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IN THE MUNICIPAL COURT OF THE CITY OF SEATTLE

CITY OF SEATTLE,  
*Plaintiff,*

v.

RICHARD REDACTED,  
*Defendant.*

Cause No. XXXXXXXXXX

DEFENSE MOTION IN OPPOSITION TO  
DOMESTIC VIOLENCE BATTERERS  
TREATMENT

**INTRODUCTION**

Richard Redacted, through his attorneys, Matthew Heintz and David Montes, moves this Court not to impose domestic violence treatment because it does not serve a permissible purpose of sentencing.

**STATEMENT OF FACTS**

**We are familiar with the procedural history of this case and believe the following is true and accurate:**

On February REDACTED, Mr. Redacted pled guilty to one count of domestic violence assault. The City recommended that the court impose a suspended sentence for twenty-four months on the condition that Mr. Redacted abide by a written no-contact order protecting Ms. REDACTED; commit no criminal law violations; pay probation monitoring fees; and complete a

1 domestic violence intervention program. The defense largely joined in this recommendation, but  
2 opposed the domestic violence treatment condition. The Court permitted briefing and argument on  
3 the issue.

4 **I certify, under penalty of perjury of the laws of the State of Washington, that the**  
5 **foregoing is true and correct to the best of my knowledge.**

6  
7 DATED this 24<sup>th</sup> day of April, 2015.

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Matthew Heintz, WSBA # 46340  
Attorney for Defendant

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David Montes, WSBA # 45205  
Attorney for Defendant

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16 **ARGUMENT**

17 **I. DOMESTIC VIOLENCE BATTERERS TREATMENT SHOULD NOT BE**  
18 **IMPOSED.**

19 For the Court to properly impose domestic violence batterers treatment as a condition of  
20 Mr. Redacted's suspended sentence, the Court must consider whether such a treatment program  
21 serves one of the legitimate purposes of misdemeanor sentencing. Reliable research indicates that  
22 recidivism rates actually increase for people assigned to domestic violence treatment, and that the  
23 specific type of domestic violence intervention program mandated by Washington State law is  
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1 particularly ineffective. By imposing an ineffective means of preventing domestic violence  
2 recidivism, the Court often misses an opportunity to use more effective means to combat recidivism.

3 A. Conditions of a suspended sentence must be tailored to making restitution or preventing  
4 future crime.

5 The power to suspend sentence, impose conditions of sentence, and punish violations of  
6 those conditions is not inherent in courts of limited jurisdiction. City of Spokane v. Marquette, 146  
7 Wn. 2d 124, 129; 43 P.3d 502, 505 (2002). The legislature vests the power to do so by statute:

8 [J]udges of the municipal court, in their discretion, shall have the power in all  
9 criminal proceedings within their jurisdiction including violations of city ordinances,  
10 to defer imposition of any sentence, suspend all or part of any sentence including  
11 installment payment of fines, fix the terms of any such deferral or suspension, and  
12 provide for such probation as in their opinion is reasonable and necessary under the  
13 circumstances of the case, but in no case shall it extend for more than five years  
14 from the date of conviction for a defendant to be sentenced for a domestic violence  
15 offense or under RCW 46.61.5055 and two years from the date of conviction for all  
16 other offenses.

17 RCW 35.20.255(1).

18 Because the Sentencing Reform Act (SRA) does not apply to courts of limited jurisdiction,  
19 courts of limited jurisdiction have broad discretion when it comes to sentencing. State v. Williams,  
20 97 Wn.App. 257, 263, 983 P.2d 687 (1999). However, the power to set conditions is not unlimited.  
21 See id. A court of limited jurisdiction has the power to set conditions of sentence only where those  
22 conditions are reasonably related to the defendant's duty to make reparations or to preventing future  
23 criminal behavior. Id. Inherent in this requirement is the requirement that conditions also be  
24 reasonable. See State v. Langford, 12 Wn.App. 228, 230, 529 P.2d 839, 840 (1974).

While the SRA does not govern misdemeanor sentencing, the legislature, in enacting the  
SRA clearly laid out the purposes of the Act, essentially codifying the goals of the punitive side of  
the criminal justice system. Among those stated purposes are to promote respect for the law by  
imposing punishment that is just; offering the offender a chance to improve himself; reducing the  
risk of re-offending; and making frugal use of public resources. RCW 9.94A.010. While not directly

1 applicable to misdemeanor sentencing, legislative statements of intent such as that accompanying the  
2 SRA provide an understanding of the policy reasons that motivate that grant of authority and the  
3 ends which that authority should be exercised to achieve.

4 B. Washington law mandates an ineffective mode of domestic violence intervention  
5 program.

6 While there are several different modes of treatment designed to address domestic violence,  
7 the most popular mode of treatment is based upon the Duluth Model. Developed by the Duluth  
8 Domestic Abuse Intervention Project in Minnesota, the Duluth Model is centered on the idea that  
9 the primary cause of domestic violence is patriarchal ideology and the sanctioning of men's power  
10 and control over women.<sup>1</sup> The treatment goals of the Duluth Model are to help men change from  
11 using behaviors designed to assert power and control over women to exhibiting behaviors which  
12 promote an egalitarian relationship with women.<sup>2</sup>

13 This mode of treatment is what is prescribed by Washington law. Under Washington law, a  
14 domestic violence treatment program purporting to provide domestic violence treatment must be  
15 certified by the Department of Social and Health Services, and comply with the provisions of  
16 chapter 388-60 of the Washington Administrative Code. WAC 388-60-0035. Under the WAC, a  
17 domestic violence treatment program's goals must be to facilitate change in the participants' abusive  
18 behavior and to hold the participant accountable for changing his patterns of behavior, thinking, and  
19 beliefs. WAC 388-60-0055.

20 Any certified treatment program must adhere to a specific curriculum. WAC 388-60-0236.  
21 Although the law does not prescribe a particular curriculum, any curriculum must include topics  
22 such as identifying belief systems that allow and support violence against women; identifying belief

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23 <sup>1</sup> J.C. Babcock, et al., "Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment",  
24 Clinical Psychology Review 23 (2004), 1023-1053.

<sup>2</sup> Id. at 1026.

1 systems that allow and/or support the use or threat of violence to establish power and control over  
2 an intimate partner; techniques to avoid abusive and controlling behavior; and education on the  
3 need to avoid blaming a victim for the abuser's behavior. WAC 388-60-0245. Programs must be  
4 single-gendered and include group sessions that are at least ninety minutes in length. WAC 388-60-  
5 0085. A program must require that participants attend a minimum of twenty-six weekly group  
6 sessions, followed by monthly sessions until a year of compliance with treatment is completed.  
7 WAC 388-60-0255. While not explicitly adopting the Duluth Model by name, Washington law  
8 mandates that any domestic violence treatment program incorporate topics and concepts that are  
9 directly derived from the Duluth Model.

10 These statutory requirements in turn limit the types of program curriculums available to  
11 defendants who are ordered to complete a domestic violence intervention program. For instance,  
12 Associated Behavioral Health's program objectives are taken directly from the Duluth Model.  
13 Domestic violence treatment participants who enroll at Associated Behavioral Health and  
14 Wellspring are instructed on the "Power and Control Wheel" and the "Equality Wheel," developed  
15 by the Duluth Abuse Intervention Program in Minnesota. Similarly, participants of these programs  
16 are required to complete homework assignments, forcing them to reflect upon their behaviors that  
17 fall into these various wheels and how they might act differently in a similar situation. These  
18 homework assignments include exercises such as writing empathy and responsibility letters to a  
19 victim of their violent or controlling behaviors. Participants in the program administered by  
20 Associated Behavioral Health also keep a "Control Log" to catalogue their behaviors that fall on the  
21 "Power and Control Wheel."<sup>3</sup>

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24 <sup>3</sup> See the appendix for copies of referenced documents from treatment providers.

1           Research indicates questionable efficacy for all domestic violence treatment programs,<sup>4</sup> and  
2 that Duluth-based models are among the least effective at reducing recidivism. As part of a  
3 statewide analysis of various treatment modalities, the Washington Institute for Public Policy  
4 conducted a study regarding the efficacy of treatment aimed at reducing recidivism in domestic  
5 violence offenders.<sup>5</sup> This meta-analysis looked at several studies regarding recidivism rates for  
6 domestic violence offenders who were ordered to undergo some sort of domestic violence  
7 intervention program, regardless of whether the individual completed or dropped out of the  
8 program.<sup>6</sup>

9           The study considered the overall efficacy of domestic violence intervention programs, but  
10 also looked specifically at the relative efficacy of different models of domestic violence intervention.  
11 In addition to a Duluth-based model, the WSIPP study also considered studies that evaluated the  
12 efficacy of couples therapy, relationship enhancement therapy, cognitive behavioral therapy, and  
13 traditional drug and alcohol treatment. When taken all together, these various modes of preventing  
14 domestic violence recidivism had a positive impact on recidivism compared to the means employed  
15 in the respective comparison groups.<sup>7 8</sup> However, when considered in isolation, Duluth-based  
16 models of treatment actually increased recidivism.<sup>9</sup>

17           While there is some support for the proposition that Duluth-based models of domestic  
18 violence intervention reduce recidivism, that support is only surface-level. When considering such  
19 support, it is important to note that the study of the efficacy of Duluth-based modes of treatment

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21 <sup>4</sup> See Lynette Feder and David B. Wilson, “A meta-analytical review of court-mandated batterer intervention programs:  
Can courts affect abusers’ behavior?”, 1 Journal of Experimental Criminology 239-262, 251 (2005).

22 <sup>5</sup> Miller, M., Drake, E., & Nafziger, M. (2013) “What Works to Reduce Recidivism by Domestic Violence Offenders?”  
(Document No. 13-01-1201). Olympia: Washington Institute for Public Policy.

23 <sup>6</sup> *Id.* at 3.

23 <sup>7</sup> *Id.* at 6, Exhibit 2.

23 <sup>8</sup> Comparison groups varied by study, but included probation only groups, groups ordered to do community service  
hours, and those that received no treatment.

24 <sup>9</sup> Miller, et al. “What Works [...]”. at 6, Exhibit 3.

1 considered in the WSIPP meta-analysis that yielded the biggest increase in recidivism (Davis et al.,  
2 2000a) is systemically flawed in a few ways.

3 The Davis study included in its analysis every participant of the study—both those who  
4 completed and those who dropped out of the domestic violence treatment program.<sup>10</sup> Of the 129  
5 participants in the Davis study who were ordered to a twenty-six week course of treatment, only  
6 27% actually completed the whole twenty-six week course of treatment.<sup>11</sup> Of the 61 participants  
7 who were ordered to complete an eight-week course, 67% percent completed the entire course.<sup>12</sup>

8 This means that a significant portion of those assigned the twenty-six-week program did  
9 not actually get the full “dose” of treatment, whereas the majority of those assigned to the eight-  
10 week program experienced the full course of treatment. If it was the treatment itself that yielded the  
11 effect size in that study, then it would be expected that those who were exposed to the full course of  
12 would have shown the biggest decrease in recidivism. However, that is not what the Davis studies  
13 show. Rather, they show that those who more consistently received the “full dose” (eight-week  
14 program group) showed no significant change in domestic violence related recidivism (effect size of  
15  $-.091$ )<sup>13</sup>. Therefore, the fact that such a small portion of the participants actually completed the  
16 entire course of treatment in the study that yielded the most significantly positive effect size  
17 indicates that the effect size yielded by the Davis study of the twenty-six week group ( $-0.447$ ) is  
18 attributable to some factor other than the treatment itself.

19 It is also worth mentioning that the Davis studies used as their comparison groups those  
20 who were ordered to complete 40 hours of community service. Therefore, even taking the effect  
21 sizes of the Davis studies at face value, what these studies truly indicate is that, at best, such a model

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22 <sup>10</sup> Davis, Robert C., et al. “Does Batterer Treatment Reduce Violence? A Randomized Experiment in Brooklyn” 2000,  
23 Document No: 180772, p. 43.

<sup>11</sup> Davis, et al. *Id.* (Table 5, following p. 51.)

<sup>12</sup> *Id.*

<sup>13</sup> Miller, et al. (2013), “What works” at 5, Exhibit

1 is only *more* effective in reducing recidivism than is ordering a defendant to complete forty hours of  
2 community service.<sup>14</sup>

3 Overall, the WSIPP study indicates that, while there may be ways to combat domestic  
4 violence-related recidivism through various modes of treatment, the one that can be ruled out as  
5 ineffective is a Duluth-based model. When a Duluth-based model of treatment is compared against  
6 probation supervision only, Duluth-based modes of treatment actually increased recidivism by a  
7 substantial margin. Unfortunately for both victims and defendants, this is the model that has been  
8 mandated by the legislature. Because Washington law in effect mandates that any certified program  
9 adopt a Duluth-based model of treatment, defendants ordered to domestic violence-related  
10 treatment are forced into a one-size-fits-all type of treatment.

11 C. Imposing domestic violence treatment deprives the court of opportunities to deploy  
12 more effective interventions.

13 While evidence-based treatment reduces recidivism,<sup>15</sup> as discussed above, current research is  
14 “not consistent with the hypothesis that batterer intervention programs are effective.”<sup>16</sup> The most  
15 effective intervention for preventing future recidivism generally, and future domestic abuse  
16 specifically, is supervision, regardless of other factors.<sup>17</sup> Research shows that domestic violence  
17 treatment, at best, has no effect on recidivism and may actually increase recidivism generally and  
18 future abuse specifically when compared to other interventions. While there are several potential  
19 explanations for this,<sup>18</sup> it may be in large part due to the fact that repeated failures to enroll in or  
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21 <sup>14</sup> Id.

22 <sup>15</sup> See Lee, S., Aos, S., Drake, E., Pennucci, A., Miller, M., & Anderson, L. (2012). “Return on investment: Evidence-  
23 based options to improve statewide outcomes,” April 2012 (Document No. 12-04-1201). Olympia: Washington State  
24 Institute for Public Policy.

<sup>16</sup> Feder, (2005) 251.

<sup>17</sup> See Feder; Davis, *infra*.

<sup>18</sup> Interestingly, studies have shown that one reason is that such treatment has a detrimental effect on the victim’s faith in  
the legal system. The victim may end up footing part of the bill for treatment, or feel that it is ineffective and that the  
system has failed her. Especially given the numbers of victim reported abuse after domestic violence treatment is



1 complete the program causes a court to simply impose a lengthy jail sanction and terminate  
2 supervision. This deprives the court of its ability to deploy more valuable interventions.

3 In 2011, the legislature set out to find the most valuable interventions a court could deploy.  
4 The legislature tasked the Washington State Institute for Public Policy with completing a cost  
5 benefit analysis of dozens of treatment modalities, including domestic violence treatment.<sup>19</sup> The  
6 study attempted to monetize and compare the effects of different treatment modalities. The study  
7 assigned a dollar value to the benefits of treatment, including reduced jail costs, law enforcement  
8 costs, health care costs, etc., and increased productivity, and similar benefits that might occur with  
9 effective treatment and reduced recidivism. Virtually all of the treatment modalities had a positive  
10 benefit on the cost-benefit scale. One of only two modalities of treatment to exhibit a negative  
11 finding on the benefit side was domestic violence treatment.<sup>20</sup> This means that whatever potential  
12 positive effects<sup>22</sup> that might come from domestic violence treatment are simply not present when it  
13 comes to domestic violence intervention programs.

14 The prevalence and apparent effectiveness of so many types of evidence-based treatment  
15 indicates that supervision and treatment is a good investment, but calls into question whether  
16 domestic violence treatment should be used. The study outlines several interventions that were  
17 much more effective at reducing recidivism, including mental health treatment, cognitive behavioral  
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20 involved. J. Zorsa, “New Research: Broward County Experiment shows no benefit from batterer intervention  
21 programs” 8 Domestic Violence Reports 23-25; Feder, *infra*.

21 <sup>19</sup> Lee, S. et al., (2012). “Return on investment,” p. 4, Exhibit 1.

22 <sup>20</sup> *Id.*

22 <sup>21</sup> Section B includes an in-depth analysis of how the study determined a negative benefit. It is due in large part to the  
23 findings of several studies, which indicate that domestic violence treatment has no benefit and may actually increase  
24 recidivism.

23 <sup>22</sup> The WSIPP considered the potential “benefit” of domestic violence intervention programs to be reduced crime. See  
24 Part 7 of Appendix, “Domestic Violence Perpetrator Programs” for an in-depth analysis of the cost-benefit calculus for  
domestic violence intervention programs used by the WSIPP.

1 therapy, and chemical dependency treatment.<sup>23</sup> Based on this study, KCPAO determined that it  
2 would no longer recommend domestic violence treatment as a condition of sentence.<sup>24</sup>

3 Seattle Municipal Court's study into the effectiveness of domestic violence treatment is  
4 consistent with the WSIPP study finding other interventions are more valuable than domestic  
5 violence treatment. The SMC Research, Planning and Evaluation Group did a comparison of  
6 defendants charged with domestic violence offenses whose cases could be broken down into four  
7 major categories: (1) those defendants against whom charges were never filed; (2) those defendants  
8 against whom charges were filed, but the defendant was never referred to probation (most of which  
9 were dismissals); (3) those defendants who were convicted and referred to probation for treatment  
10 other than domestic violence treatment; and (4) those defendants who were convicted and were  
11 referred to probation for domestic violence treatment.<sup>25</sup> The group referred to DV treatment  
12 exhibited the second highest recidivism rate, exhibiting a 33.3 percent increase in recidivism in the  
13 two years after completing treatment or being taken off of probation.<sup>26</sup> By contrast, people whose  
14 cases were filed but were not referred to probation at all (the vast majority of which had their cases  
15 dismissed) had only a 7 percent increase in recidivism.<sup>27</sup> Only the group that was referred to  
16 probation for treatment other than DV treatment had decreased recidivism.<sup>28</sup>

17 Even as one looks more closely at these numbers, the pattern remains. When considering  
18 only domestic violence related recidivism, there is a 62 percent increase for those referred to  
19 domestic violence treatment.<sup>29</sup> By contrast, those referred to other types of treatment had the  
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21 <sup>23</sup> Id. at 7-9.

22 <sup>24</sup> King County Prosecuting Attorney's Office, "Re-evaluating Criminal Sentences and Post-Release Supervision."

23 <sup>25</sup> SMC Research, Planning and Evaluation Group, "Recidivism Outcomes for 2009 Defendants with Domestic Violence  
Cases" (2014).

24 <sup>26</sup> Id. at 21.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id. at 23.

1 lowest domestic violence-related recidivism rate at 12 percent, while those not referred to treatment  
2 at all had a domestic violence-related recidivism rate of 36 percent.<sup>30</sup> When factoring out no-contact  
3 order violations (which made up the vast majority of DV recidivism), the DV treatment group  
4 showed modest gains in recidivism (2% less) but were still lagging behind the other treatment group  
5 (22% less) and even the no probation group (6% less).<sup>31</sup> This indicates that, even in Seattle  
6 Municipal Court, where post-adjudication supervision is pervasive, domestic violence intervention  
7 treatment is ineffective at best, and counterproductive at worst.

8       Importantly, it also indicates that other interventions are more effective. As the WSIPP  
9 study, groups receiving other types of treatment were much less likely to recidivate both generally  
10 and with further acts of domestic violence. Even the group who had their cases dismissed were less  
11 likely to recidivate. This indicates that domestic violence treatment increases recidivism and  
12 interferes with more effective interventions.

13       This is consistent with studies that show domestic violence treatment has a negligible effect,  
14 or even a negative effect on recidivism. The meta-analytic study by Feder and Wilson cited above  
15 appears to be the most rigorous and thorough study available. The study examined over 11,000  
16 articles to find the 12 most rigorous studies.<sup>32</sup> Their findings indicated that under the most generous  
17 analysis, that domestic violence treatment had a negligible effect on recidivism when looking at  
18 official reports, which the study found to be somewhat dubious.<sup>33</sup> The study found that the studies  
19 that indicated a strong benefit to treatment were the least representative, had the most highly  
20 motivated participants, and the smallest sample size.<sup>34</sup>

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23 <sup>30</sup> Id.

<sup>31</sup> Id. at 25.

<sup>32</sup> Feder, *Supra* at 244-245.

<sup>33</sup> Id. at 250-251.

<sup>34</sup> Id. at 250.

1 The results were even more troubling when looking at victim reports. The study found that  
2 when studies used victim reporting as a proxy for recidivism, the effect was increased abuse.<sup>35</sup> The  
3 authors caution that because the most marginalized and vulnerable victims dropped out of the  
4 studies, that abuse based on victim report may actually under-report increased abuse.<sup>36</sup> Even with  
5 under-reported incidents of recidivism, recidivism still increases when domestic violence treatment is  
6 imposed.

7 In the end, the study concluded: “While better research is needed [...], the results from the  
8 meta-analysis do not provide confidence that these programs will be found to be effective.”<sup>37</sup> It  
9 further cautioned that because of the potential negative effects for all involved, courts should be  
10 extremely cautious about imposing any treatment that does not have demonstrated positive effects  
11 on recidivism.<sup>38</sup>

12 Even the results of the Davis, et al. study discussed in section B, *supra*, where a Duluth-based  
13 model of treatment was shown to have a positive effect on recidivism, have come under scrutiny.  
14 The primary researchers of the Davis study, and several later analyses of the study, concluded that  
15 any positive effect on recidivism was attributable to longer supervision, not the treatment itself.<sup>39</sup>  
16 The researchers reasoned that if domestic violence treatment was the controlling factor, researchers  
17 would expect to see the group that received the bigger “dose” (the eight-week group, who finished  
18 at a higher rate (67 percent) and were therefore exposed to more of the material) would have better  
19 recidivism outcomes. In fact, the reverse was true, indicating to the researchers that the important  
20 intervention for reducing recidivism was supervision, not domestic violence treatment.<sup>40</sup> “In fact,

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22 <sup>35</sup> *Id.* at 253.

23 <sup>36</sup> *Id.* at 256.

24 <sup>37</sup> *Id.* at 258.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*; Feder, *supra*.

<sup>40</sup> Feder, *supra* at 251 (citing personal communications with the author of the Brooklyn study).

1 findings from the Brooklyn experiment have now come to be viewed by the principal investigator as  
2 indicative that additional monitoring, and not batterer programs, were responsible for differences in  
3 recidivism between” the experiment and control groups.<sup>41</sup>

4 This is especially troubling since domestic violence treatment results in shorter supervision  
5 in Seattle Municipal Court. Only 36 percent of people ordered to complete domestic violence  
6 treatment actually complete treatment.<sup>42</sup> The rest are given lengthy sentences based on their failure  
7 to comply with an ineffective and onerous treatment model and are then taken off active probation.  
8 Besides the personal, financial, and emotional toll that this has on the individual, it deprives the  
9 court of the most effective intervention it has: Evidence-based treatment and supervision.

10 Supervision with evidence-based treatment seems to be the most important intervention that  
11 a court can make in reducing domestic violence recidivism.<sup>43</sup> Domestic violence treatment does not  
12 meet that standard and worse, actively interferes.

### 13 I. Conclusion

14 This court should not impose domestic violence treatment. Domestic violence intervention  
15 treatment serves neither of the legitimate purposes of misdemeanor sentencing and is therefore is  
16 inconsistent with due process. Numerous studies, including SMC’s own study, indicate at best a  
17 negligible effect, and at worst a detrimental effect on recidivism rates. Due process requires that  
18 sentencing conditions be reasonably related to preventing future crime or making reparations.  
19 Domestic violence treatment hinders these goals.

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<sup>41</sup> Feder, *supra*

<sup>42</sup> SMC Research, Planning and Evaluation Group, *supra*. at 43.

24 <sup>43</sup> Lee, S. et al (2011) at 6-7, “Return on Investment.”

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DATED this 15<sup>th</sup> day of April, 2015.

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