

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
Joshua Weinstein, Committee Counsel, 415-865-7688,
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DATE: August 2, 2006

SUBJECT: Criminal Law: Batterer Intervention Program Progress Report in Domestic Violence Cases (approve form CR-168) (Action Required)

Issue Statement

Defendants in domestic violence cases must, as a condition of probation, successfully complete a 52-week batterer's intervention program. Courts may not be consistently receiving necessary information to evaluate the progress of the defendants in these programs.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2007, approve form CR-168, *Batterer Intervention Program Progress Report*, that will assist courts in monitoring defendants' progress in batterer intervention programs.

The proposed form is attached at page 3.

Rationale for Recommendation

The proposed new optional form is for batterer intervention program (BIP) providers to inform the court of progress in the defendant's treatment in domestic violence cases. The purpose of the form is to assist the court in evaluating the defendants' progress in the statutorily mandated program. The proposed form, CR-168, *Batterer Intervention Program Progress Report*, was considered in light of a recent report to Attorney General Bill Lockyer by the Task Force on Local Criminal Justice Response to Domestic Violence. That report noted that concern has been expressed that defendants often do not successfully complete BIP counseling and suggested that the courts and probation departments do more supervision of defendants' progress in these programs. The

proposed form would be submitted by the program directly to the court or to probation, and if necessary, in the latter situation, probation could submit the form to the court.

Alternative Actions Considered

The committee considered implementing two forms: the progress report and a termination or completion form. Indeed, the two forms were circulated for public comment. At this point, on reflection, the committee decided to recommend one form for approval and to further develop the termination or completion form before recommending it for approval. The committee arrived at this conclusion because the format of the termination or completion form was confusing, owing to its dual nature for either successful completion or termination.

Comments From Interested Parties

The forms were circulated for 10 weeks in the spring 2006 circulation cycle. A total of 20 comments were received. Of those comments, 7 agreed with the proposal, 9 agreed if amended, and 4 did not agree. Those who sought modification often suggested additional items of local concern. Since the form is optional, the committee decided not to include most of those suggestions because a local version can be implemented with those local items included.

The most common suggestions were adopted, such as changing the rating from a number system to a more straightforward and less confusing “satisfactory” or “unsatisfactory” system and adding a section evaluating progress in alcohol or drug treatment programs.

Two responses addressed the confidentiality of this form. The committee noted that there does not appear to be any law making these reports confidential (unless they are submitted by the probation department). As with any court record, they may be sealed under rule 2.550 of the California Rules of Court on a case by case basis when appropriate.

A chart summarizing the comments is attached at pages 4–15.

Implementation Requirements and Costs

Implementation would impose costs of copying new forms.

Attachments

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> <h1 style="margin: 0;">09-08-06 sl</h1>
PEOPLE OF THE STATE OF CALIFORNIA <p style="text-align: center;">v.</p> DEFENDANT:	
BATTERER INTERVENTION PROGRAM PROGRESS REPORT	CASE NUMBER:

Name and address of program: _____

Report date: _____ Reporting period: _____

Intake date: _____ Class start date: _____

1. ATTENDANCE

- a. Satisfactory c. Classes attended: _____ e. Classes made up: _____
- b. Unsatisfactory d. Excused absences: _____ f. Unexcused absences: _____

2. PAYMENT OF FEES

- a. Satisfactory b. Unsatisfactory (*explain*):

3. PARTICIPATION (since last evaluation)

- a. Satisfactory b. Unsatisfactory (*explain*):

4. ITEMS EVALUATED (u = unsatisfactory s = satisfactory n/a = not applicable)

- | | |
|---------------------------|---|
| a. Cooperates _____ | f. Deals with anger/hostility _____ |
| b. Attentive _____ | g. Participates in alcohol or drug counseling (if required) _____ |
| c. Nonargumentative _____ | h. Accepts responsibility vs. blame shifting _____ |
| d. Participates _____ | i. Grasps gravity of behavior vs. minimizing _____ |
| e. Not Disruptive _____ | j. Identifies and acknowledges issues vs. denying _____ |

5. PROGRESS EVALUATION and RECOMMENDATIONS

- a. Individual is is not in compliance with program requirements.
- b. Individual has has not met the basic minimum program requirements.
- c. The overall evaluation, including test results, indicates
- (1) Client should continue in program as originally ordered.
- (2) Client should be given additional time to make appropriate adjustments.
- (3) Client should repeat certain program sections (*specify*): _____

6. COMMENTS: _____

Date: _____

 (TYPE OR PRINT NAME AND TITLE)



 (SIGNATURE OF PROGRAM PROVIDER)

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Criminal Law: Forms for Batterer Intervention Program Progress Reports and Notices of Termination or Completion in Domestic Violence Cases (approve forms CR-168 and CR-169)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Superior Court of Stanislaus County	AM	N	#5c(2): if (3) specifies which section should be repeated, shouldn't (2) also specify which section should be repeated? (Progress Report). On the Completion/Termination Notice, same issue; also, #4 is not consistent with #5 above (a, b, c, (1), (2), (3)).	Agree. Sections modified.
2.	Ms. Mary Carnahan Criminal Division Program Manager Solano Superior Court 530 Union Ave., Ste. 200 Sairfield	A	N		
3.	Ms. Rolanda Pierre Dixon Assistant District Attorney Santa Clara County District Attorney's Office	AM	Y	I did note there wasn't anywhere for providers to put whether or not defendant was adhering to rules around substance abuse, or if he or she were also in substance abuse/alcohol programs.	Agree. Alcohol or drug counseling section added.
4.	Hon. Donal B. Donnelly Superior Court of Imperial County 939 West Main Street El Centro	A	N	The progress and completion report forms for anger management are needed and will be useful to participants so they can be a part of the process in submitting them to the class providers by the deadlines. The forms will allow for a greater uniformity and detail in reporting.	Agree.
5.	Hon. George C. Eskin Superior Court of Santa Barbara County	AM	N	Consider the following changes in language for 4. Attentiveness should be attention, argumentativeness should be argumentative, disruptiveness should be disruptive. And in	Agree.

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				a. Openness should be Open, b. accepting should be accepts, c. grasping should be grasps (or understands), d. identifying and acknowledging should be identifies and acknowledges.	
6.	Hon. Susan Finlay (Ret.), Judge	AM	N	<p>This form needs modification:</p> <ol style="list-style-type: none"> 1. There is no reference to alcohol or drug treatment issues and should be (PC 1203.097-req. for alcohol or drug treatment if needed). 2. Contains info court doesn't need—see #1. 3. 5(a) 2 and 3 should be clearly labeled for use only when person has completed 52 weeks. Defendants undergo a lot of change in 52 weeks. 4. Change numerical evaluation to satisfactory or unsatisfactory. <p>It is important to have <u>one</u> statewide form. A few suggested modifications are attached in the interest of simplicity.</p>	<p>Agree.</p> <p>Disagree. Some courts want this information.</p> <p>Disagree. Some courts want this information.</p> <p>Agree.</p>
7.	Ms. Janice Y. Fukai Alternate Public Defender Law Offices of the Los Angeles County Alternate Public Defender	N	Y	The Los Angeles County Alternate Public Defender objects to the substance and form of the proposed CR-168 and CR-169 forms. My objections to specific items on the form are	

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	<p>35 Hall of Records 320 W. Temple Street Los Angeles</p>			<p>listed below:</p> <p>Item Number 4: an evaluative report card of the defendant’s behavior during their participation in the batterer’s program, is objectionable for the following reasons:</p> <ol style="list-style-type: none"> 1. The grading system (1 = unacceptable; 2 poor; 3 fair; 4 = good; 5 = excellent) is incompatible with the two negative items listed; argumentativeness and disruptiveness. 2. The following items listed for evaluation are not required by Pen. Code §1203.097(a)(6)*, and are therefore irrelevant: <p>* (Pen. Code § 1203.097(a)(6) requires only: “Successful completion of a batterer’s program, as defined in subdivision (c),...for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months.”)</p>	<p>Agree that the grading system should be changed; it now lists unsatisfactory, satisfactory, and not applicable.</p> <p>Disagree regarding the areas being evaluated. This is a report, not a substitute for testimony in a possible revocation hearing. As such, the areas are appropriate and necessary for the court to monitor progress.</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>— <u>Cooperation</u>: The defendant’s cooperation is only a consideration in determining whether the defendant would benefit from additional batterer’s program sessions throughout the probationary period. (Pen. Code § 1203.097(a)(10)(A)(ii).)</p> <p>— <u>Attentiveness</u></p> <p>— <u>Argumentativeness</u></p> <p>— <u>Dealing with anger/hostility</u></p> <p>— <u>Openness about history of violent/abusive behavior</u>: There is no requirement that defendants be open about their history of violent or abusive behavior and any such requirement with respect to conduct other than that which resulted in the underlying conviction would be a violation of the Fifth Amendment protection against self-incrimination.</p> <p>— <u>Accepting responsibility vs. blame shifting</u>: A defendant’s acceptance of responsibility and forbearance from shifting blame is only a consideration in determining whether the defendant would benefit from additional batterer’s program sessions. (Pen. Code § 1203.097(a)(10)(A)(iv).)</p>	

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				<p>— <u>Grasping gravity of behavior vs. minimizing</u></p> <p>— <u>Identifying and acknowledging issues vs. denying</u></p> <p>Item Number 3: an evaluative report card of the defendants’ behavior during their participation in the batterer’s program, is objectionable for the following reasons:</p> <p>1. The grading system (1= unacceptable; 2 poor; 3 fair; 4 good; 5 = excellent) is incompatible with the two negative items listed; argumentativeness and disruptiveness.</p> <p>2. The following items listed for evaluation are not required by Pen. Code 1203.097(a)(6), and are therefore irrelevant:</p> <p>— <u>Cooperation:</u> The defendant’s cooperation is only a consideration in determining whether or not the defendant would benefit from additional batterer’s program sessions throughout the probationary period. (Pen. Code § 1203.097(a)(10)(A)(ii).)</p> <p>— <u>Attentiveness</u></p> <p>— <u>Argumentativeness</u></p>	<p>Agree that the grading system should be changed; it now lists unsatisfactory, satisfactory, and not applicable.</p> <p>Disagree regarding the areas being evaluated. This is a report, not a substitute for testimony in a possible revocation hearing. As such, the areas are appropriate and necessary for the court to monitor progress.</p>

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				<p>— <u>Dealing with anger/hostility</u></p> <p>— <u>Openness about history of violent/abusive behavior</u>: There is no requirement that defendants be open about their history of violent or abusive behavior and any such requirement with respect to conduct other than that which resulted in the underlying conviction, would be a violation of the Fifth Amendment protection against self-incrimination.</p> <p>— <u>Accepting responsibility vs. blame shifting</u>: The defendants’ acceptance of responsibility and forbearance from shifting blame is only a consideration in determining whether or not the defendant would benefit from additional batterer’s program sessions. (Pen. Code § 1203.097(a)(10)(A)(iv).)</p> <p>— <u>Grasping gravity of behavior vs. minimizing</u></p> <p>— <u>Identifying and acknowledging issues vs. denying</u></p> <p>Item Number 5: an evaluative report card of the defendants’ behavior during their participation in the batterer’s program, is objectionable because the considerations mentioned therein are relevant only to a</p>	<p>Disagree. This is a report, not a substitute for testimony in a possible revocation hearing. As such, the areas are appropriate and</p>

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				<p>determination of whether the defendant would benefit from additional batterer’s program sessions throughout the probationary period and not a basis for a determination of whether the defendant successfully completed the program. (Pen. Code § 1203.097(a)(10)(A)(iv).) An allegation of unsatisfactory performance or the failure to benefit from counseling can only be made by the prosecutor, court, or probation department and are only grounds for termination of the program if judicially determined after a hearing.</p> <p>As such, a program’s report is only a recommendation and can only be used as a basis for requiring defendants to attend additional sessions or initiating a hearing to determine if a defendant should be terminated. It cannot in itself be grounds for the termination of the program or of probation?</p> <p>Accordingly, it is feasible that a defendant would be able to successfully complete the batterer’s program and avoid a violation of probation, yet still need or benefit from additional counseling. Moreover, a defendant may successfully complete the program and have probation successfully terminated, even though he performs poorly or even unacceptably in any or all of the areas listed, so long as he attends the required number of classes,</p>	<p>necessary for the court to monitor progress.</p>

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				<p>somehow benefits from his attendance, and is not disruptive. (Pen. Code § 1203.097(c)(1)(K).)</p> <p>Note: While Pen. Code § 1203.097(c)(1)(O)(iii) requires a “final evaluation that includes the program’s evaluation of the defendant’s progress, using the criteria set forth in paragraph (4) of subdivision (a) and recommendation for either successful or unsuccessful termination or continuation in the program,” there are no such criteria mentioned therein.</p>	
8.	Superior Court of Los Angeles County 111 N. Hill Street Los Angeles	A	Y		
9.	Ms. Linda Griffin, Coordinator Domestic Violence Recovery 964 5th Avenue, Ste. 328 San Diego	N	N	No place on either report to address substance abuse or “inappropriate for group.” “Repeat certain sections” does not coincide with how S.D. programs are run. Unrealistic to ask for prediction “to be consistently violence free.” Please examine progress report developed in San Diego (being sent by separate committee).	Form optional and may be changed for local needs.
10.	Ms. Irean Hilt Facilitator The Office of Larry Corrigan San Diego	AM	N	What mark indicates (1-5) if individual is not in group to evaluate example in hospital or out on deployment for 1st evaluation period?	Agree. Changed to unsatisfactory or satisfactory.

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11.	Mr. Michael P. Judge, Public Defender Los Angeles County Public Defender 210 West Temple St., Ste. 19-513 Los Angeles	N	Y	NOTE: PLEASE SEE COMMENTS FROM MS. JANICE Y. FUKAI (identical to Mr. Judge's comments)	See responses to Ms. Fukai's comments, above.
12.	Ms. Tressa S. Kentner and Ms. Debra Meyers, Court Executive Officer and Chief of Staff Counsel Services Superior Court of San Bernardino County 172 W. 3rd Street, 2nd Floor San Bernardino	A	N		
13.	Ms. Irene Lopez Certificate Program Manager Superior Court of Ventura County 800 S. Victoria	AM	Y	2-sided form – request to be copied in a “tumble” format. Able to lift page and read 2nd page in case file folder.	Can be copied that way locally.
14.	Mr. Nelson Lu Deputy Public Defender San Joaquin County Public Defenders' Office Stockton	N	N	The new forms will, I'm afraid, cause the programs to simply standardize their accusations against our clients for failing programs without carefully considering the facts of the alleged failures, and they will invite the court to unreasonably accept the hearsay declarations and ruling them reliable to be admitted under People v. Maki and People v. Rwon.	Disagree. Form serves as initial report for court to inquire further if necessary.

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15.	Ms. Susan Maxwell, Court Services Manager Superior Court of San Mateo County 400 Cuntly Center, 2nd Floor Redwood City	A	N	Would these forms be submitted and are confidential and should be treated as so by the court upon receipt? Will it require court order to make them confidential or should they automatically be treated as so since they are for the court's use only? If so, perhaps indication on the form that it is confidential would be helpful.	If submitted by probation, they will be confidential to the extent that probation reports are confidential.
16.	Hon. Sandra L. McLean Superior Court of Butte County One Court Street Oroville	AM	N	<p>Agree with the proposed changes (in concept) if modified to include suggested recommendations.</p> <p>The proposed changes are as follows:</p> <p>1. RE: BIP Progress Report: The report date should include the reporting period dates: i.e., January to March; February to June 1 etc.</p> <p>2. The attendance should indicate two (2) time frames: a) since enrolling in the BIP program and, b) during the latest review period.</p> <p>3. Payment of Fees: Should indicate the amount outstanding.</p> <p>4. Participation: Should include a third category of "marginal" with an explanation.</p> <p>5. Program Evaluation should include a category for "Individual is benefiting or not-</p>	<p>Agree.</p> <p>Disagree. Too complicated for forms.</p> <p>Disagree. Can be put in "explain."</p> <p>Disagree. Can be added locally.</p> <p>Disagree. Can be added locally.</p>

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				<p>benefiting.” Items evaluated should also include: Demonstrates constructive change in beliefs via the following:</p> <p>a) Defendant is developing strategies to prevent future abusive and violent behavior; b) Demonstrates awareness of effects of DV on children and others; c) Defendant demonstrates empathy for victim’s experience.</p> <p>6. Items evaluated add: turning in homework, reported acts of substance abuse, and reported new criminal charges or police contacts.</p>	Disagree. Can be added locally.
17.	Ms. Amanda Noble Research Program Attorney General’s Office 1300 I Street, Ste. 1150 Sacramento	AM	Y	We are pleased that uniform forms will now be used across the state, but question certain sections. On the Progress Report form, under Progress Evaluation and Recommendations, question c. offers three possible answers. We do not understand why the third choice exists. It does not seem mutually exclusive from the second choice, and we cannot imagine that programs, if they thought additional program sections were needed, would ever choose the third answer. We would like the third answer to be eliminated and the word “specify” to follow answer 2.	Agree.
18.	Mr. Michael M. Roddy	AM	Y	The San Diego Superior Court’s understanding	Disagree. We are not aware of any

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	Executive Officer Superior Court off San Diego County 220 West Broadway San Diego			is that the information contained in Domestic Violence Progress Reports is confidential and that these reports should be kept in the confidential envelope of the case file. For that reason, we feel it would be appropriate to include a designation at the top of the proposed forms, indicating that the forms are confidential.	law making the report confidential. However, if submitted by probation, they will be confidential to the extent that probation reports are confidential.
19.	Ms. Laura Rusk Supervising Court Clerk Superior Court of Kern County Superior Court 1415 Truxtun Ave. Bakersfiled	A	N		
20.	Ms. Deborah Talmage, Commissioner Superior Court of Santa Barbara County 118 E. Figueroa Street Santa Barbara	A	N		