
Victim-centric Diversion? The Electronic Monitoring of Domestic Violence Cases

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This article discusses the electronic monitoring of domestic violence cases as a form of diversion. The data derive from a two and a half year study of two “bilateral” electronic monitoring programs geared towards domestic violence offenders, mostly defendants, and their former or current intimate partners. Analysis consists of an examination of how the programs under study manifest the aims and tensions of diversion, and highlights how a victim-centered approach to diversion can amplify the tensions of diversion. Copyright © 2005 John Wiley & Sons, Ltd.

INTRODUCTION

Growth in the volume of court cases and the costs of imprisonment, along with concerns about the stigmatizing and counter-productive effects of “labeling” (Becker, 1963) and “societal reaction” (Kitsuse, 1962; Lemert, 1967), have spurred initiatives to “divert” offenders away from criminal justice processing. Although the idea of diversion is “probably as old as the justice system itself” (Weise-Pengelly and Dammer, 2002, p. 533), current practice, conducted under the auspices of the “reform strategy” (Austin and Krisberg, 1981, p. 166) known as “diversion programs,” dates back to the mid-1960s. These efforts are designed to provide alternative remedies to traditional justice processes for selected offenders, either before or after charges are laid, with the purpose of limiting participants’ further involvement with the criminal justice system. Often promoted as less punitive or intrusive ways of dealing with offenders, diversion programs are usually geared toward “low risk” or first time violators who are seen as “needing a break,” persons whose previous convictions were for minor offenses, and such groups as juveniles, “mentally disordered” persons, and substance users.

Diversion programs attempt to meet a range of goals, among them, providing services and assistance to violators, minimizing “unnecessary” social control,

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reducing recidivism, and decreasing the cost of justice administration (Palmer, 1979, p. 14). Diversion can occur at different points in the criminal justice process, including the pre-charge (i.e. police diversion programs), post-charge/pre-trial (i.e. after a charge has been made but before the court has heard the matter), pre-conviction (i.e. before the person has pleaded or been found guilty), and post-conviction (i.e. at sentencing, usually as diversion from imprisonment) phases.

Electronic monitoring (EM) is most often used as a form of home detention (Crowe, Sydney, Bancroft, & Lawrence, 2002; Vollum & Hale, 2002; Black & Smith, 2003); it is normally *not* considered a form of diversion.¹ Rather, EM is viewed as an intermediary sanction, used in lieu of incarceration or, in pre-trial cases, as a measure to ensure that a defendant will not abscond. The EM of offenders, whether used as an intermediary sanction or as a pre-trial measure, ordinarily employs what we refer to as *unilateral* EM (or UEM) because an offender alone is the object of ongoing supervision. When used in the context of domestic violence (DV) offenses, EM technology has the additional mandate of protecting victims of intimate abuse, generally within the context of enforcing protective orders. In this case, EM is used not only to enforce liberty restrictions in the absence of traditional detention or incarceration, but also to monitor defendants' observance of "exclusion zones" around a complaining party's home. The electronic monitoring of persons charged with or convicted of DV related offenses²—where the technology is used not only for surveillance/control but also for victim protection—we refer to as *bilateral*, because a second party is enrolled into a program of surveillance³ (Erez, Ibarra, and Lurie, 2004).

Bilateral EM (BEM) extends the mandate of UEM by protecting *specific* individuals (victims), rather than being designed to address public safety considerations in general, or to discourage defendants from absconding. Judges attach or impose BEM as a condition of bond or sentence with the expectation that it will strengthen their "no-contact" orders. The victim's participation and cooperation are necessary to the functioning of BEM programs for DV cases, introducing an element absent from UEM, and from diversion programs more generally. In turn, a victim-centered thrust necessarily filters how these programs manifest the spirit and goals of diversion.⁴

This article discusses the salient aspects of DV cases that have led some jurisdictions to implement BEM programs for victim protection and defendant

¹Some have argued that because EM provides a cost-effective alternative to incarceration it is a diversion, defining cost effectiveness as the essential criterion. However, the literature is divided about whether EM is cost effective (Vollum & Hale, 2002; Black & Smith, 2003). The argument for rehabilitation in the context of EM as a substitute for jail or prison is also criticized. In this view staff are more concerned with technical issues related to surveillance, intelligence gathering, and search and seizure laws, rather than with helping offenders find employment or treatment (Scott & Hale, 2002).

²The vast majority of persons under liberty restrictions in the programs studied were not convicted at the time of their enrollment; therefore we refer to them as "defendants." In the same vein, most of the persons we refer to as "victims" are "alleged victims," since their cases usually await adjudication. We use the feminine pronoun when referring to the victims because most DV victims who come to official attention are women, and they are also far likelier than men to request, or receive, BEM protection.

³The victim is enrolled into a program of electronic surveillance in at least one sense, and possibly two senses: First, because she is kept abreast of the approach of another party to her home perimeter by electronic means; second, because the victim's own movements in and out of her home are monitored *if* her duress pendant is a transmitter that sends signals to a base receiver in communication with a monitoring center, as is the case in one of the two study sites.

⁴The most common form of diversion for domestic violence cases is the batterer intervention program (Koss, 2000), usually assigned in conjunction with (non-sentenced) probation.

monitoring, describes how EM technologies are integrated into DV cases, and outlines how the programs attempt to accomplish the aims of diversion. Diversion programs have been criticized for being contradictory (Decker, 1985), however, so we consider the relevance of the net widening critique that has been leveled at diversion. The conclusion highlights the significance that a victim-based focus may pose for diversion: BEM programs amplify the tensions of diversion insofar as efforts are made at integrating a victim perspective into its operations.⁵

DOMESTIC VIOLENCE CASES AS A CONTEXT FOR ELECTRONIC MONITORING

Reporting domestic violence or attempting separation from abusive relationships can place women at higher risk of assault. "Separation assault" (Mahoney, 1991) is a well known phenomenon in the dynamics of DV, as are instances of estranged partners being stalked in places where they are routinely present (e.g. the workplace) or likely to visit (the supermarket, church, etc.). The context and dynamics of DV render the protection of its victims a continuous challenge to the justice system, one fraught with logistical problems and contradictions (Worden, 2000).

Courts have responded to the task of securing the safety of women who have stepped forward as victims of abuse by issuing protective orders, often as an adjunct to an official proceeding brought by the state in response to the victim's complaint. Protective orders typically require that the named offending party refrain from contacting the victim and other family members, and/or move out of the house. These "no-contact" orders carry benefits for some DV victims but can be complicated to execute (Buzawa & Buzawa, 1996; Harrell, 1993; Harrell & Smith, 1996). Research indicates that protective orders are generally associated with a subsequent decrease in abusive behavior by batterers (e.g. Holt, Kernic, Lumley, Wolf, & Rivara, 2002; Holt, Kernic, Wolf, & Rivara, 2003). However, several studies have found that such orders may be less effective in keeping women safe where the defendant has a history of violent offenses (Buzawa & Buzawa, 1996; Fischer & Rose, 1995). Some offenders do not comply with the various terms of protective orders (see, e.g., Erez & Belknap, 1998a; Worden, 2000), and some victims have described these orders as ineffective at discouraging further contact or abuse (Erez & Belknap, 1998b; Erez et al., 2004). Indeed, research has found that some batterers, upon receiving the protective orders, were so angered that they sought out their victims for renewed assault (Erez & Belknap, 1998b).⁶

⁵Hudson (2002) argues that restorative justice programs are the contemporary equivalent of the diversion programs of the 1980s, except that restorative justice also incorporates the victim's (as well as the community's) welfare, in addition to the offender's "accountability" and "reintegration." Hudson (2002) nonetheless questions the effectiveness of restorative justice programs for domestic violence cases.

⁶An additional complication is that many women in abusive relationships, particularly those who have not reached the point of "enough is enough," may want to have (non-violent) contact with the offender, in spite of the presence of a protective order. They are still emotionally attached to and economically dependent on the batterer, or they have children together, in which case they may hope to keep the family intact for the children's sake. At times, therefore, they allow their partner to contact them, or they seek him out at his place in cases where he was ordered to move out of the home. The police have been known to argue on some occasions that they no longer had the responsibility for enforcing protective orders when the victim made contact with the person against whom a protective order was issued and violence re-erupted between such once again estranged couples (Buzawa & Buzawa, 1996; Erez & Belknap, 1998b).

A typical defendant facing a DV charge is likely to be well versed with the routines of the victim, her personal and social relations (e.g. family, friends, and membership in civic organizations). Concerns about her being a “sitting duck,” even when she is away from home, can be a consideration for judges handling these cases. The defendant’s knowledge of the victim’s routines and relations furnishes him with numerous opportunities to contact the victim in violation of the court’s protective orders. An especially significant contact violation from the court’s perspective involves defendants who seek out the complaining witness to request or demand that she retract or amend her complaint, or to intimidate the victim in an attempt to dissuade her from appearing in court. Victims are often frustrated when they report these incidents, however, because the issue can come down to a “he said, she said” situation in the absence of proof that the defendant made the contact alleged in their affidavit.

The presumption underlying electronic supervision is that offenders under “no contact” orders, knowing that they cannot approach a certain area without detection, are less likely to attempt to seek out a victim, in spite of a history of violating such orders in the absence of electronic monitoring. Although proponents of BEM concede that some defendants will not be deterred in such circumstances, they add that most enrollees are likely to conform to protective orders if they know they are actively being monitored through electronic means, and if they understand that violations of contact orders will be “objectively” documented and negatively sanctioned. Court officials thus explain the rationale for placing defendants on electronic supervision, namely, that it will strengthen protective orders and “give them teeth” (Erez et al., 2004).

METHODOLOGY

Data were collected over two and a half years at two court sites—River County and Lakefront (both pseudonyms)—that apply EM technology to domestic violence cases; the probation departments of the respective courts administer the programs. Data collection methods included the following. First, official records kept by the probation departments administering the programs⁷ were used to document such information as defendants’ demographic characteristics, offense history, enrollment status and details (e.g. how long under supervision), protection order violations and offenses during and after BEM enrollment. Second, in-depth, semi-structured interviews were conducted with victims ($N = 30$), defendants and convicted offenders (27), criminal justice personnel (34) comprised of police, prosecutors, judges, and probation officers, and victim assistance professionals (8) based both inside and outside the justice system. Interviews were either with focus groups or individuals. Third, at the larger site, field observations were made of how the equipment was installed at participants’ residences, how the program was explained to participants, how supervisory personnel visited with defendants at the office and in the field, and how the court handled cases involving BEM during different court phases.

⁷The two departments had varying degrees of records to consult; in River County the data were quite extensive, while Lakefront’s data were sparse. Thus, our analysis relies more on River County data.

Although the programs we studied use different equipment from different manufacturers, have different rules related to offender eligibility, and have varying definitions of the appropriate circumstances for technological intervention, they both meet the criteria for being considered diversion programs, as discussed below.

THE USE OF ELECTRONIC MONITORING FOR DOMESTIC VIOLENCE CASES

Radio-frequency- (RF-) based technologies and global positioning system (GPS) technologies are the two major types of monitoring device currently used for domestic violence cases. Both of the programs we studied utilize equipment that is RF based. Installation of equipment and operation of the technology are as follows: The defendant is equipped with a tamper-resistant, ankle-worn transmitter. A receiver in the defendant's residence periodically confirms his presence at or absence from home in accord with a curfew schedule. (Curfew violations trigger alerts to supervising officers, who then may investigate the basis for the alerts.) A receiver in the victim's home will detect the presence of a defendant when he enters a defined geographical radius of up to 500 feet. Radius penetration of a victim's home region results in an immediate call to law enforcement.⁸ A commercial monitoring company constantly monitors receivers via normal phone lines. In addition, the victim may be given a pager to receive messages from the monitoring center, a duress pendant, and/or a cellular phone pre-programmed to notify authorities. The victim may also carry a field-monitoring device to alert her to the approach of the defendant while she is away from her home receiver. The defendant is not tracked while away from home, as is the case with GPS-based systems.

Although there are several ways of violating a court's "no contact" order that will escape the monitoring center's detection (e.g., telephone communications are not monitored; the victim is not under electronic cover while away from her home; the victim can seek out the defendant at *his* residence), and although the technology's alerting system does not offer foolproof protection against harm, participating victims with whom we spoke reported having little to no contact with the defendant during his enrollment (Erez et al., 2004). Many women spoke of how differently the same defendant acted in prior cases, before BEM, during which he would routinely ignore protective orders. Thus, victims attributed this contact-free period to the effectiveness of the technology.⁹

Although the nature of the technology is important in that its capacities and limitations will circumscribe its reach and application, of greater significance is the *program* in which the technology is anchored. The program sets eligibility rules, defines expectations for participants' conduct while they are enrolled in the

⁸The equipment does *not* provide physical protection to the victim—it simply provides a warning (and notification to the police) when the defendant is nearby, as long as the ankle transmitter is worn. The equipment will not deter someone who is determined to hurt a "protected" party and unconcerned about the personal consequences. In our fieldwork we observed that the staff reiterated this point to the victims.

⁹The women were unfamiliar with how BEM operates as a program of supervision, which may explain why they did not cite its influence on the defendant during the enrollment period. When they offered that "he knows he is being watched" as an explanation for why the defendant remained at a distance, they were referring to the deterring powers of the technology, rather than the tightness of the staff's supervision.

program, and directs how program personnel interact with participants and enforce program expectations. The programs are also influenced to varying degrees by the research literature on domestic violence and the notion that BEM might be a type of intervention in an abusive interpersonal relationship. In that spirit, River County's program draws its cases from parties who are both in current and former relationships, while Lakefront almost exclusively refers only parties whose relationship has had an irrevocable breach. Lakefront personnel want to be certain that the victim wants nothing to do with the defendant before ordering the equipment's installation, while River County personnel see much merit in ordering the equipment precisely when the victim is ambivalent about her relationship with the defendant.

The program is used most often during the pretrial stage: 90% or more of the offender caseloads¹⁰ at both sites are comprised of defendants.¹¹ Eligibility assessments are initiated at the request of the prosecutor, or of the prosecuting witness, during the defendant's initial court appearance. (For a more detailed discussion, see Erez, Ibarra, & Lurie, forthcoming.)

THE DIVERSIONARY FEATURES OF BEM PROGRAMS IN RIVER COUNTY AND LAKEFRONT

Our analysis of the data considers how the electronic monitoring of domestic violence cases addresses the major aims of diversion (Palmer, 1979), through the creation of BEM as an alternative option for justice professionals (Austin & Krisberg, 1981, p. 170), and by attempting to minimize the "unnecessary" social control of referrals, reduce recidivism, provide services and assistance to participants, and decrease the overall cost of administering the justice system (Palmer, 1979, p. 14). As victim-centric programs, however, there are tensions in the realization of these aims. A concern with the victim's interests (e.g. her safety) can compete with or undermine the traditional offender-centric aims of diversion, such as avoiding stigmatizing the referral (e.g. the anklet may comprise a "technological" stigma).

Expanding the Options Available to Justice Personnel

BEM represents an expansion in the options that are available to criminal justice professionals in the pursuit of their distinctive objectives. It can enhance the craftsmanship with which they process or dispose cases, or it can function as a strategic resource in responding to case exigencies. Thus, justice professionals who we interviewed described it as an additional "tool" that can be used to address domestic violence cases, rather than as a panacea. In the words of one judge,

¹⁰Caseload size varied considerably between the two programs. The number of enrolled defendants at any point ranged from 12 to 43 in River County and averaged 25 during the study period. The range at Lakefront was approximately 0–2, with an average of 0 or 1.

¹¹River County personnel explained that pretrial cases were emphasized because they are at "the most volatile period" in domestic violence cases, in that some batterers remain prone to further abuse, harass, or intimidate the victim at that point.

The electronic monitor in and of itself is not going to cure a damn thing. And I can tell you that right now. The people that sell it will try to convince you that it's the best thing since sliced bread, but when you deal with people it's a tool.

One judge elaborated on BEM as a tool to both strengthen a protective order and provide a measure of psychological reassurance to the complaining witness:

It's a tool that you have to use once you address the situation in its entirety and see whether that particular tool will fit this situation. If I felt that there was some seriousness here, that harm was imminent, and I needed a tool, and I felt my restraining order would not be sufficient and that ordering it to satisfy the victim would calm her down, then I'd use it (BEM), in a heartbeat.

A prosecutor presented the benefits of BEM as an additional tool that can be employed to ensure that defendants will remain "accountable":

I think there is a measure of accountability that it provides a perpetrator, or at least the fear of being caught that provides some measure of control over a perpetrator as opposed to just some kind of high bond.

Another prosecutor emphasized that BEM balanced "accountability" and freedom:

From my perspective, it's a tool to enhance safety and accountability. I think from a defense attorney's perspective it's a tool, too, because often it's a way to have accountability for a perpetrator but at the same point allow the perpetrator to remain productive, maybe participate in treatment. So, for me it's a nice gray area between being out there on bond with no restrictions and being locked up with the ultimate accountability but perhaps not behaving as productively as you could.

The rhetoric of "accountability" implies that the defendant is in fact guilty as charged and that the BEM program functions as a form of reckoning with those charges. For this reason, some judges are not inclined to utilize the program, seeing it as a form of punishment that flies in the face of the presumption of innocence.¹²

Also critical were defense attorneys and public defenders, whose comments about BEM were laced with ambivalence. For example, a public defender explained his view of the flexibility that BEM offers, namely release from jail, albeit under compromised circumstances that may reflect manipulation of the system by an alleged victim:

It works out as a good middle ground between somebody at our end, the defendant, being incarcerated as opposed to just being released completely where there's a fear and the chance of a full release is not very good. So at least it gives us some middle ground approach to get the person out of jail, to continue working and being able to keep going. One of the problems that we have also, and it's not an excuse for the men, but there are frequent times when the women use the domestic violence charge as leverage against the men for some reason. Either they're mad at them, or for whatever reason, and know that they can create a difficult time for him. (...) I've often described domestic violence

¹²Judges who use it, however, do not see it as a form of punishment, but as a way of "balancing" the safety interests of the public and victim with the liberty interests of the defendant. For a discussion of the views of criminal justice professionals who were critical of BEM, on philosophical, legal, and practical grounds, see the work of Erez et al., forthcoming.

as pushing a snowball down a hill. Once it starts rolling, it's hard to stop it. (...) At least the electronic monitoring devices give us something in the middle to go to.

In short, BEM injects flexibility into the handling of domestic violence cases, and many professionals view this option as potentially helpful to everyone involved—including defendants, victims, judges, and attorneys. Everyone acknowledged (to varying degrees) that its value was limited, however, and some expressed serious reservations about its use.

Cost Reduction

A principal rationale for diversion is that, compared to jail or prison, it is less costly to release offenders into the community if they are under some degree of treatment and/or supervision. The costs cited concern not only those borne by the state and state agencies, but also those shouldered by offenders and their families when they are unable to be gainfully employed. The River County program requires defendants to contractually agree to maintain alimony and child support payments, and promises to “violate out” any participants who fail to do so. As for administrative costs, the chief probation officer at River County’s EM unit pointed out how (in 2004) it costs the county \$7.16 a day to have a person on BEM, in comparison to \$65.00 a day to keep them in jail. Thus, we found that referrals in River County are often offered an incentive to participate in the program, in the form of a lowered bond amount (or no bond amount at all), in exchange for agreeing to enroll in BEM. Lakefront made referrals’ participation in BEM a condition of bonded release from jail, and required participants to pay fees that made the program self-funding.¹³ Administrators’ economic considerations are therefore reinforced by and conjoined with the victim-centered thrust of the programs.

Reducing Social Control

The programs in both jurisdictions attempt to fulfill the most salient aim of diversion, reducing the “unnecessary” (Palmer, 1979, p. 14) social control of offenders by releasing them into the community, but this aim is expressed within a victim-centered context. For example, the programs adhere to the diversion principle that referrals to a program should not be classified as “high risk” offenders, i.e. be likely to pose a lethal threat to the victim.¹⁴ Thus most cases in both programs originate in lower level rather than higher level courts, where the offenses handled are by statute considered more serious and the bond requirements are more onerous.

The lower degree of social control (i.e. the defendant is in the community rather than in jail) ought not to be equated with an absence of social control according to personnel we interviewed. As one prosecutor stated,

¹³It cost Lakefront’s county \$10 a day to use BEM, while it cost the county \$30 a day to have someone in jail. The chief probation officer states that “the cost is ordered to be paid by the defendant/probationer on the program, usually out of the bond posted to get out of jail. We have traditionally set the (BEM) bond schedule a little higher and understand that program fees will be taken from the bond.”

¹⁴A “lethality assessment” is also part of the pre-enrollment screening.

The fear of being caught provides some measure of control over a perpetrator as opposed to just some kind of high bond. (...) And it allows people to still go to work, and allows victims to receive some compensation in terms of alimony or child support—so I think it really is a beneficial step above jail.

In releasing participants to the community, both programs direct them to discharge their responsibilities to their families, including the victim. Both programs emphasize the importance of remaining employed, and curfew hours are scheduled with consideration for supervisees' work shifts. River County program staff routinely encourages unemployed participants to find work.¹⁵ The probation officer in charge of one of the programs explained: "If the offender is not working, he has nothing to do but sit and dwell on everything and think about the victim. Eventually, he's going to blow." In almost all cases, the officer added, "Unless the offender is physically incapable of being employed, going to work is emphatically stressed."¹⁶

Although both programs achieve an overall reduction in the control of the participants (because they are released from jail), the programs also require that the men agree to liberty restrictions and varying levels of supervision in the interest of victim protection. For instance, River County requires defendants to make weekly office visits, during which urine screens are administered, and to submit to surprise home visits (at an average of two per month). Lakefront does not have such rules and policies in place, deeming them too intrusive or burdensome for non-convicted persons. Similarly, River County more strictly limits "out hours" to work and travel time, and requires advance notice of up to one week for deviations from agreed upon schedules. Lakefront is more flexible in setting curfews and has a "hands off" attitude toward defendants' whereabouts while not working, provided that they return home before 11 pm. River County's greater emphasis on supervision and its multiple restrictions are an expression of the practice of "trigger control"—a focus on monitoring defendants for risk factors associated in the literature with domestic violence. Reinforcing this emphasis is the larger proportion of River County's caseload that is high degree felony (36 versus 3% in Lakefront), and the greater likelihood that the parties in a given case will not be permanently separated, hence are likelier to still have enmeshed lives that may forecast contact attempts between them.

Reduction of Recidivism

Both programs aim to reduce re-offending by monitoring/supervising the defendants and protecting the victims. To this end, River County's program addresses "triggers" to re-offending, by prohibiting the use of alcohol and drugs, the possession of weapons in the defendant's home, by staff observance of the defendant's overall demeanor during office and home visits (with particular concern to note signs of jealousy, anger, and suicidal ideation), and by discouraging

¹⁵Supervisees' "out hours" are severely limited in River County if they are unemployed, providing an incentive to defendants to get a job if they wish to "get out of the house."

¹⁶For this reason probation officers say they do not wish to jeopardize the offender's employment by visiting his work site, unless there is a strong suspicion that the offender is lying about his work attendance, explaining that their presence at the defendant's work place could create difficulties for him. Indeed, we observed workplace visits to be rare; field interviews (and on-site "breathalyzer" tests) are conducted under cover of the probation officer's car, away from co-workers' line of sight.

defendants' involvement with "unstable environments." Contact violations, the officers argue, tend to occur when the defendant is under the influence of drugs or alcohol, at which point the deterrent effect of the anklet is likelier to weaken and give way to more impulsive actions (Ibarra, 2005).

The theory of "triggers" manifests itself in various ways. Initial home visits are approached as opportunities to become familiar with the defendant in his element—to see how and with whom he lives, where he sleeps, and to get a general reading of the stimuli and influences that might be present there. During these initial visits, River County staff will often examine the defendant's refrigerator and liquor cabinet, for purposes of seizing alcohol, and do an "in plain sight" examination of the premises for "offensive weapons" and narcotics. Caseloads at River County are greater than can be visited during the once or twice a week field nights, which means that staff must make decisions about which defendants to pay a surprise home visit. Concerns about who might have recently been drinking or using drugs often seem to guide decisions about which homes merit "surprise" visits.

Mandatory weekly office visits are also important because they provide the officer with the opportunity to talk to everyone on his caseload, and get updates on the current and recurring concerns he has with each client. Thus, personnel approach these interactions with an eye toward the defendant-specific "issues" that they believe to be most salient (Ibarra, 2005). The officer will typically make comments reinforcing "positive behavior," and discourage the client from whatever possibly "problematic" choices he may be considering.¹⁷ Staff may also engage in anger diffusion, either by calming down the client, or by offering to do something concrete to address the root of the client's anger. As for the latter, for example, defendants sometimes get angry about their inability to access their personal possessions, such as garments, car keys, bank accounts, etc., if these are in the now restricted home where the victim lives. Personnel try to diffuse this anger by serving as a go-between. However, since this burden is often not exhaustible in one trip, staffers often find that they must make multiple trips over the life of the case, as the defendant realizes the extent of the things he is missing. Indeed, often the parties to a case will have several reasons to require a go-between, including children and shared financial obligations.

¹⁷The following field note observation exemplifies these points. *Lawrence, a 45-year-old laborer who lives with his sister and her family while his case is pending, was arrested for "attempting to cause physical harm" to his wife. He and his wife got into a fight after disagreeing about how to grieve over the death of their son, who overdosed on cocaine in Lawrence's presence a few months ago. Lawrence attempted suicide three times afterwards, and he remains distraught—he was in tears when he enrolled into the program three days ago. During his first weekly office visit he comments about living with his sister, saying it is "different." The officer asks him, "Oh yea, how was it for you this weekend, how did it go?" "It was nice. Hadn't lived with a family for a long time. Had some good dinners. Everything fell apart when my son died." The officer tells Lawrence that this is a good environment for him to be in, that he needs to be around people. Lawrence replies that he has been thinking about getting his own apartment, possibly in Hill County. The officer reacts quickly, saying that although this is not necessarily a bad idea, that right now it is better for him to live in a more family environment. "Hill County can be good or bad, depending on where you live," he tells Lawrence, explaining that some areas have lots of drugs. "It might be worth hanging out at your sister's place for a while. You're in a situation where you need to be around people." Lawrence says that he needs to move out of the area, that he "can't live with her anymore." (A move would have to be approved by the officer, so it is unlikely to happen just now.) Reflecting on the case afterwards, the officer says Lawrence "is dealing with serious issues (including drug abuse). With him I am putting the emphasis equally on him and his victim. . . . The fear I have with someone who's suicidal is he can become homicidal."*

The trigger, "suicidal tendencies" in this case, led the officer to reject out of hand the proposal that the client move out of a "family environment" and live on his own, especially considering that the neighborhood where the client was thinking of living was associated with activity (drug dealing) that constitutes yet another possible trigger.

Over time, therefore, personnel become as instrumental in managing the separation of the parties as does the technology itself, and arguably more so.

As a result of the frequent contact that participants have with their supervising officer, the former are constantly reminded that they are being watched and can expect to have all aspects of their life brought into question during their meeting with staff, including when they awaken, where they sleep, and what they do with their “free time.” Officers, in turn, are in a position to listen for offhand, potentially threatening comments that defendants may make about the victim. For instance, during one visit a defendant brought up the subject of the prosecuting witness and said, “What comes around goes around. She’ll get hers.” The probation officer arrested the man on the spot; later, the court agreed that the arrest was warranted. Even though persons in the program are usually defendants, and their guilt has yet to be proven, through such means, supervising officers identify which defendants continue to harbor ill will toward the victim.

Thus, throughout their interactions with the defendants, staff are attentive for cues that may forecast “trouble” (Emerson & Messinger, 1977), either in the sense that they are in the long term “counter-productive” to the defendant’s own well being as the officer sees it, or because in the short term they portend possible threat to the victim in the case, if not dealt with immediately. Defendants appreciative of the officer’s long-term orientation to their well being at times talk about how the officer seems to be trying to “help” them get “their lives back on track.” The short-term concern with the victim’s safety, however, may result in imposing restrictions on participants that they view as burdensome, heavy handed, baffling, and ultimately unfair, considering they have not yet been convicted.¹⁸

The Provision of Assistance and Services to Supervisees

Expectations that supervisees address the roots of their (alleged or legally determined) violence are an important component of the program in River County (and to a lesser degree in Lakefront). Some may pursue counseling; others may seek substance abuse treatment, or enroll in anger management classes. Criminal justice professionals we interviewed stated that a major benefit of placing presumed batterers on BEM is that it provides them with an opportunity to seek treatment that can help them comply with the “no contact” requirements. According to one judge,

You can’t just be one sided and say “go out and sin no more”. You’ve got to say, “let us help you not sin no more”. But if you do, this is the problem you’re going to have: You’ve got to have some kind of program for anger management, for family unification. You’re going to have to include a positive approach, too, where they can work through their emotional situation. And you’re going to have alcohol and drug abuse programs

¹⁸Elsewhere (Erez et al., forthcoming) we discuss how defendants perceive the punitive dimension of their respective program. River County defendants were especially concerned about the liberty restrictions and heightened level of supervision; Lakefront defendants were more concerned about the costs involved in participating in the program.

too. You can't just say don't do it. You should try to help them not do it. And (participants) try to help themselves. They often are somewhat successful. It helps if you have a good probation officer who's trying to work with them.

Although treatment or rehabilitative issues are of *inexplicit* relevance to BEM, because these programs affect an intervention in a problematic interpersonal relationship, a treatment or rehabilitation agenda becomes integrated into BEM, whether by design or consequence. As most participants are defendants, staff cannot *require* that they seek treatment. Instead, getting defendants to treatment is based on coaxing and persuasion. Since the probation officer routinely administers urine tests that screen for the presence of trace elements of alcohol and narcotics, "dirty urines" provide staff with the basis for persuading defendants to seek treatment for substance abuse. One such defendant was told, "Stay off the alcohol. I'm telling you it's going to get you locked up. If you have a problem with it, let's deal with it, put you in treatment, AA, whatever." Requiring that such defendants sign receipt of a "written warning" creates a paper trail that can be used against them later in the event they do not take the officer's advice to show they are addressing substance abuse issues. Recommendations by staff to participants to enroll in treatment programs, or to continue with them, are often reinforced during office visits, the intimidation being that this could be the basis for mitigation down the road.

Although the program is not offered to defendants with the promise of deferred prosecution or a mitigated sentence, in practice it can sometimes have the same effect. In River County, if the defendant volunteers to participate in treatment, seek assistance or address the reasons for the abuse, by attending "anger management" classes for example, this may be brought to the court's attention in the context of a defense motion to have the charges dropped or dismissed. In considering the motion, the judge will typically ask for a reading of the defendant's compliance with BEM program strictures, which if found unproblematic, increases the likelihood that the prosecution will not object to the motion. No criminal conviction will be recorded for the misdemeanor violation under such circumstances, an important issue, as a second DV offense is upgraded to a felony. Consistent with the tenets of diversion, this option is usually not available to defendants facing felony charges. Similarly, at sentencing, the defendant's record of compliance with BEM rules and involvement with treatment programs during the pre-trial period may result in a lesser sanction (e.g. probation and continued treatment with "time on the shelf"¹⁹ rather than incarceration alone).

According to both staff and some participants, the program may also have latent "rehabilitative" value, because of the superimposition of structure in the defendants' lives that is coterminous with the scheduling of their days, or their tethering to "stable" home environments. The chief probation officer at River County, for instance, said

It is my professional belief that it (BEM) helps us to hold clients accountable to some standards, mostly that you have a place that you call home. Offenders who do not have a sense of place are difficult. These guys are the kind of people that will say "I'll be staying with my mother, girlfriend, neighbor, cousin, friend," and they move from one place to another and they stay there until they wear out their welcome. They have no stability

¹⁹"Time on the shelf" is how probationers refer to suspended jail/prison sentences.

until they have a place they call home. It (BEM) gives them a sense of regularity to their day; otherwise they wander around until the end of the day . . . People on it are there and are prompt at their schedule. It is easier to be violent when life is a sequence of disorganization and lacks structure.

Some of the participants we interviewed spoke of the benefits that they derived from the “time out” period they had while on BEM, stating that they had time to ponder the direction of their lives, address their anger, or otherwise benefit from the “order” that the program imposed on their everyday lives. In the words of one participant,

It straightened me out. I couldn't do everything I used to do . . . basically, it put me on a straight line. You know, I used to run wild. Well, now that I was on the program, it actually got me set on a—I don't know what you want to call it, a course, a daily schedule, cause I was limited to the time that I was allowed out. So, it just put me on a steady schedule. Then when I was cut off of it I stuck to that schedule. I was already there. My work habits got better. I went into business for myself while I was on it. And, it actually benefited me. (. . .) Basically, I just couldn't sit in the bar all night. That's what it comes down to . . . I had to be home and my time was valuable now. I had to actually set a schedule for my day, which I never had (done before).

Other men spoke about how the time spent “on the box”, away from their intimate partner, had convinced them that they wanted to move on with their lives, without her as a part of it. Statements such as “I hope to never see her again” and “I don't want anything to do with her” were common. Such men often spoke about their plans to leave the county with the conclusion of their case, as much of their anger was now being directed at the county itself, which administered the program. For some participants the program's chief benefit was that it instructed them in the importance of “moving on.”

Many men cited an unanticipated experience that resulted from being “on the box”: in spite of having been released to a “normal” (non-institutional) environment, they felt an uncharacteristic sense of powerlessness. That is, reminders of a lack of control and autonomy continuously undermined the veneer of normal life. This was most evident to those men who, upon release, returned to their parents' residence after many years of living on their own. These men spoke about the discomfort and infantilization that accompanied the return to their (often aged) parents' home. Living under their parents' roof, they felt it to be difficult (e.g. disrespectful) to have women or friends over, precluding a “normal” social life. Meanwhile, the men observed or imagined their estranged partners living freely, without restrictions on their movements or activities, thus some men spoke about how the program's aim seemed to be about “empowering the women” rather than “protecting” them. Many of the men described this experience as a deterrent to becoming entangled again with the victim, and as an instructively vivid encounter with the feeling of powerlessness.

NET WIDENING, NET STRENGTHENING, AND BEM

“Net widening” refers to the idea that alternatives to penal strategies can represent an *extension* of penal control by the criminal justice system over civil society (Austin

& Krisberg, 1981; Cohen, 1985; McMahon, 1990). Net widening occurs when people are brought into the system who would have dropped out of it, were it not for the existence of a diversion program. An example would be a person who is placed on probation with the stipulation that if he enrolls in a diversion program he will not be prosecuted; prosecutors might have otherwise dropped the case because of evidentiary weakness. Research suggests that net widening is a significant concern and may pose a greater risk to those involved in “diversion schemes aimed at the front end of the criminal justice process” (Thomas, 2003, p. 4), such as diversion from a charge, the stage where most BEM participants are located (e.g. Austin & Krisberg, 1981, p. 170; Decker, 1985).

Net widening can also be expressed in other ways: first, through the creation of new agencies and services that effectively supplement rather than replace the original set of control mechanisms (Cohen, 1985, p. 44), so that participation in the diversion does not preclude more formal processing; second, net widening can occur through “stronger nets” (Austin & Krisberg, 1981) or “denser nets” (Cohen, 1985). Here, people are caught up in a diversionary program that is more intense or intrusive than would have been entailed by the justice system’s ordinary handling of such cases. Persons who do not participate in the diversion end up receiving less onerous treatment. Some studies have observed that defendants who initially accepted enrollment in a pretrial diversion opted to go to court instead, calculating that the court outcome was likely to be less punitive than the diversion itself (Thomas, 2003).

Net widening is a pertinent consideration in the present context, since DV cases usually have high non-prosecution and dismissal rates relative to other violent offenses (Fagan, 1995). According to the net-widening thesis, BEM participants are likelier to become enmeshed in criminal justice processing than non-participants. Although all DV arrestees are arraigned prior to release, for example, only some of them will end up on BEM, and the latter group will tend to have a different experience with the criminal justice system upon release, owing to the greater transparency of their lives during the post-arrest period and the interest that the prosecution will take in their cases. Transparency emerges from BEM officer supervision of defendants’ activities; prosecutorial interest is sustained by BEM’s “tethering” of the witness to the case (Erez et al., forthcoming).

Many BEM supervisees made statements reminiscent of the net-widening critique. They speculated that they would have been better off spending a shorter time in jail rather than being on the program while their case was being processed. These participants argued it is not necessarily advantageous to a defendant to opt for a diversion program such as BEM instead of remaining (or being sentenced to a month) in jail, if one is going to be subjected to having program violations discovered and reported to authorities. Such newly discovered violations are susceptible to further court adjudication, hence more legal entanglements. The collateral risks of BEM, considered in tandem with its “pains” (Payne & Gainey, 1998), including the stigma associated with wearing an anklet and having to reveal to potential employers one’s status as a BEM enrollee, can render it a problematic option.

The quantitative data we collected further support the idea that BEM may exhibit diversion’s tendencies toward net-widening. For example, over a 3-year period, the number of people who were referred for an evaluation to River County’s program

increased from 365 in 2000 to 620 in 2001, to 726 in 2002. Although participation rates fluctuated (57% in 2000, 33% in 2001, and 35% in 2002), the increase in the number of referrals and the eventual increase in the number of participants suggest that net widening may be at work. River County administrators attributed the steep increase in referrals beginning with 2001 to widely reported domestic violence incidents that ended fatally. The number of hookups was constrained in part by the limited supply of equipment, but this was not the case with referrals, where judges made ample use of the program because its availability made them accountable for not using it. That is, according to defense attorneys, some judges were now using the BEM option to give themselves cover against fatalities committed under their watch:

Our judges are paranoid. Nobody wants to be the next judge who let (name of murderous defendant) go free. It's happened once where one of our judges let somebody go free and the shame of it is, the judge didn't let him go free. The sentence expired, the guy murdered his wife four days later and Judge X got blamed. That's the root of the paranoia among judges and prosecutors. Nobody wants to be the one who let out that guy who's gonna go and kill somebody. So while we have an orderly approach to a petty theft or a criminal trespass, we have a completely paranoid approach to domestic violence. It is a travesty and this whole concern for EM plays into it. I'm not saying that we don't have a societal problem. What I'm saying is that judges use EM as overkill . . .

Other trends in the official records suggest that involvement with BEM is associated with further and longer entanglement with the criminal justice system. When we examine the 2000–2001²⁰ dismissal rates of all River County defendants ($n = 848$)²¹ referred²² to BEM, and compare those who actually participated in BEM with those who did not, we find that dismissal rates are lower for BEM participants (29%) than they are for non-BEM participants (52%).²³ The average number of days in 2000–2001 that BEM participants spend in the program is higher (mean = 48, median = 29) compared with the number of days that non-BEM participants spend in jail (mean = 30, median = 20). BEM participants' cases are likelier to last longer and culminate in verdict-based dispositions. These trends are contrary to the underlying premise of diversion, namely, to divert offenders away from deeper or more extensive engagement with the system.

The lower dismissal rates for BEM participants apparently reflect the continued participation of the prosecuting witnesses in the cases, which in turn results in defendants seeking continuances, either to build stronger defenses, or as a way to wear down complainants' resolve to remain involved with prosecution efforts. The dynamics that are injected into BEM because of its victim-centric emphasis underlies the net widening we have observed. This emphasis can itself be viewed as a response to a long-standing criticism of diversion.

²⁰2002 data were not fully available at the time of this article's submission.

²¹The number of pretrial referrals overall is higher ($n = 918$), but disposition data were only available for 848.

²²Referrals might not participate for a number of reasons, for example, because the victim did not want to participate, in which case the defendant might go on to UEM; the defendant did not have a residence independent of the victim in which to live, in which case the defendant remained in jail; or the defendant was released on a higher cash bond in lieu of posting a lower bond amount with BEM as an attached condition.

²³Statistical analysis showed that the difference in dismissal rates could not be explained by differences in SES, race, age, prior offenses, or seriousness of current charges.

CONCLUSION: THE VICTIM-CENTRIC TILT OF BEM AND THE RECASTING OF DIVERSION

The programs examined in this study indicate that BEM attempts to meet many of the aims of diversion, but also manifests some of the criticism noted in the literature, most notably net widening. A review of the two programs also suggests, however, that BEM negates a central criticism of diversion—that it ignores victims and their concerns, including their safety. The tilt toward a pro-victim focus grows out of BEM's official justification: to protect victims.

BEM's victim-centric emphasis is apparent in several respects. It is particularly visible in the forms of buffering that BEM programs provide to victims. For instance, the defendant has to find a new place to reside, in the event he was living with the victim at the time of the arrest, or if he was living separately from her, but within the general proximity of her residence. Historically, defendants in DV cases would continue living at home while victims had to find make-shift housing, either with relatives or friends, or, with the emergence of shelters, at battered women's safe houses (Pleck, 1987).

BEM also is victim centered in its provision of services and assistance to the victims, especially by way of the moral and emotional support that program staff offers to them, and in how defendants are monitored and directed with a victim-based agenda in mind. The personal attention provided by BEM staff to victims appears to increase the likelihood that victims will cooperate with the prosecution—victims involved with BEM rarely fail to show in court, or to recant, for example. When victims continue to appear in court, in spite of repeated continuances, the cases are less likely to be dismissed. Some victim advocates have argued (e.g. Erez & Belknap, 1998a), and victims whom we interviewed in our study (Erez et al., 2004) have confirmed, that preventing contact between the defendant and the victim before the case has been disposed precludes the defendant from exerting pressure on the victim to retract her complaint, and bolsters her determination to cooperate with the prosecution.²⁴

Another advantage for victims whose alleged violators are placed on BEM is the close scrutiny of defendants' behavior during the period between initial arrest and final court appearance. Violations are likelier to be reported for BEM rather than non-BEM participants, because the former will have been subjected to closer supervision, again out of concern with victim protection. Justice personnel attention to ancillary program violations and cues about danger to the victim create another vulnerability for BEM defendants that non-BEM defendants do not share.

BEM, therefore, negates the criticism that diversion is too lenient toward offenders and indifferent to the concerns of the victims. BEM integrates victim interests and concerns into its structure, thereby creating potential liabilities for its supervisees that may result in further legal entanglement. In this sense, the victim-centeredness of BEM in effect amplifies the problem of net widening, in creating both wider and stronger nets. While BEM represents a move toward the recasting of diversion by integrating a victim's perspective, it also maintains a concern with the traditional offender-centric goals of diversion (cf. Sanders, 1988). Diversion

²⁴Victims we interviewed also spoke about how remaining buffered from contact with the alleged abuser allowed them to re-imagine their futures without his presence or influence.

programs have always been characterized by a contradictory quality (Decker, 1985). The victim-centricity we have observed with BEM represents a further intensification rather than reduction of those contradictions, for victims' interests often compete and conflict with offenders' interests in the context of adversarial justice systems.

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