



# **Domestic Violence “Court Option”**

## **COURT PROCESS PROPOSAL**

(Part 1 of 2)

BVLD Domestic Violence Justice Response  
Project

**August 2010**



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# PREFACE

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# **BVLD DOMESTIC VIOLENCE COURT RESPONSE PROJECT**

Variations on Domestic Violence Courts exist across Canada and the United States. This fact acknowledges that domestic violence is different from other crimes, and deserves to be handled in a unique manner. It also acknowledges that the current criminal justice process has not proven to manage these incidents in a way that reduces their occurrence, or their extensive damage to individuals, families and communities. The criminal justice system is backed up by the preponderance of domestic violence files, and there are many challenges to achieving a successful outcome, including the reluctance of victims to testify.

The BVLD Domestic Violence Court Response project was initiated in 2005, and today the Steering Committee consists of representatives from the Judiciary, Crown Counsel, RCMP, Community Corrections, Ministry of Children and Family Development, Defense Counsel, Victim Services, First Nations, and community representatives from Hazelton, Smithers, Houston and Burns Lake.

The Smithers DVCO Proposal is similar to the *Yukon Initiative* and the *Battlefords Domestic Violence Treatment Options Court Protocol*. Both programs report that the benefits are extensive, namely:

- Rates of re-offending reduced, early counseling is very successful and therapeutic
- No need for the victim's testimony at trial, risk of violence diminished
- Court time for trial is not required
- Counsel for trial is not required
- Children live in a more healthy, safer environment
- Repeat calls to RCMP lessen
- The increased interaction with community and government agencies involved with the Domestic Violence "Court Option" result in better relationships, better communication, and a forum for problem solving.

## **STATEMENT OF PRINCIPLE**

As a group of practitioners and professionals working with those accused of domestic violence and victims of domestic violence, we share the belief that:

1. The principles and purposes outlined in the BVLD Domestic Violence Court Response Steering Committee document 'The Northern Solution' (*see Incident Investigation Protocol*) motivate this proposal development. This includes the concept that domestic violence is a unique crime based on patterns of violence within intimate relationships.
2. Issues of safety and risk will be a high priority in the Court Process Proposal. Victim participation is critical to providing a coordinated response to domestic violence.

3. Timely receipt and processing of charge approval documents and early guilty plea is key to the offender taking responsibility for his actions and for victim safety.
4. Ongoing risk assessment and victim contact is a crucial component of the court process.
5. Through collaboration, we can minimize the silo effect of our agency mandates. The decisions that we make while working with victims and offenders will be thoughtful, and will have taken into account the at-times competing interests of the agencies involved, as well as the offender's and the victim's unique context. We will seek to find the 'highest' result for the individuals involved, their families, and the goals of our agencies.
6. We each have a responsibility to be informed about the dynamics and trends around domestic violence, and to keep our selves educated on an ongoing basis.
7. As a unified group we can effect change that will benefit those accused of, and all victims of domestic violence, and our community as a whole.
8. To reflect the population of our area (BVLVD), we support sensitivity to First Nations beliefs, traditions and systems in all interventions with the victims, offenders and families, including the option to utilize First Nations' mediating agencies (i.e. Gitxsan or Wet'suwet'en Unlocking Aboriginal Justice) and healing processes.

## **STATEMENT OF PURPOSE**

1. To develop an agreement around a "Court Process" Proposal for domestic violence incidents.
2. To establish "best practices" in how we work together, and to create a court process in a coordinated effort with the goal of reducing incidents of domestic violence and increasing individual safety.
3. To implement a timely court process which would allow for an early guilty plea, timely counseling, and sentence which would reflect the willingness of the offender to participate in the process. The court process will hereinafter be referred to as the **Domestic Violence "Court Option" (DVCO)**.
4. To develop and maintain effective working relationships amongst the Proposal Participants. This includes sharing information required to provide up-to-date and accurate reports.
5. To identify strengths and weaknesses within the Court Process Proposal and to make necessary adjustments to the details of the Proposal and eventual Protocol as the process evolves.
6. To provide comprehensive and coordinated services to those accused of, and all victims of domestic violence.
7. To support the criminal justice system to manage domestic violence incidents in a way that minimizes the likelihood of recidivism.

8. To maintain contact with victims throughout the court process to ensure ongoing safety and awareness of the process.

## **INFORMATION SHARING**

Consent given by the victim and/or the offender for sharing of personal information will be sought on a case-by-case basis according to relevant privacy legislation and agency policies. Consent will be in writing and documented on the file before information is shared. An informed consent-based approach should be used whenever possible, as it helps ensure that individuals are both informed and involved, and it satisfies requirements for information sharing. All people have the right to privacy. The minimum amount of personal information (on a need to know basis) may be shared.

The 'Freedom of Information and Privacy Act' (FOIPA) and the 'Personal Information Protection Act' (PIPA) include language around sharing information (whether or not consent has been obtained to do so) to avert or minimize imminent danger to any person or the public.

# COURT PROCESS

## INITIAL APPEARANCE

The Initial Appearance of the offender is held within 14 days of the domestic violence incident. This appearance is before the Judicial Case Manager pursuant to the Criminal Caseflow Management Rules (CCFM) and is held in a room separate from the Provincial Courtroom. Crown Counsel is present and the offender's lawyer or Duty Counsel is present.

### At the Initial Appearance

- Crown Counsel would provide Disclosure to the offender, including Crown's Initial Sentence Position (ISP).
- The offender is given an opportunity to discuss the charges with his lawyer, or with Duty Counsel (counsel provided by Legal Aid).
- The Judicial Case Manager (JCM) would provide initial and impartial information to the offender with respect to his charges, court process, his obligations to attend court, and his option to participate in the Domestic Violence "Court Option".
- A copy of the Domestic Violence Court Option Flowchart/Overview and Brochure would be provided to the offender.

*(See Disclosure, p. 16)*

*(See Domestic Violence "Court Option" Flowchart/Overview, p.38/39)*

*(See Brochure, p.40)*

Discussions between Crown Counsel and Defence could be conducted that day to determine whether the offender would proceed with the DVCO. A decision could be made that day.

If a decision is not made on the First Appearance, the file would be adjourned by the JCM for one week for the offender to meet with his lawyer to determine whether he would proceed with the DV "Court Option".

### If the offender wishes to proceed with the DVCO:

- The JCM would schedule the next appearance for two weeks from the First Appearance, in the Provincial Courtroom with a Provincial Court Judge sitting, for a Guilty Plea by the offender.
- The file would be marked to note that it is a potential DVCO file to enable Court Staff to clearly identify the DVCO file and set subsequent court appearances to the appropriate day.
- A DVCO Application would be completed by the offender and forwarded to DVCO Coordinator who will forward same to:
  - The Men's Counseling Program Facilitator;
  - Community Corrections;
  - Victim Services



(See “Role of Crown Counsel”, p. 17)  
(See “Role of Community Corrections, p.18)  
(See “Role of Judicial Case Manager”, p. 18)  
(See “Role of Court Services Staff”, p. 19)  
(See “DVCO Application”, p.27)

## **Domestic Violence “Court Option” Application**

When the DVCO Application is received by the Men’s Counseling Facilitator and Community Corrections, they would jointly conduct a Risk and Suitability Assessment to determine eligibility for acceptance into the Men’s Counseling Program. Results of the Assessment would be communicated to the DVCO Coordinator by fax before the next court date, ideally 2 weeks from the date of the Application.

(See *Spousal Assault Risk Assessment Synopsis*, p.22)  
(See *DVCO Flowchart*, p.14))

## **Defence Counsel**

The primary role of defence counsel, as well as reviewing the case, is to advise offenders objectively about the advantages and disadvantages of the Domestic Violence “Court Option” and other available alternatives, including formal court. Promoting the DVCO requires lawyers to take a broader view of the client’s interests, such as explaining the potential of treatment to impact positively on his relationship with his partner and children. It also requires the defence lawyer to communicate closely with the DVCO Case Management Team, attend the monthly meetings and complete the Report to Judge.

(See *Role of Defence Counsel*, p. 20)

## **GUILTY PLEA**

In the Provincial Courtroom, on the designated court day which would include Domestic Violence “Court Option” files,

- The Judge would review the Domestic Violence “Court Option” process with the offender.
- A Guilty Plea would be entered by the offender.
- The offender’s current bail documents would be varied to include: *“The offender will attend the men’s counseling program commencing at the next possible intake date.”*
- The offender’s current bail documents could have the *“no contact”* undertaking varied in accordance with the *Smithers Community Protocol to Vary Protective Conditions in Spousal Assault Files*.
- The file would be adjourned to the next DVCO Court day – approximately one month from the Guilty Plea.
- The file would be cross-referenced to any relevant family files.

- The offender would sign the Information Sharing Consent for DVCO Case Management. (*See Information Sharing Consent, p.29*)

The file would then be referred to the DVCO Coordinator to track. The offender would appear with his Case Management Team approximately once a month in DVCO Court – an appearance to “check-in” with the Court to ensure that counseling and conditions are being met. If, after the Guilty Plea is entered, the offender breaches conditions of his UTA or re-offends, he could lose his DVCO status and complete his court process in the regular Provincial Court. When counseling has been completed, a court appearance would be scheduled for sentencing. The offender could choose to abandon the DVCO at any point, and would then be scheduled into the regular Criminal Justice System process, potentially proceeding to trial.

## **DVCO Case Management**

The Domestic Violence “Court Option” Case Management Team would be comprised of:

- Crown Counsel
- Offender’s lawyer
- Offender’s probation officer
- Offender’s Men’s Counseling Facilitator
- Victim Services
- RCMP Member
- DVCO Coordinator

The Team would meet once a month, just prior to the offender’s court appearance, to discuss the progress of the offender. If a member of the Team is not able to attend the monthly meeting, that member would forward his or her report to the DVCO Coordinator prior to the meeting via e-mail, fax, or telephone. A joint report (DVCO Report to Judge) would be prepared and presented at each of the offender’s court “check-in” appearances and would be part of the court file. The DVCO Coordinator would be present in court for all monthly check-ins to coordinate the DVCO Reports.

*(See attached DVCO Report to Judge, p.28)*

## **DVCO Coordinator**

The role of the DVCO Coordinator is to oversee communication and operating procedures including:

- Coordinate Steering Committee meetings;
- Organize meetings and support the Case Management Team;
- Maintain a record of the Case Management Team meetings;
- Communicate to Case Management Team information such as meeting times, progress of files, etc.;
- Distribute appropriate information to Case management Team;
- Track each DVCO file from Guilty Plea to Post-Sentence Monitoring;

- Maintain DVCO Database;
- Maintain records of counseling referrals;
- Provide written reports when required;
- Refer DVCO files to Specialized Victim Services;
- Coordinate monthly client reports from the Case Management Team for use by the Judge;
- Maintain DVCO infrastructure.

## Counseling

Once the offender has entered a Guilty Plea, he would enter into an open-ended DVCO Counseling Program at the first available Intake day. The aim of the Counseling Program is to provide treatment to assist men in changing their abusive attitudes and behaviours. The treatment helps men examine the purpose of their abusive actions and look at the underlying belief systems from which they operate. The men are also taught new skills for managing stresses, emotions and behaviours. The objective is to assist men in stopping abuse and violence in their intimate relationships.

The offender would enter the program within one month of the initial domestic violence incident. The proposed program would include the following:

- a) An intake interview with the offender.
- b) An intake interview with the victim.
- c) An orientation session for the offender which would prepare him to enter a group.
- d) Integration into the group (16 sessions which continuously cycle).
- e) Monitoring throughout participation in the group.
- f) Assessment at completion of the 16 sessions.
- g) Sentencing to follow completion of the 16 sessions.
- h) Follow-up through probation or community as required.

The offender must meet completion requirements in order to receive credit for this program. Completion of the program must be achieved within a specific timeframe. The victim may be engaged with Victim Services during the course of the program. Additionally, Ministry of Children and Family Development may be engaged with the family when children are involved. When the counseling program is complete, Probation, in consultation with the Case Management Team, will prepare a report for Crown Counsel and Defence prior to sentencing.

*(See Proposal for Flexible Intake Program for Men Charged with Spousal Assault, p.23 )*

## **Victim Support**

Victims will be invited to have a voice in the process at all times, particularly through Community Corrections or Victim Services. Victims will be encouraged to participate in the program by regularly meeting with SVAP and engaging in a process that meets mileposts in line with the men's counseling program. Victims engaged with SVAP will have emotional support, criminal justice information, tracking of the spousal assault file, safety planning, liaison with the Case Management team, and court accompaniment.

*(See Victim Response in the BVLV DV "Court Option" Proposal, Part 2 of 2)*

## **SENTENCE**

The Judge would conduct the sentencing hearing taking all unique factors of the file into consideration, including reports from the DVCO Case Management Team and credit for an early guilty plea. The sentence would reflect the participation and progress of the offender through the counseling program as well as the *Criminal Code* sentencing principles.

The Judge has all sentencing options open to him/her including:

- Absolute Discharge
- Conditional Discharge
- Suspended Sentence
- Fine
- Conditional Sentence
- Probation
- Jail

Victims are to be given the opportunity to provide victim impact information. Sentencing should address the need for victim safety and where necessary, conditions imposed on the offender to ensure the safety of the victim.

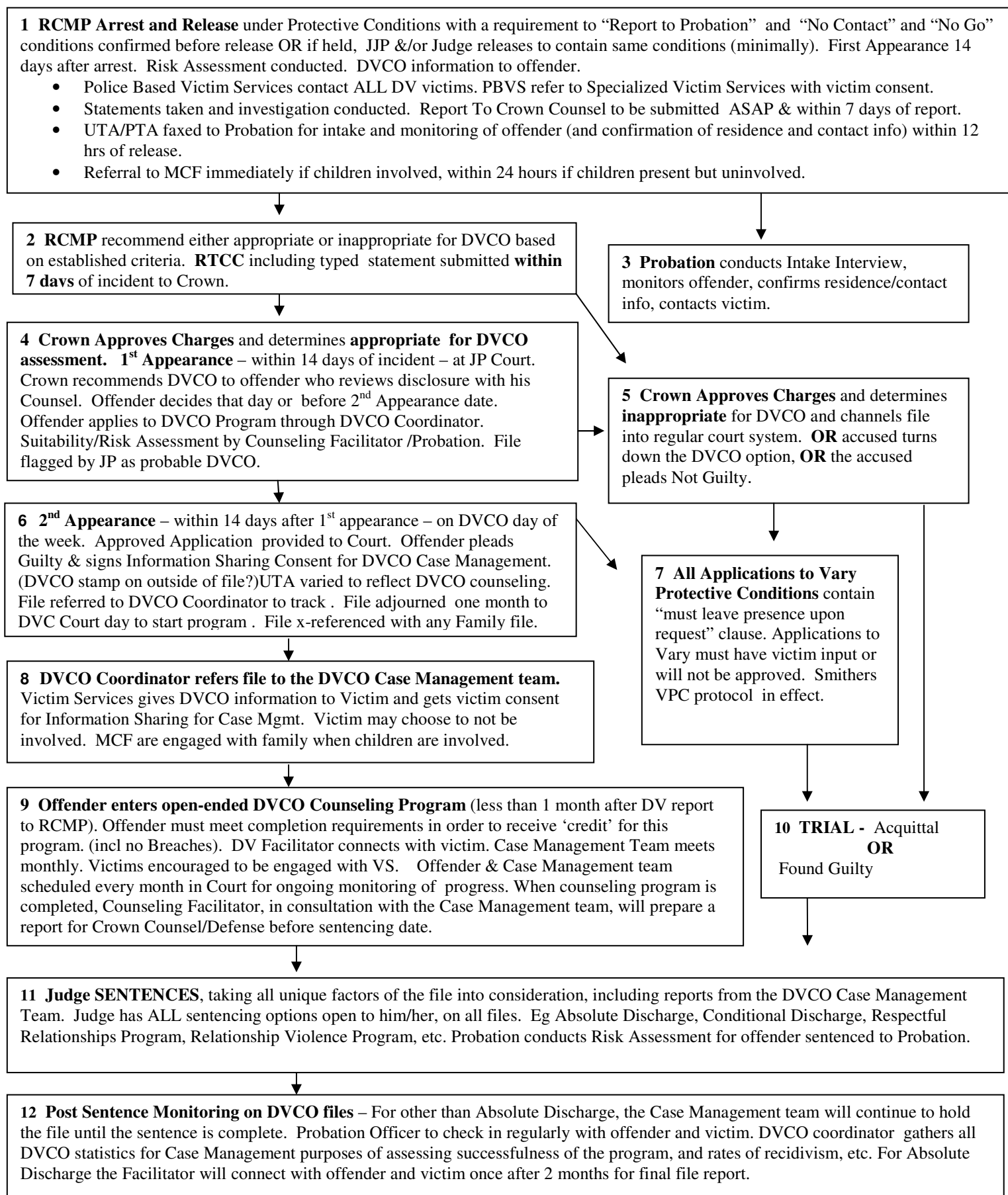
## **Post-Sentence Monitoring**

For all DVCO files, other than those with an Absolute Discharge, the Case Management Team would continue to hold the file until the sentence is complete, checking regularly with the offender and the victim. The DVCO Coordinator would gather all DVCO statistics for Case Management purposes of assessing the success of the program, and rates of recidivism. The Counseling Facilitator would connect with the offender and the victim two months after sentencing when an Absolute Discharge has been given for a final file report and provide that information to the DVCO Coordinator.

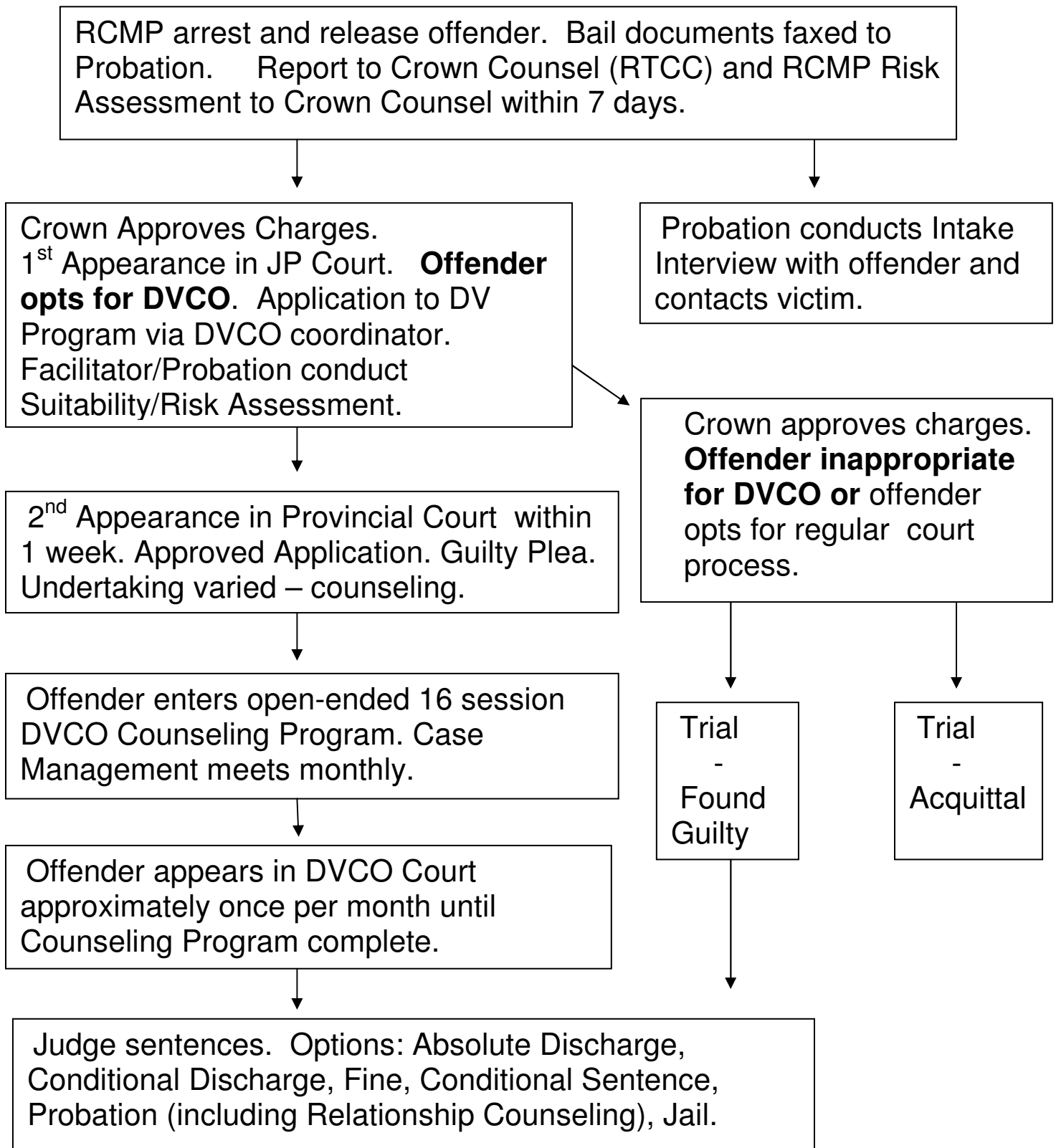
## **Appendix A: FLOWCHARTS**

1. Domestic Violence “Court Option” Flowchart (detailed)
2. Domestic Violence “Court Option” Flowchart (basic)

## Domestic Violence “Court Option” Flowchart (detailed)



## Domestic Violence “Court Option” Flowchart (basic)



## Appendix B: GUIDING DOCUMENTS

### 1. DISCLOSURE

*Stinchcombe v. The Queen* is the decision, made in the Supreme Court of Canada, which Crown Counsel is guided by with respect to disclosure to the offender. Crown Counsel must ensure that full disclosure, made in a timely manner is provided to eliminate unreasonable delay in the prosecution.

Where available, the offender should be provided with:

- a) A copy of the charging document.
- b) Narrative of the circumstances surrounding the offence.
- c) Copies of all police notes.
- d) Copies of all written statements, interview notes, or will-say summarizing anticipated evidence.
- e) Copies of audio or videotape statements of witnesses.
- f) Copies of audio or videotape statements of the offender.
- g) Copy of criminal record of the offender, if any.
- h) Copies of expert reports relating to the offence, if any.
- i) Copies of all other relevant documents, photographs, and audio or videotapes.
- j) Copies of search warrants.
- k) Opportunity to inspect items seized or acquired during the investigation.
- l) Copy of the judicial authorization or written consent under which private communications were intercepted, if any.
- m) Similar fact evidence that Crown Counsel intends to rely on.
- n) Particulars of any procedures used to identify the offender outside of court.
- o) Upon request, information about the criminal records of material Crown or defence witnesses relevant to credibility.
- p) Any information in the possession or control of Crown Counsel that the defence may use to impeach the credibility of a crown witness in respect of the facts in issue in a case.
- q) Any additional relevant information received or materially inconsistent statements made by a witness.

*(Crown Counsel Policy Manual, Disclosure, pp. 2-4)*



## 2 ROLE OF CROWN COUNSEL

Crown Counsel are prosecutors who work for B.C.'s prosecution service - the Criminal Justice Branch of the Ministry of Attorney General. The Criminal Justice Branch operates independently of government and within the justice system. They do not represent the government, the police or the victim of an offence. The courts have described the role of Crown counsel in Canada as a quasi-judicial function and a matter of significant public duty. In our system of justice, when a crime is committed against a victim, it is also a crime against our society as a whole. Therefore, prosecutors do not represent individual victims; they perform their function on behalf of the community.

Crown Counsel are entrusted with the prosecution of all offences and appeals in British Columbia related to the Criminal Code of Canada and provincial regulatory offences. Crown Counsel advise government on all criminal law matters and develop policies and procedures for the administration of criminal justice in British Columbia.

The responsibilities of Crown Counsel are defined in the Crown Counsel Act (see Crown Counsel Act, . The act ensures the independence of the prosecution service. Prosecutors are guided by the policies of the Criminal Justice Branch and they are ultimately accountable to the assistant deputy attorney general (ADAG). Under the act, the ADAG is head of the Criminal Justice Branch and is responsible for the administration of the branch and the day-to-day operations of the prosecution service. While the Attorney General is responsible for overseeing the administration of justice in the province, the Attorney General does not normally become involved in prosecution decisions relating to individual cases.

It is Crown counsel who lay charges in British Columbia. They review investigation reports from police and investigative agencies and conduct a charge assessment in relation to offences under the Criminal Code, Youth Criminal Justice Act or under provincial statutes. Charging decisions are made in accordance with the branch's charge assessment guidelines policy, which requires both a substantial likelihood of conviction and that a prosecution is in the public interest. Crown counsel make their charge assessment and other prosecutorial decisions impartially, independent of any outside influence, including political influence.

Where there is a significant possibility of a perceived or real improper influence on the prosecution process, the head of the prosecution service – the ADAG of the Criminal Justice Branch – will appoint a respected lawyer from outside the prosecution service as a Special Prosecutor to handle the case.

While B.C. prosecutors conduct prosecutions vigorously once they have made a principled charge approval decision, based on the prosecution service standards, their first duty is to ensure the trial process is fair to all, evidence is presented thoroughly and accurately and the independence and integrity of the justice process is maintained. Their duty as professionals is not to obtain a conviction at any cost but, rather, to ensure that justice is done in a fair, impartial, efficient and respectful manner.

<http://www.ag.gov.bc.ca/prosecution-service/BC-prosecution/crown-counsel.htm>

### **3 ROLE OF COMMUNITY CORRECTIONS**

The Community Corrections Division of the Ministry of Public Safety and Solicitor General delivers provincial correctional programs; operates adult correctional centres; and provides supervision for people on bail, probation, or conditional sentence orders. Community Corrections also administers victim reparation, community work service, and diversion programs.

As well, Community Corrections Provides a two-phased relationship violence prevention program to male court-ordered domestic violence offenders in custody and in the community. The 10-session Respectful Relationships Program is provided by probation officers and correctional officers, and the 17-week Relationship Violence Program is provided by contracted service providers. The program is offered at community correction offices throughout BC, as well as Nanaimo Correctional Centre, Kamloops Regional Correctional Centre, and Prince George Regional Correctional Centre. In the Lower Mainland, a multicultural version of the program is offered in Arabic, Cantonese, Hindi, Korean, Mandarin, Persian/Farsi, Polish, Punjabi, Russian, Urdu, and Vietnamese.

[www.gov.bc.ca/pssg](http://www.gov.bc.ca/pssg)

### **4 ROLE OF JUDICIAL CASE MANAGER**

#### **PURPOSE OF POSITION**

The Judicial Case Manager is responsible and accountable for providing effective and efficient court scheduling and coordination of all matters within a designated Judicial District that appear before a Provincial Court Judge. The Judicial Case Manager manages the flow of all Provincial Court appearances. This position must ensure that all Judicial resources are effectively utilized in a manner which minimizes court down-time and is consistent with the policies and practices of the Chief Judge. The Judicial Case Manager is authorized by the Chief Judge to carry out this function for the Judiciary.

The Judicial Case Manager must hold a Justice of the Peace appointment and exercise Judicial discretion and authority within that commission as required. This position is also required to preside as a Justice pursuant to the Criminal Code over non-custodial appearances prior to the Arraignment Hearing and to ensure compliance with the Criminal Case Flow Management Rules (CCFM). The Judicial Case Manager plays a significant role in the administration of criminal proceedings and in the coordination of other Provincial Court matters, attending to the rights of all court users by ensuring cases are scheduled in a timely and just manner so that each court appearance is a scheduled, meaningful event.

#### **NATURE OF WORK AND POSITION LINKS**

The Judicial Case Manager is responsible for coordinating Judicial court activities within a given Judicial District by maintaining a computerized or manual system for scheduling all matters that appear before a Provincial Court Judge in the adult criminal, youth, family, small claims or traffic jurisdictions. This position also presides as a Justice to conduct non-custodial appearances prior to the Arraignment Hearing in the youth and adult criminal process. The key contacts this position maintains in order to carry out the work include:

***Administrative Judge:*** the Judicial Case Manager develops and maintains the allocation of judicial resources (rota) in all jurisdictions; assembles caseloads; identifies and makes recommendations

regarding confidential and complex files and backlog or delay issues; provides daily technical support and expert advice on judicial resources and scheduling; assists in coordinating out-of-court activities such as scheduled meetings and vacations in order to allocate judicial resources appropriately; gathers and analyzes statistics and graphs.

***Provincial Court Judges:*** the Judicial Case Manager identifies and makes recommendations when scheduling seized files or continuations; advises on the current status of individual files; and provides daily technical support and expert advice on scheduling.

***Crown Counsel:*** the Judicial Case Manager monitors individual files and court lists with the Administrative Crown or other crown counsel and provides daily technical support and expert advice on judicial resources and scheduling. While presiding in the Initial Appearances Room the Judicial Case Manager verifies crown provides the accused sufficient circumstances and disclosure in order to discern the substance of the allegations; seeks out crown's early resolution position and commitment to all scheduling guidelines and verifies Arraignment Reports are filed in a timely manner.

***Defence Counsel:*** the Judicial Case Manager consults with counsel to monitor individual files and seeks commitment to scheduling guidelines under the adult criminal, youth, family or small claims divisions; provides daily technical support and expert advice on Judicial resources and scheduling in all matters. Provides direction to enable cases to proceed through the court process within the applicable Rules and according to the directions of the Administrative Judge; creates an efficient court schedule by batching defence files together under CCFM Rules and verifies Arraignment Reports are filed in a timely manner.

***Police:*** the Judicial Case Manager tracks availability of all police officers required as witnesses; communicates with police agencies in the local jurisdiction regarding any changes, as required, in the issuance of process; provides expert advice and guidance on scheduling.

***Court Services Staff:*** the Judicial Case Manager provides leadership and technical direction to staff in the local site and satellite locations; directs and supervises all components of trial scheduling in the satellite locations within the assigned Judicial District.

## **5 ROLE OF COURT SERVICES STAFF**

Court Services Branch (CSB) is responsible for the delivery of all court administration services in B.C. This includes the provision of court registry services, providing court clerks and courtroom security, prisoner custody and escort services and courthouse security.

Court administration includes the provision of courtroom clerks, running of court registries, arranging interpreter services and providing information to the public. Services include:

- case documentation, initiation and processing;
- fine payment processing;
- file and exhibit management;

- preparation and distribution of court orders; and
- transcript ordering information.

Sheriff services include escorting prisoners by ground and air to and from remand facilities for court appearances. Sheriffs also provide security in courtrooms and courthouses and manage the jury selection process.

<http://www.ag.gov.bc.ca/courts>

## 6 ROLE OF DEFENCE COUNSEL

Defence Counsel

- makes court appearances with the accused,
- ensures that full disclosure is made by the Crown,
- ensures that all legal issues related to the accused's case are fully explored including that Crown witnesses are cross-examined and weaknesses in the Crown case are explored,
- ensures that any witnesses for the accused are notified about the court date and attend the trial to give evidence,
- ensures that apparent errors made in trials are properly reviewed on appeal,
- ensures that the convicted person is represented by counsel during the trial and sentencing.

<http://www.victimsinfo.ca>

The Law Society of B.C. Annotated Professional Conduct Handbook notes:

(1) A lawyer should obtain sufficient knowledge of the relevant facts and give adequate consideration to the applicable law before advising a client, and give an open and undisguised opinion of the merits and probable results of the client's cause. The lawyer should be wary of bold and confident assurances to the client, especially where the lawyer's employment may depend on such assurances. The lawyer should bear in mind that seldom are all the law and facts on the client's side, and that *audi alteram partem* is a safe rule to follow.

(2) A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the controversy, if any, which might influence whether the client selects or continues to retain the lawyer. A lawyer shall not act where there is a conflict of interests between the lawyer and a client or between clients.

(3) Whenever the dispute will admit of fair settlement the client should be advised to avoid or to end the litigation.

(4) A lawyer should treat adverse witnesses, litigants, and counsel with fairness and courtesy, refraining from all offensive personalities. The lawyer must not allow a client's personal feelings and prejudices to detract from the lawyer's professional duties. At the same time the lawyer should represent the client's interests resolutely and without fear of judicial disfavour or public unpopularity.

(5) A lawyer should endeavour by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence which is authorized by law. The lawyer must, however, steadfastly bear in mind that this great trust is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less demand, for any client, violation of law or any manner of fraud or chicanery. No client has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer's own sense of honour and propriety.

(6) It is a lawyer's right to undertake the defence of a person accused of crime, regardless of the lawyer's own personal opinion as to the guilt of the accused. Having undertaken such defence, the lawyer is bound to present, by all fair and honourable means and in a manner consistent with the client's instructions, every defence that the law of the land permits, to the end that no person will be convicted but by due process of law.

(7) A lawyer should not, except as by law expressly sanctioned, acquire by purchase or otherwise any interest in the subject-matter of the litigation being conducted by the lawyer. A lawyer should scrupulously guard, and not divulge or use for personal benefit, a client's secrets or confidences. Having once acted for a client in a matter, a lawyer must not act against the client in the same or any related matter.

(8) A lawyer must record, and should report promptly to a client the receipt of any moneys or other trust property. The lawyer must use the client's moneys and trust property only as authorized by the client, and not co-mingle it with that of the lawyer.

(9) A lawyer is entitled to reasonable compensation for services rendered, but should avoid charges which are unreasonably high or low. The client's ability to pay cannot justify a charge in excess of the value of the service, though it may require a reduction or waiver of the fee.

(10) A lawyer should try to avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. A lawyer should always bear in mind that the profession is a branch of the administration of justice and not a mere money-making business.

(11) A lawyer who appears as an advocate should not submit the lawyer's own affidavit to or testify before a court or tribunal except as to purely formal or uncontroverted matters, such as the attestation or custody of a document, unless it is necessary in the interests of justice. If the lawyer is a necessary witness with respect to other matters, the conduct of the case should be entrusted to other counsel.

## **6 SPOUSAL ASSAULT RISK ASSESSMENT SYNOPSIS - CORRECTIONS**

The Spousal Assault Risk Assessment is an in-depth interview with the offender by a Community Corrections officer with the goal of determining the offender's risk of re-offending. The Assessment includes review of the following:

### **Criminal History**

- a. Past assault of family members
- b. Past assault of strangers or acquaintances
- c. Past violation of conditional release or community supervision

### **Psychosocial Adjustment**

- a. Recent relationship problems
- b. Recent employment problems
- c. History of family violence
- d. Recent substance abuse
- e. Recent suicidal/homicidal ideation/intent
- f. Recent psychotic/manic symptoms
- g. Personality disorder with anger, impulsivity or behavioural instability

### **Spousal Assault History**

- a. Past physical assault
- b. Past sexual assault
- c. Past use of weapons/threats
- d. Recent escalation of frequency or severity of assault
- e. Past violation of "no contact" orders
- f. Extreme minimization/denial of spousal assault history
- g. Attitudes that support or condone spousal assault

### **Current/Alleged Offence**

- a. Severe and/or sexual violence
- b. Use of weapons and/or threats
- c. Violation of "no contact" orders

### **Other Considerations**

- a. Other emotional crisis
- b. History of torturing or disfiguring intimate partners
- c. Victim or witness of political persecution, torture, or violence
- d. Sexual sadism
- e. Ease access to firearms
- f. Stalking
- g. Recent loss of social support network

*(Ministry of Attorney General, Corrections Branch, SPOUSAL ASSAULT RISK ASSESSMENT)*

## **Appendix C: COUNSELING PROGRAM**

### **PROPOSAL FOR FLEXIBLE INTAKE PROGRAM FOR MEN CHARGED WITH SPOUSAL ASSAULT**

This document provides an overview of a proposed treatment response for men who are charged with perpetrating violence in their relationships. As research has shown that a coordinated response with immediate intervention contributes to behavioural change for men who use violence in relationships, the program being proposed is one that men can begin soon after the charge is laid. Flexible intake programs have been used effectively. There is a need to ensure the participants feel welcomed, included, safe, aware of the group process and able to understand and integrate the material being presented.

Themes related to stopping abuse re-occur throughout sessions in all programs and therefore it is possible to make connections to these themes regardless of where the men begin the program. The focus on thoughts, feelings and behaviours and where choice can occur is consistently applied. In addition, there is strength in having men at various stages in their change process in a program as they help to bring new men along.

The proposed program would include the following:

1. An intake interview with the man.
2. An intake interview with the partner.
3. An orientation session for the man (3 hours) which would prepare him to enter a group.
4. Integration into the group (16 sessions which continuously cycle).
5. Monitoring throughout participation in group.
6. Assessment at completion of the 16 sessions.
7. Sentencing to follow completion of the 16 sessions.
8. Follow up through probation or community as required.

#### **Men's Intake Interview**

The intake interview would serve the following purposes:

- Identify risk.
- Address reluctance to attend the program and build motivation.

Risk would be identified through using the SAFER and SARA as a guide and completion of instruments such as:

- Marshall Scale
- Tolman Scale

Questions relating to past use of violence, substance use, stability (work/housing), would be part of a one-on-one interview process.

An explanation of the program and participation requirements would be provided. In addition, the man would have an opportunity to address questions that are of concern.

#### **Woman's Interview**

The interview with the partner would serve the following purposes:

- Identify Risk
- Provide information about the program.
- Explore safety concerns.

The woman would be asked to complete questionnaires such as:

- Marshall Scale for Women
- Tolman Scale for Women

Questions relating to the following would be asked in a one-on-one interview: past incidents of violence and threatening behaviour, substance use and jealousy. Concerns about safety for herself and her children would be explored. An explanation of the program would be provided along with a discussion about the limitations of the program with respect to safety. (ie. His presence in the program cannot be her safety plan.)

Interviews will occur within five days of the charge. In some circumstances the interview may occur after the man appears before the judge. In other cases the interview may occur before the man goes to court to help the judge decide if deferred sentencing is appropriate.

### **Orientation Session for the Man**

Prior to entering the program the man would need to complete an orientation session. This would ensure he could enter anywhere in the program and have an understanding of the basic principles of the program and an understanding of the group guidelines and group process.

The first session of RR is a good foundational session for both RR and RVP and many of the elements of that session will be included in the orientation session. The proposed orientation session would include the following:

- Introduction to the cognitive-behavioural model (ABCDE) which underpins the program. This model explains the focus on thoughts, feelings behaviour – what is in our control and what is out of our control, and the notion that behaviour is always a choice.
- Elements of a respectful relationship and what gets in the way to help them to identify goals for themselves.
- An introduction to a maintenance plan.
- Time out and brief relaxation (breathing).
- The power and control wheel or some other basic information to explain that the program's focus is not just violence, but also all the thoughts and behaviours that co-exist with and support the use of violence. (Some of this will be evident through the questionnaires in the interview process).
- Group guidelines. (Some of this will also be explained in the interview process.)

The orientation session is intended to help them to feel comfortable with the facilitators so they can enter the group with a connection to the facilitators and feeling supported by them.

Orientation sessions may not be offered every week, depending on numbers. The orientation session will occur within two weeks of the interview, however, to ensure the man waits no longer than three weeks to enter the on-going group sessions.



## **Integration into the Group**

A structured and well-defined process of integrating new participants will be outlined for facilitators and group members. This process will ensure that participants are comfortably integrated into the on-going group. Procedures will include the following:

- No “ownership” of seats.
- Introduction using name only.
- No focus on the new participant in a way that would lead to discomfort for the new participant.
- No focus on the new participant that would take away from the planned agenda for the session.

It may be identified by some facilitators that a particular session is not the right place to integrate a new participant. Guidelines around this will be clearly identified for facilitators.

## **The Program**

The program itself will cycle through 16 sessions of content and process that integrates what occurs in RR and RVP. The topics covered will be the following (not necessarily in this order.)

1. What is abuse?
2. Understanding the impact of abuse in relationships.
3. Equality and Healthy Relationships
4. Identifying and Managing Emotions
5. A focus on Anger
6. A focus on Jealousy and Dependency
7. Thoughts, core beliefs and thought processes
8. The Impact of Abuse on Children
9. Parenting/Fatherhood
10. Communication Skills 1
11. Communication Skills 2
12. Sex and Intimacy
13. Conflict Resolution
14. Problem Solving Skills
15. Influence and Support for Maintaining Healthy Relationships
16. Maintenance

As men will be leaving at various times there will be a need to integrate the opportunity to report on a maintenance plan to the group. This is identified as a 16<sup>th</sup> session, however it is something that may occur at various times throughout the cycle of the program and rather than a 16<sup>th</sup> session it may result in a session being extended for half an hour once a month to give the men leaving a brief opportunity to present their plan to the group.

## **Monitoring During the Group**

A process of monitoring progress group will involve the opportunity to safely connect with the partner if the man is having contact with her. Attendance, participation, responsibility and attitude will be noted. Non-attendance or a breach of other court conditions will result in a return to court.

## **Assessment at Completion of the Sessions**

Participants will fill out some of the assessment questionnaires again.

A participation report will be provided to the judge upon completion to assist with sentencing. This will include feedback from the partner that she feels safe providing. (The woman's safety is paramount throughout this process and guidelines for procedures will be provided to facilitators.)

Assessment will focus on participation, responsibility, attitude, ability to articulate a clear maintenance plan along with supports in the community, etc.

Recommendations may be provided about other areas of focus that might be helpful, including parenting, substance use, financial planning, employment, individual counseling for past trauma, etc.

It may be recommended that the man stay in the program and complete another cycle. Going through the sessions more than once may be necessary for learning to occur. With each time through, the focus on how this applies to the individual will be enhanced.

## **Appendix D: FORMS**

1. DVCO Application
2. Report to Judge from DVCO Case Management Team
3. Informed Consent for Case Management (2 pgs)
4. Violence in Relationships Checklist/Documentation – RCMP (6 pgs)



*Smithers*  
***Domestic Violence ‘Court Option’***  
***APPLICATION***

RCMP File # \_\_\_\_\_ COURT File # \_\_\_\_\_

Charge \_\_\_\_\_

Name of Offender \_\_\_\_\_ Contact # \_\_\_\_\_

Name of Victim \_\_\_\_\_ Contact # \_\_\_\_\_

**I, the Offender on the above-note file, am applying for entry to the Smithers Domestic Violence ‘Court Option’. Once I have been accepted to the program, I intend to plead Guilty to the above-noted charge. I have consulted with legal counsel, and have been advised of my rights and my options in this matter.**

---

**Signature of Offender** \_\_\_\_\_ **Date** \_\_\_\_\_

**For Administrative Use only** (circle one, 2 signatures, and rtn to DVCO Coordinator at FAX 250-847- \_\_\_\_\_):

**ACCEPTED to DVCO**

**NOT ACCEPTED to DVCO**

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Name (Community Corrections)	DATE	NOTE
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Name (Counseling Pgm Facilitator)	DATE	NOTE
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Court File \_\_\_\_\_

Police File \_\_\_\_\_

## Domestic Violence “Court Option”

# REPORT TO JUDGE

Offender \_\_\_\_\_ Date \_\_\_\_\_

Victim \_\_\_\_\_

*Member of DVCO Case Management Team to provide written comments to reflect the offender's attendance, attitude, problems, accomplishments, concerns. Note your name/initials.*

### **Men's Counseling Program Facilitator**

### **Probation**

### **Crown Counsel**

### **Defence**

### **Victim Services**

### **RCMP**

### **MCF**

### **Judge**



**Domestic Violence “Court Option”**  
 PERSONAL INFORMATION AND PRIVACY:  
 CONSENT TO SHARE INFORMATION (VICTIM)

---

The BLVD Domestic Violence Justice Option offers a file case management collaborative approach by members of the Criminal Justice System. The Case Management team will meet monthly to discuss the status of the file and prepare a Report to the Judge. Each member of the Case Management team will, from their perspective, contribute to the discussion. The Case Management team may consist of an RCMP Officer, a Crown Counsel, a Defense Counsel, a Probation Officer, a Victim Services Worker, a Men’s Counseling Program Facilitator, and the Domestic Violence “Court Option” Program Coordinator.

Private Sector Confidentiality is guided by the **Personal Information Privacy Act** (PIPA), a provincial law that establishes rules and safeguards about the collection, use, and disclosure of personal information. Information may be shared with permission of the client.

Public Sector Confidentiality is guided by the **Freedom of Information and Protection of Privacy Act** (FOIPA), a provincial law that establishes rules and safeguards about the collection, use, and disclosure of personal information. Information may be shared with the permission of the client.

Federal Sector Confidentiality is guided by the federal **Privacy Act**, a federal law that establishes rules and safeguards about the collection, use and disclosure of personal information. Information may be shared with the permission of the client.

I understand that records will be kept, and reports submitted, related to these matters, and that the records will be held in accordance with appropriate policies and procedures.

**Court File #** \_\_\_\_\_

**RCMP File #** \_\_\_\_\_

I \_\_\_\_\_ am the victim on the above-noted criminal justice Court file. Under no duress from any source, I give my Consent for the members of the Case Management Team to discuss appropriate matters related to the domestic assault.

\_\_\_\_\_  
 Client Signature

\_\_\_\_\_  
 Date



## **Domestic Violence “Court Option”**

PERSONAL INFORMATION AND PRIVACY:  
CONSENT TO SHARE INFORMATION (OFFENDER)

---

The BLVD Domestic Violence Justice Response Option offers a file case management collaborative approach by members of the Criminal Justice System. The Case Management team will meet monthly to discuss the status of the file and prepare a Report to the Judge. Each member of the Case Management team will, from their perspective, contribute to the discussion. The Case Management team may consist of an RCMP Officer, a Crown Counsel, a Defense Counsel, a Probation Officer, a Victim Services Worker, a Men’s Counseling Program Facilitator, and the Domestic Violence Justice Response Program Coordinator.

Private Sector Confidentiality is guided by the **Personal Information Privacy Act** (PIPA), a provincial law that establishes rules and safeguards about the collection, use, and disclosure of personal information. Information may be shared with permission of the client.

Public Sector Confidentiality is guided by the **Freedom of Information and Protection of Privacy Act** (FOIPA), a provincial law that establishes rules and safeguards about the collection, use, and disclosure of personal information. Information may be shared with the permission of the client.

Federal Sector Confidentiality is guided by the federal **Privacy Act**, a federal law that establishes rules and safeguards about the collection, use and disclosure of personal information. Information may be shared with the permission of the client.

I understand that records will be kept, and reports submitted, related to these matters, and that the records will be held in accordance with appropriate policies and procedures.

---

**Court File #** \_\_\_\_\_

**RCMP File #** \_\_\_\_\_

I \_\_\_\_\_ have pled Guilty to domestic assault and chosen the Domestic Violence “Court Option”. Under no duress from any source, I give my Consent for the members of the Case Management Team to discuss appropriate matters related to the domestic assault and my progress in the counseling option.

\_\_\_\_\_  
Client Signature

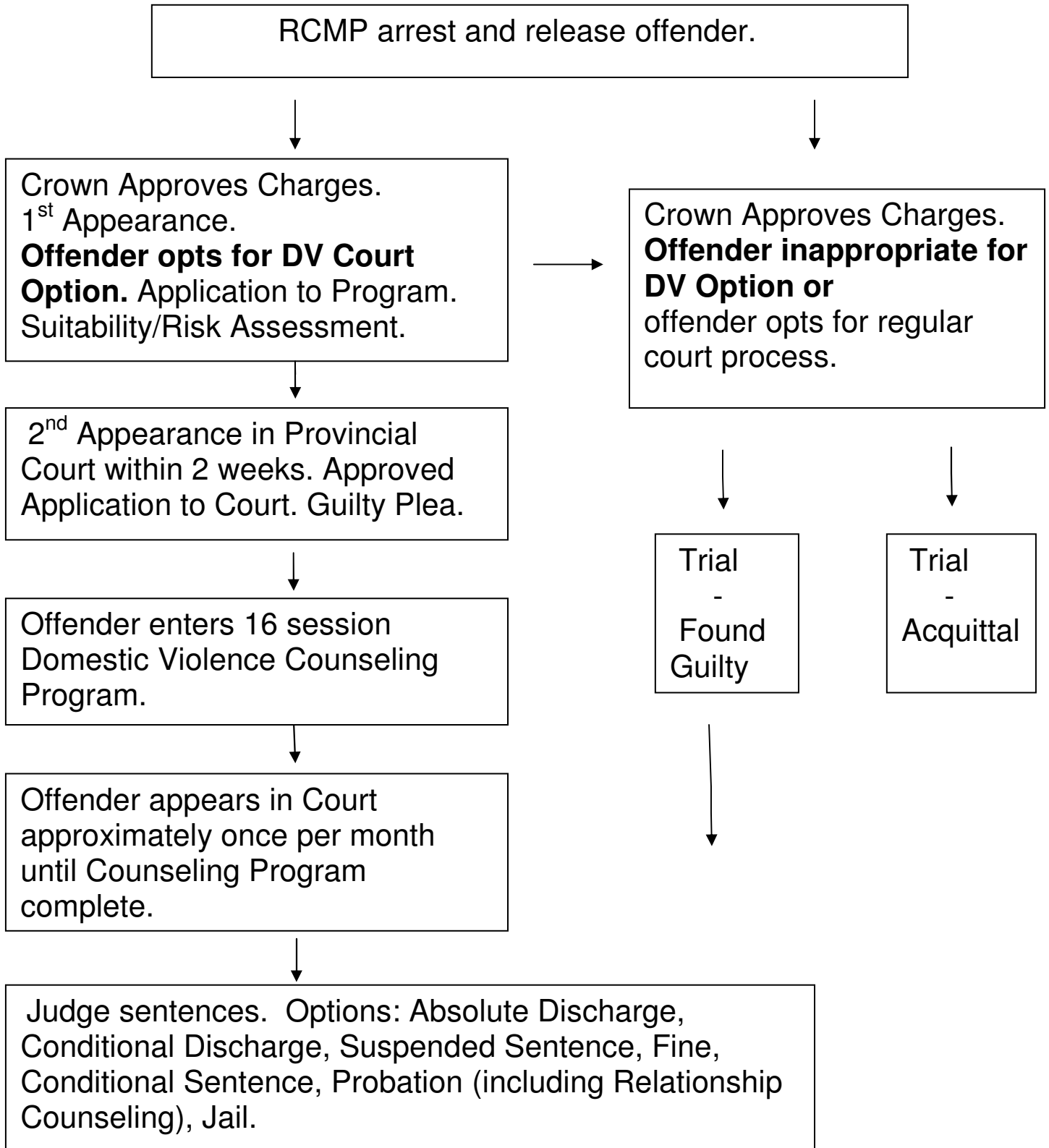
\_\_\_\_\_  
Date

## **Appendix E: HANDOUTS**

1. DVCO - Handout for Offender (2 pgs)  
Distributed by RCMP, JCM, Probation
2. Brochure - for public distribution (2 pgs)

# Domestic Violence “Court Option” (handout)

## Flowchart





# Domestic Violence “Court Option”

## Overview

The primary goal of the Domestic Violence “Court Option” is to reduce domestic violence in the community and reduce the negative impact on victims and children. The DVCO provides an alternative to conventional court. It is based on a fast-tracked process that would encourage offenders to take responsibility for their actions by entering a guilty plea early in the court process, enter promptly into an ongoing counseling program, and on completion of the counseling program, be sentenced.

## Goals

- Encourage acceptance of responsibility and early guilty pleas;
- Provide for timely intervention including fast tracking of all DVCO cases;
- Provide a non-adversarial, effective court-based alternative to formal criminal court as a means of responding to domestic violence;
- Provide specialized and effective counseling to offenders keeping in mind that domestic violence is learned behaviour that can be changed;
- Reduce recidivism;
- Provide an appropriate sentencing option to offenders under the close supervision of the court and treatment professionals;
- Ensure the safety of women and children;
- Provide protection, information and support for victims; and
- Eliminate need for trial time.

## Contacts

Smithers RCMP	847-3233	3351 Hwy 16
Smithers Crown Counsel	847-7364	Courthouse – 2 <sup>nd</sup> Floor
Smithers Probation	847-7365	Courthouse – 1 <sup>st</sup> Floor