



VERMONT  
NETWORK

**Testimony on S.134  
House Committee on Judiciary  
April 6, 2017**

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Policy Director**

Thank you for taking the time to hear the Network's concerns regarding S.134.

The Network appreciates the value of pre-trial services with regard to assessment of non-violent offenders. However, no offender who poses a safety risk to a victim or to the public should be allowed released into the community with proper risk assessment and supervision. Unfortunately, in Vermont today, we do not have the systems in place to adequately assess the risk of those charged with domestic assault.

As Section 2 indicates:

(a)(1) The objective of a pretrial risk assessment is to provide information to the Court for the purpose of determining whether a person presents a risk of nonappearance or **a threat to public safety** so the Court can make an appropriate order concerning bail and **conditions of pretrial release**.

The current risk assessment tool utilized by pre-trial services monitors – the ORAS – is not sufficient for determining the lethality risk of a person charged with domestic assault. In addition, pre-trial screeners are not adequately trained in accurately assessing the risk to victims of domestic assault.

#### **WHAT IS RISK ASSESSMENT IN DOMESTIC ASSAULT?**

Risk assessment is attempting to identify the most dangerous offenders and manage the risks posed to victims. In response, risk assessment tools in the domestic violence field have been developed to assess both an offender's risk of re-offending, and a victim's risk of lethal assault.

Best practice in domestic violence cases is to ensure that domestic violence risk assessments are part of pre-trial evaluation.

#### **The Ohio Risk Assessment System (ORAS):**

This is a general screening tool that is not specific to the risks involved in intimate partner violence (domestic violence; sexual violence; or stalking) lethality behaviors.

The ORAS reviews general criminal history, family and social support, substance abuse, criminal attitudes and behavior problems; education, employment and financial situation; neighborhood problems; and peer associations.



### **Domestic Violence Screening Instrument (DVSI-R)**

The DVSI was developed for use as a domestic violence risk screen to be followed by more intensive evaluation if the DVSI-R score indicates a high level of risk. It has also been shown to have predictive validity in identifying those who will reoffend. It is currently used to inform pre-trial evaluations and as a corrections case management tool for offenders screened as high risk for domestic violence-related re-offense. It includes questions regarding tactics that indicate potential lethality such as strangulation.

In addition to the **DVSI**, **The Ontario Domestic Assault Risk Assessment (ODARA)**, and **The Spousal Assault Risk Assessment (SARA)** were designed to *predict likelihood of an offender's re-assault* against a current or former domestic or dating partner. The tool known as the **Danger Assessment (DA)** was designed to *assess the victim's risk of lethal or near lethal violence*.

What is best practice regarding risk assessments related to domestic violence in pretrial evaluations?

1. The tool must be a DV-specific risk assessment tool and be accompanied by a judicial checklist used in setting bail and determining release conditions tailored to the particular dangers posed by the suspect to their victims, themselves, and the community.
2. Risk factors related to the current offense and history are identified and documented for use in determining the nature of the threat the defendant presents to the victim and other persons.
3. There must be a clear understanding of possible risk indicators:
  - Results of DV-specific risk assessment
  - Criminal history and current probation status
  - Access to firearms and their actual or threatened use
  - Current and past protection or harassment orders
  - Excessive alcohol or drug use and its impact on defendant's actions
  - Mental health concerns, impact on defendant's actions
  - History of combat deployment, indications of depression, PTSD/TBI
4. Recommended bail and pre-trial release conditions should be related to the:
  - Violence and coercion that occurred in this incident
  - History of violence and coercion used by the defendant in this and other relationships
  - History of arrests and convictions, probation compliance and protection order violations
  - Danger posed by the suspect to the victim and others based on this incident
  - Responses to risk questions in the police report or a risk assessment tool
  - Victim's safety needs and preferences



5. In order to adequately address risk factors, the following should also be considered for conditions:
- Limited/no contact with the victim or children
  - High risk monitoring/surveillance measures
  - Abstinence from drug or alcohol use
  - Drug and alcohol assessment/testing
  - Mental health/PTSD/TBI assessment

<b>EXAMPLES OF LETHALITY RISK FACTORS – as in DVSI-R</b>			
<b><u>1</u></b>	<b><u>Defendant owns or has access to firearm(s)</u></b>	<b><u>11</u></b>	<b><u>Defendant uses illegal drugs, particularly cocaine and derivatives and methamphetamines</u></b>
<b><u>2</u></b>	<b><u>Victim left the defendant after they lived together during the past year</u></b>	<b><u>12</u></b>	<b><u>Defendant is an alcoholic or problem drinker</u></b>
<b><u>3</u></b>	<b><u>Defendant Unemployed</u></b>	<b><u>13</u></b>	<b><u>Defendant tries to control victim's daily activities (when to see friends or family, how much money to spend)</u></b>
<b><u>4</u></b>	<b><u>Defendant ever used or threatened victim with lethal weapon</u></b>	<b><u>14</u></b>	<b><u>Defendant is violently and constantly jealous</u></b>
<b><u>5</u></b>	<b><u>Defendant ever threatened to kill victim</u></b>	<b><u>15</u></b>	<b><u>Victim beaten by defendant while pregnant</u></b>
<b><u>6</u></b>	<b><u>Defendant avoided being arrested for domestic violence</u></b>	<b><u>16</u></b>	<b><u>Defendant threatened or tried suicide</u></b>
<b><u>7</u></b>	<b><u>Victim has a child who is not the defendant's</u></b>	<b><u>17</u></b>	<b><u>Defendant threatened to harm victim's children</u></b>
<b><u>8</u></b>	<b><u>Defendant forced the victim to have sex when she did not want to</u></b>	<b><u>18</u></b>	<b><u>Victim's belief defendant is capable of killing her</u></b>
<b><u>9</u></b>	<b><u>Defendant has tried to strangle or choke victim</u></b>	<b><u>19</u></b>	<b><u>Defendant follows or spies on victim, leaves threatening notes or messages, destroys personal property or makes unwanted calls.</u></b>
<b><u>10</u></b>	<b><u>Increase in severity or frequency of physical violence over last year</u></b>		



IMPORTANT NOTE: The presence of these factors can indicate elevated risk of serious injury or lethality. The absence of these factors is not, however, evidence of the absence of risk of lethality or evidence that any particular judicial action (for example, granting an abuse prevention order) should not be taken.

**RECOMMENDATION:**

Due to the current lack of a quality domestic violence risk assessment tool and adequate domestic violence training and expertise of pre-trial services staff, the Network respectfully requests that the committee make the following change in S.134:

(See pg 8-9 of 15) Insert “listed crime” or “violent crime” as written below:

A person charged with ***a listed crime/violent crime as defined in ...*** or an offense for which registration as a sex offender is required pursuant to subchapter 3 of chapter 167 of this title or an offense punishable by a term of life imprisonment shall not be eligible under this section.

(Please see attached for the definitions of “listed crime” and “violent crimes” in Vermont statute.)