Court Watch report, the majority of our findings are based on information collected during bail court proceedings. From these findings we are able to report on the trajectory of a case from charging, detention, through the bail court process, and in some cases, the sentencing decision. The 2nd Annual Report affords the same types of information about the demographics of the offender moving through this system, as well the criminal justice response to the accused and victims. Building on our experiences collecting and analyzing data, we have refined the survey tool to incorporate new areas of inquiry arising from our first report.

In this report we continue to identify demographic and case characteristics of the accused. We also take a closer look at data collected on female accused³. Our second report tracks cases of women being identified by the criminal justice system as offenders. We also closely examine the sexual assault cases presenting in the bail court system and report on these findings as well.

The majority of our information continues to be collected during bail hearings (Figure 1).

³ Our sample includes 377 unique cases before the bail and judges court. In some cases, an accused is tracked by the Court Watch program on more than one occasion. Include in this sample are 318 male accused and 35 female accused.

Figure 1. Types of Cases Observed



FINDINGS

Case Characteristics

Accused Demographics

The majority of accused being processed in bail court are men (Table 1).

Overwhelmingly, men are perpetrating some form of violence or abuse towards a female partner. In 11% of the cases, women were identified as the accused (more information about this in the Female Accused section). Given men are identified as the accused in 89% of the cases, throughout the remainder of this report (unless otherwise stated) the term ‘accused’ or ‘perpetrator’ will refer to men and the term ‘victim’ or ‘survivor’ will refer to women.

The majority of the accused are in a current relationship with the identified victim. They are also reasonably young – the average age of the men being identified by the criminal justice system is 30 years old. The number of accused with a history of *charges* for woman abuse is fairly low.⁴ While a known history of charges is low, roughly half⁵ (53%) of the accused are being detained prior to the bail court hearing and our data records 73% of the sample have release conditions imposed. Finally, almost one-third⁶ of accused are violating an already existing bail and/or probation condition (Figure 2).

The ethnic identity, as self-reported by the accused during the course of the court proceeding or identified by court personnel (i.e. Crown, Judge, Defense Lawyer, etc.),

⁴ Two important caveats to consider: 1) the majority of abuse does not get reported to the criminal justice system, and when it does charges are not always laid and 2) this number (16%) is likely underestimated given we were unable to gather information about a history of woman abuse *charges* for 176 cases.

⁵ This number is likely underestimated as information was unavailable for 119 cases.

⁶ This number is likely underestimated as information was unavailable for 194 cases.

continues to be under-reported. During our observation we were able to collect ethnic identity information in 141 cases. For those cases where ethnicity information was available, more than half were identified as Non-Caucasian and just under half were identified as Caucasian.

Table 1. Demographic Information

	PERCENTAGE (N)
Gender	Male 89% (283) Female 11% (35)
Relationship with victim	Current Partner 50% (149) Former Partner 8% (20)
Mean Age	30
Ethnicity⁷	Non-Caucasian 26% (73) Caucasian 21% (59)
Victim Ethnicity	Non-Caucasian 8% (23) Caucasian 4% (11)
Previous criminal conviction⁸	7% (20)
Known previous DV charge	16% (47)
New charge violates previous condition	27% (75)
Detained prior to bail hearing	53% (15)
Bail hearing conditions imposed	73% (207)

⁷ Ethnicity information available for approximately half the sample (N=141)

⁸ Any charge, including domestic violence

Charges

Information related to charges continues to be inconsistently collected as charges are not always read in bail court. Court Watch volunteers do their utmost to fill in missing information if it is not given verbally, but cannot realistically capture everything. We determine a case's relevance to our program by cross-checking with court personnel and/or through information provided by the victim.

While all criminal charges are concerning, especially when placed in the context of woman abuse, the majority of charges continue to be physically violent in nature (Table 2). More than 50% of the known charges relate to assault, assault plus related charges⁹, assault with a weapon, or uttering threats. Other charges such as mischief, fail to comply/attend, breach, and harassment, were reported in smaller numbers. In 8 cases the accused was actually *charged* with a breach¹⁰ of an order – generally those caught breaking a release condition were given new conditions. These 8 instances may reflect cases where the accused has been remanded to Judge's court to face the breach charge directly. See description of breaches and Section 524 application in Discussion section. Finally, sexual assault charges were reported in 11 cases. These cases are examined further in the Sexual Assault section.

⁹ This category includes a charge of assault plus additional charges such as breaking and entering, uttering threats, assault with a weapon, trespassing, etc.

¹⁰ Cases where there is a breach of a previous bail condition, or related charge, are explored further in the Breach section.

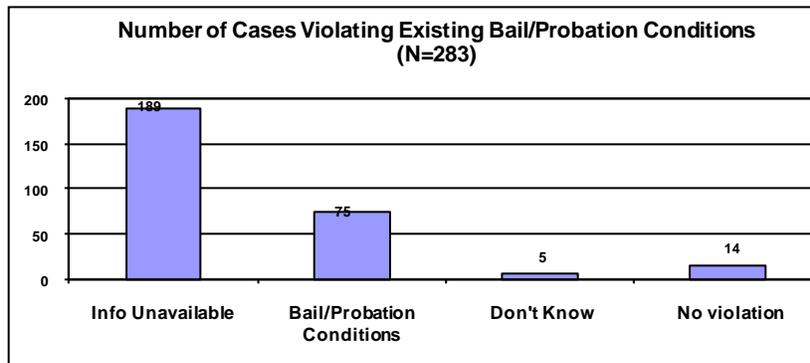
Table 2. Type of Charge (N=259)

	PERCENTAGE (N)
Assault+	28% (78)
Assault	19% (53)
Uttering threats/Death threat	6% (18)
Fail to comply/attend	6% (18)
Sexual Assault	4% (11)
Harassment	3% (10)
Breach	3% (8)
Mischief	3% (9)
Assault with a weapon	3% (7)

Breach of an Existing Bail or Probation Condition

We were able to determine, at a minimum, 27% of the accused were alleged to be in violation of an existing bail and/or probation condition (Figure 2). Unfortunately, our data does not distinguish between breaches of bail release conditions and breaches of probation orders.

Figure 2. Cases Violating Existing Bail/Probation Conditions



Given almost one-third of the sample is violating existing bail and/or probation condition, we looked more closely at some of the information related to the current charge, conviction history, and criminal justice response to breaches of court orders (Table 3).

More than half the men violating an existing condition were charged with a physically violent crime (as defined in our previous section related to accused characteristics) and about one-third have a previous criminal conviction. The majority (79%) were detained prior to the bail court hearing. We closely examined the conditions of release for those who were charged with a breach of an existing order. As noted in the table below, *all* of the accused we have information for (61 cases) received some form of bail conditions. Of these 61 cases, 35 were remanded into custody and 26 were again released on bail (the impact of releasing men who are already in breach of an existing order is more fully discussed the Inconsistent Bail Hearing Conditions section).

Table 3. Characteristics of Accused who Breach Existing Bail/Probation Conditions (n=75)

	YES	NO	UNCERTAIN
Current charge is physically violent ¹¹	61% (46)	--	--
Previous criminal conviction	31% (23)	--	
Detained prior to hearing	79% (59)	5% (4)	16% (12)
Bail hearing conditions	81% (61)	--	19% (14)
Remanded into custody	57% (35)	43% (26)	--

Bail Hearing Conditions: Entire Sample

With respect to bail hearings, the typical trajectory of a case is as follows. An accused is charged and detained by police until a bail appearance the next day. Later, a bail hearing results in one of three outcomes for the accused: 1) release without conditions; 2) release with conditions; or 3) remand into custody. The accused then proceeds to Judge’s Court and either pleads guilty or chooses to go to trial. If the accused pleads guilty, an Early Intervention process is supposed to be an option for some, depending on the

¹¹ Charge is assault, assault+, assault with a weapon, or sexual assault

characteristics of their crime (offenders with no convictions for violence-related offences, who have caused no significant injuries or harm, have not used weapons, and who choose to plead guilty).

In October 2004, the Thunder Bay the Domestic Violence Court Advisory Committee developed and approved a flowchart of a Domestic Violence Court Process (see Appendix I). A process which enhanced this model was suggested in the “Implementing the Specialized Domestic Violence Court Process” document from the Ministry of the Attorney General in 2000. In the Early Intervention process the accused has the opportunity to plead guilty, and get an immediate referral to Partner Assault Response (PAR) where the community agency can monitor his on-going risk to the partner while offering education to the perpetrator. Sentencing occurs after the perpetrator completes the Partner Assault Response (PAR) program. The EI process is intended to deal quickly with low risk cases and minimize reliance on victim testimony by focusing on admission of guilt. DVCA Committee members agreed to this process in 2004, however in both this and last year’s report we can find no evidence that early intervention has been implemented. One of the procedural obstacles may be that the accused is required to plead guilty in Judge’s court to be eligible.

Finally, Bail Court does not make findings of guilt, so should concentrate on immediate safety concerns. It is a critical juncture to impose conditions that will protect victims from further violence or retaliation while getting the perpetrator the structure needed to address behavior and minimize further incidents of violence.

Seventy-three percent of all the cases for which information is available (283), saw accused sanctioned at the conclusion of the bail hearing. Information regarding the

remaining 27 percent of cases suggested either no conditions, or was not available.

Criminal court personnel assure us that every release includes conditions, unless the case is dismissed. The outcomes of sanctions imposed at bail hearings can be grouped into two categories: 1) 58% were released on bail with a recognizance or undertaking (which includes various combinations of conditions such as refrain from alcohol/drugs, no weapons, no contact with victim, reside at, released with surety, released without surety, released with deposit, released without deposit, etc.) and 2) 41% were remanded into custody.

Table 4. Bail Hearing Outcomes (n=283, n=207)

	YES	NO	UNCERTAIN
Conditions Imposed	73% (207)	--	27% (76)
Recognizance	58% (121)	--	--
Remanded to custody	41% (86)	--	--

As indicated in the table above, our data shows release conditions were imposed on 121 (58%) accused following bail court proceedings.¹² Those released on bail incur a wide variety of conditions (see Table 5). The combinations of conditions vary for each accused, however we were able to identify those conditions most often and least often applied in each of the cases. Most common are the number of accused required not to contact or attend the home of the victim. These two conditions are applied often (in 75% and 65% cases respectively) in the conditions of release, and in most cases are applied together. Another consistently included condition is around restricting access to and consumption of alcohol and drugs (57%). Given the prevalence of gun ownership in Northwestern Ontario, and the associated risk factors involved, it is surprising that conditions restricting access to firearms (32%) and weapons (36%) are imposed so

¹² In 7 cases we were unable to determine the conditions of release.

infrequently. Curfews are imposed even less frequently (25%). Most notable are the conditions related to surety and deposit. These two conditions in particular are applied with the least amount of consistency (see Table 6), with deposit almost never being required (103 of 121 cases required no deposit), and a surety being secured only half of the time. Finally, the least required condition, in only 5 cases, was a requirement to attend a Partner Assault Response (PAR) program¹³. Without an established Early Intervention process, it is not surprising that Partner Assault Response (PAR) referrals are low in the initial stages of the criminal process. Accused qualifying for EI must plead guilty, only possible in judge’s court, so it is unlikely that Partner Assault Response (PAR) participation would be raised at the bail stage before there is any admission or finding of guilt. The Coordinated Prosecution model applies Partner Assault Response (PAR) only at the probation stage.

Table 5. Distribution of Bail Release Conditions (n=121)

	CONDITION IMPOSED	CONDITION NOT IMPOSED
Surety required ¹⁴	45% (54)	50% (60)
Deposit required	10% (11)	85% (103)
No contact with victim	75% (91)	20% (23)
Do not attend (residence, workplace, etc.)	65% (78)	30% (36)
No alcohol or drugs	57% (69)	38% (45)
No weapons	36% (43)	59% (71)
No firearms	32% (39)	63% (75)
Curfew imposed	25% (30)	75% (85)
Partner Assault Response (PAR) participation	4% (5)	91% (109)
DNA sample	>1% (1)	99% (120)

¹³ There was only 1 case in which a Partner Assault Response (PAR) program was specifically mentioned by name as a condition for bail release. However, we coded any reference to ‘participating in a program’ or ‘anger management’ as meaning a Partner Assault Response (PAR) program.

¹⁴ In 10 cases, the John Howard Society Bail Supervision program is used in lieu of surety.

We were interested to explore the intersection of the less frequently applied conditions. Namely, we were interested to look at how many cases were being released at the bail court stage without a surety and without a bail deposit. The table below outlines the various combinations of surety and deposit with which accused are being released. Most notable, as discussed in detail in the Discussion section, is the finding of 56 cases being released with no surety and no bail deposit.

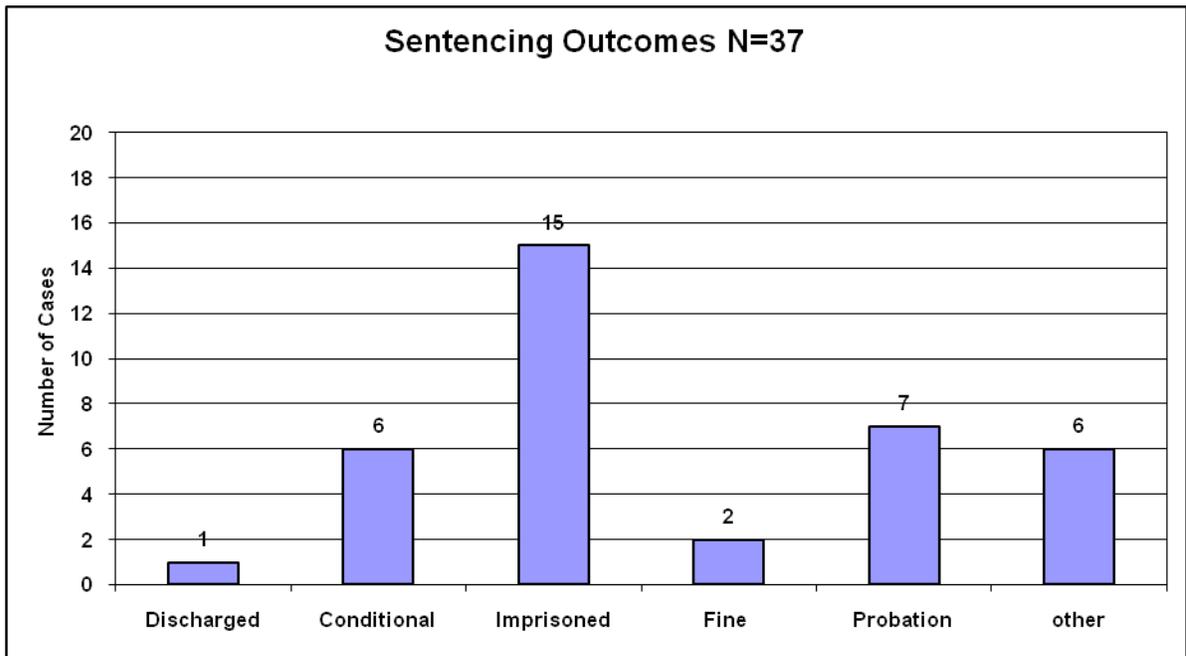
Table 6. Conditions of Release: No Surety and No Deposit

	With Deposit	Without Deposit
With Surety	7	47
Without Surety	4	56

Judge's Court: Sentencing Outcomes

For cases proceeding beyond the bail stage hearing stage (i.e. trial or entering a guilty plea), we were able to obtain sentencing outcomes in 43 cases. In only 1 case was the accused discharged (Figure 3). Similar to the very low findings of PAR recommendations during interim release (i.e. bail release), there were *zero* conditions of PAR or program participation made at the time of sentencing. Once again, this result seems to indicate that there is no Early Intervention process being used, and that referrals to PAR program are occurring only at the probation stage.

Figure 3. Sentencing Outcomes

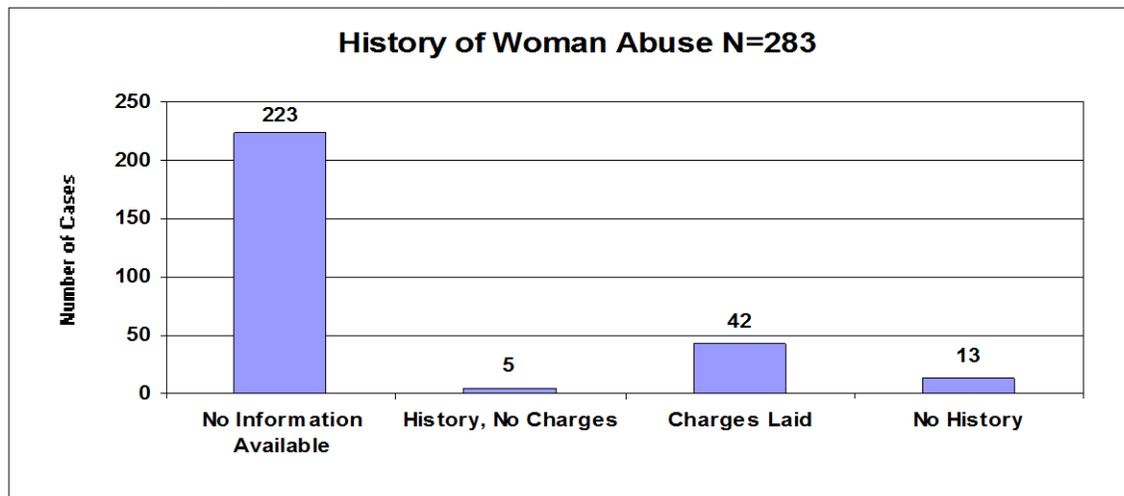


Accused with History of Woman Abuse

Accessing information about a history of woman abuse for accused is difficult for Court Watch volunteers during the bail court process. However, the Bail Safety Risk Assessment and police Domestic Violence Supplementary Report should document this for Crowns. As with information regarding charges (which is often not read in court), information about a history of woman abuse, whether or not charges have been laid, is haphazard at best. Our best opportunity to gather information about a history of woman abuse occurs when there is a previously laid charge. We acknowledge that information about charges is not a reliable indicator of incidence - the number of woman abuse cases actually reported to police and subsequently charged does not provide a complete picture of incidence or risk. For this reason, the absence of a formal charge for intimate partner violence should in no way be interpreted as a lack of history or previous abuse by the accused.

Keeping this context in mind, in 47 cases we were able to identify previous woman abuse, and 42 of those accused had historical charges laid. A history of woman abuse is a significant indicator of increased risk of future harm and we closely examine this particular variable and its bearing on case outcomes in greater detail within the Repeat Offenders section.

Figure 4. History of Woman Abuse.



We wanted to examine the types of charges laid against repeat offenders, and by extension, the potential for increased risk an offender with a history of domestic violence presents. To do this, we looked at offenders with a previous domestic violence charge (N=42) and the type of charge laid during their current bail court appearance (Table 7). The charges laid in these cases are only slightly different from the overall sample with “assault plus” representing 31 percent of charges versus 28 percent in the general sample. Half of the charges reflect a physically violent crime, and are especially concerning in these cases given ‘history of woman abuse’ is being measured by a previous charge for domestic violence.

Table 7. Repeat Offenders: Type of Charge Laid (n=42)

	PERCENTAGE (N)
Assault+	31% (13)
Assault	11% (5)
Uttering threats/Death threat	11% (5)
Fail to comply/attend	9% (4)
Harassment	9% (4)
Breach	7% (3)
Assault with a weapon	4% (2)
Other	2% (1)
No Information Available	14% (6)

The conditions placed on the repeat domestic violence offenders do not seem to reflect an understanding of the higher risk these men present to women and children. For the 31 cases where we were able to obtain information, release conditions for the accused were recorded in only a slightly higher number of cases than the general sample (74 versus 73 percent). When we examined the number of accused remanded into custody and the number of cases released on bail, the numbers were split almost evenly. In 16 cases the accused was remanded back into custody and in 15 cases the accused was released on bail (Table 8). It appears repeat offenders are being remanded back to custody by Justice of the Peace in bail courts at somewhat higher rate than the general sample (52 percent versus 41 percent).

Table 8. History of Domestic Violence Charges: Bail Hearing Conditions (n=42)

	YES	NO	UNCERTAIN
Conditions Imposed	74% (42)	--	26% (11)
Recognizance	48% (15)	--	--
Remanded to custody	52% (16)	--	--

Although the sample size for the measures of repeat offenders was notably smaller than the general sample, we would still expect a higher incidence and perhaps a wider range of bail conditions to be applied to accused with a history of violence. Our results, however, show a significant percentage increase in only two categories of bail conditions: “No Weapons” and “PAR participation”. Although the condition of PAR participation registers as 13 percent, the smaller sample size means that translates to only 2 accused, compared to 5 in the general sample, which does not suggest any increased rate of sanction. Three other categories showed an increase in application from the general sample: “No Contact with Victim”; “Surety and “Deposit Required”. Of most concern, accused with a history of DV charges were significantly less likely to receive “Do Not

Attend” conditions, or those restricting alcohol and drugs or firearms; and are less likely to have a curfew imposed. It is possible that lower rates of application of some conditions could be attributed to them being superseded by other categories (e.g., weapons restrictions could presumably include firearms). But in general, we find the lack of a clear pattern of increasing sanction against accused with a verified history of woman abuse worrisome.

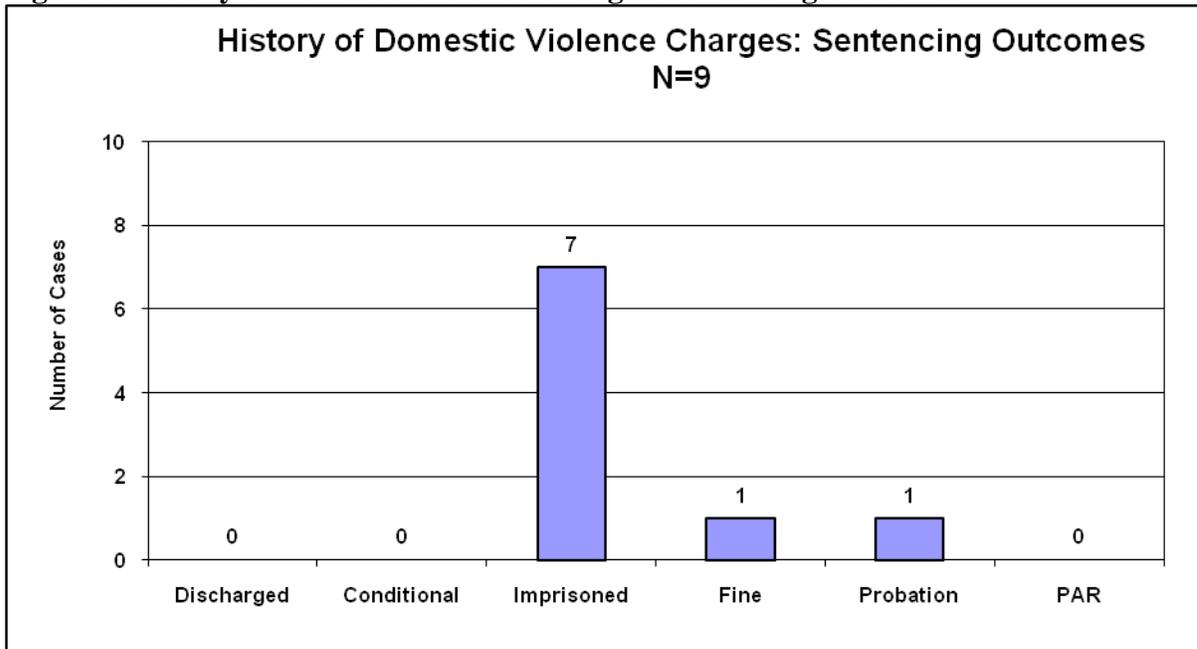
Table 9. History of Domestic Violence Charges: Conditions of Bail Release N=15

	YES	NO
Surety required	7	8
Deposit required	2	13
No contact with victim	12	3
Do not attend (residence, workplace, etc.)	8	7
No alcohol or drugs	8	7
No weapons	8	7
No firearms	2	13
Curfew imposed	3	12
PAR participation	2	13

If an Early Intervention Process was in place, we would expect more referrals to PARS at the bail court stage. Bail court, because it happens soon after the assault, is a critical juncture where accountability and safety measures can be put in place to protect women for the remainder of the criminal justice process. Instead, offenders who would normally meet the criteria for EI do not plead, and wait for trial to take their chances with the system. This can take as long as a year, at which point the charges may no longer be substantiated if the victim is persuaded not to testify and everyone’s memory of the event is less clear. If this time lapse occurs without the protection that court ordered PAR programs and strict bail conditions provide, the risk of retaliatory or continued violence against partners of accused will remain or escalate.

Sentencing outcomes (Figure 5) for these cases revealed no absolute discharges or conditional discharges, indicating that perhaps judges are taking previous history of DV into account in their dispositions. Unlike accused without previous charges, the majority of the accused received imprisonment, a fine, or probation. Only 40 percent of the general sample (n=15) were incarcerated, versus 77 percent of repeat offenders (n=7). Again, we notice the lack of reference to PAR programming as a component of sentencing.

Figure 5. History of Domestic Violence Charges: Sentencing Outcomes



Accused Ethnicity and the Criminal Justice Response

In just under half the cases (N=141) we were able to identify the ethnicity of the accused. Twenty-six percent (73 accused) were identified as Non-Caucasian (primarily Aboriginal) and 21% (59 accused) were identified as Caucasian¹⁵. We continue to be interested in examining how the criminal justice response to Non-Caucasian and Caucasian accused may be similar and different. For instance, we have compared some of the information related to detainment, bail hearing conditions, and sentencing outcomes. Non-Caucasian men were more often in breach of an already existing bail condition than Caucasian men. They were also detained more frequently than Caucasian men and more frequently imposed with conditions. There is less information available about sentencing outcomes, but we were able to identify more Non-Caucasian men being imprisoned and placed on conditional release than Caucasian men.

Table 10. Comparison of Non-Caucasian and Caucasian Case Characteristic

	NON-CAUCASIAN (N)	CAUCASIAN (N)
Charges Violate Previous Conditions		
Bail/probation condition	22	7
Detained		
Prior to bail hearing	43	18
Conditions		
Bail hearing conditions	55	44
Sentencing Outcomes		
Discharged	0	1
Conditional	2	0
Imprisoned	4	1
Probation	2	2

¹⁵ Individuals were identified as Non-Caucasian *only* if they were explicitly identified as such throughout the proceedings.

Female Accused

In this year's report, we have expanded our inquiry to examine the treatment of female accused. We are interested in better understanding the context of the criminal justice response to these women, especially since it has been repeatedly shown that women charged with DV are often living with a partner with a history of woman abuse.

The majority of perpetrators being observed, especially in bail court, are male. However, there were 33 instances of females being identified by the criminal justice system as offenders. In each of these cases the identified victim was male (Table 11). During the analysis of the victim and offender gender, we discovered 3 cases of male-to-male assault¹⁶. Our findings suggest these are not intimate relationships (i.e. the relationship between the offender and the victim was not coded as a same-sex relationship). For example, in one case, the victim was identified as the offender's brother-in-law.

Table 11. Comparison of Perpetrator and Victim Gender

	Male Victim	Female Victim
Male Perpetrator	3	280
Female Perpetrator	33	0

Comparison of Offender and Victim Gender

Similar to the male accused, we were interested in obtaining a more complete picture of the characteristics of female accused (Table 12). The majority of women identified were charged with a crime against their current partner. The ethnicity of the accused was more often Non-Caucasian (8 women) than Caucasian (4 women)¹⁷. Eight women were in

¹⁶ We could not determine the specifics of the offender and victim relationship in 2 of these cases. In the other case, the victim was the offender's brother-in-law.

¹⁷ Ethnicity information was available for less than half the women (N=12)

violation of an existing bail or probation condition and four women had a previous charge for domestic violence.

Table 12.Characteristics of Female Accused (N=35)¹⁸

	PERCENTAGE (N)
Relationship with victim	Current Partner 51% (18) Former Partner 11% (4)
Mean Age	Unavailable
Ethnicity¹⁹	Non-Caucasian 23% (8) Caucasian 11% (4)
Victim Ethnicity	Non-Caucasian 14% (5) Caucasian 6% (2)
Previous criminal conviction²⁰	9% (3)
Known previous DV charge	11% (4)
New charge violates bail/probation condition	23% (8)
Bail Hearing Conditions	86% (30)

¹⁸ Victim gender is unknown in 2 of the cases

¹⁹ Ethnicity information available for less than half the sample (N=14)

²⁰ Any charge, including domestic violence

Charges

Approximately two-thirds of accused females were charged with a physically violent offence (Table 13). While women were not charged as often with an “Assault plus” charge compared to men, at least 9 women received multiple charges. Sentencing outcomes for female offenders were not available as all 32 cases were bail proceedings and 1 case was to set a date for trial. Twenty of the female accused (57%) were detained prior to their scheduled court appearance, slightly more than male accused (53%). In 86% of the cases for which we have information, female accused were given conditions upon release, considerably more than male accused (71%).

Table 13. Type of Charge: Female Accused (n=32)

	PERCENTAGE (N)
Assault	40% (14)
Assault+	26% (9)
Fail to comply/attend	3% (1)
Breach	3% (1)
No Information Available	27% (10)

Sexual Assault

Eleven cases were identified as sexual assaults. Bail hearing conditions were imposed in 8 of the cases; 4 were released with conditions (2 at sentencing stage; 2 at interim release) and 4 were remanded into custody. The two of the cases at sentencing resulted in both of the accused receiving probation (18 months and 24 months respectively) with counseling programs as required by Probation & Parole.

Table 14. Sexual Assault Case Characteristics (n=11)

	PERCENTAGE (N)
Accused gender	Male 100% (11)
Victim gender ²¹	Female 82% (9)
Relationship to offender	Current partner 9% (1) No info available 91% (10)
Bail Hearing Conditions ²²	73% (8)
Sentencing Outcomes	15% (2)

²¹ In two of the cases, the victim gender could not be determined.

²² Not able to determine if disposition conditions were imposed in 3 of the cases.

DISCUSSION

For women experiencing violence at the hands of their intimate partner, a spouse's criminal charge rarely represents either the beginning or the end of their abuse. In many cases, there is a considerable history of violence, and it is likely to not only continue, but to be exacerbated by the criminal justice process itself, as well as by any ensuing separation or custody determination. It is one of the central ironies for Violence Against Women advocates that a system designed to protect women can not only trigger additional violence if an abusive partner is angered by being called to account, but also fail to address that escalation. It is this context of women's experience of violence that courts must take into consideration if they are to address safety concerns. In light of the repeated findings in risk and threat assessment research, it is also imperative that the criminal system treat accused with histories of violence and breaches of recognizance very seriously.

The Ontario Ministry of the Attorney General implemented the Specialized Domestic Court Process throughout the province in response to growing concerns about murders of women and children by intimate partners, and we presume, to address the Coroner's recommendations from a series of inquests into these homicides. They stated four separate objectives for the program:

- to provide early intervention for perpetrators meeting certain criteria and willing to pled guilty, as well as timely processing of DV matters;

- vigorous prosecution of perpetrators, including increasingly serious consequences for repeat offenders and the minimization of reliance on victim testimony using enhanced evidence collection;
- support and advocacy for victims
- effective coordination and collaboration among stakeholders to increase victim safety.

Thunder Bay does not have a fully established Domestic Violence Court, but has implemented some of the structures and protocols involved. Keeping that limitation in mind, the following discussion reviews some of our specific findings to see how well these Provincial goals are being met.

Many Accused Pose High Level of Risk to Women and Children

The Domestic Violence Death Review Committee Report (2008) ranked the most common risk factors associated with domestic homicide from 2003-2008. When we examined the common risk factors identified by the DVDRC, we discovered our sample had at least five of the identified risk factors. Perpetrators having more than 7 risk factors are considered to be at very high risk for lethality. While we are not able to speak to the individual risk posed by each of the accused in our sample, we can state that, as a group, our sample contains at least 6 of the higher markers for lethality.

The following risk factors are present in our sample. We have compared the percentage of homicide cases from 2003-2008 with these risk factors and the percentage of cases with risk factors present in our Court Watch sample.

Table 15. Comparison of risk factors: DVDRC and Court Watch study

RISK FACTOR	DVDRC	COURT WATCH STUDY
History of domestic violence	79%	78% ²³
Criminal history	62%	16% ²⁴
Threats to kill the victim	51%	6% ²⁵
Excessive alcohol or drug use	42%	57% ²⁶
Perpetrator fails to comply with authority	35%	80% ²⁷
Victim and perpetrator live together	23%	50%

The presence of these risk factors clearly illustrates the level of risk posed to female partners of the men in our study. We can speak to three of these risk factors directly: history of domestic violence; non-compliance with authority and relationship status. Although critical, we cannot comment on the risk factor related to threats to kill because the percentage recorded in our data is quite low compared to the other risk factors. As well, our information about alcohol and drug use is anecdotal based on the bail release conditions.

One of the more concerning risk factors present in our sample is a history of domestic violence. The DVDRC identifies a history of domestic violence as one of the strongest indicators of risk for lethality. If this information was systematically available during the

²³ We are reporting on valid percentage of men charged with domestic violence prior to the current charge; we did not include missing information in this table. The risk factors for lethality are very powerful and we wanted to illustrate how closely the men whom we have information for meet the threshold of high risk perpetrators.

²⁴ Based on *charges only* for a past domestic violence offence

²⁵ Based on *charges only*; the number is likely underestimated given we do not have personal accounts from victims

²⁶ Based on bail conditions not allowing alcohol or drugs

²⁷ Based on valid percentage of accused who breach existing bail or probation conditions (i.e. those men who we know were in violation of an existing condition).

bail court and sentencing processes, a more complete picture of risk, and in some cases lethality, could be drawn. Ideally, information about a history of domestic violence would

1) increase the likelihood of justices remanding high risk offenders to custody and 2) decreasing the likelihood of justices releasing accused with inadequate conditions.

Secondly, the offenders in our study clearly fail to comply with authority. As evidenced by the number of men violating an already existing bail or probation condition, these perpetrators are not deterred from either ignoring court ordered conditions, or, in some cases, committing further acts of aggression or violence against their partners.

Finally, the status of the current relationship continues to be an indicator of risk. While relationship status is a difficult construct to report on (i.e. he may consider himself to be in a relationship and she may not, they may be living apart but considered together, etc.), there is such a large number reporting a current relationship with the victim (50%)²⁸, the significance of understanding this information is crucial to bail conditions and sentencing decisions (especially when we know 58% of the accused are being released). Risk may be exacerbated if men are being released without any supervision or monitoring, such as might be provided by John Howard Society or a Partner Assault Response (PAR) program. The time between the bail process and judges court is the most dangerous for abused women, and any lack of attention to the danger and risk these types of non-specific conditions pose to women and children is of great concern.

Given the level of risk we have identified in this group, the criminal justice process needs to establish a clear focus on women and children's safety as opposed to the rights of the perpetrator.

²⁸ This is on par with the national statistics for perpetration of violence against current partners. According to Statistics Canada (2008), 69% of domestic violence is perpetrated against current rather than former partners.

Increased Risk to Women's Safety Not Always a Central Factor in Bail Release Conditions

Accused with a history of woman abuse seem somewhat more likely to be detained prior to bail court, but there is still a noticeable disconnection between the level of risk posed by repeat offenders and the imposition of release conditions.

The Bail Safety Program was only referred to directly in 88 cases, but the fact that it is not mentioned in the courtroom does not mean that it is not being used. We are confident from our work with abused women and the bail safety officer that the bail safety program interview is being completed consistently. Whether or not justices are making full use of the BSP risk assessment recommendations is a separate question.

This is a trend we noted in our first report and have continued to observe in the data collected for this report. While the inconsistency remains problematic, there are encouraging results from our findings related to overall application of bail hearing conditions. We examine the inconsistency of bail hearing conditions below.

Inconsistent Bail Hearing Conditions

Generally speaking, there continues to be a lack of clear, purposeful, release conditions being implemented during bail court proceedings. While in all cases for which we have information, accused are being released with at least some conditions, the conditions include a wide variety and combination of factors that are not always congruent with safety considerations.

Release to Surety: We have some concern that high risk accused are sometimes released to individuals who, for reasons of relationship or lack of control over the accused are unable to act as an appropriate surety. Our results indicate that there were 56 instances of men being released without a surety or deposit. Our data has not captured whether or

not these cases were referred to the John Howard Society's Bail Supervision Program. We know that some are, and that referrals to J.H.S. might actually be preferable to using individuals as sureties. Some accused are ordered to reside there, and staff has no personal relationship with accused that might prevent them from reporting a breach of conditions to police (personal communication). Unfortunately, John Howard Society is not involved with the DV risk assessment protocol or other specific monitoring programs, so their capacity to deal effectively with DV accused may be limited.

Breaches of Existing Bail or Probation Condition Receive Variable Responses, and Not Necessarily Increasing Sanction

Not all breaches involve repeat violence or inappropriate contact with complainants – some may be infractions related to the use of alcohol, curfew etc. In addition, our current data does not distinguish between breaches of probation and bail release orders, each of which are treated differently by the court, and may therefore result in significantly different outcomes. A breach of an interim release order from bail court triggers a “reverse onus” situation where the accused must prove to the court he is not at risk to break conditions in order to be released. Because the court starts from the assumption that the accused will remain incarcerated unless convinced otherwise, it is possible that this situation may result in more remands into custody than do breaches of probation.

The response to the Section 524 application (part of the Criminal Code that sets aside the original interim release order if it is breached) by Crown and defense counsel also affects the way accused who breach are remanded to custody. If the Crown proceeds with Section 524, it indicates that the Crown is seeking to cancel the accused's original release

order. A hearing involving the application of Section 524 is considered "reverse onus" which means that the accused bears the burden of establishing why the previous order should not be cancelled. Though the hearing of the Section 524 matter is often subsumed in the bail hearing involving any new charges, it is technically considered a separate matter. If the breach is unrelated to contact with, or harm to, the victim, the Crown may "abandon the application" and allow the original conditions of release to stand. Alternatively, the accused may be remanded to Judge's court to face the breach charges directly, which could also result in incarceration, but potentially no change in the original release conditions. The net effect of the Crown "abandoning" Section 524 is that the original release order remains in place, once the accused deals with the new charges by way of guilty pleas and sentencing.

The new charges may result in a temporary period of actual custody, if this separate sentence involves a term of jail but will not involve more stringent conditions of release once the sentence for these newer charges is served, or a potentially "enhanced" sentence for the earlier charges once they are eventually dealt with. For this reason, it is difficult to conclude whether a slightly increased level of accused remanded to custody after further charges are laid actually reflects increasing sanctions for those who breach release conditions.

Whether or not breaches reflect further interference with the victim the disregard of court orders is still a known risk factor for recidivism and lethality. Accused who breach an existing order logically fall into the category of perpetrators who fail to comply with authority. It would seem prudent to apply increasing sanctions such as remanding to

custody rather than re-releasing perpetrators on their own recognizance given the increased risk this group poses.

In our sample, bail hearing conditions and remand to custody seem more likely to be applied when there is a breach of a previous bail/probation condition. The high percentage of accused who are in violation of an existing bail condition being detained prior to bail court (79%) may speak to an increased awareness of the risk these men pose to women and children. Eighty one percent of the accused (i.e. *all* of the accused we have information on) who were in breach of a previous condition were again given bail conditions. Notwithstanding the limitations of our data, we still would expect a significant number of accused to be remanded in to custody. However, as illustrated in the findings, 26 out of 61 men who were violating an already existing condition were *again* released on bail (details of these releases provided in the table below). This raises concerns for victim safety, but also brings into question the message the criminal justice system is sending to offenders, women and children, and the community. Releasing accused who breach court orders becomes more problematic because we know conditions of release are being imposed inconsistently without a clear pattern of increasing sanction, any referral or requirement to attend a Partner Assault Response (PAR) program, and sometimes without surety or deposit.

Table 16. Justice of the Peace and release of accused in breach of existing conditions

JUSTICE ID#	ACCUSED RELEASED WITH A KNOWN HISTORY OF BREACHING EXISTING BAIL OR PROBATION CONDITIONS N=26
8	1
6	7
10	3
5	3
4	3
2	3
3	3
7	3

Accused with Known History of Domestic Violence are Released on Bail as Often as They are Remanded into Custody

Remand or conditional releases were placed on *all* known domestic violence accused.

These findings are positive. These accused are being detained prior to bail court and are receiving conditions as often (74% of the time) than the accused in the overall sample (73%). When we look more closely at the specifics of the bail hearing conditions for these repeat accused, the picture shifts.

While all of the accused are receiving some form of conditions, nearly *half* of these accused are being re-released on bail (15 cases) and half are being remanded in custody (16 cases). As illustrated in our findings, 15 of 31 accused (with a known history of domestic violence charges) are being released on bail. We did not capture how many of these are referred to the John Howard Bail Supervision program. We do know that only 2 of 15 offenders released on bail were required to participate in a Partner Assault Response (PAR) program.

Differential Bail and Sentencing Conditions for Non-Caucasian Accused

We continue to be interested in reporting on what appears to be a differential criminal justice response to Non-Caucasian accused. Similar to our findings in the 1st annual report, we continue to see a differential pattern in prosecution and disposition outcomes between Non-Caucasian and Caucasian accused. We also continue to emphasize that examining this discrepancy is not about whether Non-Caucasian perpetrators are more or less violent, but rather the purpose is to examine how the consequences for their violent behaviour are similar or different to that of Caucasian men. Our findings suggest the consequences for Non-Caucasian men occur more frequently and are of greater severity when compared to non-Aboriginal men. Non-Caucasian men are being detained more often prior to bail court and are more likely to be in violation of an existing bail/probation condition. It may be that they are more inclined to plead guilty, although we have not captured this in our data. Other factors causing this discrepancy, such as a lack of resources or knowledge of legal rights, may contribute to the general over-representation of Non-Caucasian men in the criminal justice system.

Female Accused and the Criminal Justice Response

We decided to examine the characteristics of female accused and the criminal justice response to these women in this year's data collection. In total we documented 35 cases with female accused. We present the characteristics of these women within a feminist framework, acknowledging that their use of violence is likely to be connected to their experience of being a victim of violence, often by the same partner they are charged with assaulting. A study by the Women Abuse Council of Toronto suggests that women's use

of force is not the same as men's, and is often in response to sustained abuse by a partner. When mandatory charging policies are applied in gender neutral fashion, they can mask the context of a history of abuse, re-victimize women and enhance the power of an abusive partner. Counter and dual charging practices may result in both partners being charged at the time of a DV incident, which may result in a underestimation of risk for women. Adding even more complexity is increasing evidence that shows some violent men manipulate the legal system to ensure their partners are charged, even though they are not the aggressor. Women who assault their partners should not be exempt from DV criminal procedures; however, we are very concerned that those who are engaging in a pattern of power and control be distinguished from those that are acting to protect themselves and their children. The criminalization of a women's response to a partner's violence serves only to increase their vulnerability to further abuse.

Fourteen women were charged with a single instance of assault (14) compared to the number of men charged with a single charge of assault (61). Our volunteers were not usually able to capture the circumstances of charges against accused, so we cannot report on whether these charges occurred in a situation of self defense or as a result of dual or other inappropriate charging practices.

We were somewhat surprised to learn more bail hearing conditions were applied to women (86%) than men (71%) and for women in violation of a previous bail/probation condition (23%), *all* were given bail conditions; 2 were remanded into custody and 6 were released with a combination of surety, no deposit, not to attend, etc. These results suggest women are being held to account more stringently than men, and in the case of women who are in violation of existing bail/probation condition, are more often receiving

release conditions. Again, we want to emphasize we are not suggesting women should be held less accountable for violent behaviour – rather equity in consequences should be applied to men and women. Ideally, we would move closer to true equity in the criminal justice response (for example, in terms of charging) if we continue to maintain a focus accurately identifying the dominant aggressor in a relationship. As with Non-Caucasian accused, there may also be structural factors at work – women may have fewer resources, less knowledge of the legal system, and be more likely to plead guilty.

Victim Evidence

Women often do not want to face perpetrators in court, and the enhanced prosecution techniques including DVSR and the Bail Safety Process are intended to reduce reliance on victim testimony. Video statements are not routinely used by police in Thunder Bay. The Victim Impact statement is almost never released before the sentencing stage because it must then also be provided to the defense, who could use it to cross examine the victim. It's late disclosure is intended to protect both the victim and the Crown's case.

We were only able to document a handful of cases where women who were victims of DV testified in court. This could indicate less reliance on women's testimony, but more likely reflects the small sample of trials observed in our data.

Absence of Children in Bail and Sentencing Conditions

Out of 377 cases, children were mentioned in 60 cases, which is likely a significant underestimation of those cases in which children were present, or in the family. In almost all of the cases the children were mentioned during bail conditions referring to when the

accused could attend the home to access children. We continue to observe unexamined assumptions by courts that the accused rights related to accessing children is either unrelated to or more important than the safety of the family involved. At no point during the collection of data were children referred to in the context of safety and/or safety planning. This causes us some concern, as we know when children and youth are victims of family violence, parents are the most commonly identified as the perpetrators.

According to Statistics Canada (2008):

- 107 per 100,000 children and youth were physically or sexually assaulted by a parent;
- Over the past three decades (1977 to 2006), the majority of family perpetrated homicides against children under 18 years of age were committed by a parent (90%); and
- Fathers are more likely than mothers to be the perpetrators of child homicide.

The domestic violence death review committee has for many years listed the presence of children as a risk factor for lethality. Specifically, they name the following conditions as markers of risk: 1) any dispute in regards to the custody, contact, primary care or control of children, including formal legal proceedings or any third parties having knowledge of such arguments; 2) any child(ren) that is(are) not biologically related to the perpetrator; and 3) any threats made against the children.

So, not only may children be at risk in such situations, their very presence, especially in the common context of a custody or access issue, suggests an increased level of risk for all concerned. Given the high likelihood of co-occurring woman abuse and child maltreatment, the criminal justice system must carefully consider the impact bail release,

and by extension the conditions of release and child access, will have on safety of women and children.

Infrequent Referrals to PAR and Community Resources

There were *no* referrals to Partner Assault Program (PAR) as a condition of sentencing and only 5 cases mentioned attendance at a PAR program as part of bail release conditions. Those 5 cases represent 4% of all accused with bail release conditions, even though 53 of those men have a history of being charged with domestic violence. These low numbers are most likely the result of the lack of an Early Intervention process, discussed in more detail below. While our data does not illustrate consistent, systematic use of PAR as a component of bail or sentencing conditions, we know there is an expectation within Probation & Parole to include PAR participation as a condition of parole. For example, a recent internal probation procedure memo related to domestic violence cases states:

Staff are [sic] reminded that domestic violence is not an anger management problem; thus, anger management counselling is not a responsive option for domestic violence offenders. Wherever possible, these offenders must be referred immediately to domestic violence-specific programs, such as Partner Assault Response (PAR) Programs. This mandatory referral, where services exist and offender participation is feasible, applies to all treatment/counselling conditions, whether or not a PAR Program is named on the supervision document (personal communication).

The local Domestic Violence Court Advisory Committee has approved an Early Intervention model, but our data shows it is rarely used. As noted above, referrals to the partner assault program seem to routinely occur at the probation stage, rather than early on in the criminal court process. DVCA Committee members agreed to this process in 2004, however, in both this and last years report we can find no evidence that Early

Intervention has been implemented. Referrals to Partner Assault Programs at the probation stage are consistent with the Coordinated Prosecution protocol. Unfortunately, that leaves a lengthy period of weeks and perhaps months when the perpetrator is not monitored. We understand that it is not the role of Bail Court to make findings of guilt, however, some jurisdictions have circumvented this procedural obstacle by encouraging accused eligible for E.I. to attend PAR and plead guilty at an early stage, thus relieving the woman of the burden of giving evidence and allowing monitoring at the front end of the process.

Unfortunately, we are aware that some defense lawyers are creating their own version of E.I. by sending their clients to request voluntary admission to PAR programs without pleading guilty. This practice has the effect of creating an informal diversion process unintended in the development of the E.I. model. There are many problems with a diversion process where there is no admission of guilt or court ordered attendance: there is no information from the case given to the PAR staff to assess risk and change in behaviour in the perpetrator; there is no ability to do partner checks to determine if women are safe or if there are any issues around increased risk due to criminal justice process; and the premise for entering the program to be held accountable for the violence is undeterminable. What it does allow is for the accused to potentially receive a lighter sentence. During the development of the DV court process, this same type of diversion was suggested and rejected by the Committee as whole on many occasions.

Procedures Designed to Enhance Women's Safety Remain Disjointed

We continue to note that women's experience of violence is acknowledged inconsistently in the criminal justice response to perpetrators of woman abuse. Although the Bail Safety

program and the Domestic Violence supplementary report is intended to assess and mitigate risk it is not used directly or accepted as evidence by the Justice of the Peace. It is used by the Crown to form an opinion whether to request custody or which release conditions to recommend to the Justice to assign to a perpetrator. Although we understand that it is within the purview of Justice of the Peaces' role to request information to ascertain safety concerns prior to granting a release (personal communication), our Court Watchers are not hearing them do so. Despite the consistent application of the Bail Safety Program, we remain concerned that women's safety does not systematically inform the court's response to perpetrators at every step. Risk assessments done prior to the criminal proceedings are critical, but are rendered ineffective if they are not incorporated appropriately into release conditions.

It is reassuring that remand to custody or release conditions are routinely registered generally for DV accused and specifically for breaches or repeat offenders. Although our data is limited in scope, it does suggest that there is inconsistency in the increase in sanctions for accused that reoffend.

The apparent lack of an Early Intervention process is another gap posing a risk to women. If accused are not engaged in some measure of accountability at an early stage, and if no agency takes the role of re-evaluating risk to women as the criminal court process proceeds, many weeks or months may go by without external monitoring at a time when risk of harm or lethality is high. The evidence that orders to attend PAR programs are rare even at sentencing suggests that the Coordinated Prosecution model was not intended to be used without an Early Intervention process.

RECOMMENDATIONS

Most of the Thunder Bay Women's Court Watch Recommendations are corroborated by the Ontario Domestic Violence Death Review Committee (DVDRC) Reports (2003 – 2008). Thunder Bay Women's Court Watch concurs with their call for increased and ongoing education of criminal justice system professionals.

1. Thunder Bay Criminal Justice System should adhere to provincial and local guidelines previously established for the Domestic Violence Court Process; Partner Assault Response and Victim Witness Assistance Program.

2. Risk Assessments and the Bail Safety Process

a) A separate, High Risk Protocol (with community members) Committee should be established for accused whom have been determined to pose a substantial threat of harm to women and children. These cases should be closely monitored throughout the criminal court and probation process to ensure the woman's safety is not compromised.

b) Justices of the Peace should be fully apprised by the Crown, at the bail hearing, of all serious risk factors in the Bail Safety risk assessment and should consider the information gathered from this tool as trustworthy and credible evidence. Accused with any history of domestic violence (toward current or past partners) should automatically be considered higher risk and not released. and held until trial.

c) Where there is any question of security of the victim with respect to conditions recommended by the Crown Attorney, Justices of the Peace should themselves routinely ask for additional information regarding the victim's safety, rather than accept the Crown's recommendation.

d) Conditions of release should be applied in a more consistent and standardized way in woman abuse cases. For example, there should always be a no contact order requested unless there is good reason not to issue it. Ongoing risk management through continued assessment and monitoring of perpetrators through an agency accountable to women's advocates should occur throughout the criminal justice process.

e) Where there is any evidence of ownership or access to firearms, that access should be restricted automatically. DVDRC reports that restriction of access to firearms during separation or imminent separation is key to effective intervention and risk management.

f) Conditions of release should not be contradictory or create potential opportunities for future harassment and violence by accused (for example, issuing a no contact order and child access in the same set of conditions). Use of a curfew condition should be increased, especially for those accused who are not subject to other forms of monitoring.

g) The presence of children should be noted as itself a factor of risk for harm for all concerned. Children's safety and well being should be considered in both the risk

assessment and imposition of conditions. Access to children should not be facilitated when there is an assessment of risk. The presence of any child custody or access issue should be considered as an additional factor of risk.

h) Our results corroborate recommendations from the DVDRC that any person proposed as a surety for an accused should be 1) properly investigated as to their suitability to act as surety; 2) fully informed about their responsibilities both in writing and in the court record; and 3) be warned in writing and on record as to their potential liability should they breach their duty.

3. Increasing Consequences for Repeat Offenders

a) Repeat charges related to domestic violence and breaches of bail and probation conditions should always result in increased consequences, conditions and enhanced sentences, including jail time. This may require taking a longer view across the court process to ensure measures of accountability and safety are not getting lost in procedural convolutions, as noted in our discussion of Section 524 cases.

b) Women reporting breaches should be taken seriously and risk should be re-assessed whether or not police feel conditions have been broken. DVDRC recommends that police identify, monitor and manage high risk cases, and vigorously enforce bail conditions. Breaches that appear to be unrelated to the safety of the women (such as substance use, property damage, assault of another person) treated as indicators of increased risk.

c) All criminal justice personnel (police, John Howard, Probation and Parole) should routinely report breaches as they occur.

4. Enhanced Prosecution Techniques – Minimize Reliance on Victim Testimony

Police and Crowns should focus on evidence other than victim testimony at trial, in order to remove the onus (and any potential violent retribution) for prosecution of an abuser from the woman he assaulted. The use of video statements taken immediately after an assault could dispense with the need for further testimony. A functional Early Intervention process that encourages first time or low risk accused to plead guilty and attend a PAR program would also be helpful. Under no circumstances should a woman who recants or is unwilling to testify against her abuser be charged with (or threatened with charges of) mischief or contempt of court.

5. Pre-Trial Process

The pre-trial process occurs in judges chambers between the crown, defense counsels and the judge. While it may expedite the prosecution process, decisions negotiated behind closed doors may also compound omissions of information and context that put women at risk. Women experiencing the process complain they have no say, and nothing is entered in the court record. In addition, the process gives the defense attorney the opportunity to present before a new judge.

6. Sentencing

We recommend a standardization of sentencing conditions for domestic violence cases according to existing guidelines. As well, terms of probation should be consistently applied to all convictions. Repeat offenders should receive increased penalties.

7. Partner Assault Program referrals

Court orders to Partner Assault Response programs are not being routinely requested or ordered for DV accused until the probation stage, primarily because there is no Early Intervention process in place. The time period between charging and sentencing is the most dangerous for accused at high risk to re-offend. Criminal courts in this jurisdiction need to redouble their efforts to establish protocol that will allow for monitoring of DV accused and their partners as they make their way through the court process. The DVDRRC also recommends stricter adherence to the Provincial policy that requires that the Crown always seek an order for PAR program for those convicted of a domestic violence offence.

8. Probation and Parole Conditions of probation should be standardized for woman abuse cases. Probation officers should follow probation order conditions, and never diminish them or wait until near the end of the probation term to get a perpetrator to attend a PAR program. The probation officer should also report any breaches, at which point accused should be arrested, charged and then detained/remanded.

See Sixth Annual Report of the Domestic Violence Death Review Committee (2008) for more general recommendations.

References

Domestic Violence Death Review Committee. (2008). *Sixth Annual Report of Domestic Violence Death Review Committee*. Office of the Chief Coroner, Province of Ontario: Toronto, ON.

Statistics Canada. (2008). *Family violence in Canada: A statistical profile*. 85-224-X. Canadian Centre for Justice Statistics: Ottawa, ON. Retrieved on September 14, 2009 from <http://www.statcan.gc.ca/pub/85-224-x/85-224-x2008000-eng.pdf>

Women Abuse Council of Toronto, Dr. Shoshana Pollack and Anke Allspach. (2005). *Women Charged With Domestic Violence in Toronto: The Unintended Consequences of Mandatory Charge Policies*.

APPENDIX I - Early Intervention Process Flow Chart

