



**Improving
the
sentencing
of domestic
violence
offenders
in Maine:
A proposal
to prohibit
anger
management
therapy**

By Molly Butler Bailey

CURRENTLY, WHEN AN OFFENDER IS CONVICTED OF DOMESTIC VIOLENCE IN the state of Maine, he¹ will be sentenced to jail time, batterer's intervention, or anger management therapy. But anger management is not an appropriate sentence in domestic violence cases and its use should be prohibited.

Barring the use of anger management as a sentence for domestic violence offenders will fulfill Maine's sentencing aims to a greater extent than the current system. Rehabilitation is an important goal of any criminal justice system, in that if a criminal can be reformed, she will not reoffend.² When domestic violence is involved, the need for rehabilitation tends to be stronger than in other criminal cases.³ Domestic violence is unlike any other crime. A domestic violence crime involves dynamics and risks that are not present with most other violent crimes.⁴ For example, there is often a continuing relationship between the victim and the offender.⁵ This relationship gives the state prior knowledge of the likely victim of the offender's future crimes. These considerations alter the usual methods of sentencing and require the state to consider alternative sentencing statutes for domestic violence offenders which involve extensive

rehabilitation and supervision. However, rehabilitation that is not designed for domestic violence offenders, like anger management, can not only be counterproductive but dangerous.⁶

This article focuses on just one possible change to Maine's sentencing statutes, the elimination of anger management therapy as a possible sentence. It explores the rehabilitation of domestic violence offenders generally, and focuses on batterer's intervention and anger management, which are the two most common rehabilitative sentences used in domestic violence cases in Maine.⁷ I focus on batterer's intervention not because it is an ideal solution, but because the elimination of anger management would most likely lead to many more offenders being sentenced to batterer's intervention. There are public policy implications of such a statutory change, particularly focusing on the perception of domestic violence in our society and its ramifications on the domestic violence movement. But anger management is an inappropriate sentence for domestic offenders, and its elimination furthers the goals of Maine's sentencing system as well as our major public policy goals.

Clegg Award 1st Prize Winner

Molly Butler Bailey is a 2006 graduate of the University of Maine School of Law, where, earlier this year, she won first prize in the second annual Kenneth Clegg Memorial Writing Awards, presented by the Maine State Bar Association and the York Bar Association. The three 2006 Clegg Awards include cash prizes from the York Bar Association and publication in the *Maine Bar Journal*. The awards were established by the York Bar Association in memory of Kenneth Clegg, a former faculty member of the University of Maine School of Law and a private practitioner and trial lawyer in Sanford. The awards are intended to encourage and publish outstanding writing by students at the University of Maine School of Law.

Molly Butler Bailey was born in New York, grew up in Massachusetts and graduated from Harvard University's Division of Continuing Education in 2003, when she and her husband bought a home in Limington and she enrolled in law school. As a law student, she has worked in the U.S. Attorney's office, the Lewiston District Attorney's office, the Maine Senate president's office, and the Maine Civil Liberties Union. She was a member of Maine Law's Moot Court Board and the law school's Trial Team, and was co-chairwoman of the American Constitution Society. She is currently studying for the bar examination and hopes to work as a litigation attorney in the fall. This article is her winning submission for the Clegg Awards.

Rehabilitating the Domestic Violence Offender

ATTEMPTING TO REHABILITATE DOMESTIC VIOLENCE OFFENDERS is an important goal.⁸ However, there is a substantial problem with rehabilitative therapy in domestic violence cases. Offering treatment to domestic violence offenders often makes the victim feel more secure, when more than likely she is not.⁹ Studies show that when an abuser is sentenced to treatment, the victim is more likely to stay in the relationship.¹⁰ Additionally, abusers tend to use their attendance in a rehabilitative program to control and manipulate the victim into staying in the relationship and the court into giving a lesser sentence.¹¹ This puts women whose abusers are sentenced to rehabilitative therapy into more danger because the prospect of rehabilitation causes them to let their guard down.

Because of the conflict between the need to rehabilitate domestic violence offenders and the danger of rehabilitative therapy, we need to be very careful which rehabilitative therapies are sentenced. In Maine, domestic violence offenders are commonly sentenced to one of two forms of rehabilitative therapy as part of their probation; batterer's intervention or anger management.¹² Fortunately, anger management is becoming less popular, this is probably the result of the growing consensus that it is ineffective at combating domestic violence.

Batterer's Intervention Programs

BATTERER'S INTERVENTION PROGRAMS [BIP] ARE CLASSES THAT are specially tailored toward domestic violence offenders.¹³ They are certified by the state, and supervised by both a state agency and a local domestic violence project, which is involved in planning the curriculum.¹⁴ Maine has approved three nationally recognized models of intervention and restricts the program to these models.¹⁵

In the program, batterers are taught about the different types of abuse as well as the dynamics of abuse.¹⁶ The classes emphasize that abuse is a choice the batter makes in order to, "gain and maintain an imbalance of power and control within the relationship."¹⁷ The batterer is held accountable for his actions and the programs attempt to minimize victim blaming while teaching the abuser how to change his controlling behavior.¹⁸ BIP is also a way to monitor the offender, because they regularly communicate with the probation office and the courts.¹⁹ This monitoring includes an effort to assess the offender's dangerousness to the victim.²⁰ Lastly, the programs are quite lengthy at forty-eight weeks.²¹

Some studies assessing the effectiveness of BIP have concluded that they have no effect, but some studies have concluded that they are effective.²² However, when these studies are assessed as a whole, the programs appear to be effective.²³ A recent paper prepared for a local judge, Robert Moyer, Ph.D. examined three hundred studies of these programs and found good presumptive evidence that BIP works.²⁴

Other studies have shown that BIP can be effective, but not for all batterers. For example, one three year study performed by Edward Gondolf of the Mid-Atlantic Addiction Training Institute, found that that two thirds of men who had gone through the program did not re-assault for at least a year

after beginning the program, while only 10–15 percent of men seemed unresponsive to the court and the program.²⁵

A recent study by the Massachusetts Trial Court Office of the Commissioner of Probation which came out in late 2004 is even more optimistic. Unlike earlier studies which tended to only look at the short term effect of batterer's intervention, the Massachusetts study followed batterers for a period of six years.²⁶ The study found that the likelihood of an offender who completed BIP being re-arraigned for any subsequent offense was 47.7 percent, while for an offender who did not complete the program the likelihood was 83.6 percent.²⁷ The likelihood of an offender who completed BIP to be arraigned for another violent offense was 33.7 percent, while for an offender who did not complete the program the likelihood was 64.2 percent.²⁸ Lastly, the likelihood of a completer violating a restraining order was 17.4 percent compared to 41.8 percent for non-completers.²⁹ These statistics show that BIP may indeed be an effective form of rehabilitation.

Anger Management

ANGER MANAGEMENT PROGRAMS ARE CLASSES GEARED TOWARDS perpetrators of non-intimate violence.³⁰ Unlike BIP, anger management is not overseen by the state, there is no participation by domestic violence projects, and these programs are not certified.³¹ Whether or not the facilitator is trained in domestic violence issues is a subject of agency discretion and in no way required.³² Although the goals of BIP involve ending violent, abusive and controlling behavior; increasing victim safety; and holding the batterer accountable, the only goal of anger management is to control and express anger appropriately.³³ The length of treatment is also a lot shorter at eight to fifteen weeks.³⁴ Techniques used include, "time outs, relaxation methods, and coping skills."³⁵ The offender's violence is viewed as "momentary outburst[s] of anger" as opposed to a manipulation of power and control.³⁶

There are several reasons why the differences between the two programs are significant. First, unlike BIP, anger management programs "fail to take into account the premeditated and controlling behavior associated with abuse."³⁷ Domestic violence is not about anger, it's about power and control, and in fact, abusers rarely lose control.³⁸ Abuse usually occurs when the abuser feels his control over his partner is slipping.³⁹ Batterers engage in "cold, calculated aggression," which is something not addressed in anger management classes.⁴⁰

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Second, anger management programs often teach the abuser to be even more controlling⁴¹ because they focus on the batterer controlling his emotions.⁴² Control is at the root of the batterer's behavior.⁴³ In fact, the cycle of battering is about the batterer exercising his power and control over his victim.⁴⁴ Therefore, giving batterers the tools to be more controlling can make the situation worse.⁴⁵ Although the classes can sometimes decrease the violence in a relationship, these same techniques can teach the abuser to be more emotionally abusive.⁴⁶

A third and related problem is that anger management can re-enforce the batterer's tendency to blame the victim.⁴⁷ The program does this in two ways. First, the program focuses on "what makes the offender angry" causing the offender to focus on what he feels his victim has done wrong instead of his own behavior.⁴⁸ Second, the concept of "anger management" implies that the offender is helpless to control his actions and that he was somehow provoked into abusing his partner.⁴⁹ This absolves the offender of any responsibility for his actions. This is particularly harmful in light of the fact that therapists have found that taking responsibility for past abuse is an essential part of any sort of rehabilitation for domestic violence offenders.⁵⁰

A fourth significant difference between anger management and BIP is that anger management programs tend to "feed into the batterer's tendency toward self-pity and self-deception and his need to dwell on his own discomfort," whereas BIP is designed to avoid this result.⁵¹

Fifth, anger management affects the way batterers are perceived in our society. Sentencing a man to anger management implies that his is simply a psychological problem and not a criminal one. It takes the focus off of protecting the victim and puts it onto "treating the offender" thereby putting the victim into further danger.⁵² By simply treating the offender we are "reinforcing the hierarchy that allows, and encourages, men to govern their spouses, thus supporting male dominance over women."⁵³ It reduces the "criminal stigma" attached to domestic violence⁵⁴ and turns it into a trivial problem.⁵⁵

Lastly, the length of the anger management programs is a major concern. One study found that brief intervention strategies could actually be less effective than no treatment at all.⁵⁶

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The study by the Massachusetts Trial Court Office of the Commissioner of Probation examined the effectiveness of anger management as well as BIP. The study found that the likelihood of an offender who completed anger management being re-arraigned was not significantly statistically different from those who dropped out of the program.⁵⁷ Additionally, when the effect of anger management and BIP were compared, the study found the likelihood of an offender who completed BIP being

re-arraigned for any subsequent offense was 47.7 percent, while for an offender who completed anger management the likelihood was 57.7 percent,⁵⁸ and that the likelihood of an offender who completed BIP to be arraigned for another violent offense was 33.7 percent, while for an offender completed anger management the likelihood was 42.6 percent.⁵⁹ The study points out the extreme significance of these statistics in light of the fact that, "substantially more of those assigned to BIP were less well educated, more had a long standing substance abuse problem, and significantly more had a criminal history, especially one involving violence and prior restraining order violations."⁶⁰

A common conclusion is that anger management programs are simply a "band aid" and do not actually fix anything.⁶¹ The federal government has recently made changes to its funding

policy that reflect the growing concern with anger management programs. The Federal Office of Violence Against Women now prohibits any of the grant money given to the states to be used to fund anger management programs for domestic violence offenders.⁶² The federal prohibition shows the growing consensus that anger management programs are inappropriate for domestic violence offenders.

Use of Anger Management as a Sentence for Domestic Violence Offenders in Maine

IN 2003, THERE WERE 5,364 DOMESTIC VIOLENCE ASSAULTS IN the state of Maine.⁶³ This was more than an 11 percent increase from 2002.⁶⁴ Domestic violence is the leading cause of murder in Maine accounting for 47 percent of all homicides in 2003.⁶⁵

In June of 2004, the death of Lisa Deprez led state officials to reconsider the way domestic violence is treated in Maine.⁶⁶ One result of this reexamination was that the governor issued an executive order to set up a commission

on the prevention of domestic violence in Maine.⁶⁷ One of the commission's findings focused on BIP and anger management.⁶⁸ The commission found that "there are now more domestic violence offenders under the supervision of the department of corrections who are required to attend anger management counseling than offenders required to attend a batterer's intervention program."⁶⁹ The commission then gave an overview of the two programs, concluding that BIP was preferable and "urg[ing] defense counsel, prosecutors, judges and probation officers to assign domestic violence offenders to anger management programs only in exceptional cases and then only after consideration of the differences in the content and purposes of these two programs and the characteristics of the offender."⁷⁰ As of late March of 2005, assignment to anger management programs was down marginally from the statistic used in the commission's report. However, the number of offenders sentenced to these programs was still significant; 598 offenders had conditions of attendance at a certified BIP and 348 were required to attend anger management.⁷¹

The choice among sentencing an offender to jail time, BIP, or anger management is currently a discretionary decision the prosecutor makes in her sentencing recommendation, or a discretionary decision the judge makes at sentencing.⁷² There are many factors leading to a decision to sentence an offender to anger management. Anger management is often used instead of BIP simply because prosecutors and judges do not know the differences between the two programs, or do not understand that domestic violence has nothing to do with anger.⁷³ Another reason is that defense attorneys push anger management during plea negotiations.⁷⁴ Anger management classes are both cheaper and shorter and therefore preferred by offenders.⁷⁵ As a result of the defendant's reluctance to plea-bargain when BIP is the proposed sentence as opposed to anger management, many prosecutors will settle for anger management rather than risk losing a conviction.⁷⁶

Proposal

AS THE ABOVE SECTION SHOWS, ANGER MANAGEMENT IS AT best ineffective and at worst dangerous, and in Maine, it is being used as a sentence much of the time. My proposed solution is simple: remove anger management as a possible sentence. As the research has shown, anger management is ill suited for domestic violence cases. By eliminating the discretion to give anger management as a sentencing option, the

prosecutor's need for that option is also eliminated. Defense attorneys will quickly realize that BIP is the only plea possibility and will offer a guilty plea instead of risking jail-time. At the same time, offenders will be getting the benefits of a program that is at least not counterproductive and at most helpful in curbing abusive behavior. Domestic violence will also carry with it a more expensive and time-consuming penalty.

I propose adding the following to 17-A M.R.S.A. §1204 (2-A)⁷⁷ the statute governing conditions of probation:

2-A. As a condition of probation, the court in its sentence may require the convicted person:

D. To undergo, as an out-outpatient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for the purpose. Failure to comply with this condition is a violation of probation and may not, in itself, authorize involuntary treatment or hospitalization. The court may not order and the state may not pay for the defendant to attend a batterer's intervention program unless the program is certified under Title 19-A section 4014. In cases where the state pleads and proves that the person was convicted of committing against a family or household member^[78] a crime under chapter 9,^[79] a sentence to anger management therapy shall not be permitted.

Using the term, "family or household member," which has been used in another section of the probation code, should ensure an accurate definition. This phrase has been interpreted by the Law Court to apply to perpetrators of "domestic violence."⁸⁰ Additionally, unlike statutes which mandate batterer's intervention, my approach leaves prosecutors with some discretion to recommend individual therapy or drug and alcohol counseling in appropriate cases.

Implications for Maine's Sentencing Goals

THE FIRST PURPOSE OF SENTENCING LISTED IN THE MAINE Criminal Code is the purpose most directly affected by the statute I have proposed.⁸¹ It reads as follows:

"To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety."⁸²

This purpose encompasses three different goals. The first goal is deterrence. The belief behind this premise is that offenders won't commit criminal acts out of fear of the punishment.⁸³ There are two kinds of deterrence, general, which refers to the public at large, and specific, which refers to the specific offender being punished.⁸⁴ Unfortunately, there is only limited research with inconclusive results on deterrence in domestic violence cases, but what has been done has shown that domestic violence is more apt to be deterred when social controls, as well as legal sanctions, are imposed.⁸⁵ These controls involve things like "community and social reinforcers⁸⁶ of particular behavior."⁸⁷ One way of implementing these controls is BIP.⁸⁸

Despite the absence of empirical evidence showing that domestic violence can be effectively deterred, the removal of anger management as a sentencing option could only work to further this goal. In the absence of anger management therapy, two sentencing possibilities remain: incarceration and BIP. Incarceration is undeniably a harsher punishment than anger management. The other remaining option, BIP, is also a harsher punishment because it is thirty-three to forty weeks longer and substantially more expensive, thereby increasing the effect on the batterer's life.⁸⁹ Increasing the level of punishment will increase both the general and specific deterrent effect of the assault statute.

The second goal is rehabilitation. The principle behind rehabilitation is that if a criminal can be reformed, he will not reoffend.⁹⁰ As discussed earlier,⁹¹ BIP goes much further towards satisfying this goal than anger management.⁹² While there is some evidence that BIP may stop a domestic violence offender from reoffending,⁹³ anger management is at best ineffective and at worst counterproductive.⁹⁴ Given this reality, the goal of rehabilitation will be furthered by the unavailability of anger management as a sentence for domestic violence offenders.

The last goal is incapacitation. Incapacitation tends to "place the offender in some form of custody where s/he cannot commit any additional crimes against the public at large."⁹⁵ Obviously the easiest way of accomplishing this goal is incarceration. Increasingly, however, legislatures and courts have used other methods to accomplish this goal, examples include, curfews and chemical inhibitors.⁹⁶ Batterer's intervention and to a lesser extent anger management can further this goal in a

similar way. The time during which the batterer is mandated to be in counseling is time when the victim can do what she needs to do to stay safe. At a minimum, this means she is safe during these meetings. Ideally, she can use this time to regroup or to work on her plan to leave. BIP, being a longer program, provides a longer period of protection, furthering the goal of incapacitation. Prohibiting judges from imposing sentences of anger management will help to deter, rehabilitate and incapacitate offenders.

Public Policy

TO UNDERSTAND THE IMPORTANCE OF THE CRIMINALIZATION OF domestic violence and the problems that can arise in the public policy arena when considering sentences for domestic violence

offenders, it is helpful to briefly examine the history of domestic violence laws in this country. English common law in the nineteenth century gave a husband the right to abuse his spouse to maintain "family discipline."⁹⁷ One reason for this was that under English law a woman was the property of her husband and they were legally one person.⁹⁸ These principles were carried into American jurisprudence.⁹⁹ Early American courts repeatedly refused to intercede in domestic violence cases unless the husband had gone beyond "moderate chastisement."¹⁰⁰ The reasoning behind this was that the family relationship was private and "courts should not reveal private conduct to the public."¹⁰¹ During the late nineteenth century, in the wake of the first women's rights movement, these attitudes began to change and husbands could be charged with assault and battery for abusing their wives.¹⁰²

By the beginning of the twentieth century, however, this progress began to unravel. The advent of the family court system curbed judicial attitudes away from punishment and towards family reconciliation.¹⁰³ Judges even went so far as coercing wives into dropping charges against their husbands and refusing to provide protection after a complaint was filed.¹⁰⁴ Not until the 1960s did the movement against domestic violence begin to return to the public consciousness.¹⁰⁵ Following this resurgence, reforms to the laws began to emerge.¹⁰⁶ The earlier view that domestic violence is a private matter has persisted however; many Americans still believe that domestic violence should be dealt with between the couple and not through the criminal justice system.¹⁰⁷ The

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idea of the private family realm has been the “most important ideological obstacle to legal change and reform.”¹⁰⁸ The biggest problem with this conception of domestic violence as a private matter is that it makes the problem individual.¹⁰⁹ By individualizing the problem into one between one woman and one man as opposed to a societal problem, responsibility for correcting the problem is placed within the individual relationship and not on society at large.¹¹⁰

The criminalization of domestic violence has served to transform what was thought of as a private matter into one of an inherently public nature, converting the problem into a societal issue.¹¹¹ This change in perception has led to domestic violence beginning to be regarded as a crime as serious as stranger assault.¹¹² When domestic violence is criminalized, “the court becomes a place for women to turn for protection rather than a place that reinforces male authority. For men it is a place of alienation, a disruption of their sense of the social support for male authority.”¹¹³

One problem with therapeutic sentences such as anger management is that they can counteract the positive effects of criminalization. There are two deleterious effects caused by therapeutic sentences. The first is that treating domestic violence offenders “seeks to reunite the offender and the victim, thus privileging the sanctity of the family over other policy objectives.”¹¹⁴ This could easily cause a reversion to the pre-1960s treatment of domestic violence as a private matter because the best way to protect the sanctity of the family is to avoid delving into private family matters.

The second problem with therapeutic sentences is that they can send the message to the public that domestic violence is not a serious crime.¹¹⁵ Allowing defendants to attend counseling programs instead of submitting to other punishment allows offenders to duck the regular criminal penalties for their actions.¹¹⁶ Sending the message that “one who abuses women needs help [but] one who abuses strangers is dangerous”¹¹⁷ undermines the importance of domestic violence as a societal issue. Sentencing offenders to therapy gives the impression that batterers are “sick” and that battering is an illness.¹¹⁸ This characterization excuses the batterer from any responsibility for his actions and takes the criminality out of battering.¹¹⁹ Even most therapists agree that accountability is necessary.¹²⁰

An abuser will not stop abusing because of therapy alone; he needs to take responsibility for his actions in order to make any progress towards stopping the abuse.¹²¹ Criminalization is essential not only for domestic violence to remain a societal problem, but also to rehabilitate the batterer.

Some commentators, however, do see treatment as a punishment.¹²² When an offender is sentenced to a treatment program, his liberty is infringed upon and his choices are restricted.¹²³ This is a type of sanction and in some regards is punitive in nature.¹²⁴

Unlike a typical therapeutic situation, BIP does not treat batterers as ‘sick.’ The programs emphasize that battering is a choice and not a disease.

Keeping these concerns in mind, BIP has several features not present in anger management that lead to a closer fit with the policy concerns cited above. First, unlike a typical therapeutic situation, BIP does not treat batterers as “sick.” The programs emphasize that battering is a choice and not a disease.¹²⁵ Further, accountability is a central feature of the program; the batterer is forced to take responsibility for his actions.¹²⁶ Lastly, the close connection between the court system and BIP,¹²⁷ gives the program more of a criminal punishment aspect. Unlike anger management programs, in which the batterer is simply told to get some help, BIP involves the whole criminal justice system. Battering becomes a public matter because this program is so public. It is monitored by the state,

probation officers and judges are involved, and the program does everything to avoid treating battering as a private matter.¹²⁸ Society is involved in taking responsibility for the problem of domestic abuse.

On the other hand, anger management perpetuates the societal misconception that domestic violence is a sickness. Sending batterers to anger management sends the message that domestic abuse is simply a psychological problem that affects the batterer’s control over his anger, which is not at all the case.¹²⁹

Another important policy concern with the proposed statute has to do with the dangers of further differentiating domestic assaults from stranger assaults. The domestic violence movement has worked hard to assure that assaults between family members are treated just as seriously as other assaults.¹³⁰ At the beginning of the domestic violence movement, this approach was important, because it emphasized the fact that domestic violence is a crime and should be treated as

any other. Now that domestic violence is taken more seriously, however, the approach should change. My statute advocates for different treatment. The reasoning behind this is that domestic violence is different. In fact, the family relationship—the very reason that domestic violence was treated differently in the past—is the reason the crime is more serious.¹³¹

The relationship between the victim and the abuser complicates the analysis and requires innovative solutions that are not necessary with stranger assault cases.¹³² In domestic violence cases, the victim is often financially dependant on her abuser; in fact, abusers often strive to make their victim as financially dependant as possible as a way to control their behavior.¹³³ Additionally, the victim is often tied to the abuser through her children.¹³⁴ Abusers tend to use the legal system as a way to control their victims when other means of control no longer work.¹³⁵ This often includes trying to gain custody of the children.¹³⁶ Most important, the victim may often choose to stay with her abuser, requiring the criminal justice system to attempt to protect her in the future. Most women try to leave,¹³⁷ but the reality is that some victims stay with their abusers. Although it is dangerous to focus on the woman's pathology as opposed to the abuser's, there are myriad reasons why a woman might remain in an abusive relationship.¹³⁸ The most obvious reasons for a woman staying are: financial dependence, social factors, threats against herself or her children, love, fear, social isolation, and low self-esteem,¹³⁹ to name just a few. Even when women leave, they often need the protection of the criminal justice system. The most dangerous and often deadly time for an abused woman is after she has left.¹⁴⁰ When a woman leaves, the abuser often uses his usual technique to maintain their connection—asserting his control through violence.¹⁴¹

By acknowledging that domestic violence is different, the proposed statute serves to address the needs of the victim as well as meeting the criminal justice goals with respect to the abuser. Anger management classes do not address the presence of a victim, and can in fact make matters worse for her.¹⁴² BIP, on the other hand, takes into account the presence of the victim, by addressing the behavior of the abuser that may cause him to abuse again and also by holding him accountable.¹⁴³ Further, BIP contacts victims to tell them of the batterer's enrollment, thereby keeping the victim informed and in the picture.¹⁴⁴ Lastly, the programs work to assess the abuser's present dangerousness and report to the court and probation officer in an attempt to protect the victim from further attacks.¹⁴⁵

Domestic violence is already treated differently from other crimes. Programs such as BIP are available to aid in rehabilitation while taking the needs of victims into account. Forbidding the use of anger management will further tailor the sentencing system for assault to the differences between assault in domestic violence cases and assault in other contexts.

Conclusion

GIVEN THE HIGH RATE OF DOMESTIC VIOLENCE IN MAINE,¹⁴⁶ a different approach towards the sentencing of domestic violence offenders is warranted. A statute forbidding the use of anger management in domestic assault cases is a great place to start. Anger management therapy was not intended, nor is it appropriate, for domestic violence cases. The presence of an alternative like BIP reduces the need for this therapy to nil by providing an alternative that is tailored specifically towards the rehabilitation of domestic violence offenders.

The proposed statute fulfills the purposes of the Maine sentencing provisions.¹⁴⁷ In fact, the absence of anger management as a sentence will go further towards satisfying those goals.¹⁴⁸ Lastly, eliminating anger management as a possible sentence furthers the public policy goals of increasing societal responsibility for domestic violence and enhancing its perceived seriousness.¹⁴⁹ Eradication of anger management as a sentence is a necessary step toward lowering the astounding rate of domestic violence in Maine;¹⁵⁰ and this step should be taken immediately. ▀

1. 95 percent of domestic violence in Maine is Male to Female. MAINE DEPARTMENT OF HUMAN SERVICES, DOMESTIC VIOLENCE IN MAINE DATA PROJECT 1990-1995, 118TH CONGRESS (1996). I use the word "she" for the victim and "he" for the perpetrator solely to simplify.

2. Richard Gebelien, *Delaware Leads the Nation: Rehabilitation in a Law and Order Society; A System Responds to Punitive Rhetoric*, 7 DEL. L. REV. 1, 2 (2004) (summary of sentencing goals and history of how they have been used throughout this century). See also Edward Rubin, *Model Penal Code Sentencing: Just say no to Rehabilitation*, 7 Buff. Crim. L. R. 17 (2003) (arguing that one of the reasons rehabilitation is important is that retribution is not working, "the United States has the highest rate of incarceration in the Western world by a factor of five"). See generally Bruce J. Winick, *Problem Solving Courts and Therapeutic Jurisprudence: Therapeutic Courts and Problem Solving Courts*, 30 Fordham Urb. L.J. 1055 (2003) (documenting the rise in problem solving courts which have a large rehabilitation component) See generally Francis T. Cullen, *Public Opinion and Punishment and Corrections*, 27 Crime & Just. 1, 49-54 (2000) (most citizens favor a system that includes some form of rehabilitation).

3. See KEVIN HAMBERGER & JAMES E. HASTINGS, LEGAL RESPONSES TO WIFE ASSAULT CURRENT TRENDS AND EVALUATION 189 (Zoe Hilton ed. Sage Publications 1993).

4. See ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 12-13 (Yale University Press 2000). See also CLAIRE DALTON & ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND THE LAW 55-56 (Clark et. al. ed. Foundation Press 2001).

5. See Hamberger, *supra* note 3.

6. See *infra* notes 37-56 and accompanying text.
7. See *infra* notes 67-71 and accompanying text.
8. See *supra* text accompanying notes 2-6.
9. Randal B. Fritzler & Leonore M.J. Simon, *The Development of a Specialized Domestic Violence Court in Vancouver, Washington Utilizing Innovative Judicial Paradigms*, 69 U. MO. AT KAN. CTY. L. REV. 139, 167 (2000). See also Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1536 (1998).
10. Fritzler, *supra* note 8 at 124 and William Warren et. al., *Stop F.E.A.R. Rockland Court Policy* (September 25, 2003) available at www.opdv.state.ny.us/public_awareness/bulletins/2003/legalcorner.html.
11. *Id.*
12. E-mail from Denise Giles, Victim Services Coordinator, Maine Department of Corrections, to Molly Butler Bailey, author (March 30, 2005 12:21:56 EST) (on file with author).
13. Governor's Advisory Council on the Prevention of Domestic and Sexual Violence and the Prosecution of Related Crimes in Maine & The Maine Commission on Domestic and Sexual Abuse, REPORT OF THE MAINE COMMISSION ON DOMESTIC AND SEXUAL ABUSE AND THE GOVERNOR'S ADVISORY COUNCIL ON THE PREVENTION OF DOMESTIC AND SEXUAL VIOLENCE, Appendix C (March 18, 2005) [Report of the Maine Commission].
14. *Id.*
15. *Id.*
16. *Id.* The classes teach the batterer that there are many types of abuse including, physical, emotional, sexual, verbal and economic. *Id.*
17. *Id.*
18. Joan Zegree and Meg Crager, *Comparison of Anger Management and Batterer's Intervention*, November 6, 2005 at www.edvp.org/About-DV/forabusers.htm#chart.
19. See Report of the Maine Commission *supra*, note 13.
20. Doug Gaudette, Address at National Crime Victims Rights Week in Augusta, ME (April 23, 2004).
21. See Report of the Maine Commission *supra*, note 13.
22. Compare Hanna, *supra* note 9 at 1533-1536, (examining several different studies showing that intervention has no effect whatsoever), with, CRAIG CHALQUIST, DOMESTIC VIOLENCE OPPOSING VIEWPOINTS 145 (Tamara Roleff, ed., Greenhaven Press 2000) (stating that 70 percent of men who went to intervention did not batter their wives during the subsequent twelve month period).
23. See Robert Moyer, Ph.D., *To BIP or not to BIP* 9 (June 8, 2004) (on file with the York/Springvale DV case coordination project advisory board).
24. *Id.* at 9. Moyer examined 300 studies comparing batterer's intervention completers with non-completers, concluding that in every study completers reoffended less often than dropouts.
25. Gaudette, *supra* note 20.
26. Massachusetts Trial Court Office of the Commissioner of Probation, Restraining Order Violators, Corrective Programming and Recidivism I, (November 1, 2004) [Massachusetts Report].
27. *Id.* at 6.
28. *Id.*
29. *Id.*
30. See Report of the Maine Commission *supra*, note 13.
31. George Anderson, *Without Rage* (July 2, 2004), available at <http://withoutrage.crimsonzine.com/> (George Anderson is the founder of Anderson & Anderson, the world's largest provider of anger management counseling. Georgia Commission on Family Violence, *Distinctions Between Family Violence Intervention Programs and Anger Management Counseling*, (November 6, 2005) available at www.dcov.state.ga.us/pdf/FVIPdistinctions.pdf). See also Report of the Maine Commission, *supra* note 13.
32. See Report of the Maine Commission *supra*, note 13.
33. Zegree *supra*, note 18.
34. See Report of the Maine Commission *supra*, note 13.
35. *Id.*
36. *Id.*
37. Gaudette, *supra* note 20.
38. See Dalton & Schneider, *supra* note 4 at 57. See also Warren, *supra* note 10 (stating "domestic violence behaviors are almost always the result of a deliberate choice to exert power and control over a partner). See also Preventing Violence in the Home, *Anger Management? NO! Stopping Violence? YES!* (November 6, 2005) available at www.dvc.org/NZ/anger.htm (pointing out that men who abuse their partners are not violent with other people, and that anger management ignores the intentions behind the violence).
39. See Dalton & Schneider, *supra* note 4 at 62.
40. Cheryl Welch, *Courts Lack Tools to Treat Domestic Violence Offenders, Some Say*, NC STAR NEWS, June 20, 2004, at 1A, 4A.
41. See Gaudette, *supra* note 20. See also Welch, *supra* note 40.
42. Susan Scott, *Advocating for Victims of Domestic Violence*, 20 WOMEN'S RTS. L. REP. 73, 79 (1999).
43. See Gaudette, *supra* note 20. See also Welch, *supra* note 40.
44. See *supra* notes 37-39 and accompanying text.
45. See Gaudette, *supra* note 20. See also Welch, *supra* note 40.
46. See David Hench, *Is Anger Management a Remedy for Batterer's? A Federal Ban on Using Domestic Violence Grants to Fund the Programs Raises some Questions*, PORT. PRESS HERALD, October 10, 2004. See also Welch, *supra* note 40.
47. See Gaudette, *supra* note 20. See also Warren, *supra* note 10.
48. See *Anger Management isn't the Only Answer; Victims Advocates say These Programs Aren't Working, and Officials Should Listen*, PORT. PRESS HERALD, October 14, 2004, at A12.
49. See Hench, *supra* note 46. See also West Virginia Coalition Against Domestic Violence, *Batterer Intervention Programs in West Virginia* (November 6, 2005) available at www.wvcadv.org/batterer_intervention.htm.
50. BRADLEY BERRY, DAWN, J.D., THE DOMESTIC VIOLENCE SOURCEBOOK 42 (Dawn Bradley Berry ed. Lowell House 2000) (1995).
51. Gaudette, *supra* note 20.
52. *Id.*
53. Hanna, *supra* note 9 at 1540. See also West Virginia Coalition Against Domestic Violence, *supra* note 40, and Preventing Violence in the Home, *supra* note 38.
54. Stephanie Ebbert, *Study: Few Batterers Treatable*, BOSTON GLOBE, May 11, 1998, at C1.
55. Hanna, *supra* note 9 at 1540.
56. *Id.* Findings presented for the first time at the Massachusetts judicial training in May 2000 found that batterer's intervention was far more effective than anger management because the latter was missing several essential elements including a "coordinated response," safety issues, public accountability, and the experience of the women's movement. Additionally, anger management "doesn't address violence accruing planfully, out of angry arousal" or "entitlement to controlling behavior." See also Bradley Berry, *supra* note 50 (citing findings that programs which required the batterer to attend for six months or longer were more effective in the long run than shorter programs).
57. See Massachusetts Report, *supra* note 26 at 7. See also *supra* notes 26-30 and accompanying text.
58. *Id.*
59. *Id.*
60. *Id.*
61. See Benedict Carey, *Anger Management May not Help at All*, N.Y. TIMES, November 24, 2004.
62. U.S. Department of Justice Office of Violence Against Women, *Rural Domestic Violence And Child Victimization Enforcement Grant Program* (Fiscal Year 2005 Solicitation). See *Anger Management isn't the Only Answer*, *supra* note 48. See also Hench, *supra* note 46.
63. ATTORNEY GENERAL'S OFFICE OF MAINE, ANNUAL REPORT ON DOMESTIC VIOLENCE PROSECUTIONS IN MAINE (December, 2003) (Submitted July, 2004).
64. *Id.*
65. *Id.* Of the 17 homicides in 2003, 8 were domestic violence-related. In the past 18 years 47 percent of homicides in Maine have been domestic violence related. See also Barbara Walsh, *Volatile Life, Violent Death; Lisa Deprez, a Victim of Suspected Domestic Abuse, was no Stranger to Tragedy but met Life Head on*, PORT. PRESS HERALD, June 6, 2004, at 1A.

66. Welsh *supra* note 40.
67. E-mail from Faye Luppi, Esq., Violence Intervention Partnership, to Molly Butler Bailey, author (February 13, 2005 22:13 EST) (on file with author).
68. See Report of the Maine Commission *supra*, note 13.
69. *Id.* at 8.
70. *Id.*
71. E-mail from Denise Giles, victim services coordinator, Maine Department of Corrections, to Molly Butler Bailey, author (March 30, 2005 12:21:56 EST) (on file with author).
72. Telephone interview with Michael Cantara, commissioner of public safety (March 18, 2005).
73. See Hench, *supra* note 46.
74. *Id.*
75. *Id.*
76. *Id.*
77. See 17-A M.R.S.A. §1204: Conditions of Probation.
78. [See 17-A M.R.S.A. §1202 (A-1) (allowing higher periods of probation, “if the state pleads or proves that the person was convicted of committing against a family or household member a crime under chapter 9 or 13 or section 554 or if the person was convicted under chapter 11 or 12 or section 556.”)]
79. [See 17-A M.R.S.A. §207 (2004) (assault) 17-A M.R.S.A. §208 (2004) (aggravated assault)]
- 17-A M.R.S.A. §208-B (2004) (elevated aggravated assault). Chapter 9 offenses are offenses against the person.
80. See also *State v. Hodgkins*, 2003 ME 57, 822 A.2d 1187 (interpreting the terms of this statute to mean it covers cases of “domestic violence”).
81. See 17-A M.R.S.A. §1151 (2004).
82. *Id.*
83. See Gebelien, *supra* note 2.
84. *Id.*
85. Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1314 & 1321 (2000).
86. *Id.* Tsai states that these social reinforcers include greater social costs, for example “negative impact on their employment, children, or reputation in the community.” *Id.*
87. *Id.*
88. See *id.*
89. Report of the Maine Commission *supra*, note 13. Examples of the effect on a batterer’s life include interruptions in his work schedule, social life and free time, as well as a strain on his bank account.
90. Gebelien *supra*, note 2 at 2 (summary of sentencing goals and history of how they have been used throughout this century).
91. See *supra* notes 22-29, 37-56.
92. *Id.*
93. See Moyer, *supra* note 23.
94. See Gaudette, *supra* note 20. See also Welch, *supra* note 40.
95. See Gebelien, *supra* note 2 at 2.
96. *Id.*
97. Schneider, *supra* note 4 at 13.
98. *Id.* at 14.
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.* at 16.
103. *Id.* at 18.
104. *Id.* Judges accomplished this by “badgering women into withdrawing their complaints, denying their petitions for financial support from husbands, or assigning cases to a social service organization.” *Id.*
105. *Id.* at 20.
106. *Id.*
107. Campbell, Bonnie J., DOMESTIC VIOLENCE OPPOSING VIEWPOINTS 95 (Tamara Roleff, ed., Greenhaven Press 2000).
108. Schneider, *supra* note 4 at 187.
109. Hanna, *supra* note 9 at 1539.
110. *Id.*
111. See Schneider, *supra* note 4 at 186.
112. *Id.* at 184.
113. *Id.* at 50.
114. Hanna, *supra* note 9, at 1539-1540.
115. Tsai, *supra* note 85, at 1311.
116. *Id.*
117. Hanna, *supra* note 9, at 1540
118. *Id.* at 1542.
119. See *id.*
120. Bradley Berry, *supra* note 50 at 42.
121. *Id.*
122. See John A. Bozza, “The Devil Made me do It”: Legal Implications of the New Treatment Imperative, 12 S. CAL. INTERDIS. L. J. 55, 78 (2002).
123. *Id.*
124. *Id.*
125. See Report of the Maine Commission *supra*, note 13.
126. Zegree, *supra* note 18.
127. See Report of the Maine Commission *supra*, note 13.
128. See *supra* notes 13-21 and accompanying text.
129. See *supra* notes 111-114 and accompanying text.
130. See *supra* notes 115-124 and accompanying text.
131. See *infra*, notes 133-141 and accompanying text.
132. See *supra* notes 4-6 and accompanying text.
133. Bradley Berry, *supra* note 50 at 32. Abusers often will insist on control of the finances, the victim is often “required to turn over her paycheck, quit her job, sell her car ... even wealthy women have been kept penniless.” *Id.*
134. *Id.*
135. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1, 44-45 (1991).
136. *Id.* This tactic is often successful, “[m]en who pursue custody have a better than even chance of gaining custody, *Id.*
137. See *id.* at 61. One study found that 70 percent of abused women had left at least once in response to violence. *Id.*
138. *Id.* at 27. Approaching the problem from the victim’s pathology tends to “reinforce batterers’ defenses and denials” because the focus is on the victim’s pathology and not the batterer’s. *Id.* Additionally, this approach shares the blame for the abuse between the partners instead of focusing on the abuser. *Id.* Some have argued that it is unfair to coerce a woman’s choices by imposing the responsibility to leave on her despite the many reasons she may have to stay. *Id.* at 61-64.
139. Bradley Berry *supra*, note 50. Low self esteem is usually caused by the batterer. Batterers’ techniques have been compared to the brainwashing techniques used by Nazi concentration camp guards. In fact, “they include many behaviors identified by Amnesty International as psychological torture, including isolation, monopolization of perception, induced exhaustion and debility, threats, occasional indulgences, demonstrations of complete power, degradation and humiliation, and enforcing trivial demands.” *Id.* at 38. Compare Mahoney *supra*, note 135 (arguing that this reasoning portrays women as pathologically weak and creates a cultural stereotype with which most battered women do not identify).
140. See Schneider, *supra* note 4 at 51. See also Mahoney *supra*, note 135 at 5, 64.
141. *Id.*
142. Gaudette, *supra* note 20. See also Welch, *supra* note 40. See also *supra* notes 13-21 and accompanying text.
143. See *supra* notes 13-29 and accompanying text.
144. See Report of the Maine Commission *supra*, note 13. See also *supra* notes 13-21 and accompanying text.
145. *Id.*
146. See *supra* notes 64-66 and accompanying text.
147. See *supra* notes 81-96 and accompanying text.
148. See *id.*
149. See *supra* notes 97-145 and accompanying text.
150. See *supra* notes 64-66 and accompanying text. ▀