California State Auditor

BUREAU OF STATE AUDITS

Batterer Intervention Programs:

County Probation Departments Could Improve Their Compliance With State Law, but Progress in Batterer Accountability Also Depends on the Courts

November 2006
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November 21, 2006 2005-130

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning our review of batterer intervention programs (programs) in California.

This report concludes that although state law requires an individual who is placed on probation for a crime of domestic violence to complete a 52-week program, only about half of batterers actually fulfill the program requirement. Some of the county probation departments (departments) we visited are counseling and referring batterers back to programs after they have been terminated for violations, rather than notifying the courts as required by state law. Because only two batterers in our sample of 125 ever completed a program after committing three or more violations, we question whether this practice only delays the inevitable court-imposed consequences of jail time or probation revocation and unintentionally sends the message that program violations are not serious and therefore will be tolerated.

Additionally, sometimes courts notified of violations simply return batterers to programs without imposing any additional jail time, even though batterers had multiple prior violations. This practice may be sending the unintended message to batterers that they can avoid the program requirement without any significant penalty for doing so. This lack of batterer accountability reduces the effectiveness of programs designed to alleviate the problem of domestic violence in the State. Program effectiveness is also hampered by the departments' failure to adhere strictly to the statutory requirements for program monitoring.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

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SUMMARY

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Our review of batterer intervention programs (programs) in California revealed the following:

- ☑ *Only about half of batterers complete a program as required by state law.*
- ☑ *Only two batterers in our sample of 125 ever completed a program after committing three or more violations of their program or probation terms.*
- ☑ *The county probation departments (departments) we visited had various attendance policies, and all were more lenient than statutory provisions, which allow for only three absences for good cause.*
- ☑ *Rather than notifying the courts as required by state law, some departments are counseling and referring batterers back to programs after they have been terminated for violations.*
- ☑ *Courts sometimes do not impose any consequences on batterers, even those with multiple prior violations.*
- ☑ *On-site program reviews required by statute are not being performed consistently.*

RESULTS IN BRIEF

State law requires an individual who is placed on probation for a crime of domestic violence to complete a 52-week batterer intervention program (program) approved by a county probation department (department). However, only about half of the batterers placed on probation actually fulfill the program requirement. Our review of a sample of batterers indicated that more than one-quarter of those who had completed programs did so after committing violations of program or probation requirements. Such violations can cause batterers to take longer than a year to complete their programs. Additionally, the departments do not always report violations to the courts. Further, some courts notified of violations simply return batterers to programs without imposing any additional jail time, even though at times the batterer had multiple prior violations. This lack of batterer accountability reduces the effectiveness of programs designed to alleviate the problem of domestic violence in the State. Program effectiveness is also hampered by the departments' failure to adhere strictly to the statutory requirements for program monitoring.

The programs, which are funded with the fees participating batterers pay, are structured courses designed to stop the use of physical, psychological, or sexual abuse to gain or maintain control over a person such as a spouse or cohabitant. According to information provided by the departments, California has more than 450 approved programs. State law mandates that the departments assume certain responsibilities, putting them in the role of principal overseers of the programs. Each department must design and implement an approval process for its programs and annually perform on-site program reviews. State law requires a department to notify the court if a batterer is violating any probation requirements and gives the court the authority to administer consequences.

The departments indicated that at least 25,000 batterers in California were enrolled in programs as of May 2006. However, based on statistics provided by the departments and our review of a sample of 125 batterers, only about half of these individuals are likely to complete their programs. Interestingly, 72 percent of the batterers in our sample who had completed

a program did so without violating the terms of the programs or their probation, but only two batterers in our sample of 125 completed the program after having three or more such violations. Although the most frequent violation involved noncompliance with attendance policies, the departments we reviewed had various policies regarding program attendance, and all were more lenient than statutory provisions, which allow for only three absences for good cause. In discussing their policies, departments cited the need for greater flexibility in attendance policies to allow as many batterers as possible to complete their assigned programs. Consequently, it may be time for the Legislature to consider whether these requirements are practical for the conditions faced at the local level.

As a result of violations, the average length of time it took batterers in our sample to finish the 52-week requirement was more than 15 months. The maximum completion time allowed by statute is 18 months, unless a court modifies the requirement. A primary reason for the significant extension beyond one year is that when a batterer is terminated from a program—for violating the attendance policy, for instance—the batterer must obtain a referral directing him or her back to a program. Obtaining this referral from the court or, in some cases, the department, takes time, and if a batterer commits multiple violations, that time can accumulate.

Of the departments we visited, the San Joaquin department allowed its batterers to accrue the highest number of program violations; thus, the average program completion time in that county was slightly more than 18 months. One reason batterers in San Joaquin County accrued numerous violations while on probation was that the department often followed a practice of counseling and referring batterers back to programs after being terminated for violations, rather than notifying the courts. Other departments also employed this practice but to a more limited extent. The practice is an apparent violation of statutory provisions that require departments to notify the courts of violations and, given our finding that very few batterers actually complete programs after more than two violations, appears only to delay the inevitable consequences that follow noncompliance with program requirements—namely, revocation of probation and further sentencing by the court.

Results from our sample indicated that when a court received notification of a violation, the most frequent response was to refer the batterer back to the program after he or she had

served some amount of jail time. It is this ability to impose consequences on noncompliant batterers that makes the role of the courts so crucial in batterer accountability. In fact, some counties have expanded on that role by having batterers appear regularly in court for progress reviews. This appears to provide greater accountability and may improve outcomes. Despite the positive impact the courts can have, sometimes courts do not impose any consequences on batterers, even those with multiple prior violations. Moreover, according to some department officials and evidence we obtained in one county, the courts are sometimes incorrectly sentencing batterers to 16-week anger management programs, rather than 52-week batterer intervention programs as the statute requires.

The departments could improve their monitoring of the programs by adhering more closely to statutory requirements. Although state law requires departments to design and implement a program approval process, we found that none of the five departments we visited had written procedures to guide staff in analyzing and approving applications or application renewals. Additionally, we found that two departments we visited could not provide documentation of their reviews of the applications they had approved in the last five years. However, the applications approved in the last five years that we were able to review generally conformed to statutory requirements.

State law requires the departments to conduct annual on-site reviews of their programs, including monitoring sessions, to determine whether they are adhering to statutory requirements. To ensure that the programs are complying with statutory requirements, the departments would also need to perform on-site reviews of program administration, such as the use of sliding fee schedules to assess the program fees batterers pay. However, based on our interviews with staff at all 58 departments and our review of selected programs at five departments, on-site reviews are not performed consistently. For example, the five departments we visited skipped years and programs in their on-site review efforts. Among the examples of programs straying from state requirements, we found one program that used an unqualified facilitator to oversee counseling sessions that were not single gender, as called for by law, and sessions that sometimes consisted only of movies that were not even related to domestic violence.

RECOMMENDATIONS

To maintain a balance between upholding the standard of batterer accountability and granting departments the flexibility needed to help batterers complete their assigned programs, the Legislature should consider revising the attendance provisions in the law to more closely align with what the departments and courts indicate is a more reasonable standard.

To improve their ability to hold batterers accountable for their actions, the departments, in conjunction with the courts and other interested county entities, should jointly consider taking the following actions:

- Establish and clearly notify batterers of a set of graduated consequences for violations of program requirements or probation terms. To maintain the credibility of the graduated consequences, the departments and the courts must administer them consistently.

- Establish a limit to the number of violations they allow before a batterer's probation is revoked and he or she is sentenced to jail or prison.

- Eliminate the practice of having probation officers counsel and direct batterers back to programs in which they failed to enroll or from which they have been terminated for excessive absences, and establish a consistent practice of notifying the court of all such violations, allowing the court to set the consequence for the violations.

- If they have not already done so, implement a practice of regular court appearances in which batterers receive both negative and positive feedback on program compliance.

The courts should consistently sentence individuals placed on probation for a crime of domestic violence to 52-week batterer intervention programs approved by the department. Courts should not substitute any other type of program, such as a 16-week anger management program, for a 52-week batterer intervention program.

To ensure consistency in its approval reviews, each department should adopt clear, written policies and procedures for approving and renewing the approval of programs, including a description of how department personnel will document reviews of program applications.

To ensure that programs adhere to statutory requirements, each department should consistently perform the on-site reviews required by state law. Specifically, a department should annually perform at least one administrative review and at least one program session review for each program.

AGENCY COMMENTS

Although our report contains certain recommendations that are broadly directed to all California probation departments and courts, and others that are directed to the Legislature, we asked the five departments we visited, with input from the courts in the respective counties when possible, to respond to the recommendations that relate to them. The department in Butte County said that it reviewed the report and plans to implement the recommendations. The Los Angeles department, in consultation with the court in that county, believes some of our recommendations interfere with the discretion of individual judges but agrees with the recommendations regarding the monitoring of programs. The department in Riverside County indicates that it needs time to consult with the court and that it will provide a response at a later date. The San Joaquin department outlines its plans to implement several of the report's recommendations but adds that certain constraints, such as jail overcrowding and limited court resources, do not make it feasible to implement others at this time. Finally, the department in San Mateo County adds some points of clarification and raises some concerns but does not specify whether it will be implementing the recommendations. ■

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INTRODUCTION

BACKGROUND

A batterer is an individual who uses physical, psychological, or sexual abuse to gain or maintain control over a person defined in Section 6211 of the Family Code to include a spouse, cohabitant, or someone who has or had a dating or engagement relationship with the abuser. A batterer intervention program (program) is a structured course designed to stop this behavior. According to state law, a person who is placed on probation for a crime of domestic violence must be on probation for a minimum of 36 months. As an alternative to prison or jail, probation allows offenders to remain in the community under the supervision of a county probation department (department), also known as formal probation, or under the supervision of a court, also known as informal or court-supervised probation. As a condition of probation, state law requires a batterer to complete a program of not less than one year, which is commonly referred to as a 52-week program. Programs must be approved by a department and consist of two-hour single-gender group sessions that include particular educational content. State law dictates that a batterer attend consecutive weekly sessions unless granted an excused absence for good cause. However, state law mandates that the batterer cannot miss more than three such sessions during the entire program and cannot extend the program beyond 18 months unless, after a hearing, the court finds good cause to modify these requirements. According to information provided by the departments, California has more than 450 approved programs with at least 25,000 batterers enrolled as of May 2006.

Programs obtain funding from the fees they charge batterers for attending the classes. Although the programs determine the fees, state law requires them to offer a sliding fee schedule based on an individual's ability to pay. A court can waive the fee if it determines that an individual does not have the financial ability to pay even a nominal amount. Other program requirements include periodic progress reports made to the courts and departments and immediate notification of violations, such as additional acts of violence and failure to comply with the program requirement.

DEPARTMENT RESPONSIBILITIES

The departments are criminal justice agencies with countywide jurisdictions. Their purpose is to assist the criminal justice system by, among other things, supervising offenders on court-ordered probation. In addition, state law assigns certain responsibilities to the departments that render them the principal overseers of the programs. For example, state law requires each department to design and implement approval and annual renewal processes for the programs. Additionally, the departments must perform an annual on-site review of each program, including monitoring a program session, to determine that the program adheres to applicable statutes and regulations. For these tasks state law allows the departments to charge each program a maximum of $250 annually. No other source of funding is established by state law.

THE ROLE OF THE COURTS

After setting the conditions of a batterer's original sentence and probation, the court plays a significant role in holding the batterer accountable for adherence to probation and program requirements throughout the probationary period. State law mandates that the court order the batterer to comply with all probation requirements, including the requirements to attend a program. If afterward the court, the department, or the county's prosecuting attorney becomes aware that the batterer is performing unsatisfactorily in the program, is not benefiting from counseling, or has engaged in criminal conduct, state law requires the court to hold a hearing as a priority calendar item. State law gives the court the sole authority to terminate the program requirement and proceed with further sentencing if it determines that the batterer has violated probation conditions, is not performing satisfactorily in or benefiting from the assigned program, or has engaged in criminal conduct. Consequently, although a program can raise a concern through a progress report or a department can report a violation of probation, the court has the sole authority to administer consequences.

SOME PAST AND CURRENT EFFORTS TO REVIEW BATTERER ACCOUNTABILITY

Although the Judicial Council of California, through its staff agency, the Administrative Office of the Courts (office), has policymaking authority over the courts, no state entity has a

standing charge to oversee the departments' monitoring of programs. However, some ad hoc state efforts to evaluate California's response to domestic violence have been undertaken. For example, in December 2003, in response to the continued high level of domestic violence in California, the attorney general formed a 26-member task force to examine how local criminal justice agencies respond to domestic violence. One of the four areas of focus for the task force was a review of how the programs, together with the courts and departments, hold batterers accountable. The task force conducted its review by surveying or interviewing practitioners, including judges, probation officers, prosecutors, victim advocates, and program staff from selected counties.

In its report, issued in June 2005, the task force noted several problems, including the following:

- Batterers are completing programs at low rates.
- Programs are allowing more absences than are granted under state law.
- When a program refers a noncompliant batterer to court, the court typically responds by reenrolling the batterer in another program, often allowing the batterer to retain credits for sessions already attended.
- Little data have been systematically collected to allow an assessment of the extent to which batterers are being held accountable.

In addition, the office, with funding from the National Institute of Justice, began a two-year study in December 2005 of California's batterer intervention systems. The study includes the collection of data from more than 70 programs in five selected counties. The office plans on using the data to determine what court, program, and department practices yield the most effective results in terms of program completion and reduced batterer recidivism.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits examine the extent to which the various entities involved in batterer intervention—including programs, departments, and courts—hold convicted

batterers accountable. Specifically, we were asked to review how the departments and courts responded to a sample of progress reports, allegations, or other information from the programs. We were also asked to examine the roles that the programs, departments, and the courts play in batterer intervention, including what type of information the departments send to the courts and how batterer fees are assessed. The audit committee also asked us to examine department input regarding fee structures, goals and measures, and the type and frequency of reports used. In addition, the audit committee requested that we determine how well a sample of departments oversee programs by performing the following analyses:

- Review the policies, procedures, and practices for approving and renewing the approval of programs by determining whether department processes are in writing, consistently applied, updated as necessary, and sufficient to ensure that all statutorily required elements are submitted.

- Determine the departments' processes for and frequency of monitoring program compliance with state law, and review their performance of other assessments of program performance, such as tracking program enrollment, absenteeism, and success rates.

- Determine what action departments take when they identify noncompliance with laws and requirements, including an assessment of what prompts departments to suspend or revoke program approval, deny an application for renewal, or modify the terms and conditions of approval.

- Identify any best practices departments are using to oversee programs.

To obtain a sample of progress reports, allegations, and other information from programs from which to evaluate department and court responses, we randomly selected and reviewed the department and court files of 125 batterers—25 batterers from five selected counties. The counties we chose were Butte, Los Angeles, Riverside, San Joaquin, and San Mateo. In selecting these counties we attempted to choose a sample that reflected diversity in location, population size, and per capita income. Because we wanted to review department practices in our selected counties, we interviewed staff at the departments in all 58 counties and also considered other factors when making our selections, such as the department's ability to typify particular levels of program monitoring and the presence of

any potentially unique practices that could represent a best practice. We requested that each department provide us with the following countywide statistics: the number of batterers enrolled in approved programs as of May 2006, the number of batterers enrolled in programs in 2004, and the number of 2004 enrollees who had completed their programs as of June 2006. The Appendix summarizes the information we obtained from our interviews with staff at the departments in the 58 counties.

After selecting the five counties, we asked the departments to provide data on all batterers directed to enroll in programs in 2004. However, as we discuss in Chapter 1, only two of the five departments could provide this type of data. The other three departments had to obtain data on enrollments from the programs themselves. Because one of these departments—Los Angeles—has 129 approved programs, we randomly selected five programs from which the department requested data. Although we had no other available alternative, one problem with using data from the programs is that the programs would be aware only of individuals that enrolled in their programs. They would not be aware of batterers who were directed to enroll but never did. Knowing that this problem would exclude such batterers from our testing, we attempted to identify some examples of those who failed to ever enroll in programs as ordered by the courts, using the data completeness steps described next.

In determining if the data provided us were accurate and complete, we found some minor inaccuracies in the provided data but determined that the errors had little to no effect on the results of our review. To determine the extent to which the data we obtained were complete—that is, contained all batterers directed to programs in 2004—we selected and reviewed a sample of convictions not appearing in our data to determine whether the individuals involved had been directed to programs.[1] As a result of this testing, we found that a program in Butte County had unintentionally excluded an insignificant number of batterers from the data it provided. In San Joaquin County, of a sample of 22 individuals convicted of crimes potentially related to domestic violence, we found five who were directed to programs but never enrolled. As we discussed earlier, these individuals would not be expected to be in the program data; therefore, their absence did not cast doubt on the data provided by programs in that county.

[1] Because we had data from only five of its 129 programs, we were not able to perform completeness testing for the Los Angeles department.

We evaluated the consequences imposed on batterers who failed to ever enroll in programs. The consequences for this type of noncompliance were not significantly different than consequences imposed on batterers in our overall sample for certain other types of noncompliance, such as failure to attend group sessions. However, because batterers who fail to ever enroll would by definition never complete programs, their exclusion from the population from which we selected our sample would have some effect on the completion percentage demonstrated by our sample. Specifically, the completion percentage of the true population of interest—those directed to programs in 2004—could be lower than the completion percentage of a sample selected from a population that excluded those who failed to ever enroll.

After obtaining the data and analyzing their accuracy and completeness, we obtained information for a random sample of 125 batterers from department, court, and in some cases program records. This information typically consisted of batterer progress or termination reports from programs, notes from probation officers, documents on violations of probation prepared by departments for the courts, records of court proceedings, and arrest reports for subsequent crimes. We noted each violation of probation or program requirements and determined how the department and court responded. We also determined whether the batterer completed the program and, if not, what his or her status was as of July 2006.

To evaluate how well the departments oversee the programs, we reviewed the program approval and renewal activities of the same sample of departments selected for the procedures previously described. We determined what procedures the departments have in place to review applications for program approval, and we examined whether departments consistently used these procedures for applications approved in the last five years. We also reviewed the applications to see if they included the key components specified in state law, such as program content and the level of experience and facilitator training the programs must have prior to applying for approval. We then analyzed how departments renew the approval of programs, typically by reviewing the renewal documentation at each county for a sample of five approved programs.[2]

[2] The department in Butte County had only two approved programs.

Using the same sample of programs, we assessed the five departments' monitoring activities by examining the on-site reviews conducted at these programs. When the on-site reviews identified noncompliance, we determined what the departments did to follow up with programs about these instances. We also requested that the departments provide us with documentation of any other types of monitoring they may be doing. To determine whether any departments are tracking program enrollment, absenteeism, and success rates, we included a question about these statistics in our interview with staff at all 58 departments. We also examined the use of these statistics at the one department we visited that indicated it had them. Finally, we evaluated unique, potentially best practices that the departments or the courts used to monitor program performance or improve batterer accountability. ■

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CHAPTER 1

Many Batterers Do Not Complete Their Required Batterer Intervention Programs, and the Extent to Which They Are Held Accountable Varies

CHAPTER SUMMARY

Anyone placed on probation for a crime of domestic violence is required by state law to successfully complete a batterer intervention program (program) of not less than one year, which is commonly referred to as a 52-week program. However, according to staff we interviewed at the 58 county probation departments (departments), and based on a sample of batterers whose progress we reviewed at five departments, only about half of the batterers required to do so actually fulfill the program requirement. Among the 125 batterers in our sample who completed programs, 72 percent did not violate any terms of the programs or their probation. In contrast, only two batterers in our sample completed programs after committing three or more violations. Although the program attendance policies of the departments we reviewed varied and were all more lenient than statutory provisions, the most frequent violation was for noncompliance with the program attendance policy. The next most frequent violation was for failure to enroll in a program.

The average length of time to finish the 52-week requirement for the batterers in our sample was more than 15 months. The statute allows 18 months for program completion, unless a court modifies the requirement. A primary reason program completion time can extend significantly beyond one year is that when a batterer is terminated from a program—for violating the attendance policy, for instance—the batterer must obtain a referral directing him or her back to a program. Obtaining this referral from the court, or in some cases the department, takes time, and to the extent that a batterer commits multiple violations, that time can accumulate. Of the counties we visited, San Joaquin County allowed its batterers to accrue the highest number of violations, and batterers who completed programs there did so after an average of slightly more than 18 months. One explanation for batterers in San Joaquin County accruing high numbers of violations while on probation is the

department's practice of counseling and referring a batterer back to a program after being terminated for a violation, rather than notifying the court by filing a formal violation of probation. Although they did so to a lesser extent, other departments also employed this practice, which is an apparent violation of statutory provisions requiring departments to notify courts of violations. Moreover, given our finding that very few batterers in our sample actually completed programs after committing more than two violations, the practice appears merely to delay the inevitable consequences of not complying with program requirements—namely, revocation of probation and further sentencing by the court.

Our sample indicated that when notified of violations for noncompliance with the program enrollment and attendance requirements, the courts returned batterers to the programs from which they were terminated, with no jail time and no other consequences, in 27 percent of cases. However, a slightly more frequent court response to violations, employed in 31 percent of cases, was to require batterers to serve some amount of jail time before allowing them to return to their programs. It is this ability to impose consequences on a noncompliant batterer that makes the role of the courts so crucial in batterer accountability. In fact, some courts have expanded that role by having batterers appear regularly before them for progress reviews. This practice appears to allow for greater accountability and, quite possibly, better outcomes.

Despite the positive impact courts can make, we noted some inconsistencies in batterer sentencing. In particular, department officials informed us, and evidence we obtained in one county confirmed, that courts are incorrectly sentencing some batterers to 16-week anger management programs, rather than the 52-week batterer intervention program that statute requires.

ONLY ABOUT HALF OF BATTERERS COMPLETE THEIR ASSIGNED PROGRAMS

Based on interviews with staff at California's 58 departments and a review of 125 batterers who enrolled in programs in 2004, roughly half of the batterers directed to enroll in programs complete them. In the Appendix we present the results of our departmental interviews. With most of the departments reporting, the overall completion rate was 54 percent. In addition, we randomly selected 125 batterers (25 from each of the five selected counties) enrolled in programs in 2004, and

we obtained documentation of their progress in fulfilling the program requirement. As shown in Table 1, 69 of the batterers we reviewed (55 percent) completed a program.

TABLE 1

Results of Our Review of a Sample of Batterers as of July 2006

		Completed Batterer Intervention Program				Did Not Complete Batterer Intervention Program			
County	Number of Batterers Reviewed	Totals	With No Program Violations*	With One or Two Program Violations	With Three or More Program Violations	Totals	Still Subject to Program Requirement†	Warrant Out for Arrest	Probation Revoked and Sentenced to Jail or Prison
Butte	25	15	10	5	0	10	2	1	7
Los Angeles	25	19‡	15	4	0	6	1	3	2
Riverside	25	13	9	4	0	12	4	7	1
San Joaquin	25	8	6	1	1	17§	8	2	5‖
San Mateo	25	14	10	3	1	11#	0	5**	5
Totals	**125**	**69**	**50**	**17**	**2**	**56**	**15**	**18**	**20**

Sources: Court records and department files from the five counties we visited.

* For the purposes of this analysis, a program violation generally is any action by a batterer that causes a program termination and the need for reinstatement if the batterer is to continue progressing.

† The majority of batterers in this category are still enrolled in programs. However, some are awaiting sentencing or other action from the courts, and a few are in jail or drug rehabilitation but should be required to enroll in programs when they get out.

‡ Includes one individual who was directed by the court to attend only 26 program sessions as discussed later in the chapter.

§ The columns to the right do not add up to 17 because one batterer passed away and because the county's parole office that was to monitor another batterer could not tell us his status.

‖ Includes a batterer who was committed to a state hospital within the Department of Mental Health.

The columns to the right do not add up to 11 because one batterer was put on court-supervised probation and allowed to move to another country.

** Includes three batterers who were deported.

The program violations reflected in Table 1 were generally severe enough to cause termination from a program and the need to be reinstated by the courts or, in some cases, by the departments, before the batterers could continue to progress toward completing their assigned programs. As Table 1 shows, of the 69 that had completed their programs as of July 2006, 50 (72 percent) did so without any program violations, 17 had one or two violations but later completed their programs, and only two batterers with three or more violations later completed their programs. Of the 125 batterers included in Table 1, 31 had three or more violations. Therefore, it is significant that only two from that group completed their programs.

A 2004 study in New York found that of the individuals sentenced by domestic violence court, those who had immediate problems complying with program requirements were very likely never to complete programs.

A study funded by the U.S. Department of Justice and conducted in New York had similar findings. Issued in April 2004, the study found that half of the individuals sentenced by domestic violence court completed their programs and that those "who had immediate problems complying with [program requirements] were very likely never to complete [programs]."[3] This particular study also found that not completing a program predicted recidivism, which in this study was defined as any new arrest for domestic violence or other crime.

Of the 56 batterers previously shown in Table 1 who had not completed a program as of July 2006, 15 were still enrolled in a program or otherwise subject to the program requirement, 18 had warrants out for their arrest, and 20 had had their probation revoked and were sentenced to some time in jail or prison. For those still subject to the program requirement, continued program progress is still a possibility. For those who had had their probation revoked and were sentenced to jail or prison, accountability for failing to complete a program was achieved to at least some extent. However, for batterers who remained on arrest warrant status, program progress was halted, as was accountability for completing a program.

An arrest warrant is an authorization typically issued by a court to arrest and detain an individual. For the purposes of this report, the term *arrest warrant* generally refers to a bench warrant issued by a judge after a person fails to appear in court. For instance, from our sample a batterer from Butte County failed to appear for a June 2005 court hearing, and the court issued an arrest warrant. As of our review in July 2006, more than a year later, the individual had not yet been arrested and brought back to the court for further sentencing. Another case from our sample is a batterer from San Mateo County who failed to report to the department, failed a drug test, and did not attend a program and a residential drug treatment center. The department filed a violation of probation with the court, and the court issued an arrest warrant in August 2004. However, as of our review in July 2006, nearly two years later, the batterer had not yet been arrested and therefore remained on arrest warrant status.

[3] The program requirement for the majority of the individuals in this study included batterer intervention only. For 24 percent of the batterers, the program requirement included batterer intervention and substance abuse treatment, and for 11 percent the requirement included only substance abuse treatment.

Among the 18 batterers shown in Table 1 with warrants out for their arrest, the length of time they had been on arrest warrant status ranged from one month to 23 months and averaged 11 months. We asked the departments why batterers could remain on arrest warrant status for that long. Other than in Butte and Los Angeles counties, where the departments indicated that they regularly attempt to contact or apprehend batterers on arrest warrant status,[4] the department officials we interviewed explained that once an arrest warrant has been issued, it is generally law enforcement's responsibility to arrest the individual. They further explained that law enforcement is not necessarily searching for batterers on arrest warrants. Rather, law enforcement apprehends batterers on arrest warrants during traffic stops or as the result of their committing other offenses.

THE MOST FREQUENT VIOLATION WAS LACK OF PROGRAM ATTENDANCE

State law requires courts to order batterers to comply with all probation requirements, including the requirement to attend a 52-week program and to pay all program fees based on ability to pay. Among the 125-batterer sample indicated in Table 1, 50 batterers (40 percent) completed programs without any violations. However, nearly all the remaining batterers in our sample had one or more program violations of some type. Figure 1 on the following page shows that the most frequent violation was for not complying with attendance policies, representing 30 percent of the violations that occurred in our sample. As we discuss later in the chapter, these policies vary by county, and none of the policies in the five counties we visited is in strict accordance with state law.

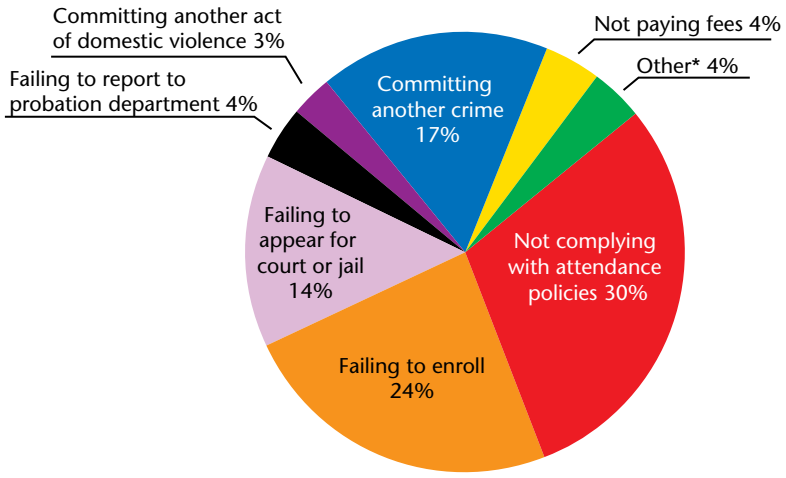
The most frequent violations committed by the batterers in our sample were for not complying with attendance policies and for failing to enroll in a program.

Another frequent violation, representing 24 percent of the violations in our sample, was a batterer failing to enroll in a program after being directed to do so. Two of the five counties we visited provided us with data on all batterers directed to enroll in programs in 2004, enabling us to get a sense of how many failed to ever enroll. Specifically, in Riverside County, we found that nine of the 25 batterers in our sample never enrolled in programs, and in San Mateo County, we found that four of our sample of 25 batterers failed to ever enroll in programs. However, the three other counties we visited did not

[4] According to the department in Los Angeles County, in 2005 it organized a bench warrant unit to send a letter to individuals on formal probation, notifying the individual of the arrest warrant. If individuals do not respond, the department indicated that it has a special unit that searches for them.

FIGURE 1

Distribution of Violations Committed by Participants in Batterer Intervention Programs



Sources: Court records and department files from the five counties we visited.

Note: Data based on a sample of 125 individuals who were placed on probation for crimes of domestic violence in five counties.

* Includes termination from drug rehabilitation program, threatening program staff, not progressing in counseling, and a positive drug or alcohol test.

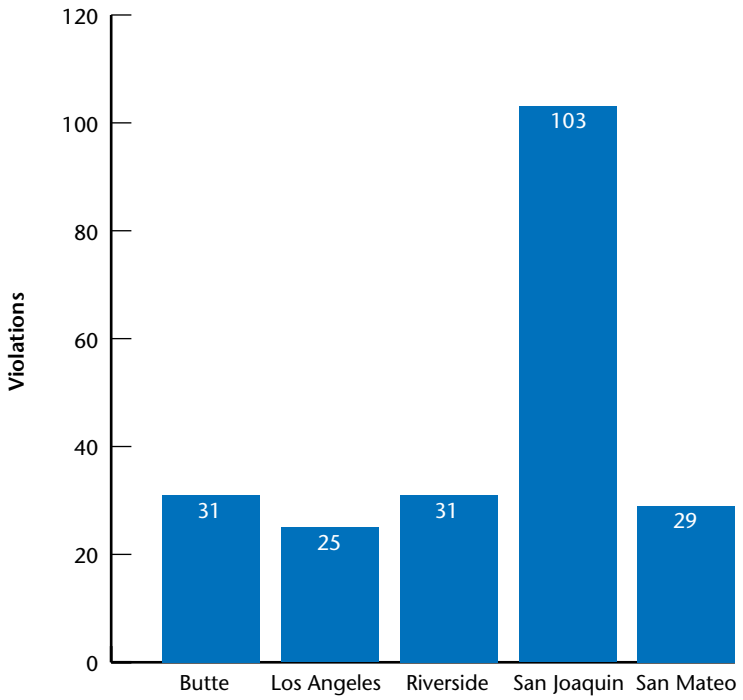
maintain centralized information showing all individuals who were directed to programs; thus, we had to select our sample of 25 batterers from enrollment data provided by the programs. Individuals who initially enrolled in programs but were then terminated and subsequently failed to enroll in the same or other programs would be in the data. However, batterers who failed to ever enroll in a program would not be in the data. Therefore, the overall frequency of this type of violation is likely higher than what is shown in Figure 1. As discussed in the Scope and Methodology, we compensated for this problem by doing additional work at some counties to determine what the common consequences were for this type of noncompliance.

Some of the other frequent violations that occurred were committing another crime (17 percent) and failing to appear for court or jail (14 percent). Some of the less frequent violations were failing to report to the department (4 percent), not paying fees (4 percent), and committing another act of domestic violence while in a program (3 percent). We discuss some of these violations later in the chapter.

The number of violations from each county that make up Figure 1 is displayed in Figure 2. As shown, the 25 sampled batterers in San Joaquin County had the most violations of the counties we reviewed. One apparent reason for this, as we discuss later in the chapter, is that the San Joaquin department, more often than other departments we reviewed, counsels those who fail to attend program classes and directs them back to programs, rather than formally notifying the court of the violations. This appears to allow batterers to accumulate more violations before they receive any consequences, such as jail time or probation revocation.

FIGURE 2

Number of Violations for a Sample of 25 Batterers at Each Selected County Probation Department



Sources: Court records and department files from the five counties we visited.

Note: The total number of violations in this figure, 219, exceeds the total number of batterers in our sample, 125, because some batterers had multiple violations.

STATUTORY PROVISIONS REGARDING PROGRAM ATTENDANCE AND COMPLETION TIME MAY WARRANT FURTHER CONSIDERATION

Before January 2002 the provision in state law that imposes the program requirement on batterers did not specify an attendance requirement or the length of time a batterer could take to complete the 52 program sessions. In response to concerns that batterers were dropping in and out of programs and taking years to complete them, the Legislature amended the law to include a specific attendance requirement and an 18-month limit for program completion. However, more than four years after these amendments were added to the law, the counties we visited appear not to have adopted them as part of their efforts to hold batterers accountable for completing programs. Specifically, the departments' program attendance policies are more lenient than the state law provisions, and most departments do not track whether a batterer is approaching or has exceeded the 18-month limit. As we discuss later in this chapter, departments cite as their reason for leniency the need for a flexible policy to allow as many individuals as possible to complete a program. Consequently, it may be time for the Legislature to reconsider whether these requirements are practical for the conditions faced at the local level.

Department Attendance Policies Are More Accommodating Than the Attendance Provisions in State Law

None of the attendance policies of the departments we visited are in strict compliance with the program attendance provisions in state law.

As we discussed earlier, a frequent reason batterers were terminated from programs was a failure to comply with attendance policies. However, among the departments we visited, different standards exist for the number of absences allowed before an individual is terminated from a program. Moreover, as indicated in Table 2, no department policy is in strict compliance with the program attendance provisions in state law. State law dictates that a batterer complete a 52-week program in consecutive weeks unless granted an excused absence for good cause, but the batterer can never miss more than three sessions during the entire program. However, in response to certain local conditions and to the difficulty of establishing good cause in some situations, departments have adopted attendance policies that are more lenient than the statutory attendance requirement.

TABLE 2

Comparison of Attendance Provisions of State Law With the Policies of Selected County Probation Departments

	Number of Excused Absences Allowed	Number of Unexcused Absences Allowed	Total Absences (Excused or Unexcused) Allowed	Makeup Sessions Allowed (Yes/No)	Comments
State law	3	0	NA	Not mentioned	
Butte County	No specific number	3	No specific number	No	Two unexcused absences in any 10-week period results in termination.
Los Angeles County	NA	NA	3	Yes*	Does not attempt to distinguish between excused and unexcused absences.
Riverside County	NA	NA	3	Yes	Does not attempt to distinguish between excused and unexcused absences.
San Joaquin County	No specific number	7†	No specific number	Yes‡	Three consecutive absences results in program termination.
San Mateo County	NA	NA	3	Yes*	Two consecutive absences results in program termination.

Sources: Court records and department files from the five counties we visited.

NA = Not applicable.

* The departments in Los Angeles and San Mateo counties allow makeup sessions for excused absences. The Los Angeles department states that the makeup session must be in roughly the same time period as the missed session.

† The department in San Joaquin County allows three nonconsecutive absences in the first 26-week period and four in the second.

‡ The department in San Joaquin County stated that it gives programs the discretion to offer makeup sessions but believes they should be within the same week as the absence.

All five departments we visited allow a certain number of absences for which a batterer could not show good cause (unexcused absences). As shown in Table 2, the departments' policies either explicitly allow a specified number of unexcused absences or do not distinguish between excused and unexcused absences. The San Joaquin department allows program participants to have a total of seven absences before being terminated from the program. However, three consecutive absences result in immediate termination. A department official explained that it is already hard to get batterers in San Joaquin County to complete programs; strictly enforcing the attendance provisions in state law would cause more batterers to be terminated from programs. Consequently, some batterers might lose all session credits and have to pay reenrollment fees, ultimately resulting in even fewer batterers completing the programs.

The Riverside department indicated that requiring programs to verify the reason that a batterer missed a program session would be impractical for programs and would subject them to manipulation from batterers. The Riverside department, along with the Los Angeles and San Mateo departments, has adopted the policy that a program participant can miss a total of only three sessions, excused or unexcused. On the fourth absence the program is to notify the department or the court, depending on probation status. In addition, four of the five departments we reviewed have some type of makeup policy. The department in Los Angeles County indicated that it does not authorize programs to conduct makeup sessions for any and all missed classes but gives some discretion to programs to allow an otherwise compliant batterer to attend another program session in the place of his or her regularly scheduled session if the absence was for good cause and the makeup session is in roughly the same time period as the missed session. In these limited circumstances, the department indicated that the missed session would not then count toward the limit of three absences. Additionally, the department in Riverside County allows makeup sessions but gives programs discretion on when they can be conducted.

Of the 50 batterers shown in Table 1 who completed the program requirement without any program violations, 36 did so with at least one absence for an unexcused or undetermined cause. Had the departments we reviewed chosen to adhere strictly to statutory provisions, the typical practice would have been to terminate these individuals from their programs and require them to appear in court. The individuals would then have been faced with starting their programs over, potentially losing previous session credits and having to pay reenrollment fees. The extent to which this would have discouraged the 36 batterers from later completing a program is unknown, but at a minimum it would have extended the length of time it took those individuals to complete their assigned programs.

The fact that all the departments we visited found it necessary to adopt attendance policies that are more accommodating than the requirements of state law suggests that current statutory provisions regarding attendance may merit further consideration.

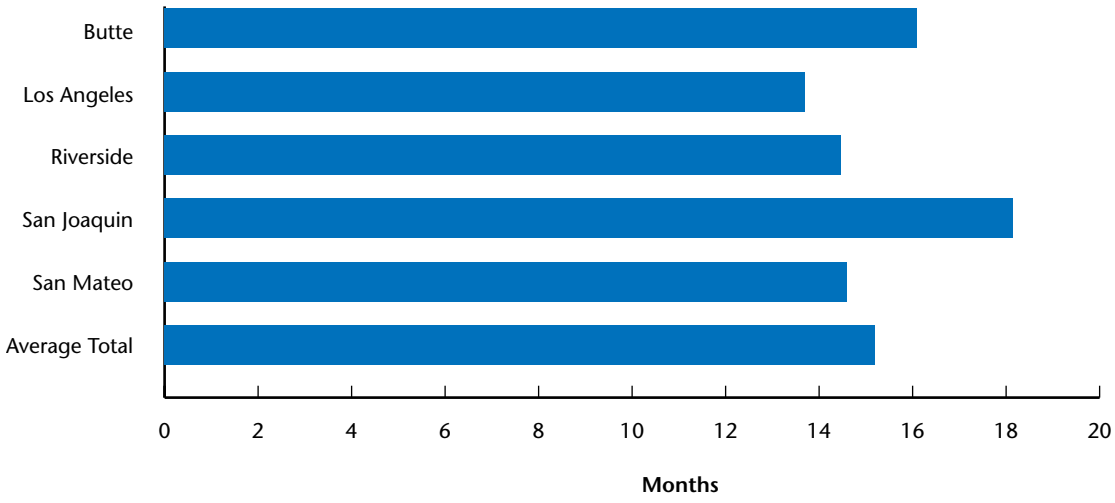
We recognize that limiting the number of absences is important for maintaining program continuity and allowing departments and the courts to receive prompt notification of batterers attempting to avoid the program requirement. However, the fact that all the departments we visited found it necessary to adopt attendance policies that are more accommodating than the requirements of state law suggests that current statutory provisions regarding attendance may merit further consideration.

Batterers Who Complete Programs Sometimes Exceed the Time Limit Established in State Law

When a batterer violates program requirements and is terminated from a program, he or she must obtain another directive, or referral, from the court, or in some cases the department, to be reinstated into a program. Although obtaining another referral can be done quickly, in some cases the process takes months. Consequently, a batterer who commits a violation may need longer than 52 weeks to complete a program. State law places a limitation on the additional time that can be spent by requiring a batterer to complete a program within 18 months unless a court finds good cause to modify this requirement. For the 69 batterers in our sample who completed a program, we determined the length of time it took them to reach the end of their program and found that only six (9 percent) exceeded the 18-month requirement. However, as Figure 3 shows, the average completion time for the total sample was more than 15 months.

FIGURE 3

Average Time for Batterers to Complete Batterer Intervention Programs



Sources: Court records and department files from the five counties we visited.

Note: Data based on a sample of 124 individuals who were placed on probation for crimes of domestic violence in five counties. We excluded one individual in Los Angeles County who was directed to complete and eventually completed only 26 program sessions.

Generally, we calculated the length of time it took batterers to complete programs starting from the date they were directed to enroll in a program. However, in cases where the court imposed jail time as part of the original sentence, we excluded this time spent in jail from the calculation.

In San Joaquin County, the eight batterers completing programs (see Table 1 on page 17) had an average completion time of slightly more than 18 months. Two of the eight exceeded the 18-month requirement, with one batterer taking 31 months to complete a program. As shown previously in Figure 2, the sample of 25 batterers in San Joaquin County had far more violations than the same number of batterers in other counties. Program termination for a violation and the program reinstatement that must occur if the batterer is going to continue in the program take time to be completed and communicated—processes that can extend the time a batterer takes to complete a program.

We reviewed court documentation for the six batterers who completed programs but exceeded the 18-month requirement and found no instance in which a court noted the requirement and waived it.

We reviewed court documentation for the six batterers who completed a program but exceeded the 18-month requirement and found no instance in which a court noted the requirement and waived it. In fact, we found very little, if any, acknowledgment of the 18-month requirement in any of the documents we reviewed. When we asked the five departments we visited if they track batterers against the 18-month requirement, four indicated that they do not and were not aware of the courts or programs doing so. A representative from the fifth department—San Mateo—explained that a batterer is typically placed on formal probation for the first 18 months, and if the individual completes a program within that time, the type of probation changes to informal, or court supervised. The representative said this provides an incentive to batterers to complete programs so they can avoid the additional monitoring and fees associated with formal probation. According to the representative, if batterers do not complete their programs within the 18-month time frame, they do not have their probation terms modified and could be required to attend additional sessions.

However, the other counties we visited do not use a model that incorporates the 18-month requirement. A representative from the Los Angeles department explained that the courts are informed of, and consider, individual violations on an ongoing basis and that the effort is to hold the batterers accountable for instances of noncompliance in a way that motivates and allows them to complete the program, whether or not it takes longer than 18 months to complete. A representative from the Riverside department explained that its focus is not so much on the 18-month requirement as on batterers completing their assigned programs before their probation expires. He further offered that each time the court holds a violation of probation hearing and reinstates a batterer to a program, it is implicitly extending the 18-month requirement.

The interpretation of the Riverside department, however, renders the 18-month requirement ineffective, because a batterer who takes any time close to 18 months to complete a 52-week program should have had at least one court hearing in which the program requirement was reinstated. In theory, reinstatement would restart or extend the 18-month requirement. Whether or not the interpretation is correct that the 18-month requirement is implicitly extended at each hearing in which a batterer is reinstated into a program, it appears that most of the departments and the courts we reviewed have not found it to be a benchmark to which they need to attach any consequences. Rather, the departments and the courts seem to focus on helping batterers who appear amenable to the program to complete it, regardless of how long they take to do so. Consequently, it may be that this statutory provision merits further consideration by the Legislature.

OTHER VIOLATIONS WERE LESS FREQUENT BUT STILL HOLD SIGNIFICANT RAMIFICATIONS FOR BATTERER INTERVENTION

Although certain violations, such as committing another act of domestic violence and failing to pay program fees, occurred less frequently than others among our sample of batterers, it is important to note their existence and to understand their importance. In our sample of 125 individuals, we found seven instances of a batterer committing another act of domestic violence after enrolling in a program. Although this violation was relatively infrequent compared with other types of violations, its occurrence points out that programs cannot necessarily stop all further acts of violence. A program can challenge a batterer's viewpoint and help him or her learn new techniques to avoid committing the same or a similar offense, but ultimately even completing a program does not guarantee that a batterer has been changed by the process.

Ultimately even completing a program does not guarantee that a batterer has been changed by the process.

For example, a batterer on court-supervised probation in Riverside County completed his program with the highest possible marks for participation and learning. On a scale of one to 10, one being the lowest possible chance of recidivism and 10 being the highest, the program assigned the batterer a one. However, 11 days after completing the program, the probationer assaulted his wife in a severe manner, as indicated by the description contained in the police report. He was convicted of felony domestic violence, put on formal probation monitored by the department, sentenced to a year in jail, and directed back

into a program. Consequently, this program completion, which is included in Table 1 on page 17, cannot be considered an indicator of success for the program or the batterer intervention system overall. Rather, program completions should be considered only the beginning of an analysis of batterer intervention outcomes. A further measure of success would be reductions in batterer recidivism—the committing of further acts of domestic violence. However, recidivism must be tracked over an extended period, and as discussed in Chapter 2, few departments currently collect such information.

The financial viability of the system California has in place to deal with batterers depends on batterers paying their program fees.

Although a violation for failing to pay program fees occurred only eight times among our sample of 125 batterers, it is another violation that holds particular significance. As mentioned in the Introduction, programs obtain funding from the fees that batterers pay for attending classes. Therefore, the financial viability of the system California has in place to deal with batterers depends on batterers paying their program fees. However, to allow batterers who have little or no income to participate, state law requires programs to offer a sliding fee schedule based on income and authorizes courts to waive the fees for batterers found unable to pay. Faced with the need to secure enough funds to remain operational and with the requirement to offer a sliding fee schedule, programs have found it necessary to have batterers show proof of income demonstrating the financial hardship that paying full program fees would inflict on them. Programs have also found it necessary on some occasions to terminate batterers in part for not paying program fees.

For example, a program in Los Angeles County terminated a batterer for not paying the program fee and for not providing proof of financial hardship that would allow the program to reduce the fee. After being notified of the termination and accompanying reasons, a Los Angeles court directed the person to enroll in another program, allowing her to retain the session credits she earned from the program for which she did not pay. The court tracked her progress through the next program, adding session credits together and determining that she had completed the program once the court thought the credits for the two programs had reached 52.[5] Although in this case the court chose not to hold the batterer accountable for paying the program fee, the example highlights the courts' role in that effort. For instance, the court could have refused to give

[5] The batterer had really completed only 47 classes; a math error by the court caused it to mistakenly determine that she had completed the program.

the batterer credit for previous classes until the batterer paid a reasonable program fee, but it did not do so. This type of court response may send an unintended signal to batterers that they do not have to pay program fees and could threaten the financial viability of the batterer intervention system.

THE DEPARTMENTS CAN AFFECT THE CONSEQUENCES BATTERERS RECEIVE IN RESPONSE TO VIOLATIONS

Depending on how a county chooses to monitor its domestic violence probationers, the departments can play a significant role in ensuring that batterers are held accountable for violations of probation and program requirements. Specifically, when a department notifies the court that a batterer is performing unsatisfactorily in the assigned program, state law requires the court to hold a hearing on a priority basis to determine whether further sentencing should proceed. In addition, state law requires departments to report to the court any violation or breach of court-imposed terms and conditions of probation. However, in apparent violation of state law, some departments are not notifying the courts of violations; rather, they are counseling the offending batterers and directing them back to programs.

Some counties have chosen to place all batterers on formal probation—that is, probation monitored by the departments—as shown in the Appendix. Other counties have chosen to use court-supervised probation for a significant number of batterers. As the text box shows, of the five counties we visited, only Los Angeles and Riverside use court-supervised probation to a meaningful extent. In those counties batterers convicted of misdemeanor offenses are the ones placed on court supervision; batterers convicted of felonies are usually placed on formal probation.

Number of Batterers on Court-Supervised Probation From Our Sample of 25 at Each County

Butte	1
Los Angeles	18
Riverside	19
San Joaquin	0
San Mateo	0

As we discussed earlier, the program violations committed most frequently by our sample of batterers were failing to attend program classes and failing to enroll in a program. Table 3 on the following page shows that for our sample of 125 batterers, these violations totaled 117.[6] Because some of these batterers were on court-supervised probation, the five departments we reviewed needed to respond to only 95 of these violations. Rather than

[6] Some batterers had more than one violation. Therefore, it would not be accurate to say that 117 of the 125 batterers had an attendance or enrollment violation.

file violations of probation to notify the courts, the departments counseled batterers and directed them back to programs in response to 39 of the 95 violations (41 percent). Although a few other departments used this practice to a limited extent, the San Joaquin department used it the most, in part because it had the most violations. The department in Butte County did not use the practice for any of the violations we reviewed for which the batterers were on formal probation. An official at the Butte department explained that it has a low tolerance for any batterer who, as a result of a continued lack of performance, is terminated from a program. He said that in most cases of program termination, the department files a violation of probation with the court, although it does not have a specific policy requiring this.

TABLE 3

Responses of County Probation Departments to Batterer Intervention Program Attendance and Enrollment Violations

			Action of County Probation Department		
County	Total Violations	Violations by Batterers on Formal Probation	Counseled and Directed Batterer to Return to Program	Filed Violation of Probation, or the Court Was Otherwise Notified	No Action Taken*
Butte	14	13	0	13	0
Los Angeles	10	4	0	4	0
Riverside	22	9	2	7	0
San Joaquin	60	58	35	19	4
San Mateo	11	11	2	9	0
Totals	**117**	**95**	**39**	**52**	**4**

Sources: Court records and department files from the five counties we visited.

Note: Data based on a sample of 125 individuals who were placed on probation for crimes of domestic violence in five counties.

* Includes violations for which the county probation department did not need to take a separate action or, in a few instances, for which the department failed to take action when needed.

As we discussed earlier in this chapter, the 25 batterers we reviewed from San Joaquin County had the highest number of program violations, and batterers from that county who completed the program took the longest to do so of batterers from any of the five counties we reviewed. This occurred even though the San Joaquin department has one of the most lenient program attendance policies. It appears that one of the reasons for the results is the practice by the department of counseling and directing batterers back to programs rather than filing formal violations of probation, which then require court action.

This allows batterers in San Joaquin County to accrue more program violations before either completing a program or being considered to have failed to meet the program requirement and having their probation revoked. However, certain population characteristics and other factors in San Joaquin County may make it fundamentally different from the other counties we reviewed, and therefore they should be considered as part of a side-by-side comparison.

According to annual statistics prepared by RAND California, a service that publishes statistics on public policy issues, from 1993 through 2004 San Joaquin County had the highest number of domestic violence calls per 10,000 persons among our sample counties. This indicates that, adjusted for population size, domestic violence is more prevalent in San Joaquin County and that the San Joaquin court and department face demographics that are different from those of the other counties in our sample. We acknowledge that a high number of batterers could become burdensome on a system and may indeed change how the system responds to noncompliance. Nevertheless, the San Joaquin demographics, although they may lead to a higher number of batterers, need not affect the number of violations the county tolerates before it terminates a batterer's probation. The higher number of violations among the 25 batterers in our San Joaquin County sample (as shown in Figure 2 on page 21) is rather a reflection of the accountability process in that county.

The higher number of violations among the 25 batterers in our San Joaquin County sample is a reflection of the accountability process in that county.

An official at the San Joaquin department commented that it monitors more probationers than other departments in larger counties and that, faced with the need to monitor large caseloads, the department has established a policy in which a probation officer can provide one additional program referral if a batterer fails the program requirement. The department official said that if the batterer commits a subsequent violation, the probation officer must file a violation of probation with the court. However, based on our review of 25 batterers, the department does not appear to follow this policy consistently. We found at least six instances in which probation officers provided additional referrals on consecutive violations. In one instance, the probation officer provided the batterer with five consecutive referrals after attendance or enrollment violations before finally filing a violation of probation with the court.

As we discussed previously, state law requires the departments to report to the courts any violation or breach of court-imposed terms and conditions of probation. This would include the program requirement, which is indicated in court orders. Therefore, the practice by departments of counseling batterers who have committed program violations and directing them back to their assigned programs without notifying the courts of the violations appears to violate state law. Two departments—Riverside and San Joaquin—explained that if they filed a violation of probation with the court for every violation, the court's resources would be overwhelmed. The Riverside department indicated that with the approval of the court, it gives probationers additional opportunities to correct behaviors that are leading to less serious violations. For example, the department in Riverside County stated that the court has authorized it to reinstate several times probationers who were terminated from work programs for missing one day.

Because of the lack of initial consequences, departments that use the practice of providing additional referrals may unintentionally be sending the message that program violations are not serious and therefore will be tolerated.

Although we acknowledge the challenges that counties face, we question whether the department practice of providing additional referrals to batterers who fail to enroll or attend batterer intervention programs is an effective practice, because the batterers in our sample who violated program requirements three times or more tended not to complete their programs. Therefore, the practice by departments of providing additional referrals, which have no associated jail time consequences, seems only to delay the inevitable court-imposed consequences of jail time or probation revocation. Indeed, because of the lack of initial consequences, departments that use this practice may unintentionally be sending the message that program violations are not serious and therefore will be tolerated. This may actually increase the workload of departments and courts trying to manage already difficult caseloads.

COURTS PLAY THE MOST SIGNIFICANT ROLE IN IMPOSING CONSEQUENCES FOR VIOLATIONS

Courts play the most significant role in exacting consequences for violations of program and probation requirements. When a program violation is brought to a court's attention, state law allows the court the discretion to terminate the program requirement and proceed with further sentencing or to reinstate probation terms and thus direct the batterer back to a program. If it reinstates probation terms, the court sometimes imposes a limited number of days in jail as an intermediate consequence

prior to reentering a program. However, state law does not specify what the intermediate consequences should be, leaving this up to the discretion of the courts.

We tracked court responses to attendance and enrollment violations that occurred within our sample of 125 batterers. Table 4 provides a breakdown of the consequences the courts imposed for the 74 attendance and enrollment violations brought before them. As the table indicates, the most common action of the courts—taken in response to 23 of the 74 violations (31 percent)—was reinstating probation terms, including the program requirement, and requiring the batterer to serve some amount of additional jail time before reentering a program. However, the next most common action—taken in response to 20 of the 74 violations (27 percent)—was reinstating probation terms without imposing additional jail time.

TABLE 4

Court Responses to Attendance and Enrollment Violations

County	Total Violations Brought Before the Court	Reinstated Probation Terms and Directed Batterer to Reenter a Program With:				Probation Revoked	Other†
		No Additional Jail Time	Additional Jail Time*				
			1 to 10 Days	11 to 30 Days	More Than 30 Days		
Butte	14	2	3	0	2	6	1
Los Angeles	10	3	0	1	1	1	4
Riverside	20	8	0	3	0	1	8
San Joaquin	21	7	0	6	3	2	3
San Mateo	9	0	1	3	0	2	3
Totals	**74**	**20**	**4**	**13**	**6**	**12**	**19**

Sources: Court records and department files from the five counties we visited.

Note: Data based on a sample of 125 individuals who were placed on probation for crimes of domestic violence in five counties.

* Includes days the court directed a batterer to participate in a sheriff labor program.

† Includes violations for which batterers are still on arrest warrant, are awaiting sentencing, were transferred to a drug rehabilitation program, or for which court action could not be ascertained from available court records.

As Tables 3 and 4 show, the department in Butte County consistently notified the court of attendance and enrollment violations, and the court appeared to impose the most significant sanctions of the courts in any of the five counties by revoking the probation of six batterers. However, these six batterers either committed another act of domestic violence, had a positive drug test, or had previous attendance violations before the final attendance violation that resulted in their

probation being revoked. The consequences shown previously in Table 4 increase in severity from left to right, and one would expect the severity in a given case generally to correspond to the number of prior violations a batterer had committed. However, when we analyzed the violations in Table 4, we did not see a general pattern of increasingly severe consequences for each successive violation. Specifically, sometimes courts returned batterers to programs without imposing any additional jail time, even though the batterers had multiple prior violations. In fact, the average number of prior violations by batterers sentenced to no additional jail time was not significantly different from the average number of prior violations by those sentenced to 11 to 30 days of additional jail time and was only slightly less than batterers sentenced to more than 30 days of additional jail time.

When we analyzed the violations committed by batterers in our sample, we did not see a general pattern of increasingly severe consequences for each successive violation.

Further, sometimes a batterer received more severe consequences for an earlier violation than for a later one. For example, a batterer in Los Angeles County enrolled and began attending a program in December 2004. Two months later he failed to make a court appearance and missed three consecutive program sessions, for which he was terminated from the program. In March 2005 the court held a hearing in which the batterer received a sentence of 30 days in jail and was directed to reenroll in a program. He again failed to appear in court in June 2005 but later presented a program progress report in court and was not given any additional jail time for this violation. In November 2005 he was terminated from the program for excessive absences, and subsequently he again failed to appear in court. After three months on arrest warrant status, he was brought before the court in March 2006. Rather than impose any additional time in jail, the court simply directed him to return to a program. As of July 2006 he had not attended another program session and was back on arrest warrant status.

We also noted examples of batterers who received no consequences for early violations, which possibly led to further disregard for program requirements. For instance, a batterer in Riverside County was directed to enroll in a program in June 2004. However, he failed to do so and, after some time on arrest warrant status, was brought before the court in May 2005 and directed to enroll in another program—with no additional consequences imposed. He again failed to enroll in a program, and an arrest warrant was issued in August 2005. The batterer was brought in from arrest warrant status in November 2005 when, according to the police report, he was arrested because he had "head-butted" his wife hard enough to cause her nose

to bleed. For his enrollment violation the court directed him in December 2005 to enroll in a program again and did not impose any additional consequences. In May 2006, after the batterer failed one more time to enroll in a program, the court convicted him of the November 2005 assault, put him on probation, sentenced him to a year in jail, and directed him to enroll in a program. Although this conviction sent him to jail, significant consequences were not imposed earlier for his failure to enroll in a program.

Not imposing significant consequences for violations may send an unintended message to batterers that they can avoid the program requirement without any significant penalty, which could be putting victims at risk.

These examples illustrate that not imposing significant consequences for violations may send an unintended message to batterers that they can avoid the program requirement without any significant penalty. As the last example demonstrates, this could be putting victims at risk. Although the courts cannot stop all acts of domestic violence, by imposing consequences for violations, they can send a clear message that batterers must attend the programs intended to help them overcome the behaviors that lead to domestic violence. The examples also raise the issue of whether a batterer who has demonstrated a clear pattern of avoiding the program requirement, and has even repeated a domestic violence offense, should again be placed on probation and directed to enroll in a program. Batterer accountability may be better served by having such an individual serve jail or prison time for any subsequent acts of domestic violence.

THE COURTS HAVE OTHER WAYS OF INFLUENCING BATTERER ACCOUNTABILITY BESIDES IMPOSING CONSEQUENCES FOR VIOLATIONS

The courts can affect batterer accountability in ways other than imposing consequences for violations of program and probation requirements. For instance, some counties have chosen to make batterers regularly appear in court for program progress reviews. This practice has the potential to increase the number of batterers who complete the program. However, some courts have made sentencing decisions that resulted in batterers being sent to other types of counseling, such as 16-week anger management programs, which do not satisfy statutory requirements.

Some Counties Use Regular Court Appearances to Encourage Program Compliance by Batterers

As we mentioned in the Introduction, the attorney general formed a task force to examine how local criminal justice agencies respond to domestic violence. The task force highlighted the practice of having batterers regularly appear in court for program progress reviews. The benefit of such court appearances, according to the task force, is that they allow judges to monitor batterers more closely and discuss with batterers their progress reports, thus increasing the likelihood that batterers will complete their programs. In our interviews with personnel at the 58 counties, staff at 18 counties indicated that their courts require batterers to make regular court appearances. At another eight counties, staff said the courts require some, but not all, batterers to make regular appearances.

Of the five counties we visited, we saw evidence that two counties, Butte and San Mateo, require regular court appearances, and in another two counties, Los Angeles and Riverside, a significant number of batterers in our sample were required to make regular court appearances. The one county that did not have any of our sample of batterers on a schedule of regular court appearances,[7] San Joaquin, also happened to have the lowest reported and sampled program completion percentage of the five counties. Without isolating all the significant factors that affect a completion percentage, it is impossible to conclude that the lack of court appearances caused a lower completion percentage. However, the logic behind regular court appearances is compelling:

- The physical appearance of a batterer in a court—the only entity that can impose any real consequence for a program violation—provides a regular reminder to the batterer that he or she is accountable for completing the program.

- The positive and negative comments from the judge while he or she reviews the progress report with the batterer provides intermediate feedback that may prevent the batterer from committing program violations.

[7] In addition, although state law requires reports on a batterer's progress "every three months or less," a court representative explained that the San Joaquin courts do not generally require programs to submit such reports quarterly. The representative added that the court might request a particular batterer to appear in court with a progress report more often if the batterer is deemed problematic or high risk.

- Regular domestic violence court appearances can be held in the same courtroom on the same date, forcing batterers to wait in the courtroom for their turn to discuss their progress with the judge. During this wait batterers can learn from the negative consequences imposed on other batterers appearing ahead of them without having to experience those consequences themselves. They also witness the positive feedback that is given when batterers complete programs, which can result in the reduction or elimination of future court dates or a change from formal to court-supervised probation.

- Regular court dates provide an impetus for regular progress reports from programs. If a progress report is not delivered on time to the court, its absence is readily apparent. Consequently, regular appearances provide an additional means to hold programs responsible for statutory requirements.

Regular court appearances could increase compliance among batterers and decrease the need for as many hearings on violations of probation.

For these reasons, counties that are not currently doing so should consider requiring regular court appearances for their batterers. Although this requirement would likely increase the number of individuals needing to appear in court in the short term and therefore would entail the use of some additional resources, it may be that the primary benefit it provides—an increase in compliance among batterers—will over time decrease the number of hearings on violations of probation.

Some Courts Appear to Be Inappropriately Sentencing Batterers to Anger Management Programs That Do Not Last 52 Weeks and May Not Address Domestic Violence Issues

One problem the attorney general's task force pointed out in its 2005 report was that, contrary to statutory provisions, some prosecutors enter into and judges approve guilty plea agreements with individuals accused of domestic violence misdemeanors without requiring attendance in a 52-week program or three years of probation. Similarly, during the course of our audit, department officials told us, and evidence we found at one county we visited confirmed, that courts were directing individuals placed on probation for crimes of domestic violence to 16-week anger management programs, rather than the required 52-week batterer intervention programs.

A department official in Riverside County explained that the courts there, for a number of reasons, sometimes order a 16- or 32-week anger management program instead of the required 52-week batterer intervention program. She explained that one reason this occurs is that a plea is negotiated and the

county's district attorney feels the evidence is not sufficient to get the batterer to agree to a 52-week program. She said that some judges believe that some type of program is better than no program. Likewise, the supervisor of the unit charged with approving and monitoring programs in the Los Angeles department said that occasionally the court orders an anger management program when a batterer intervention program is required based on the statutory definition of the victim of the crime—for example, a spouse, cohabitant, or someone with a dating or engagement relationship with the abuser. The supervisor explained that in these instances the department has given programs, which sometimes separately offer both anger management and batterer intervention sessions, discretion to place the person in batterer intervention sessions. In such a case the program is to then immediately send a report to the court explaining the circumstances of the placement and requesting a change in the court order.

We found instances where batterers were placed on probation but not directed to programs, even though their domestic violence crimes were against victims meeting the definition in state law.

While we were performing our audit field work in the San Joaquin department to ensure that the list of batterers provided to us included all batterers enrolled in programs in 2004, we found instances in which batterers were placed on probation but not directed to programs, even though their domestic violence crimes were against victims meeting the definition in state law and therefore activated the program requirement. Specifically, we found nine such instances in a review of files for a sample of 22 individuals who were charged with crimes potentially related to domestic violence in 2004 but did not appear in our list of program enrollees. In five of the nine instances, the courts specifically directed batterers to anger management programs, and in another instance the court did not require any type of counseling. In each of the remaining three instances, the court left it up to the department to decide what type of program the batterers should attend, and the department incorrectly sent them to anger management.

As we did at all of the counties we visited, we reviewed the files of 25 batterers in San Joaquin County who enrolled in a program in 2004. Based on this review, the practice of the court giving the department discretion over the type of program a batterer attends appears to be fairly common in this county. In fact, 19 of the court orders from our sample of 25 batterers gave the departments this discretion. We did not find such discretion in our review of the court orders in the other counties we visited. We also asked the other four departments we reviewed

if courts in their counties gave them discretion over the type of program a batterer should attend, and each said the courts did not offer this type of discretion.

The San Joaquin department shared with us a document that shows how it determines the type of program a batterer should attend. The document indicates that three specific charges—battery against a spouse, corporal injury to a spouse or cohabitant, and assault with a deadly weapon—mandate the 52-week batterer intervention program. The document then listed other charges, such as battery, disobeying a court order, and other specific forms of assault, that do not mandate the 52-week program and for which offenders are sent to 16-week anger management programs. It is apparent from the document and from our discussions with the San Joaquin department that it considers the program requirement to be related to specific charges rather than specific victims.

The San Joaquin department's view that the program requirement is related to specific charges rather than specific victims does not align with state law and can lead to questionable decisions on the type of program an individual is required to attend.

Not only does this view not align with state law, it can lead to questionable decisions regarding the type of program an individual is required to attend. For example, one of the 25 batterers we reviewed in San Joaquin County, who also happened to be one of the eight who completed the program requirement, was convicted of assault with a deadly weapon and directed by the department to attend a 52-week program. The sheriff's report of the crime, which describes a fight by the side of the road in which a male attacker stabbed a male victim, made it readily apparent that the victim in this case had no relationship with the attacker that would fall under the statutory definition. In fact, the sheriff's report did not indicate that the victim and attacker even knew each other before the incident and clearly indicated that the attack was not domestic violence. Under state law, this person would not have been directed to a 52-week batterer intervention program, but under the department's document of charges that mandate a program, he was directed to a program for batterer intervention. In contrast, at least three other individuals whose crimes met the statutory definition of domestic violence but who pled down to the lesser charge of battery were directed to 16-week anger management programs instead of the 52-week batterer intervention programs they were statutorily required to attend. Further, although this may have been a typographical error in the court orders, the court directed one of the 25 batterers sampled in San Joaquin County to 32 program sessions rather than the required 52.[8]

[8] Although department records make it clear that only 32 sessions would be required, the batterer had not completed the program as of the time of our review.

In Los Angeles County, of the 25 individuals sampled, one was charged with corporal injury to a spouse and later pled no contest to the lesser charge of battery. The court then found the individual guilty, ordered the individual to complete 26 sessions of a batterer intervention program, and set a probation and sentence hearing for a future date. The individual made two more court appearances, and at one appearance demonstrated the completion of 15 of the 26 court-ordered sessions. However, at both of these appearances sentencing did not occur, and instead a future date was again set. Finally, six months after finding this individual guilty, and after this individual completed the court-ordered 26 program sessions, the court dismissed the charges, citing a statutory provision allowing for dismissals "in furtherance of justice."

In response to our inquiries, the judicial officer on the case commented that the court ordered the 26 sessions as a condition of the individual's "own recognizance" release from jail. The judicial officer added that the number of sessions required can be at the discretion of the court or by agreement between the prosecutor and defense attorney, and in this case it was based on the recommendation of the prosecutor. The judicial officer further commented that this situation occurs in numerous cases prior to a plea or disposition. However, the judicial officer noted that if a defendant is sentenced in the case, the disposition will include 52 weeks, or more if the defendant is in need of additional counseling. As to why this case was dismissed prior to sentencing, the judicial officer explained that it was done in the interest of justice and indicated that our inference that dismissal was based on the completion of the 26 program sessions would not be correct.

We question whether the intent of the law is not being frustrated when courts direct batterers to a lesser number of program sessions prior to sentencing, delay sentencing until program sessions can be completed, and then dismiss charges.

We recognize that the statutory requirement for a 52-week program takes effect only when an individual is sentenced to probation. However, when courts divert batterers to a lesser number of program sessions prior to sentencing, delay sentencing until program sessions can be completed, and then dismiss charges "in the interest of justice," we question whether the intent of the law related to batterer intervention is not being frustrated. Specifically, the 1995 legislation that mandated 52 program sessions for batterers placed on probation eliminated a program whose practices were similar to the situation just described, so that domestic violence would be treated as a serious crime.

RECOMMENDATIONS

To maintain a balance between upholding the standard of batterer accountability and granting departments the flexibility needed to help batterers complete their assigned programs, the Legislature should consider doing the following:

- Revise the attendance provisions and the 18-month completion requirement included in the law to more closely align with what departments and courts indicate is a more reasonable standard.

- Assess whether probation and the associated program requirement is an effective deterrent against future acts of domestic violence among individuals who appear unwilling to learn from the program because they commit acts of domestic violence while in programs or after some number of years of completing programs.

If it is the Legislature's intent that individuals who commit domestic violence be consistently sentenced to 52 weeks of batterer intervention, it should consider enacting statutory provisions that would not allow the courts to delay sentencing so that batterers can complete a lesser number of program sessions.

To improve their ability to hold batterers accountable for their actions, the departments, in conjunction with the courts and other interested county entities, should jointly consider taking the following actions:

- Establish and clearly notify batterers of a set of graduated consequences that specify minimum penalties for violations of program requirements or probation terms. The nature of the violation, as well as the number of previous violations, should be taken into consideration when establishing the consequences. Further, to maintain the credibility of the graduated consequences, the departments and the courts must administer them consistently.

- As part of these graduated consequences, establish a limit to the number of violations they allow before a batterer's probation is revoked and he or she is sentenced to jail or prison.

- Eliminate the practice of having probation officers counsel and direct batterers back to programs in which they failed to enroll or from which they have been terminated for excessive

absences, and establish a consistent practice of notifying the court of such violations, allowing the court to set the consequence for the violations.

- If they have not already done so, implement a practice of regular court appearances in which batterers receive both negative and positive feedback on program compliance.

- Require programs to submit progress reports to the courts at the frequency specified by law.

The courts should consistently sentence, and the departments should consistently direct, individuals granted probation for a crime of domestic violence—when the victim is a person specified in Section 6211 of the Family Code—to a 52-week batterer intervention program approved by the department. Courts should not substitute any other type of program, such as a 16-week anger management program, for a 52-week batterer intervention program. ■

CHAPTER 2

County Probation Departments Could Improve Their Monitoring of Batterer Intervention Programs by More Closely Adhering to State Law and by Implementing Performance Measures

CHAPTER SUMMARY

State law mandates certain responsibilities that make county probation departments (departments) the principal overseers of batterer intervention programs (programs). Although the departments have largely embraced this role, they could improve the monitoring they do by adhering more closely to statutory requirements and by collecting better information on program performance. State law requires courts and departments to refer batterers to approved programs only; provides departments with the sole authority to approve programs; and requires each department to design and implement a program approval process, which must include a written application containing necessary and pertinent information describing the program. State law specifies a list of requirements that programs must meet regarding program session content, facilitator training and experience, and program operating experience. A demonstration that a program has fulfilled the requirements would be the necessary and pertinent information needed on an application.

Although two of the five departments we visited could not provide documentation of their reviews of applications for program approval, we found that the applications approved in the last five years that we were able to review generally conformed to the requirements in state law. However, the applications at some departments did not demonstrate the fulfillment of program and certain facilitator experience requirements. State law also requires each department to have a process to annually renew program approvals. All but one of the departments we visited had such a process. Although the processes varied, they generally included the submission

of any updates to program policies submitted in the original application. Renewal decisions also depend on the results of the departments' monitoring efforts.

State law requires departments to conduct annual on-site reviews of each program, including monitoring a session, to determine whether the programs are adhering to statutory requirements. To ensure that programs are complying with statutory requirements, the departments would also need to perform on-site reviews of program administration, such as the programs' use of a sliding fee schedule to assess batterer fees. However, based on interviews with staff at all 58 departments and our review of five departments, the departments are not consistently performing annual on-site reviews. For example, when we reviewed selected programs at the five departments we visited, we found that the departments skipped years and programs in their on-site review efforts. Various examples of programs not meeting statutory requirements—including a program that used an unqualified facilitator to oversee a counseling session that was not single gender and that had sessions consisting of showing movies not related to domestic violence—demonstrate that on-site reviews must be done at least once a year to identify programs that are straying from state requirements.

Key Program Components Required by State Law

- Fifty-two weeks of single-gender group sessions; no couple or family counseling allowed.
- An initial intake interview in which the batterer receives a written definition of and techniques for stopping domestic violence, and the program performs an assessment of the batterer.
- Victim notification that the batterer is participating in a program, that victim resources are available, and that program participation does not guarantee that the batterer will not be violent again.
- A confidentiality statement and a written agreement between the batterer and the program that must include a program outline, specify program attendance requirements, and state the requirement that participants attend sessions free of chemical influence.
- Procedures for providing the department and the courts with proof of program enrollment, regular progress reports, and a final program evaluation.
- A sliding fee schedule based on the batterer's ability to pay.
- Demonstration of at least one year of experience as an operational program and of each facilitator having 40 hours of basic training and no less than 104 hours as a trainee in an approved program.

Source: California Penal Code, sections 1203.097 and 1203.098.

DESPITE THE LACK OF A SYSTEMATIC APPROVAL PROCESS AT MOST DEPARTMENTS, APPROVED APPLICATIONS GENERALLY CONFORM TO STATE REQUIREMENTS

Program applications approved in the last five years by the departments we reviewed generally addressed how programs conformed or planned to conform to key components of state law (see the text box). However, some departments could not provide evidence of their application review. In addition, although most of the departments we visited employed a process to annually renew program approvals, they did not typically have written policies and procedures that would have allowed the department to maintain consistency and hold department personnel accountable for their approval and renewal practices. However, very few programs have been approved in the

last five years at the counties we visited. According to staff interviewed at each of the five departments, the current number of programs meets the need in that county, and so having more programs is not necessary.

The applications we reviewed generally addressed how programs conformed or would conform to the key components of state law.

Based on our review of the applications approved in the last five years by four departments—Butte, Los Angeles, Riverside, and San Joaquin—the departments could demonstrate that applications for approval had been received. Additionally, the applications generally addressed how programs conformed or would conform to the key components of state law, although the department in Los Angeles County relied on verbal assurances rather than requiring certain information to be submitted with the application. None of the approved applications we reviewed, except one application in the Riverside department, demonstrated the statutory requirement that facilitators have no less than 104 hours as trainees in approved programs. Further, applications in the Butte and San Joaquin departments did not demonstrate that the programs had one year of operating experience, as state law requires.

The department supervisor in charge of approving and monitoring programs in the San Joaquin department explained that she believes programs should have some counseling experience but the experience does not necessarily have to be in domestic violence. Further, she noted that although the 40 hours of basic training for each facilitator (an additional statutory requirement) is necessary, she believes 104 hours as a trainee in an approved program is an unreasonable standard, especially for hard-to-find facilitators who can meet the needs of the non-English-speaking population. A representative from the Los Angeles department explained that its application packet was developed 10 years ago, after the original legislation was passed, and has not been updated to include the subsequently added requirements, such as a program needing to demonstrate that its facilitators have at least 104 hours as trainees in approved programs. However, the facilitator experience provision was added to state law more than five years ago. At the department in Butte County, a representative stated that the omissions we noted resulted from a department oversight. In summary, our findings at the counties we visited cause us to question the extent to which other counties have ensured that their applications address the provisions in state law.

The San Mateo department did not approve a new program in the last five years; thus, we did not review any of its applications. Additionally, the department in Riverside County was not able to provide two of the three original applications it approved in the last five years because the department typically replaces old applications with documentation it receives as part of its annual renewal of program approvals. Nevertheless, we were able to verify that the original applications had been reviewed generally using a reasonable methodology because the department maintained a checklist or other documentation demonstrating its internal review. However, the application checklist for one program we reviewed indicated that the application lacked some required items, and the department could not demonstrate that these items were later provided. Additionally, based on the checklist for the one original application available for our review and the department's subsequent correspondence with that applicant, it appears that the department approved the program before addressing all the deficiencies it found during its review.

As indicated in Table 5, the Butte and San Joaquin departments could not provide any evidence of the use of a checklist or other systematic review of the applications they approved. These two departments stated that they reviewed the applications using relevant portions of the Penal Code as their standard. As we mentioned earlier, we found that the content of the applications they approved generally conformed to state requirements. Although we have some concern about the lack of documentation of application reviews, we acknowledge that no statute requires such documentation and, as Table 5 shows, the departments we visited have recently approved very few program applications. Finally, the department in Los Angeles County had a checklist documenting its application review for the one program it approved in the last five years.

An area in which we had some concern was the lack of written policies and procedures describing the program approval process.

Another area in which we had some concern was the lack of written policies and procedures describing the approval process. We would expect a department that is designing and implementing processes for program application approval and annual renewal, as required by state law, to put those processes in writing so that staff could refer to and consistently follow them. We asked staff at California's 58 departments if they had written policies and procedures for approving and renewing programs. As indicated in the Appendix, personnel at 40 departments affirmed that they have such written policies and procedures.

TABLE 5

Approval of Batterer Intervention Programs in the Last Five Years for Selected County Probation Departments

County	Number of Approved Batterer Intervention Programs as of 2006	Number of Programs Approved in the Last Five Years	Did the Department Use a Checklist or Other Systematic Process to Review the Applications?
Butte	2	1	No
Los Angeles	129	1	Yes
Riverside	16	3	Yes
San Joaquin	6	1	No
San Mateo	6	0	NA
Totals	**159**	**6**	**NA**

Sources: Documents provided by the five county probation departments we visited.

NA = Not applicable.

During our visits to the five departments, we attempted to validate the answers they provided in their interviews. Of the four departments that had told us they had written policies and procedures for approving and renewing programs, we found that none had what we were expecting—internal instructions for analyzing and approving an application or renewal. Instead, departments generally had in writing only instructions for applicants and communications to approved programs outlining the requirements for program renewal. Although these types of instructions and communications to applicants are important, without internal documents guiding staff on how and by whom a procedure is to be accomplished, the risk of inconsistencies increases and holding department personnel accountable for their work becomes more difficult.

State law requires departments to conduct annual renewals. Of the five departments we visited, all but the department in Butte County have renewal processes. The renewal processes used by the four departments varied somewhat but generally included a request for program updates in policy, location, or facilitators. Some departments asked for specific items such as business licenses, verification of the fulfillment of annual facilitator training, or various program statistics such as the number of batterers currently enrolled and the number of batterers who completed or terminated the program in the last year. The departments in Riverside and San Mateo counties also ask the program applicant to sign a statement certifying that the program will comply with statutory and department

requirements. The Butte department indicated that it did not think it necessary to annually renew the approval of its two programs because it visits and communicates with its programs on a regular basis. We recognize that the decision to renew a program should involve more than just evaluating information submitted by a program. The renewal decision also depends on the results of the departments' monitoring efforts. For example, the San Joaquin department typically does not require much additional information at renewal if the program indicates that no policy changes have occurred. Rather, the department ties its renewals to the results of annual site visits.

THE DEPARTMENTS DO NOT CONSISTENTLY MONITOR PROGRAMS

State law requires departments to conduct annual on-site reviews, including monitoring program sessions, to determine whether programs are adhering to statutory requirements. A program session review generally involves determining session length, assessing program content, and evaluating group dynamics and the physical environment. However, the departments need to do more than monitor program sessions to determine whether programs are fulfilling other requirements, which include conducting initial intake interviews, sending victim notification letters, obtaining written agreements from batterers, using a sliding fee schedule, and preparing progress reports. To ensure compliance, the departments need to perform on-site reviews of these and other aspects of program administration. This report uses the term *administrative review* in reference to aspects of the annual on-site review that ensure compliance with statutory requirements that cannot be seen while monitoring a program session. Based on interviews with staff at all 58 departments and our review of the five departments we visited, we concluded that the departments are not consistently performing annual on-site administrative and program session reviews. Both types of on-site reviews are necessary for departments to identify programs that are not complying with statutory requirements and to bring them into compliance or revoke their approvals.

The departments need to do more than monitor program sessions to determine whether programs are fulfilling all statutory requirements.

Staff we interviewed at 34 of the 58 departments stated that they regularly perform both an administrative review and a program session review for each program on at least an annual basis. Department responses are included in the Appendix. The remaining 24 departments told us the following:

- Fourteen departments reported that they perform annual program session reviews but do not regularly conduct any type of administrative review.
- One department indicated that it performs administrative reviews but not program session reviews.
- Six departments stated that they do not regularly perform any type of annual on-site monitoring of programs.
- Three departments told us that they do not have an approved program within the county.

In addition, as shown in the Appendix, some departments indicated that, although their answers reflect current practice, they did not perform on-site reviews in some past years. In addition, other departments said that they do not use a standardized checklist to perform, or do not document, their on-site reviews.

The departments did not consistently comply with the annual on-site review requirement.

In an effort to confirm department responses, we visited five departments, typically reviewing a sample of five programs.[9] Our review revealed that the departments did not consistently comply with the annual on-site review requirement. For example, as shown in Table 6 on the following page, the department in San Mateo County performed administrative reviews in 2003, even visiting some programs more than once; but in 2004 that department reduced its administrative reviews, and it did not perform any in 2005. Even the San Joaquin department, which, along with the department in Los Angeles County, demonstrated one of the more consistent practices of performing on-site reviews, did not perform administrative reviews in 2003.

The department in Butte County did not have any documentation of its on-site reviews for any of the last three years. Additionally, the San Mateo department did not have documentation for the two program session reviews it stated were conducted in 2005. Documenting site visits is important because it allows departments to track long-term problems that may eventually result in revocation of program approval and because it allows departments to hold personnel accountable to conduct consistent, systematic program reviews. Also, as exemplified by the detailed reports the department in

[9] As indicated in Table 6 on the following page, the department in Butte County has only two approved programs.

TABLE 6

Number of Annual On-Site Reviews Conducted by County Probation Departments for a Sample of Batterer Intervention Programs

County	Number of Batterer Intervention Programs in Sample						
		Received an Administrative Review			Received a Program Session Review		
	Totals	2003	2004	2005	2003	2004	2005
Butte	2*	0	0	2†	1†	1†	1†
Los Angeles	5	4	4	4‡	4	4§	5
Riverside	5	1	0	0	3‡	4‡§	5‡
San Joaquin	5‖	0	4	5‡	3‡	4‡	5‡
San Mateo	5	5‡	2	0	2‡	2‡	2†‡

Sources: Documents provided by the five county probation departments we visited as well as statements from the department and approved programs.

* Butte County has only two approved programs. One program was first approved in 2004 and would not have required a monitoring visit until 2005.

† The department could not provide documentation of these visits.

‡ For some or all of these programs, the department conducted multiple site reviews of this category in this year.

§ For one of the programs, the department relied on an annual session review of a different program that was taught by the same facilitator.

‖ One of the sampled programs was first approved in 2004 and would not have required a monitoring visit until 2005.

Riverside County prepared from its program session reviews and shared with its programs, documented reviews can provide feedback to programs that encourages continued improvement.

Although a program session review typically involved department personnel sitting in on a group session, taking notes on the session's content and facilitator, and making observations of group dynamics, an administrative review generally involved examining the program files for a sample of batterers. The departments we visited examined the files looking for evidence that programs complied with key components of state law. Specifically, the departments looked for documentation of initial intake interviews, victim notification letters, a written agreement signed by the batterer, the use of a sliding fee schedule, and the preparation of progress reports. The departments also looked for attendance records to ensure that program attendance reported in progress reports was accurate. Some of the typical areas of concern raised by program session reviews were that sessions were lasting less than two hours, had disruptive participants, and were not always focused on domestic violence. Some of the typical concerns raised by the administrative reviews of the

departments we visited were that batterers' files lacked victim notification letters, progress reports, and counseling notes or attendance records.

The departments could not always demonstrate that they communicated results of on-site reviews to the programs and made sure that corrective actions were taken.

Although the departments' on-site reviews identified the issues just described, the departments could not always demonstrate that they had communicated these results to the programs and made sure that corrective actions were taken. For example, the department in San Mateo County said that it discusses compliance issues identified by a site visit at a subsequent meeting with the program provider, but the department could not demonstrate that it followed up with noncomplying programs to ensure that they came into compliance. On the other hand, documentation at the San Joaquin department provided evidence that it communicated with programs regarding noncompliance and conducted return site visits to ensure that programs made necessary changes before annually renewing program approvals. Departments that do not consistently perform, document, and share the results of these reviews, as well as ensure compliance by conducting follow-up visits with programs, miss an opportunity to help programs stay in compliance with statutory and department requirements.

Departments cited various reasons for not consistently performing administrative reviews. The San Joaquin department, which as we indicated earlier performed no administrative reviews in 2003, explained that before 2004, when it developed its current administrative review process, it believed an on-site interview with the program administrator was sufficient. However, after attending a meeting and having discussions with departments from other counties, the supervisor in charge of approving and monitoring programs decided to incorporate the administrative review procedures that other counties were using. The department in Butte County said that it did not conduct administrative reviews in 2003 and 2004 because of disruptions caused by a change in department management as well as a physical change in location, and because its past reviews and frequent interactions gave it assurance that the one program running at the time was operating in a manner approved by the department. The department in San Mateo County cited a change in supervisors in 2005 as the reason for its not performing administrative reviews in that year.

The department in Riverside County indicated that it becomes aware of compliance issues through complaints, program session reviews, and batterer progress reports submitted by programs,

as well as through ongoing meetings, e-mails, and telephone conversations it has with program providers. The department told us that when it becomes aware of problems through these means, it conducts an administrative review. Further, the department said it is moving in the direction of conducting annual administrative reviews of programs. Nevertheless, the Riverside department said that it believes that state law requires annual on-site reviews of program sessions but not necessarily of program administration. However, state law requires departments to conduct an "onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations." By using the word *including,* the law envisions that more is to be done during an on-site review than just monitoring a session. Further, without going on-site and actually reviewing participant files, a department cannot ensure, for example, that the attendance described in a statutorily required program progress report is accurate or whether a program has charged each participant the correct fee for his or her level of income in accordance with state law. Likewise, conducting only an administrative review would not be enough to determine whether a program is compliant, because the content of program sessions, about which state law is specific, can be verified only by attending one. Departments that do not perform these visits, or that skip years and programs, are not putting forth a sufficient effort to become aware of noncompliant programs.

Without going on-site and reviewing participant files, a department cannot ensure that the attendance described in a progress report is accurate or whether a program has charged each participant the correct fee for his or her level of income in accordance with state law.

Departments must put forth this effort because, in the absence of ongoing monitoring by the departments, programs could continue to offer services that do not meet state requirements. Although the outcomes of these efforts differed, the following three examples of on-site monitoring show how programs can stray from compliance with statutory requirements:

- A monitor in the Los Angeles department visited a program session in 2004 and found that the facilitator had not had the required training and was not on file with the department as an approved facilitator. The department monitor also found that the group session included both men and women, when state law requires sessions to be single gender, and in subsequent visits found that participants paid their fees and were told to go home without having a program session. The monitor also conducted an administrative review and found a lack of progress notes for participants. After numerous

other problems, including reportedly showing movies, such as *Spider-Man* and *As Good as It Gets*, rather than conducing actual sessions, the department later terminated the program.

- In 2004 an official at the San Joaquin department visited a program session, which by law is supposed to last a minimum of two hours. However, after approximately one hour the official noted that a participant made a comment that made her suspect that the program sessions had typically been lasting only one hour. This session, and a session in the following year that the department monitored, lasted only an hour and a half. Despite a 2006 program session review indicating that this program's sessions continue to last only an hour and a half, the program is still approved. The department said that it has occasionally told programs that, depending on the material covered or the size of the group, it allows sessions to run an hour and a half. However, such a policy does not align with state law.

- In December 1999[10] the department in Los Angeles County notified a program that its approval was to be revoked because it was unwilling to stop using unqualified facilitators, to cooperate adequately with the program approval process, to discontinue enrolling batterers after its approval had been suspended, and to correctly apply the sliding fee schedule (a department review found at least 16 batterers who were overcharged based on the program's sliding fee schedule). Despite concerns from the department's former supervisor of the unit charged with approving and monitoring programs (unit), the department reapproved the program in January 2001.

In the last example, the former supervisor wrote a document labeled "grievance details" indicating that he was concerned about being asked to review the program's application as if it were new, ignoring the long history of noncompliance demonstrated by the program, and about being told by a department official that application approval for this program was a foregone conclusion. Department personnel, not including the former supervisor who, we were told, retired shortly after this event, explained that the circumstances surrounding this event reduced enthusiasm within the unit and hurt its credibility with the programs because, despite the efforts

[10] When this audit was authorized, we were asked to assess what prompts departments to suspend or revoke program approval. To obtain enough information to perform this assessment, we reviewed past years extending back to the beginning of program approvals.

that went into documenting this program's noncompliance, the unit ultimately had to reapprove the program. Another department representative commented that the program was given a list of recommendations and was reapproved because it complied with the recommendations. Nevertheless, we believe that it is important when deciding whether to reapprove a program to consider that program's present efforts and promises in the context of its past record, especially when there has been significant noncompliance.

Departments that do not perform administrative and program session reviews have a limited ability to identify noncompliant programs.

As can be seen by the examples presented here, the programs do not always follow state law. Sometimes departments need only counsel a program to achieve compliance. However, some programs may deviate so far from state law that their status as approved programs needs to be questioned, if not revoked. Departments that do not perform annual administrative and program session reviews have a limited ability to identify noncompliant programs and cannot say they have put forth a sufficient effort.

DEPARTMENTS ALREADY PERFORM PROGRAM-MONITORING TASKS NOT REQUIRED BY STATE LAW BUT COULD IMPLEMENT FURTHER MEASURES

Some departments have implemented program-monitoring practices beyond those required by law, such as meeting regularly with program directors, but implementing performance measures could improve program effectiveness. As indicated in the Appendix, more than half the departments reported to us that they regularly meet with program directors to discuss compliance and other relevant issues. Although not required by state law, these regular meetings have the potential benefit of enhancing awareness of statutory and department requirements, unifying program responses to batterer noncompliance, and spreading effective program practices more quickly.

As the Appendix shows, eight departments reported that they regularly collect statistics on program enrollment and completion. We visited one of those departments—San Mateo—and found that, as part of an effort to increase the percentage of batterers completing programs, the department requires programs to provide it with the number of enrollees, the number of completions, and the number of and reasons for terminations in the previous quarter. Although these activities are admirable, the statistics collected do not actually provide the department with an accurate completion percentage. Such a percentage

would be calculated by dividing the number of completions in a particular program by the total number of program participants. Rather than using this methodology, the San Mateo department collects statistics on enrollment, completions, and terminations in a quarter. The completions in these quarterly reports bear no relation to the reported enrollment. In fact, reported completions and terminations sometimes exceed enrollment.

The San Mateo department admitted that its measure is not an "exact science" but stated that it does give them an idea of how the programs and the department are doing overall. Nevertheless, it is clear that few departments are systematically collecting data that allow them to statistically measure how well their programs are performing. Such performance measures could include program completion rates and recidivism rates of program graduates. As we discussed in Chapter 1, completion rates alone do not adequately measure program effectiveness. Rather, completion rates could form the starting point to an analysis. A better measure, which because it must be tracked over an extended period may be more difficult to implement, would be batterer recidivism by program—measuring the rate at which batterers who have completed their programs commit further acts of domestic violence. The departments would need to consider the costs of developing performance measures and the potential benefits of doing so—benefits like identifying programs that are not making as significant an impact on batterer intervention as other programs and identifying batterer actions that suggest an increased chance of recidivism and thus support the argument for more severe consequences for batterer noncompliance.

It is clear that few departments are systematically collecting data that allow them to statistically measure how well their programs are performing.

Another untapped measure of program effectiveness is the systematic collection of feedback from program participants. Four of the five departments we visited do not have a formal process for handling complaints from program participants. When asked why they do not, some of these departments stated that they receive very few complaints. However, because the departments we visited also do not systematically collect perspectives from batterers on the effectiveness of their programs, the departments are missing an opportunity to obtain feedback from program participants that could alert them to programs that are deviating from state law or from good counseling practices.

RECOMMENDATIONS

To ensure consistency in its approval reviews, each department should adopt clear, written policies and procedures for approving and renewing the approval of programs, including a description of how department personnel will document reviews of program applications. Additionally, the departments should ensure that applications address all applicable requirements in state law.

To ensure that programs adhere to statutory requirements, each department should consistently perform the on-site reviews required by state law. Specifically, a department should annually perform at least one administrative review and at least one program session review for each program. Further, the departments should document their reviews, inform programs of the results in writing, and follow up on areas that require correction.

To increase its ability to determine the effectiveness of its programs, each department should consider developing and using program performance measures, such as program completion and recidivism rates, and developing a mechanism to receive feedback from batterers on program effectiveness.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

Date: November 21, 2006

Staff: Karen L. McKenna, CPA, Audit Principal
Benjamin M. Belnap, CIA
Nathan Briley
Natalya Fedorova
Albert Sim

APPENDIX

Measures of the Scope and Oversight of Batterer Intervention Programs Provided by County Probation Departments

The table on the following pages details the results of our request for statistics on batterer intervention programs (programs) and of our interviews with all 58 county probation departments (departments). As described in the Scope and Methodology, we interviewed staff at each department to gain an understanding of the departments' monitoring practices as part of an effort to select five departments to review further. At the same time, we asked each department to provide us the number of batterers enrolled in an approved program as of May 2006, the number of batterers enrolled in a program in 2004, and the number of 2004 enrollees who had completed programs as of June 2006. Using the latter two pieces of information, we computed the program completion percentage for the 2004 enrollees.

As the table shows, not all 58 departments could provide us with the statistics we requested. In addition, most of the departments that provided the numbers we requested could do so only after obtaining the data from the programs because, as shown in the table and discussed in Chapter 2, few departments centrally track program enrollments and completions. In the Introduction and in Chapter 1, we refer to the statistics provided in the table, and in Chapter 2 we discuss the monitoring practices of the various departments shown in the table.

Although many departments stated during our interviews that they had performed regular on-site reviews, we found, as described in Chapter 2, that the departments we visited skipped some years or programs in their on-site review efforts. Further, we found that although some departments stated in their interviews that they performed semiannual on-site reviews, two of the five departments whose documentation we reviewed—the Butte and Los Angeles departments—performed what are more accurately termed annual reviews during 2003 through 2005. Consequently, based on our reviews at selected departments, we have reason to believe that some of the departments' answers included in the table could be overstatements or could be statements of what the departments currently intend to do, not necessarily what they have consistently done in the past.

TABLE A

Statistics and Information on the Monitoring of Batterer Intervention Programs as Provided by the 58 County Probation Departments

			Number of Program Participants as of May 2006				Does the County Do the Following (If Applicable, How Often):					
County	Number of Approved Programs	Program Completion Percentage for 2004 Enrollees	On Formal Probation	On Court-Supervised (Informal) Probation	Totals	Does the County Have Written Policies and Procedures for Approving and Renewing Programs	Perform Regular On-Site Reviews of Program Sessions	Perform Regular On-Site Reviews of Program Administration	Hold Regular Meetings With Program Providers	Centrally Track Statistics Such as Enrollment, Absenteeism, and Completion Rates	Require Programs to Regularly Submit Written Progress Reports	Require Batterers to Appear Regularly in Court for Program Progress Reviews
Alameda	16	48%	*	*	1,513	Yes	At least annually	At least annually	Quarterly	No	No	Informal only
Alpine	0	NA	0	0	0	NA	NA	NA	NA	NA	NA	NA
Amador	3	64	254	0	254	No	No	No	No	No	Quarterly	Quarterly
Butte	2	46‡	173	7	180	Yes	Semiannually§	Semiannually§	Every two weeks	No	Quarterly	Quarterly
Calaveras	3	76	*	*	50	Yes	No	No	No	No	Quarterly	No
Colusa	1	67	20	0	20	No	No	Annually‖	No	No	Quarterly	No
Contra Costa	10	55	*	*	408	Yes	Annually	Annually	Quarterly	No	Yes; varies	Formal only
Del Norte	1	29†	28	22‡	50	Yes	Annually	Annually	Weekly	No	Quarterly	No
El Dorado	5	49	56	161‡	217	No	Annually‖	Annually‖	No	No	Quarterly	No
Fresno	11	52	1,004	385	1,389	Yes	Monthly#	Annually	Quarterly	No	Monthly	Quarterly
Glenn	3	78	62	7	69	No	Quarterly§	No	Semiannually	No	Quarterly	Yes
Humboldt	6	40††	*	*	117§§	Yes	Annually#	Annually#	Monthly	No	Quarterly	No
Imperial	2	43	15	166	181	Yes	Annually	Annually	Every two months**	No	Monthly	Informal only
Inyo	1	65	38	6	44	No	Annually§	Annually‖	Monthly	No	Monthly	No
Kern	19	47	*	*	184	Yes	Annually	Annually	No	No	Quarterly	No
Kings	3	42	165	0	165	No	Semiannually§	No	No	No	Quarterly	No
Lake	2	27	31	68	99	No	Annually**	Annually**	No	No	Quarterly	No
Lassen	1	No approved program in 2004	*	*	23	No	Annually‖	Annually‖	No	No	Monthly	No
Los Angeles	129	57††	*	*	6,314	Yes	Semiannually	Semiannually	Quarterly	No	Quarterly	No
Madera	3	47	*	*	29	No	Annually§	No	No	No	Monthly	Only for one criminal department

			Number of Program Participants as of May 2006				Does the County Do the Following (If Applicable, How Often):					
County	Number of Approved Programs	Program Completion Percentage for 2004 Enrollees	On Formal Probation	On Court-Supervised (Informal) Probation	Totals	Does the County Have Written Policies and Procedures for Approving and Renewing Programs	Perform Regular On-Site Reviews of Program Sessions	Perform Regular On-Site Reviews of Program Administration	Hold Regular Meetings With Program Providers	Centrally Track Statistics Such as Enrollment, Absenteeism, and Completion Rates	Require Programs to Regularly Submit Written Progress Reports	Require Batterers to Appear Regularly in Court for Program Progress Reviews
Marin	6	66%	69	0	69	Yes	At least annually	No	Quarterly	No	Quarterly	No
Mariposa	1	48	25	2	27	Yes	Annually	Annually	Every one to two months	Yes	Quarterly	No
Mendocino	7	55	*	*	93	Yes	Annually	No	Quarterly	No	Quarterly	No
Merced	4	91[††]	*	*	291	Yes	Annually	Annually	No	No	Quarterly	Informal only
Modoc	0[‡‡]	50	1	4	5	No	NA	NA	NA	No	No	No
Mono	1	100	6	0	6	No	At least annually[§]	No	Quarterly	No	No	No
Monterey	9	66	473	43	516	Yes	Annually	Annually	Bimonthly	No	Quarterly	No
Napa	4	55	164	0	164	Yes	Annually	No	Quarterly	No	No	No
Nevada	6	*	*	*	71	No	No	No	No	No	Monthly	No
Orange	20	64	295	685	980	Yes	Annually	Semiannually	Monthly	Yes	Quarterly	Yes
Placer	10	64	46	57	103	No	Annually[ll]	Annually[ll]	Quarterly	No	Quarterly	Quarterly
Plumas	0[‡‡]	100	5	1	6	NA	NA	NA	No	No	No	No
Riverside	16	*	*	*	2,552	Yes	Annually	No	Semiannually	In part of county	Quarterly	No
Sacramento	11	25	*	0	*	Yes	At least semiannually	No	Quarterly	Yes	Weekly	No
San Benito	2	71	*	*	68	Yes	Annually	No	Yes	No	Quarterly	No
San Bernardino	22	*	352	602	954	Yes	Annually	Annually	Quarterly	Yes	Quarterly	Only in central part of county
San Diego	22	48	193	1,528	1,721	Yes	Annually	Annually	Monthly	Yes	Quarterly	Quarterly
San Francisco	11	41	523	0	523	Yes	Annually	Annually	Monthly	No	Yes; varies	Yes; varies
San Joaquin	6	40[††]	572[§§]	96[§§]	668[§§]	No	Annually	Annually	Quarterly	No	Semiannually	No
San Luis Obispo	3	*	249	0	249	Yes	Annually	No	Monthly	No	Monthly	No
San Mateo	6	45	414	0	414	Yes	Semiannually	Semiannually	Monthly	Yes	Yes; varies	Yes; varies
Santa Barbara	4	75	*	*	516	Yes	Annually	Annually	Monthly	No	Every one to two months	Every one to two months
Santa Clara	9	55[††]	*	*	1,180[§§]	Yes	At least annually	At least annually	Every two months	Yes	Every 60 days	Yes
Santa Cruz	4	52	226	*	226[§§]	Yes	Annually	Annually	Quarterly	No	Annually	Yes
Shasta	5	48	*	*	271	Yes	Annually	Annually	Biweekly	No	No	No
Sierra	1	NA	1	0	1	No	Annually	Annually	No	No	Yes; varies	Yes

continued on the next page

			Number of Program Participants as of May 2006				Does the County Do the Following (If Applicable, How Often):					
County	Number of Approved Programs	Program Completion Percentage for 2004 Enrollees	On Formal Probation	On Court-Supervised (Informal) Probation	Totals	Does the County Have Written Policies and Procedures for Approving and Renewing Programs	Perform Regular On-Site Reviews of Program Sessions	Perform Regular On-Site Reviews of Program Administration	Hold Regular Meetings With Program Providers	Centrally Track Statistics Such as Enrollment, Absenteeism, and Completion Rates	Require Programs to Regularly Submit Written Progress Reports	Require Batterers to Appear Regularly in Court for Program Progress Reviews
Siskiyou	2	45%	33	50	83	No	Annually	No	Quarterly	No	Quarterly	Yes
Solano	6	50††	227	130	357	Yes	Annually	Annually	Quarterly	No	Quarterly	Yes
Sonoma	5	59	406	0	406	Yes	Annually	Annually	Quarterly	No	Quarterly	Yes; varies
Stanislaus	3	32	155	227	382	Yes	Annually	Annually	Quarterly	No	Yes	Informal only
Sutter	4	*	*	*	*	Yes	No	No	No	No	Monthly	No
Tehama	1	77	33	19	52	Yes	Annually	Annually	Annually	No	Quarterly	No
Trinity	1	44	2	4	6	Yes	No	No	Quarterly	Yes	Quarterly	Quarterly
Tulare	4	50	49	198	247	Yes	Annually	Annually§	No	No	Quarterly	No
Tuolumne	2	51	45	7	52	Yes	Monthly§	No	Three times a week	No	Quarterly	Informal only
Ventura	4	62††	508	0	508	Yes	No	No	10 meetings a year	No	Quarterly	30 and 90 days from sentencing
Yolo	3	62	52	129	181	Yes	At least semiannually	At least annually	No	No	Every 60 days	Yes; varies
Yuba	6	56	88	8	96	Yes	Annually§#	No	No	No	Quarterly	No
Overall Totals or Percentages	**452**	**54%**	*	*	**25,350**							

NA = Not applicable.

* Departments, or the programs that provided data to the departments, did not completely provide this information.

† The data provided was for formal probationers only.

‡ The department, or a program that provided data for the department, indicates that this data includes some program participants that are not on probation for a crime of domestic violence.

§ No visit checklist is used and no report is filed documenting the results of the visit.

‖ The department either admitted that no visits had occurred in the past or said that no documentation of past visits existed.

This objective is not always met for each approved program.

** The department said that these were not done in the past one or two years but will be resumed in the future.

†† This completion percentage is based on data from some but not all of the department's approved programs.

‡‡ Some counties do not have an approved program but instead have batterers attend a program approved by another county or an unapproved program. If a county does not have an approved program, state law allows the courts to designate another appropriate counseling program for the batterer to complete.

§§ The department could not provide the exact number of batterers, but the information they provided indicates that the number was at least the amount shown.

Agency's comments provided as text only.

Butte County Probation Department
42 County Center Drive
Oroville, California 95965-3377

November 8, 2006

To Whom It May Concern,

The Butte County Probation Department has reviewed the report authored by the California State Auditor's office, titled: Batterer Intervention Programs. It is the intention of the Butte County Probation Department to implement those recommendations, under the control of the Chief Probation Officer, as outlined in the report in an attempt to improve the department's Domestic Violence program.

Sincerely,

(Signed by: John Wardell)

John Wardell, Chief Probation Officer

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Agency's comments provided as text only.

Los Angeles County Probation Department
9150 East Imperial Highway
Downey, California 90242

November 6, 2006

Elaine M. Howle*
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

We received the draft copy of the report entitled, "Batter Intervention Programs: County Probation Departments Could Improve Their Compliance with State Law, but Progress in Batterer Accountability Also Depends on the Courts." Based on the recommendations contained therein, my staff met with the Chair of the Domestic Violence Committee of the Superior Court (Judge Anita Dymant.) The response to the recommendations is predicated on that meeting.

Recommendation Responses

Chapter 1

Judge Anita Dymant, Chair of the Domestic Violence Committee of the Los Angeles Superior Court made the following recommendations:

- Regarding Graduated consequences: Bench Officers should take all appropriate measures to enforce court orders and to consider sanctions for failure to comply, but it would interfere with the discretion of individual judges to promulgate rigid and specific rules for punishing non-compliance.

- Regarding the allowed number of violations: Allowing a limited number of violations does not just interfere with discretion, it overlooks applicable factors in individual cases.

- Regarding regular county appearances: Judge Dymant agrees that for non-probation supervised defendants who are ordered to complete the 52-week program, it is necessary for the court to schedule 90-day appearance progress report hearings. However, for probationers on formal probation, the better option would be to calendar the matter for regular reports.

Chapter 2

The Domestic Violence Monitoring Unit will carefully review and change our application packet, reflecting all of the suggestions mentioned in the audit. This will be accomplished prior to the 60-day review.

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* California State Auditor's comments appear on page 65.

Los Angeles County Probation Department currently monitors programs at least annually, and usually semi-annually. Visits include sitting in on an actual session and auditing a random sample of files. If deficiencies are found, they are noted in writing on the monitoring instrument, a copy of which is then given to the program. The program is asked to respond in writing within 14 days, delineating their plan to correct the problem. A subsequent visit is then made to determine the results of the correction. If the program has not corrected the deficiencies, then the de-approval process begins.

Consideration will be given to developing a form to be given to each batterer upon completion of the program, asking about benefits received during program. The program participant will be asked to send the form to the Domestic Violence Monitoring Unit.

At this time, the Los Angeles County Probation Department does not collect recidivism data on program participants; however, the Department is currently developing a means for determining the recidivism data for those probationers on formal probation. However, at least 85% of Batterer Intervention Program group members in Los Angeles County are on conditional sentence, which does not fall under the jurisdiction of the Department.

If there are any questions regarding these responses, please feel free to contact me at your convenience at (562) 940-2501.

Sincerely,

(Signed by: Robert Taylor)

Robert Taylor
Chief Probation Officer

COMMENTS

California State Auditor's Comments on the Response From the Los Angeles County Probation Department

To provide clarity and perspective, we are commenting on the response to our audit report from the Los Angeles County Probation Department (department). The numbers below correspond with the numbers we have placed in the margins of the department's response.

1. We disagree with the characterization of our recommendation in the department's response. Establishing and clearly notifying batterers of a set of graduated consequences that specify minimum penalties for violations of program requirements or probation terms must obviously be specific but does not necessarily have to be rigid. As discussed in the recommendation on page 41, the departments and courts could design minimum consequences that take into account the nature of the violation, as well as the number of previous violations. This type of direction could provide some consistency to a system in which individual judges at times may use their discretion to impose little to no consequences on batterers that continually fail to meet their obligations.

2. Although we recognize that there needs to be some flexibility so that batterers have a reasonable opportunity to complete their assigned programs, such flexibility must be balanced by the need for batterer accountability. We question whether there should not be a limit to the number of "applicable factors" or violations that the court accepts before a batterer has his or her probation revoked and is sent to jail or prison because, as noted on page 17, very few batterers in our sample ever completed a program after committing three or more violations.

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Agency's comments provided as text only.

Riverside County Probation Department
P.O. Box 833
Riverside, California 92502-0833

November 6, 2006

Elaine M. Howle
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: Response to Domestic Violence Program Audit report

Dear Ms. Howle:

The Domestic Violence audit took more than three months to conduct, is detailed in a sixty-one page report and Probation cannot meet your response deadline of seven days. I am sure you understand that such response must reflect consultation with the Court, and the Court is not available to review the report until this week

We will forward our response as soon as possible. If you must move forward immediately, then our response will be available for your 60 day deadline.

Sincerely,

(Signed by: Marie Whittington)

Marie Whittington
Chief Probation Officer

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Agency's comments provided as text only.

San Joaquin County Probation Department

November 7, 2006

MEMORANDUM

TO: Elaine Howle
State Auditor

FROM: J. Christopher Hope
Chief Probation Officer

SUBJECT: Response to draft report titled "Batterer Intervention Programs: County Probation Departments Could Improve Their Compliance with State Law, but Progress in Batterer Accountability Also Depends on the Court."

I herein submit my response to the report titled "Batterer Intervention Programs: County Probation Departments Could Improve Their Compliance with State Law, but Progress in Batterer Accountability Also Depends on the Court." Upon receipt of this report, a meeting was conducted with the Superior Court Judge that oversees the Domestic Violence calendar to discuss the recommendations and proposed solutions.

CHAPTER 1 RECOMMENDATIONS:

To improve their ability to hold batterers accountable for their actions, department, in conjunction with the courts and other interested county entities, should jointly consider taking the following actions:

1. **Establish and clearly notify batterers of a set of graduated consequences that specify minimum penalties for violations of program requirements or probation terms. The nature of the violation, as well as the number of previous violations, should be taken into consideration when establishing those consequences. Further, to maintain the credibility of the graduated consequences, the departments and the courts must administer them consistently.**

   There presently is no continuum of graduated sanctions in San Joaquin County specifically addressing violations of probation for failing to complete the 52-week batterer intervention program requirement. The Probation Department and the Superior Court Judges will need to work collaboratively to determine a set of graduated consequences for probationers convicted of domestic violence charges that take into account the limited resources throughout the criminal justice system in San Joaquin County. Once that continuum has been determined, the Probation Department will consistently inform the batterers of the consequences and will make the appropriate recommendations when filing the Violations of Probation. It will be up to the Court to administer the consequences consistently.

2. As part of its graduated consequences, establish a limit to the number of violations they allow before a batterer's probation is revoked and he or she is sentenced to jail or prison.

Most of the domestic violence cases in San Joaquin County are misdemeanor charges that carry a maximum sentence of up to one year in the County Jail. San Joaquin County has an exceedingly overcrowded jail and operates under a Jail Population Court Cap Order, which has been in existence since November 14, 1988. As a result, probationers only actually serve a fraction of their commitment time. In many instances, low-level offenders are immediately released upon booking. San Joaquin County Superior Court Judges indicate that if an individual was sentenced to a full year in County Jail, they would only serve appropriately four months (120 days) and the Probation Department would then have no jurisdiction over the probationer. As such, the Court believes that revoking probation would have little or no true impact on the probationer. By retaining jurisdiction over the probationer, the Probation Department will continue to provide supervision services, the search and seizure clauses will remain in effect, and the victim will continue to have the support of the Court as well as the Probation Department. It is not anticipated that the Court will revoke probation regardless of the number of violations filed for failing to complete the 52-week Batterer Intervention program, especially on misdemeanor charges.

3. Eliminate the practice of having probation officers counsel and direct batterers back to programs in which they failed to enroll or from which they have been terminated for excessive absences, and establish a consistent practice of notifying the court of such violations, allowing the court to set the consequences for the violations.

It has been agreed upon by the Superior Court Judge and the Probation Department that the first violation of probation will, in most instances, be handled by directing the probationer to reenroll in a Batterer's Intervention Program. The Court has indicated that they will bestow that authority upon the Probation Department. However, for any subsequent violation of probation, the Probation Department will formally notify the Court by filing a Violation of Probation.

4. If they have not already done so, implement a practice of regular court appearances in which batterers regularly receive both negative and positive feedback on program compliance.

The San Joaquin County Probation Department and the Superior Court Judges agree that having specialized courts (similar to the evidenced-based Drug Court Model) are more effective in monitoring offender compliance. However, due to the limited resources of the Court (i.e. courtrooms, judges, court personnel, etc.) and the overwhelming number of probationers in San Joaquin County that are on formal probation for domestic violence charges, this is not feasible at this time.

5. Require programs to submit progress reports to the courts at the frequency specified by law.

The Probation Department will direct the Batterer Intervention Program providers to begin sending all progress reports to the Court. However, Superior Court Judges indicated that they do not have the resources to review each progress report and will rely on the Probation Department to file Violations of Probation when the probationer is out of compliance.

CHAPTER II RECOMMENDATIONS:

1. To ensure consistency in its approval reviews, each department should adopt clear, written policies and procedures for approving and renewing the approval of programs, which include a description of how department personnel will document reviews of program applications. Additionally, departments should ensure that applications address all applicable requirements in state law.

The San Joaquin County Probation Department will begin formalizing its certification and re-certification processes by writing policies and procedures to be included in a Division Manual. San Joaquin County will also develop a checklist, which includes all required components of Section 1203.097 of the Penal Code, to be utilized when approving applications for a new program.

2. To ensure that programs adhere to statutory requirements, each department should consistently perform the on-site reviews required by state law. Specifically, a department should annually perform at least one administrative review and at least one program session review for each program. Further, departments should document their reviews, inform progress of the results in writing, and follow up on areas that require correction.

Since 2004, the San Joaquin County Probation Department has been conducting at least one administrative review, which includes a file review, and at least one program session review per year. These reviews are thoroughly documented by the Probation Department. Each program has always received notification of their compliance status and any areas that require immediate correction in order to maintain full compliance. After a reasonable period of time, appropriate follow-up is conducted by the Probation Department to ensure all corrective steps have been taken. The Probation Department does not currently provide the programs with the specific review documents; however, we will begin doing so.

3. To increase its ability to determine the effectiveness of its programs, each department should consider developing and using program performance measures, such as program completion and recidivism rates, and developing a mechanism to receive feedback from batterers on program effectiveness.

The San Joaquin County Probation Department is not aware of any provision under Section 1203.097 of the Penal Code that requires departments to track performance measures; however, the Probation Department acknowledges that performance measures are critical to evaluating the success of our programs. Therefore, we will begin developing outcome measures relating to program success and recidivism. Additionally, we will develop a survey

to be administered to probationers who have been court-ordered to attend the 52-week batterer intervention program. It is anticipated that these surveys will be administered upon intake and upon program completion.

The Probation Department expresses a desire to work closely with the San Joaquin County Superior Court to develop strategies to adequately address the recommendations contained in Chapter 1 of this report. We strive to serve the probationers under our jurisdiction through cost effective programming so they may experience success in socially and legally acceptable ways and to hold them accountable when they chose not to make positive change. Our service to the victims in our community is of utmost concern as is protecting public interest and safety.

Thank you for your review and feedback on this program. We will follow-up with subsequent reports to your office on our progress.

Very truly yours,

(Signed by: J. Christopher Hope)

J. Christopher Hope
Chief Probation Officer

Agency's comments provided as text only.

San Mateo County Probation Department
21 Tower Road
San Mateo, California 94402

November 8, 2006

Elaine M. Howle*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, Ca 95814

RE: Draft "Batterer Intervention Programs: County Probation Departments Could Improve Their Compliance with State Law, but Progress in Batterer Accountability Also Depends on the Courts"

Dear Auditor Howle:

This letter is in response to the correspondence I received from your office on November 2, at 7:10 AM, in which you asked for our comments regarding the above "Draft" report.

The below suggestions and comments are the consensus responses from Deputy Chief of the Adult Division, Stu Forrest (650) 363-4642, Juvenile Division Director, Christine McGlynn (650) 312-5337, and Probation Services Manager Roy Brasil (650) 363-4270 with the San Mateo County Probation Department:

BACKGROUND

- In the first paragraph, the audit suggests that treatment programs are structures to "stop" this behavior. We believe a more accurate statement might be to "modify" or "lessen" the abusive behavior. We believe that it may be unrealistic to assume that a one year program will completely undo years of conditioning as a batterer.
- In the first paragraph, the audit notes that "probation allows offenders to remain in the community." In our judgment, allowing people to remain in the community is a "judicial" decision, not a "probation" decision. Probation officers make "recommendations," however, it is the "Court" who makes decisions.
- In the second paragraph, we believe it is important to note that programs have no source of funding established by state law to support them. Funding is also a major factor in terminating cases from treatment, because if defendants cannot afford to pay, they will also have trouble paying for re-instatement fees.

* California State Auditor's comments begin on page 77.

SCOPE AND METHODOLOGY

- On page 7, in the second paragraph, we believe it is important to note that batterers often attend programs in the county in which they reside, rather than in the county that is responsible for their supervision. Given these circumstances it may well be that a number of batterers attending treatment in counties outside their supervision county may not have been counted.
- We believe it would be helpful to have a clear definition of "successfully completing a program." From our experiences, some attend programs, but get nothing from them and for some, their behavior does not change. Possibly there should be a "before" and "after" testing process to measure any change in attitudes, beliefs, and behavior.

Chapter I
CHAPTER SUMMARY

- The first paragraph indicates that all departments were "…more lenient than statutory provisions;" However, the table then shows that San Mateo County had standards that were stricter in that a violation could be filed if a defendant missed two sessions in a row, even if they were the only two missed.
- From our experience, we have also found that defendants sometimes take longer than 18 months to complete the class, due to reasons such as medical procedures and substance abuse treatment.
- Under THE MOST FREQUENT VIOLATION WAS LACK OF ATTNEDANCE, we found that a very common reason for lack of attendance was an inability to pay.
- Also under the same section, on page 17, second paragraph, first and second sentence, we believe it should read "probation" violation, rather than "program" violation.
- Under "STATUTORY PROVISIONS REGARDING PROGRAM ATTENDANCE AND COMPLETION TIME MAY WARRANT FURTHER CONSIDERATION" we believe that the Court should have some discretion to extend treatment for extenuating circumstances. Treatment providers have indicated that generally, "the light goes on for batterers after about six to nine months in treatment."
- Under "Table 2" we are of the belief that "make up sessions" are unacceptable, due to the fact that if a defendant attends a group other than that which he has been working, he has no continuity with the group and will be less likely affected by peer pressure, which we believe is a major positive factor in doing group sessions.

OTHER VIOLATIONS WERE LESS FREQUENT BUT STILL HOLD SIGNIFICANT RAMIFICATIONS FOR BATTERER INTERVENTION

- In the first paragraph, we would suggest using the word "reported" rather than "occurred" when discussing violations.
- Although we agree that individual counties may require some form of external controls to prevent program instability, the report seems to devalue the intervention of probation officers that are short of violation and detention. It also seems to exclude a probation officer's (or Court) decision to "counsel" and re-refer a batterer from its definition of accountability.

- We also believe that the State has shown through research and analysis that participation in "batterer intervention programs" is effective in reducing or minimizing future domestic violence. As a result, a department's (or Court's) focus on program participation, as opposed to incarceration, seems logical and in the best interest of the State and the community. Placing strict global limitations on the number and type of sanctions that can be used in response to violations does not support the team case-management approach that we have found to be very effective in San Mateo County.
- San Mateo County is privileged to have a Domestic Violence Court system that brings together a Judge, probation officer, defense counsel, assistant district attorney, and treatment providers into a "case-management team" that provides an umbrella of case services, including regular court appearances to review progress. In this environment, we believe that a decision to re-refer a probationer to a program, with or without detention, is a mindful assessment of the important case specific factors for the probationer. We believe that such a program that seeks to address the probationer's unique needs and challenges cannot be expected to apply uniform sanctions that may not be appropriate, given the totality of circumstances. We also are of the belief that if counties incorporate a process that reports all violations handled informally by the probation officer to the Court, compliance with State law is achieved, and the Court can then decide if it wishes to take more formal action.
- We would also suggest that case plans should address why defendants are missing groups, should that behavior occur. We know that some groups lock the door if the defendant is five minutes late. However, especially in the Bay Area or other metropolitan areas, traffic and work related issues may make it occasionally difficult for defendants to always be with in five minutes of being on time.
- Additionally, we offer a perspective that if we terminate probation and send offenders to jail because they are late to programs or occasionally miss meetings, when they get out of jail, generally after a relatively short time in custody, they may be angrier and even more likely to continue their abusive behavior. Research has clearly shown that it is treatment that changes criminal and recidivistic behavior; it also shows that if we just "lock up offenders" and provide no treatment interventions, that actually increases criminality.

PROGRAM REVIEW

- We would suggest that if the document indicates "State law requires…" that it also include the actual statutory citation for reference, if needed.
- Regarding the monitoring of programs, the audit suggests one session review per program per year. We wonder if this would adequately provide the review and oversight needed, since many programs have different facilitators who run groups, and if each facilitator is not observed, one review may not adequately describe the overall quality of the program as a whole.
- One final suggestion would be to ask if it would be possible to provide the State with an online reporting/renewal form that could be uploaded annually and its information captured in a state database that could be shared with all counties?

This concludes San Mateo County's suggestions. We are very pleased that the State and the State Auditor are focusing upon such an enormously important issue as is domestic violence. We are also very appreciative for the opportunity to respond to this draft, and I am sorry we did not get our comments to you yesterday. If you need any further clarification to any of these suggestions, please feel free to contact Stu, Christine, and/or Roy at the numbers noted above.

Respectfully submitted,

(Signed by: Loren Buddress)

Loren Buddress
Chief Probation Officer

COMMENTS

California State Auditor's Comments on the Response From the San Mateo County Probation Department

To provide clarity and perspective, we are commenting on the response to our audit report from the San Mateo County Probation Department (department). The numbers below correspond with the numbers we have placed in the margins of the department's response.

1. Our statement is accurate. As indicated on page 7 of the report, a batterer intervention program (program) is designed to stop domestic violence. This is in accordance with California Penal Code, Section 1203.097(c)(1) that says, "The goal of a batterer's program under this section shall be to stop domestic violence." However, as we point out on page 27, we agree that completing a program does not guarantee that a batterer has been changed by the process.

2. The department misunderstands our report text. The first paragraph on page 7 of the report simply explains the concept of probation. We do not say that probation departments make the decision to sentence individuals to probation. As we state on page 8, it is the courts that make these decisions.

3. It is not clear what the department means. As explained on page 11, three departments (not including the department in San Mateo County) could only provide us with data on program enrollments from the programs themselves. We acknowledged that this data was not complete to some extent because it excludes batterers who failed to ever enroll in a program. However, we point out that we had no other available data from which to select our sample of batterers. In addition, we took additional steps to determine if the data excluded other groups and did not find any issues related to those living outside of the county in which they were placed on probation. If the department is referring to its own data being incomplete, our testing did not surface this issue and the department did not express this concern during our review.

- Although it is true that under the department's policy two consecutive absences results in program termination, the department allows for three unexcused absences in total as we show in Table 2 on page 23. Thus, the department's policy is more lenient than state law, which allows for three absences only if they are for good cause (excused).

- We agree that in this context the term *program violation* could cause confusion and have modified the text on page 20.

- We reported in Table 2 on page 23 what the manager in charge of overseeing programs confirmed in writing is the department's attendance policy. The department may want to formally update its attendance policy so that everyone, including the programs, has the same understanding of what is allowable.

- The department is mistaken. We do not devalue the intervention of probation officers when it is appropriate. We only point out, as stated on page 29, that state law (California Penal Code, Section 1203.12) requires departments to notify the courts of any violation or breach of court-imposed terms and conditions of probation.

- We are not advocating incarceration over program participation and are not placing "limitations on the number and type of sanctions that can be used in response to violations." We point out on page 35 that not imposing significant consequences for violations may send an unintended message that batterers can avoid the program requirement without any significant penalty. Therefore, the credible threat of incarceration or some other penalty serves as an incentive for batterers to stay in and complete programs. If that credibility is undermined by inconsistent or nonexistent consequences, batterers may be less likely to complete programs.

- We believe that a reasonable attendance policy can accommodate for the situations the department describes—batterers occasionally missing or being late to program meetings. In fact, on page 41, we recommend that the Legislature consider revising attendance provisions in state law to more closely align with what the departments and courts indicate is a more reasonable standard. However, when a batterer violates the accepted attendance policy, batterers must be held accountable by the imposition of a penalty so that the policy is seen as credible.

- As we state on page 48, state law requires annual on-site reviews of programs. If the department believes this level of monitoring is not sufficient, we encourage it to implement whatever additional efforts it believes are reasonable. However, because departments, including the San Mateo department, have not consistently met the statutory requirement, our recommendation is that they do so.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press