

Improving Witness Safety and Preventing Witness Intimidation in the Justice System: Benchmarks for Progress



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THE PROSECUTORS' RESOURCE
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Introduction

Imagine yourself as a victim of a violent crime. You are physically injured and you are traumatized by the event. You fear for your own safety and that of your loved ones. You struggle with the emotions and other psychological effects that often follow a traumatic event. You wonder, should you go to the police? Will that put everyone in more danger?

Next, imagine that someone has reached out to you to help you. He asks you detailed questions about the crime. You are uncomfortable reliving the event, but you go through with it because this person is here to help you. What will happen if this information is shared? This person concludes the meeting by talking about available resources should you need to talk to someone or should you feel in danger again. You try to tell him you are scared but he doesn't write anything down because nothing specific has happened yet. He gives you his card and then leaves. Three days later another person asks to speak with you as part of an investigation into the crime. She asks you the same questions and gives you different information about where to go for help. You don't tell her you are scared. You call the first person who visited you to ask for help in sorting out what is happening, but he is not available. You are informed that someone else has taken your case, so you are transferred to that person. She asks you more questions in order to get to know you. Some of the questions are the same ones you have now answered twice before. How would you feel now? What would you think of these people who say they are here to help you?

Now imagine you are compelled to sit in the same room with the individual who attacked you. The individual can't get up and hurt you physically, but can speak to you, gesture and send you messages through text or social media. How would you feel? What would you think of the people who forced you into that situation?

The above is a hypothetical situation that only scratches the surface of the realities that victims and witnesses¹ face in our justice systems every day. From our professional experiences, we know that many perpetrators of violent crimes intimidate, harass, threaten, and manipulate victims and witnesses in order to avoid arrest and prosecution. Less recognized is how the criminal justice system itself may facilitate intimidation when conducting “business as usual.” The conventional process of arrest, adjudication, and sentencing involves frequent instances of bringing victims/witnesses and offenders together. Signs of intimidation are often missed during these instances, which compromises trust and confidence in the system. Justice systems across the country have not kept pace with best practices on victim and witness safety, despite widespread recognition that promoting such safety is critical to the administration of justice.

The pervasive problem of victim/witness intimidation in criminal justice systems is one that requires a strategy for change and firm commitments from leaders and practitioners alike. This Resource, **Preventing Witness Intimidation and Improving Witness Safety in the Criminal Justice System: Benchmarks for Progress**, includes tools for practitioners to use collaboratively within their communities. These tools are intended to provide criminal justice leaders with concrete guidance to implement best practices in providing for victim and witness safety. While many experienced justice system professionals are knowledgeable about intimidation, far too many incidents are still missed, misjudged, or otherwise left unaddressed due to a lack of collaboration

¹ Throughout this Resource the terms victim and witness intimidation will be used together and sometimes simply represented as witness intimidation. The use of “witness intimidation” is not intended to exclude victims.

and struggling to respond to this pervasive yet undetected crime. Practitioners, therefore, may also find this publication helpful in developing or reinforcing their knowledge of intimidation, or their colleagues'—both inside and outside of the criminal justice system—and discovering what other jurisdictions have done to promote victim and witness safety. This Resource was produced through a collaboration between AEquitas: The Prosecutors' Resource on Violence Against Women (AEquitas) and the Justice Management Institute (JMI) and was significantly informed by the initiative on *Improving the Justice System Response to Witness Intimidation (IWI)*² pilot sites: Knoxville, TN; Duluth, MN and San Diego, CA. The IWI work looked not only at victim and witness safety in the context of domestic violence but also in cases of gang-related violence. This Resource, which intends to provide a broad-based resource for safeguarding witness safety, is divided into three parts:

- **Part I. Defining the Problem: Victim and Witness Intimidation.** This part provides a brief overview of witness intimidation, the various forms of intimidation, and common characteristics of victims and perpetrators of intimidation.
- **Part II. Identifying Solutions: Integrating Victim and Witness Safety Into Criminal Justice Systems.** This part presents a *Conceptual Model* to measure the prevalence of actual intimidation in any jurisdiction. Additionally, this section maps out common opportunities for intimidation as well as gaps in victim and witness safety. The map draws from literature on victim and witness intimidation and builds on the experience of the IWI's three pilot sites. Finally, ten best practice principles are identified, against which jurisdictions can assess and compare their own system responses. These principles also draw from the literature and from the experience of IWI's three pilot sites. However, these principles provide more than just suggestions for specific responses. They have been structured in the form of a user-friendly and adaptable tool for practitioners to assess the alignment of their responses to intimidation with these principles, and to document their progress over time as they implement change.
- **Part III. Implementing Change: A Process for Witness Safety Assessment and Improvement.** This part lays out six action steps for implementing change, describes a research-informed methodology, and provides tools to begin the process for change that includes monitoring, evaluating, and improving victim and witness safety efforts. In this part of the Resource, criminal justice leaders will find a step-by-step guide to assessment and diagnosis, action planning, and monitoring and sustaining change.

² This Initiative is a field-initiated project funded by the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. For more information on this initiative please visit, <http://aequitasresource.org/Improving-the-Justice-System-Response-to-Witness-Intimidation.cfm>.

Part I. Defining the Problem: Victim and Witness Intimidation³

Witness intimidation can hinder the investigation and prosecution of any criminal case, but it presents predictable challenges in certain categories of crime. Where the defendant has a pre-existing relationship with the victim, or in cases involving gangs or organized crime, the defendant often has the ability, directly or indirectly, to continue to inflict harm upon, or to exercise influence over, the victim or witness long after the precipitating criminal act. Victims of domestic violence are routinely threatened and manipulated by their abusers to drop charges or to refuse to cooperate with law enforcement. Family members may pressure victims of elder abuse or child victims of sexual assault to recant their allegations. Human trafficking victims, or cooperating witnesses in such cases, are vulnerable to threats by traffickers or their associates. Victims of, or witnesses to, organized crime or gang-related violence, who often must continue to reside in the same neighborhood—a neighborhood that may be under the *de facto* control of the gang or criminal organization—are labeled “snitches” and thereby made targets for intimidation and reprisal. Victims of crimes that occur in institutional settings, such as schools, hospitals, or prisons, may be forced to continue interacting with associates of their abusers on a daily basis.

Witness intimidation can, and often does, result in failure to report crimes, refusal to speak with investigators, recantation of statements previously given, and refusal to testify at trial. Some victims will testify in favor of the defendant—actively opposing the prosecution’s case and claiming that they lied to police or were coerced by police into falsely implicating the defendant. Some witnesses will claim a Fifth Amendment privilege in an effort to avoid testifying, even when there is no valid legal basis to assert the privilege. Some witnesses will simply disappear prior to trial, fearing for their own safety or that of their families if they testify against the defendant.

Although witness intimidation most often occurs prior to trial or during the trial itself, intimidation and reprisal do not necessarily end when the defendant is found guilty and sentenced. Whether a defendant receives a noncustodial sentence or is imprisoned in a maximum-security facility, he or she may continue to stalk, threaten, or intimidate victims and witnesses, with the aim of securing a post-conviction recantation, to retaliate against them for their cooperation with law enforcement, or to send a message to others about the consequences of cooperation.

Witness intimidation is “behavior which strikes at the heart of the justice system itself.”⁴ When intimidation is permitted to occur, and when it is not effectively addressed by the system of justice, victims and witnesses suffer additional harm, defendants escape accountability for their actions, and the general public becomes cynical and loses confidence in law enforcement. Criminals become emboldened, confident in their ability to continue their criminal activities with impunity, while victims and witnesses decide it is not worth the risk to report crimes or to cooperate with law enforcement. Law enforcement professionals become discouraged and frustrated by witnesses who withhold information or recant the statements they have already given. When witness intimidation results in a mistrial or disturbs a conviction, the result is a costly re-trial. To allow

³ Part I is adapted from TERESA GARVEY, *AEQUITAS: THE PROSECUTOR’S RESOURCE ON VIOLENCE AGAINST WOMEN, WITNESS INTIMIDATION: MEETING THE CHALLENGE* (June 2013), available at, <http://www.aequitasresource.org/Witness-Intimidation-Meeting-the-Challenge.pdf>.

⁴ *Devonshire v. United States*, 691 A.2d 165 (D.C. 1997) (quoting *United States v. Mastrangelo*, 693 F.2d 269 (2d Cir. 1982)).

witness intimidation to go unchecked is to compromise the integrity of the criminal justice process overall and its responsibility to promote public safety.

HOW PREVALENT IS VICTIM AND WITNESS INTIMIDATION?

Accurate statistics on witness intimidation are hard to come by, in part due to the difficulty of identifying and interviewing those witnesses who are subject to the worst, most effective forms of intimidation. The studies that have been done have involved samples of victims and witnesses in single jurisdictions over a discrete period of time. Nevertheless, the information that is available suggests a problem that is pervasive and increasing. A study of witnesses in Bronx, New York, published in 1990, suggests that 36 percent of witnesses were directly threatened and over half of the remaining witnesses feared retaliation.⁵ Other researchers have documented more qualitative assessments of the witness intimidation by canvassing law enforcement and prosecutors. In these studies, witness intimidation is said to occur in 75-100 percent of violent crime in neighborhoods with a strong gang presence. In other neighborhoods, the prevalence is lower but still significant.⁶ In addition to gang-related cases, police and prosecutors frequently identify domestic violence victims as being particularly susceptible to intimidation efforts that result in witness reluctance or refusal to testify.

WHAT DOES INTIMIDATION LOOK LIKE?

Witness intimidation can take many forms, and it may be direct or indirect. Common forms of intimidation include acts of physical violence, verbal and non-verbal communication of threats, threats implied by conduct, and emotional manipulation. Acts of intimidation may be in full view of many witnesses (as in gang-related or human trafficking cases, where the perpetrator wishes to influence more than a single witness—or the community at large—with the consequences of cooperating with the police), in private with no outside witnesses, or in public but concealed or disguised so that only the intended target understands the message. Any form of intimidation may be carried out by the defendant personally, or may be carried out by others acting on their behalf, usually (though not always) with the defendant's knowledge and consent, if not on their explicit instructions. Regardless of the form it takes, its purpose is invariably the same: to allow the offender to escape justice by preventing witness testimony or other cooperation with law enforcement (*e.g.*, providing information or physical evidence, or even obtaining medical treatment that might result in a report to law enforcement and disclosure of the crime).

Physical violence

Direct intimidation may consist of actual violence, with or without accompanying verbal threats. The most extreme example, of course, is the killing of a witness to prevent him or her from cooperating with the police or from testifying in court. This ultimate act may serve a criminal purpose beyond the elimination of that witness's testimony, however. Particularly in cases involving gangs or other organized criminal activity, such a killing may have the intended purpose, and often has the effect, of serving as a warning that will deter other witnesses from coming forward or cooperating with law enforcement. Considered in this context, such acts may also result in the intimidation of potential jurors, creating ensuing difficulty selecting and empanelling a jury,

⁵ R. DAVIS, B. SMITH & M. HENLEY, VICTIM SERVICES AGENCY, VICTIM/WITNESS INTIMIDATION IN THE BRONX COURTS: HOW COMMON IS IT, AND WHAT ARE ITS CONSEQUENCES? (1990),

http://www.popcenter.org/problems/witness_intimidation/PDFs/Davis_etal_1990.pdf.

⁶ K. HEALEY, NAT'L INST. OF JUSTICE, VICTIM AND WITNESS INTIMIDATION: NEW DEVELOPMENTS AND EMERGING RESPONSES. RESEARCH IN ACTION SERIES (1995), <https://www.ncjrs.gov/pdffiles/witintim.pdf>.

and the potential for mistrial or reversal on appeal if juror fears voiced during the trial or deliberation affect the ability of the jury to remain impartial.

Short of causing the actual death of the witness, lesser acts of violence can be just as effective in preventing witnesses from cooperating. A beating, wounding, or brutal sexual assault carries at least the implicit threat of continued or more severe violence if the witness persists in cooperating with the police or prosecution. A battered woman, thrown across the room after the police leave the scene without making an arrest, does not need to have the significance of that act spelled out. In neighborhoods dominated by gangs or organized crime, acts of violence against witnesses not only discourage witness cooperation in that witness's case, but discourage any other witness cooperation with respect to any future crimes that may be committed, thereby allowing the criminal organization to operate with impunity, and enhancing the fearsomeness of its reputation among rival gangs or criminal organizations.

Explicit threats

Even if no physical violence is used, explicit threats may effectively silence a witness. A defendant may spell out for the victim or witness exactly what consequences are in store if he or she reports the crime to the police or cooperates in any other way. In gang- or organized-crime-dominated neighborhoods, the mere threat may be sufficient to put the witness in fear – fear not only of the perpetrator, but also of the perpetrator's criminal associates and even the witness's own friends, neighbors, or family members, who may also pressure the witness not to get involved. The “Stop Snitching” motif popularized over the past few years in hip-hop music, graffiti, and fashion carries the clear message that informants and witnesses cooperate with law enforcement at their own risk and that that cooperation is socially unacceptable.

The threat need not be one to commit an act of violence; threats to disclose embarrassing facts or lies about the victim; threats to report criminal activity (real or fabricated); and immigration-related threats (“If you leave me, you will be deported”) may be effective. In the family setting, abusers may threaten to take away the custody of children or to use their superior financial and legal resources to leave the victim in financial straits. If the family is no longer together, the abuser may threaten to report the victim to child welfare authorities. Victims of elder abuse may be threatened with physical or financial abandonment.

Modern technology makes it possible to communicate threats using blogs, social media (*e.g.*, Facebook, Twitter), text messages, email, and voicemail. The source of these communications may be concealed with technology, a technique called “spoofing,” requiring proper computer forensic evidence-gathering techniques to connect the communications to the defendant.

In addition to making threats against the witness personally, a defendant or a third party acting on their behalf may direct threats against the witness's family and loved ones, including children and pets. Victims and witnesses who are immigrants may be threatened with reprisals against family members in distant countries, particularly in gang-related or human trafficking cases, where the defendants may have associates or influence with government officials in those countries.

Implicit threats and menacing conduct

Nonverbal communication without an explicit threat is another effective form of intimidation. Readily understood threats include gestures, such as making a slashing motion across the throat, mimicking the firing of a gun, or miming the snapping of the witness's photograph while in the courthouse to testify. In cases involving domestic violence, human trafficking, or gang-related violence against a victim who is associated with the gang, there may be a history of violence against

the victim such that a “code” word or phrase, an outwardly ambiguous gesture, or a facial expression associated with previous assaults is sufficient to communicate the threat. Some threats are symbolic (*e.g.*, a dozen yellow roses delivered to a victim who has been told that the day she receives a dozen yellow roses is the day she will die). Cross-burnings have been used for years as symbolic threats against African American victims in parts of the South, and organized crime or gang members may deliver symbolic threats in the form of dead animals or utilize some other object or sign, such as graffiti, that the victim will recognize as a threat.

Other menacing conduct, such as stalking behavior, is often used to intimidate victims. Such conduct communicates to the victim or witness that he or she is being watched by the perpetrator, and discourages continued cooperation with investigators or prosecutors. A witness may receive repeated hang-up calls or calls playing music or with strange sounds. Gang members may fill the courtroom while a witness is on the stand, and their visible presence may frighten the witness into silence. Vandalism and property damage, including graffiti, window breaking, or shooting gunfire at a witness’s home or car sends a clear message.

Emotional manipulation

Finally, more subtle forms of pressure, some of which may not facially appear to be intimidation, can be used to manipulate victims in an effort to dissuade them from cooperating with law enforcement. Abusive partners in intimate relationships have an advantage that many defendants do not—they know precisely what their victims’ emotional vulnerabilities are. Victims of intimate partner violence may be the recipients of tearful apologies, declarations of love, assurances that the abuser will change if only the victim will be forgiving, promises to quit drinking or using drugs, promises to marry or to attend counseling sessions. These are common tactics that play upon the victim’s desperate wish not to be in the position of being responsible for the criminal conviction of someone they once loved, and for whom they may still care deeply, someone with whom they may have children. The defendant may convince the victim that if they simply make the case go away, the defendant will finally change, having received an important “wake up call.”

This kind of emotional pressure may come not only from the abuser, but also from family members of both parties, particularly when, as so often happens, the abuse has been hidden from others. Abusers are often very skilled at presenting a calm, reasonable, and loving appearance around family and friends, and are frequently adept at gaining their sympathy and support at the expense of the victim, who is often intentionally isolated from potential sources of support. In such cases it is possible that the individuals exerting the pressure may be unaware that they are advancing the abuser’s scheme to silence the victim.

Children are particularly vulnerable to emotional manipulation. Witnessing abuse and being subjected to manipulation by abusers harms children. Children of an abusive relationship may be co-opted by the abuser, who will blame the victim for their arrest and incarceration and will encourage the children to pressure the victim to drop the charges. Sometimes boys will emulate their fathers’ treatment of their mothers and become surrogate abusers in their fathers’ absence. The children thus are placed squarely in the middle: they are both manipulated by the abuser and used as a means to manipulate their mother, the domestic violence victim.

In cases involving child sexual assault by a parent or other relative, the non-abusing parent or other relatives may be in denial that the abuse could have occurred, and may threaten the child’s security by blaming the child for breaking up the family. The child may be threatened with placement in foster care or a group home, or may be blamed for provoking the abuse. The child may ultimately

recant the report of abuse or “forget” what happened to regain his or her sense of security. Children may also be bribed with promises or gifts to change their testimony.

Intimidation promoted by unethical defense counsel

In addition to family, friends, and criminal associates, some defendants have another potential source of third-party intimidation: their own legal defense team. Ethical defense attorneys routinely abide by court rules and orders, and refrain from harassing and intimidating conduct. However, some attorneys are heedlessly overzealous or fail to control their investigative team, conducting the defense in ways that support the defendant’s intention to prevent the victim or witness from testifying. Inappropriate tactics may cause that victim to cease all cooperation with the proceedings or even to go into hiding to avoid the intrusiveness of the defense investigation. Examples include: repeatedly harassing the victim for an interview (when the desire not to speak with the attorney or investigator has been clearly communicated), invading the privacy of a victim by seeking personal or confidential information that has no possible relevance to the proceedings, or seeking unwarranted psychiatric or physical examinations of the victim. Unethical defense attorneys may also share with their clients personal information about a victim or witness obtained in discovery that has been restricted to the attorney only by virtue of a protective order.

WHO IS VULNERABLE TO INTIMIDATION?

Although a victim or witness can be intimidated in almost any kind of criminal case, certain categories of victims and witnesses are more likely to be subjected to intimidation attempts. When there are multiple vulnerability factors (*e.g.*, a victim of domestic violence who is also a recent immigrant), the opportunities for intimidation, and the kinds of threats to which they may be subjected, increase accordingly.

Victims of domestic violence

Victims of domestic violence are almost always subjected to some form of intimidation or manipulation during the course of criminal proceedings, as are their children. Often others close to the victim, such as families and friends, are subjected to efforts by the abuser to discourage them from cooperating with the investigation or from providing emotional or material support to the victim.

Witnesses to organized-crime- or gang-related violence

Witnesses to violence perpetrated by a criminal organization are frequently subjected to intimidation tactics in connection with their having provided information or cooperation to law enforcement. Moreover, criminal organizations such as gangs are likely to perpetuate an atmosphere of fear and intimidation in the neighborhoods where they operate. This kind of community-wide intimidation contributes to the “no snitching” credo that frustrates the ability of law enforcement to effectively investigate and prosecute such crimes.

Human trafficking victims

Human trafficking victims in forced sex and/or forced labor markets are, like domestic violence victims, subjected to intimidation and threats on an ongoing basis, as part of the trafficker’s scheme to ensnare them and then to keep them enslaved. The level of intimidation only increases with the prospect of a victim’s cooperation with an investigation of the trafficker. These victims often share characteristics with other vulnerable groups, as when the victim is also involved in an intimate relationship with the trafficker or when the victim is an immigrant, potentially subject to deportation or whose family members in his or her home country may be threatened with harm.

Immigrants

Victims who are immigrants, particularly those who have only recently arrived in this country, may be subjected to threats of deportation. In cases involving gangs with a presence in the victim's home country, or human traffickers with contacts and influence in the victim's home country, the victim may be threatened with harm to family members who remain in that country. The vulnerability of immigrant victims increases when there are barriers of language and of culture that prevent them from seeking support services or from understanding, or trusting, law enforcement and the criminal justice process.

Child and juvenile victims and witnesses

Child victims and witnesses are particularly vulnerable to threats and emotional manipulation. Because of their dependence on the adults in their lives, including the abuser in cases of family violence and sexual abuse, children may ally with the abuser for their own physical and emotional safety. Child victims of human trafficking are isolated from responsible adults, such as teachers and health-care providers, who might otherwise assist them.

Juvenile victims of, or witnesses to, gang violence are often members of gangs, themselves—either members of the same gang as the defendant(s), or members of a rival gang. As such, they are subjected to an even higher degree of pressure, threats, and retaliation than victims or witnesses who have no connection to gang activity. Juvenile gang members, moreover, are likely to have little support from parents or contact with trustworthy adults such as teachers or counselors. Juvenile witnesses to gang violence present unique witness management problems, since their social and emotional ties to the gang may be so strong that they resist efforts by law enforcement to protect them during and after the criminal investigation. Most law enforcement agencies are presently ill-equipped to provide the services that these young witnesses need for their ongoing safety.

Victims and witnesses in institutional settings

Victims of abuse or violence occurring in institutional settings, such as schools, prisons, hospitals, or group homes are particularly vulnerable to intimidation, regardless of whether the assailant is a staff member or another student, inmate, patient, or resident. Where the abuser is a staff member, that individual typically has tremendous power over the life and well-being of the victim. Even if the abuser is removed from the institution, he or she may have friends who are in a position to intimidate or to retaliate against the victim for disclosing the abuse. When the assailant is another student, inmate, patient, or resident, that defendant also may have allies who are able and willing to intimidate the victim or any witness courageous enough to speak out. In correctional institutions, the institution itself may effectively “punish” the victim or witness by placing him or her in isolation from others for the witness's own protection. Such segregation may result in the loss of privileges enjoyed by individuals in general population, and may even backfire by highlighting the fact that the witness is cooperating.

Incarcerated witnesses to crimes committed outside the institution often face risks from the defendant against whom they are cooperating and from the defendant's incarcerated associates. Even transfers to other institutions may not assure the safety of such witnesses where the prison grapevine can rapidly communicate information between institutions about who is cooperating against whom. Such witnesses are sometimes directly threatened while they are being transported for court appearances or placed in holding facilities while waiting to testify.

To effectively address the problem of victim and witness intimidation requires the collaboration of police, prosecutors, investigators, judges, and advocates, as well as health care, social services, and corrections professionals, all of whom may come into contact with victims or witnesses who are

vulnerable to intimidation or with defendants who intimidate. Those stakeholders need to understand when and how intimidation is most likely to occur, in order to prevent its occurrence, to promptly and effectively address it when it occurs, and to successfully prosecute cases in spite of defendants' efforts to prevent witnesses from cooperating.

CONCLUSION

Knowledge about the kinds of cases in which victim and witness intimidation is most likely to occur, and the means by which it can be carried out, will enable police, prosecutors, and allied professionals to coordinate their efforts to prevent its occurrence, to promptly and effectively address it when it occurs, and to successfully prosecute cases in spite of defendants' efforts to prevent witnesses from cooperating. Defendants engage in witness intimidation because it works. To the extent that the criminal justice system can make intimidation a losing proposition for defendants, victims and witnesses will be safer and more will be willing to come forward and cooperate to ensure public safety.

Part II. Identifying Solutions: Integrating Victim and Witness Safety Into Criminal Justice Systems

Victim and witness intimidation challenges the foundation of the justice system, which is built on its capacity to render justice and ensure public safety. A critical function of the justice system is to ensure that individuals can easily report crimes and feel safe participating in prosecutions without fear of retaliation. Unfortunately, the reality is that some justice system processes fail to comprehensively protect victims and witnesses from intimidation. This part of the Resource will guide practitioners not only in defining the scope of victim and witness intimidation in their jurisdictions but also in reviewing how their systems might better promote safety. It is divided into three sections. The first section, *Framework for charting progress in ensuring safety*, describes a model for defining the actual incidence of intimidation so as to gauge progress over time. The second section, *Common safety vulnerabilities in justice systems*, charts the common pitfalls and vulnerabilities in the justice system relative to victim and witness safety. Finally the third section, *Best practice principles for systemic safety responses*, describes best practices for justice systems to use as a guide for developing systemic responses to intimidation.

FRAMEWORK FOR CHARTING PROGRESS IN ENSURING SAFETY

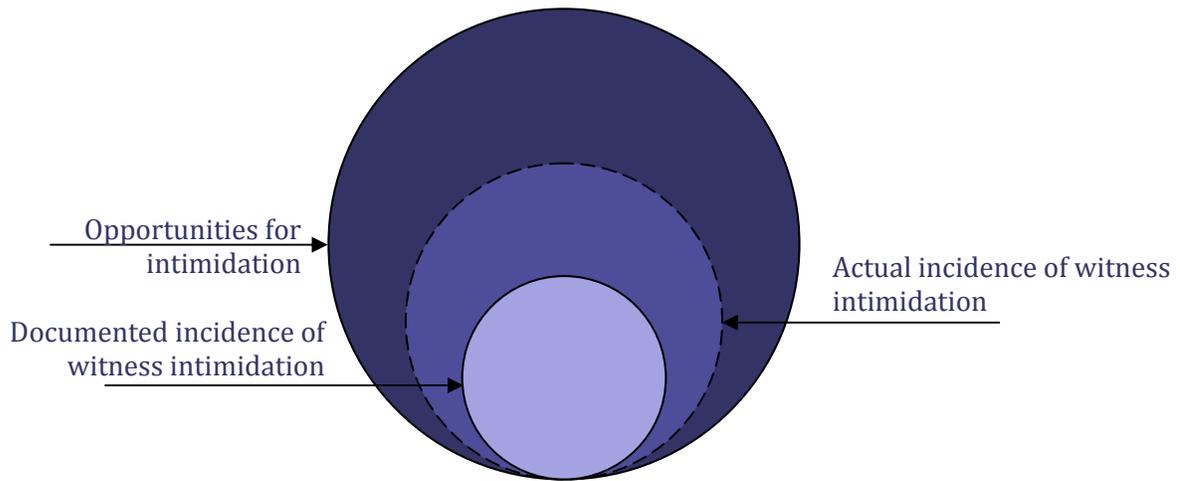
Before creating a systemic response to intimidation, it is important to consider what you want to achieve, and how to measure progress toward that outcome. However, what if the underlying problem is one that is impossible to measure? The problem of victim and witness intimidation may in fact be immeasurable. By its nature, intimidation is difficult to identify unless it is unsuccessful or only partially successful. There is no real way to determine how often intimidation succeeds in preventing crime reporting or cooperation with the prosecution. Without a clear measure of the incidence of intimidation in a community, how can any jurisdiction truly determine whether its responses are effective in decreasing intimidation and enhancing safety? Practitioners and experts in the field are reduced to lamenting the unknown prevalence and challenges of intimidation, whether in domestic violence, gang, or other violent crimes cases, without a sense of direction in which to proceed to effectively reduce its occurrence.

Ultimately, practitioners should strive to decrease and eliminate the occurrence of intimidation. Without knowing exactly how often intimidation occurs, there are two factors that can be used to quantify the true prevalence of intimidation. The first is **documented incidence of witness intimidation**.⁷ Experts agree that this number is significantly lower than the actual incidence of intimidation, but it does provide at least some measure of how well the criminal justice system is responding when intimidation is identified. The second is the number of **opportunities for intimidation**. The number of potential instances of intimidation will far exceed the reality, because it is unlikely that defendants or other potential intimidators take advantage of *all opportunities* for intimidation.

These two measures – documented incidence of witness intimidation and opportunities for intimidation – form two concentric circles, the former embedded within the latter. As shown in the diagram below, the actual incidence of witness intimidation lies between these two circles.

⁷ Common charges include witness intimidation, tampering with a witness, solicitation of perjury, etc. For more information see the AEQUITAS statutory compilation “Witness Intimidation,” available upon request.

Figure 1. Conceptual Model of Prevalence of Intimidation



Bringing all three circles into alignment with each other applies systemic pressure to decrease the actual incidence of witness intimidation.

The implications here are significant. Criminal justice agencies should work collaboratively to increase the identification and prosecution of intimidation (make the smallest circle bigger), while also closing gaps or opportunities for intimidation (make the largest circle smaller). This will bring them closer to eliminating incidents of intimidation altogether. Moreover, jurisdictions can *measure* their progress from both ends to see increases in prosecutions and convictions over time and to assess the degree to which known vulnerabilities in their system are being reduced or eliminated.

This framework can be a critical tool for criminal justice leaders to design, implement, and evaluate their systemic responses to intimidation and subsequently gauge the effectiveness of victim and witness safety efforts. Before discussing what those systemic responses should incorporate, identifying the specific opportunities for intimidation merits discussion.

COMMON SAFETY VULNERABILITIES IN CRIMINAL JUSTICE SYSTEMS

The justice system strives to ensure that cases proceed efficiently through it while prioritizing the protection of defendants' due process rights. Nonetheless, there are significant gaps in victim and witness safety, leading to opportunities for intimidation. Over the last two decades, however, increased attention to risk assessment, victim safety, victims' rights, offender accountability and system accountability has led justice system professionals to begin focusing on how, when, and where intimidation occurs. The work of AEQUITAS on the IWI initiative identified common gaps in preventing and responding to intimidation, which are addressed below.

Intimidation can put pressure on victims and witnesses to be uncooperative with law enforcement and prosecutors *after* a crime is reported. It can also prevent those individuals from coming forward to report a crime at all, which may represent the most significant area of unaddressed intimidation in many communities. "Communities" are not limited to those defined by geographical bounds. They may include, for example, college campuses where sexual assault among students presents a significant challenge as victim and perpetrator may have to continue to work and study

in close proximity. They may also include military bases, church communities, or civic organizations. The increasing use of social media means that the intimidators' reach is even broader, resulting in contacts that are more frequent, not bound by location, and more damaging.

When victims and witnesses do come forward, they are often required to appear at court at the same time as the defendant. Even when no-contact orders are in place, this close proximity presents safety challenges. To ensure safety, justice system professionals should think creatively about how to respond to intimidation inside and outside of courthouses.

Figure 2 below maps the common opportunities for intimidation throughout the life of a criminal case, from the commission of a crime through completion of the offender's sentence, whether in custody or under community supervision. **Local leadership can use this map to analyze their own systems and to identify where they have been able to close gaps and where vulnerabilities persist.**⁸ Figure 2 divides the criminal justice process into key stages or components:

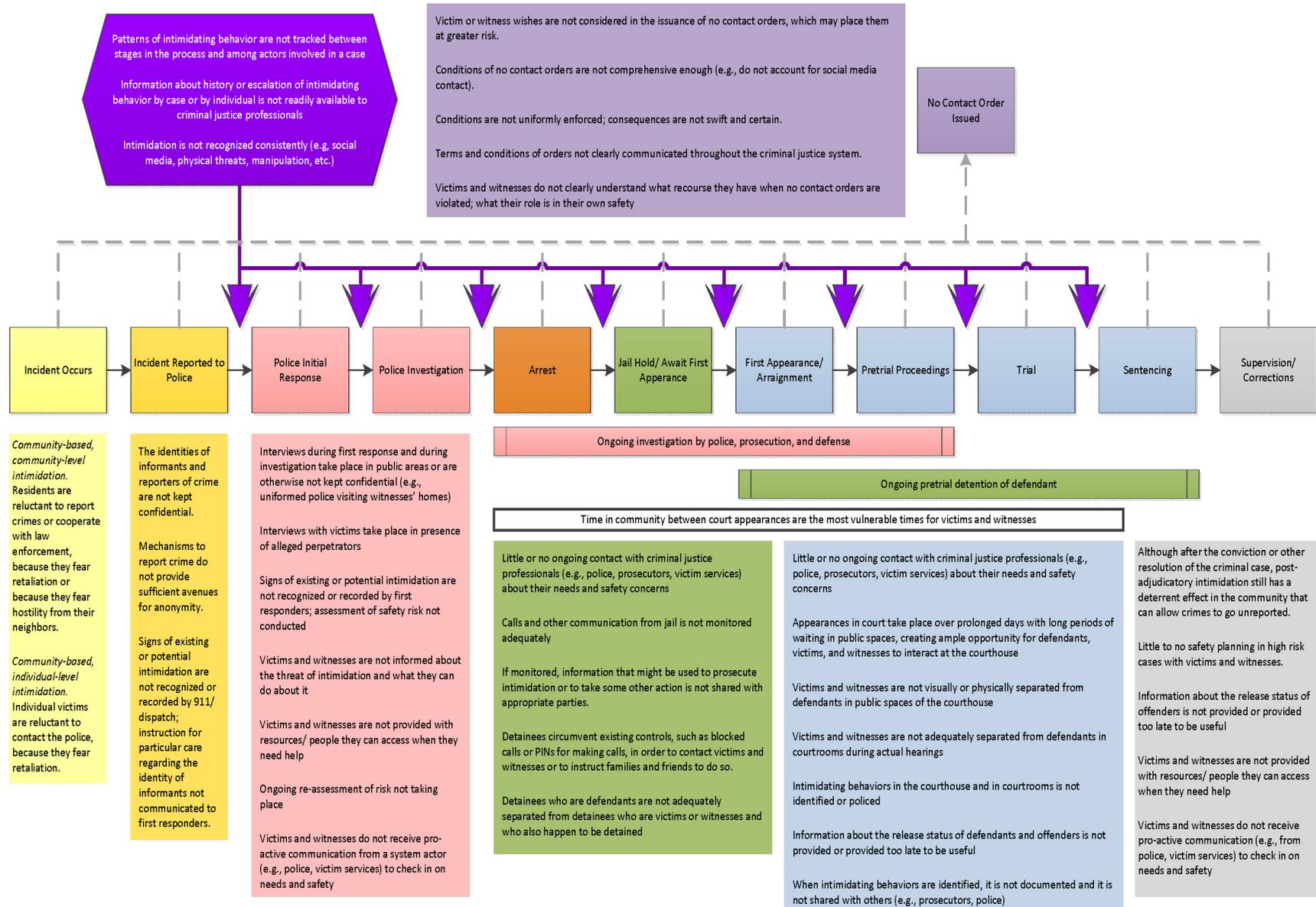
- Incident occurs
- Incident reported to police
- Police initial response
- Police component
- Arrest
- Jail hold awaiting first appearance
- First appearance/arraignment
- Pretrial proceedings
- Trial
- Sentencing
- Supervision/corrections

Untracked patterns of intimidating behavior represent a major gap and are represented in Figure 2 as spanning the stages of the process. Perpetrators make a series of threats – implicit and explicit – over time. In very serious cases, these threats escalate and culminate in physical harm, including death. Unfortunately, patterns of intimidating behavior are not tracked across the criminal justice system. In fact, the behavior may escape attention within a single stage (*e.g.*, police failing to recognize intimidation on the scene at the time of their response). Even when such conduct is recognized, that information is often not shared with other system actors, such as prosecutors and victim advocates, unless the victim takes on that responsibility. Without that flow of information, those interacting with victims and witnesses do not have an accurate picture of the safety of these individuals and are unable to respond appropriately to the intimidation.

⁸ The methodology for such an assessment involves many of the same activities that have characterized Safety and Accountability Audits of responses to domestic violence: observations of practitioners; interviews or focus groups with victims/witnesses; and analysis of case reports and files. See Part III for further discussion about such a methodology. For more information about Safety and Accountability Audits, please visit Praxis International at <http://www.praxisinternational.org/>

IMPROVING WITNESS SAFETY AND PREVENTING WITNESS INTIMIDATION
IN THE JUSTICE SYSTEM: BENCHMARKS FOR PROGRESS

Figure 2. Map of Common Opportunities for Intimidation and Gaps in Victim and Witness Safety



BEST PRACTICE PRINCIPLES FOR SYSTEMIC CRIMINAL JUSTICE SAFETY RESPONSES

The *Map of Common Opportunities*, Figure 2, points to specific targets in the criminal justice process that need to be addressed to enhance safety for victims and witnesses served by that system. The approach presented here for understanding and responding to the prevalence of victim and witness intimidation does not require starting from scratch. Local and federal jurisdictions and international courts working to enhance victim/witness safety have developed effective ways of addressing systemic vulnerabilities. Table 1 below combines them into a set of best practice principles that address these vulnerabilities when responding to intimidation.

Jurisdictions looking to implement these principles must begin with a public commitment to safety and aggressive prosecution of criminal intimidation. This commitment involves *all* key system actors coming together to plan a coordinated and comprehensive approach – the only approach that can realistically address a safety problem as pervasive as intimidation. This will provide a foundation from which it is possible to build an effective systemic response to intimidation, monitor outcomes, ensure desired outcomes are achieved, and allow for strategies to be refined and enhanced over time.

Of course, communities will have different strengths and needs, so no one set of best practice principles can be applied universally to all jurisdictions. Every community will – and should – look a little different but all can be informed by the principles set forth in Table 1. These principles provide a guide for planning responses and for creating benchmarks to measure success.

Table 1. Ten Principles for Effective Criminal Justice System Safety Responses

1	Plan and implement a highly-visible coordinated justice system response to victim and witness intimidation that spans the time from initial report of a crime through post-release supervision of the offender.
2	Use community-based approaches to build trust with neighborhood residents and to encourage reporting of information about criminal incidents including intimidation.
3	Educate victims and witnesses about witness intimidation.
4	Equip criminal justice leadership and staff with an operational knowledge of intimidation and safety.
5	Maintain consistent team of criminal justice actors that work with victims and witnesses to build trust and respond holistically to their needs.
6	Use objective assessments and input from victims and witnesses to determine risk of and vulnerability to intimidation. Use those assessments and input to inform witness safety efforts.
7	Create information-sharing policies that link justice system actors and allow them to identify patterns of behavior and possible intimidation in individual cases.
8	Make all reasonable efforts to minimize contact between victims/witnesses and defendants throughout the justice system process.
9	Create safe spaces in courthouses.
10	Track the progress and outcomes of efforts and use that information to inform system improvement.

Practice Principle 1. Plan and implement a highly-visible coordinated justice system response to victim and witness intimidation that spans the time from initial report of a crime through post-release supervision of the offender.

The planning, implementation, and monitoring of witness safety programs requires effort and investment from the entire criminal justice system and the broader community. Necessary partners include 911, law enforcement, jail, pretrial services, prosecution, victim services, court security, judiciary, court administration, probation, offender programs, corrections, parole, community-based victim advocacy, civil legal services, medical community, etc.⁹ A team of representatives of these agencies can make policy that looks thoughtfully at the evidence of intimidation and responds systemically. This team's goal is to ensure victim/witness safety throughout the *entire* criminal justice process from initial reporting through post-release supervision, including while offenders are on release status in the community (*e.g.*, during periods of probation and post-release from incarceration).

Effective system change requires more than the assembly of multi-disciplinary teams; other key aspects of these teams are coordination and accountability. Successful teams include a coordinator or facilitator who pushes efforts forward, and members who are accountable to one another, according to a plan. The work of the team addresses the system's prevention of and response to intimidation as well as how the system responds to the needs of victims and witnesses, protects victims and witnesses, and provides referrals for services. Examples of preventive efforts are monitoring courthouse spaces and maintaining confidentiality of witnesses during investigation. Examples of response strategies include monitoring communications to and from jails, enforcement of protective orders, specialized patrol of homes and workplaces of high-risk victims and witnesses, electronic monitoring of defendants, and relocation of victims and witnesses.¹⁰ There are a variety of options that can be customized to the risk level and needs of individual victims and witnesses.

⁹ While previous experience with CCRs gives pause to the inclusion of defense counsel, jurisdictions implementing the model presented here should consider a fully representative team that includes defense. Where appropriate — and with consideration of their ethical responsibilities to their clients — defense counsel can provide important insight into how the justice system can ensure the safety of victims and witnesses without compromising the due process rights of defendants. After all, not all defendants are intimidators and some victims and witnesses may even be defendants in another case. Given the opportunity to be involved, defense counsel — along with other justice system actors — may learn how their actions could inadvertently facilitate intimidation and what they can do to close gaps in witness safety.

Given the ongoing advances made by Criminal Justice Coordinating Councils (CJCCs), there is reason to believe that a broad-based policy workgroup that includes judges, prosecutors, defense counsel, law enforcement officers, corrections officers, probation officers, and victim advocates would succeed. CJCCs have gained popularity throughout the country and have been instrumental in efforts like the Evidence-Based Decision-Making Initiative from the National Institute of Corrections at effecting sustainable systems reform. Numerous organizations, including JMI, have supported and worked alongside these collaborative workgroups to revamp screening and assessment practices, sentencing processes, and services available to court-involved individuals. *See also* Jennifer Trone, Lori Crowder & Chandra Yoder, Vera Institute of Justice, *Justice and Safety for All: Promoting Dialogue Between Public Defenders and Victim Advocates* (2002), www.vera.org/sites/default/files/resources/downloads/Justice_and_safety.pdf (“In November 2001, a group of 25 public defenders and victim advocates from around the United States gathered in Chicago. Perhaps for the first time, members of the two professions talked openly about how they view each other and their own work.” This experience showed that an inclusive team of adverse parties can come together to dispel myths and find a balance between a defendant's zealous representation and victim safety.)

¹⁰ Changes in courtroom, courthouse, or jail visitation procedures that may impact the interests of defense counsel in providing effective representation to their clients should be implemented after a notice and comment period, with appropriate consideration given to those interests.

These responses should represent a continuum of protective strategies or a safety net for victims and witnesses, and need to be highly visible, communicating a clear and unwavering commitment to safety. Any system response should also include a public awareness campaign as well as efforts to maximize the relationship between criminal justice actors and the community. It is important that the community is made aware of these efforts so as to communicate to victims and witnesses that the justice system takes their safety and other needs seriously and will advocate for them. This commitment also warns would-be perpetrators that they will be pursued and prosecuted for intimidation.

Practice Principle 2. Use community-based approaches to build trust with neighborhood residents and to encourage reporting of information about criminal incidents including intimidation.

One of the largest obstacles to crime reporting and prevention is the fear of perpetrators and distrust of the justice system that pervades many communities. Often, there is a fear of retribution for reporting to or cooperating with police (*e.g.*, “snitches get stitches”). Furthermore, some neighborhoods have widespread animosity or hostility between residents and justice system actors, such as law enforcement. Bridging the gap between the justice system and the communities it serves has proven to advance the interests of victims and witnesses, the criminal justice system, and the community as a whole. Some indicators of an effective witness safety program include:

- Community policing and prosecution
- Continual outreach to parents, guardians, and other adults who are often first informed about youth gang violence and intimidation
- Easily accessible confidential channels for reporting crime or information about crimes
- Language and cultural skills among law enforcement appropriately matched to the communities served
- Ongoing community education and community organization efforts that bring together members of the community with representatives of law enforcement.

Community policing and prosecution principles are central here. Focusing on positive interactions with community members, opening up lines of meaningful communication with residents, partnering with residents and local organizations, and making criminal justice work transparent and open to residents are all proven methods for building trust.

Practice Principle 3. Educate victims and witnesses about witness intimidation.

Victims and witnesses who are educated about intimidation will be more prepared to avoid or respond to it from the start. Offenders will attempt to exploit their fear, reluctance or embarrassment or attempt to control them by instilling guilt or exploiting feelings of loyalty. One of the most effective strategies for facilitating the identification, prevention, and prosecution of intimidation is to provide information to vulnerable victims and witnesses about what intimidation can look like and when it might happen. Educating and empowering victims and witnesses is more than a one-time event. Justice system actors should have regular dialogues with victims and witnesses about safety and with partners to remove or mitigate obstacles to safety. When strategizing about reporting intimidation and accessing available services, it is important to provide options and support but equally important to consider the victim’s or witness’s wishes and concerns in deciding the best way to proceed.

Questions these dialogues can address early and often are:

- What is witness intimidation? What forms does it take? What does the intimidator want?
- What is evidence of witness intimidation and how should evidence be preserved?
- How and to whom should I report witness intimidation?
- How can I protect myself from intimidation?
- What resources are available to me for help, advice, counseling, etc.?
- How does the criminal justice system work? What can I expect?

Practice Principle 4. Equip criminal justice leadership and staff with an operational knowledge of intimidation and safety.

An operational knowledge of victim and witness intimidation means that criminal justice leaders and practitioners understand the dynamics of witness intimidation – what it looks like and how to document incidents – as well as effective responses. Practitioners should develop or identify existing strategies for counseling victims and witnesses, for connecting them with responsive and reliable services, and for gathering the information necessary to take legal action when appropriate. Some individuals may not see themselves as victims, while others are deeply dependent on the perpetrator’s income or protection, or because that person is their only lifeline in the community or in the country. Consider the cases of immigrants victimized in human trafficking cases or the closeted partner in an abusive same-sex relationship or the young gang member in a gang-dominated neighborhood. These situations are all potential scenarios in which victim or witness intimidation can occur and requiring a comprehensive response from law enforcement, prosecutors, court security, judges, victim advocates, and others. A working knowledge of how to identify and respond to intimidation – to both assist victims/witnesses and to pursue prosecution – characterizes effective prevention efforts and system response to intimidation that will improve public safety.

The first tool for practitioners to assess their understanding and progress in developing a response to intimidation can be found in [Appendix C, Rubric to Assess Operational Knowledge of Victim and Witness Safety Among Criminal Justice Practitioners](#). This tool, designed as a rubric,¹¹ describes areas of knowledge that practitioners must have in order to be effective partners in safety efforts. Each area of knowledge is described with an accompanying scale to measure understanding.

Practice Principle 5. Maintain consistent team of criminal justice actors that works with victims and witnesses to build trust and respond holistically to their needs.

Trust between victims and witnesses and the criminal justice system is critical to the effective administration of justice. By maintaining consistent staff, (e.g., police, prosecutors,

¹¹ Rubrics have gained popularity as useful tools to clearly communicate standards of practice and to concretely describe levels of performance. They are normative in that they define the expectations for effective practices for promoting witness safety. They are also formative in that they help practitioners and leaders better understand what effective practice looks like and give them the tools to accurately assess their own performance. The rubric in [Appendix C](#) is designed to be used with individual staff from key stakeholder groups, such as 911 operators, police officers, prosecutors, victim advocates, court security, etc.

victim service providers) teams are able to report better results including that victims and witnesses feel safer, intimidation is reported more readily, and cooperation with prosecution is more consistent.

Victims and witnesses often find themselves with a diminished or non-existent support network as a result of coming forward to report a crime or cooperating with the prosecution. They may need temporary housing and income support. They may also need other services such as healthcare for physical injuries, mental health counseling and treatment, and crisis intervention. Victims and witnesses may have children, elderly family members, or pets who are threatened and who may therefore also require services. As much as possible, victims and witnesses should be interacting with the same investigators, prosecutors, and advocates throughout their cases, rather than being shuffled through a succession of newly assigned staff.¹² Regular two-way communication builds trust over time, as staff check in about safety, make services available as needed, and explain the adjudication process and changes in case status. Victims and witnesses benefit from timely and accurate communication about major case events, such as release status and court proceedings. These communications can be combined with ongoing safety planning with victims and witnesses so that they are actively engaged in safety efforts instead of feeling disempowered and overwhelmed by them. Ensuring consistent interaction between victims/witnesses and well-trained practitioners central to a successful system response to intimidation.

Practice Principle 6. Use both objective assessments and input from victims and witnesses to determine risk of and vulnerability to intimidation. Use the assessments and input to inform witness safety efforts.

Many jurisdictions are faced with limited resources and other significant challenges to protecting victims and witnesses. Nonetheless, some jurisdictions have learned how to allocate available resources in strategic ways to create system-wide safety measures. These strategies include more targeted interventions, such as increased patrols or relocation in high-need situations. Assessment of threats to safety or risk of intimidation should be made early and often. Early threat assessment is important because victims and witnesses are potentially at risk as soon as they report a crime. Frequent reassessment recognizes that risk is dynamic and can increase or decrease over time and as conditions change.

Many justice system actors already assess risk using their professional judgment. While their experience is invaluable, research has consistently shown that professional judgment is far more effective when paired with objective assessments of risk. Objective assessments help to ensure thoroughness, prevent a professional's individual assumptions from interfering, and allow for all staff – regardless of experience level – to provide the necessary protection to all victims and witnesses. The perception of the victim or witness is another critical component of risk assessment. The victim's or witness's personal perception of risk

¹² In offices where vertical prosecution is not possible, or where unavoidable staffing changes demand that a case be transferred to a new prosecutor, investigator, or advocate, it is important for outgoing staff to carefully document in the case file all information pertinent to the safety of victims and witnesses, and to review this information with newly assigned staff to be sure it is understood. Where possible, a personal introduction to the new staff assuming responsibility for the case will help to reassure the victim or witness that newly assigned staff are committed to maintaining the same high level of attention to safety needs.

should be weighed heavily in conjunction with the objective assessment and the professional's own judgment.

Threat assessment tools have been developed and validated for use in domestic violence cases—among them the Spousal Assault Risk Assessment Guide (SARA), MOSAIC, the Danger Assessment, and the Ontario Domestic Assault Risk Assessment (ODARA).¹³ However, similarly validated tools specifically designed to assess the risk of intimidation in other types of cases have not yet been developed.¹⁴ Investigators and prosecutors often conduct informal threat assessment in gang cases based upon known risk factors, such as the proximity of relationship among individuals, the residence of witnesses in a gang-dominated neighborhood, and previous history of violence among the perpetrators.

Justice system practitioners should leverage the tools that are available, experiment with these kinds of assessments to adapt them to instances of intimidation, and continue to monitor emerging research in the field. An intimidation assessment tool should include a number of factors, most significantly any previous patterns of intimidation and violence by the accused, any escalation of intimidation or threat, and closeness or intimacy of the relationship between the victim/witness and offender. To promote evaluation of risk as early in the process as possible, consider beginning with basic screenings and following up later in the process with more thorough assessments.

Regardless of the assessment method used, it is crucial to act upon the results. Systems should react swiftly and appropriately based on assessments, strategically providing timely services for intervention and protection.

Practice Principle 7. Create information-sharing policies that link justice system actors and allow them to identify patterns of behavior and possible intimidation in individual cases.

Intimidation is a “patterned” crime – perpetrators intimidate in multiple ways and repeatedly over time and often across relationships. Therefore, understanding past behavior becomes as important as understanding present behavior when gauging the seriousness of intimidation and trying to predict future threats and actions. Effective witness safety programs have the capacity to identify and document witness intimidation *and* to provide system practitioners with seamless access to previous complaints by or involving the same people. Ideally, 911 staff, law enforcement, prosecutors, corrections, court security/court administration, and probation/parole would be able see complaints of intimidation over time for a single individual in order to assess the escalation of a threat. This information should follow victims, witnesses, and defendants, throughout a case, ensuring that everyone who touches it and interacts with the parties understands the safety concerns. Accessibility and timeliness of information is particularly crucial as cases and

¹³ P. Randall Kropp, Stephen D. Hart, Christopher D. Webster, Derek Eaves, *SARA Spousal Assault Risk Assessment Guide*, MULTI-HEALTH SYSTEMS, INC. (MHS), <http://www.mhs.com/product.aspx?gr=saf&prod=sara&id=overview> (last visited July 17, 2013); MOSAIC THREAT ASSESSMENTS SYSTEMS, <https://www.mosaicmethod.com> (last visited July 16, 2013); DANGER ASSESSMENT, <http://www.dangerassessment.org> (last visited July 16, 2013); NOVA SCOTIA PUBLIC PROSECUTION SERVICE, RISK ASSESSMENTS (ODARA) IN SPOUSAL/PARTNER VIOLENCE CASES (2009), http://www.gov.ns.ca/pps/publications/ca_manual/ProsecutionPolicies/ODARA%20RISK%20ASSESSMENTS%20IN%20SPOUSALPARTNER%20CASES%20ALL.pdf.

¹⁴ The United Nations Office on Drugs and Crime has proposed similar factors to be considered in assessing risk to victims of human trafficking, but that tool also has not yet been validated.

people change court venues and confinement facilities, or when new personnel assume responsibility for a case. These are the times when lapses in communication and access to information occur, and victims and witnesses may be most vulnerable to intimidation.

As local teams explore the expansion of information sharing, new information about limitations and obstacles will arise and new safety concerns will surface.¹⁵ Where it is not possible to link agency databases, as described above, systems can consider an information-sharing network. For example, Duluth, Minnesota developed the Domestic Abuse Information Network (DAIN), to get around the impossibility of trying to force everyone's databases to share.¹⁶ Instead, DAIN is one database that everyone can access that includes information on case history, risk, intimidation, and more. Still, creating another database for practitioners to use may not be the most efficient way to track intimidation and it may not be feasible for some jurisdictions. The critical piece, that cannot be overemphasized, is the value of inter-agency and system-wide communication. Even where resources are extremely limited, an open dialogue between justice system and community actors should be maintained. The safety of victims and witnesses depends on accurate and current information, so that each system actor can make the best-informed safety decisions.

Practice Principle 8. Make all reasonable efforts to minimize contact between victims/witnesses and defendants throughout the justice system process.

Physically separating victims and witnesses from potential threats throughout the investigation, adjudication, and post-conviction process is one of the best strategies for preventing intimidation and ensuring safety. Investigations and interviews should be carried out in a way that avoids making victims and witnesses vulnerable to intimidation and retaliation. They should be private and information should be kept confidential, where allowable under the rules of discovery. System actors should communicate with victims and witnesses in ways that protect their identities and do not expose or broadcast their cooperation to the accused, to their family and friends, or to the community at large. For example, police investigators may meet witnesses outside of their neighborhoods or in plain clothes to gather information.

Additional strategies successful in minimizing contact between victims/witnesses and defendants include: setting high bail and seeking preventive detention where allowable by law; using witness protection programs, or otherwise relocating victims and witnesses;¹⁷ and issuing and enforcing no-contact orders. Judicial officers should consider the wishes of victims and witnesses in addition to other information about safety risks and potential escalation of intimidation and threats. No-contact orders should have clear conditions, and

¹⁵ New safety concerns can arise from information sharing, however. For example, in cases perpetrated by law enforcement officers or individuals who work with the court system, and in cases on college campuses, or in military settings, unsafe information sharing can be dangerous. Practitioners sharing information, in any form, should be extremely cautious not to put victims and witnesses at further risk.

¹⁶ For more information on DAIN, see Domestic Abuse Intervention Programs, www.theduluthmodel.org (last visited Aug. 1, 2013).

¹⁷ Temporary housing, such as domestic violence shelters, may also be used as short-term solutions in domestic violence cases, and for cases on college campuses, changes in class schedules and campus housing relocation may afford sufficient separation of the parties. In any case, the wishes of the victim or witness should be considered before relocation, as s/he will bear the burden of adjusting to a new routine and environment.

appropriate resources committed to their enforcement so that consequences for violations are swift and certain.

Jail and prison staff also play key roles in minimizing contact by cooperating with requests to block calls from inmates to victims or witnesses and by monitoring all forms of communication in high-risk cases. Cases may be characterized as high-risk based on a threat assessment, on actions or communications observed by corrections staff or informants, or on incidents reported by victims or witnesses. When the accused and the victim or witness are both detained in the same facility (either pretrial or post-conviction), facility staff should quickly identify these situations and take appropriate safety measures, which always includes physical separation.

Some jurisdictions have taken less-traditional approaches to ensure victim and witness safety. In response to intimidation in gang-related cases, some courts have created a special docket to expedite very high-risk cases in order to minimize the amount of time victims and witnesses are exposed to threats. Even without a special docket, prosecutors can request that these cases be prioritized. Police investigators and prosecutors may take the additional steps of securing statements quickly and early via recordings and/or signed statements to protect against recantation and failed prosecutions. *Where a single strategy is insufficient, programs can use appropriate combinations of these strategies, based on the level of risk, to protect victims and witnesses.*

Practice Principle 9. Create a safe space in courthouses.

Unfortunately, no criminal justice system can stop all intimidation from taking place. What they can do is make safe spaces for victims and witnesses. Courthouses are one space where justice systems can reasonably exert a sufficient level of control and ensure that courthouses, including courtrooms, hallways, entrances, and grounds, are free from threats – both overt and implicit. As with all of these principles, different communities will employ different strategies to create safe courthouses. The strategies offered here will not work in every community, but they do illustrate some of the creative ways that criminal justice systems can ensure victim and witness safety.

Examples of what other communities have done include:

- Signage and literature setting ground rules for behavior and penalties for intimidation
- Active and visible security who identify, report, and track patterns of intimidation
- Security screening of all entering court (*e.g.*, metal detectors, temporary phone confiscation)
- Prohibiting recording or photography of victims and witnesses in the courthouse
- Courtroom and courthouse check-ins, in order to identify and separate victims and prosecution witnesses from defendants and defense witnesses
- Secure waiting areas for victims and witnesses
- Regular briefings of court personnel regarding high-risk cases and individuals
- Video monitoring in public spaces and/or courtrooms

Practice Principle 10. Track the progress and outcomes of efforts and use that information to inform system improvement.

Justice systems must be able to obtain, understand, and integrate information related to victim and witness intimidation in order to maximize safety. Whether operating under a newly developed coordinated criminal justice response team or as individuals, practitioners must prioritize efforts to collect information and to use it to track effectiveness and refine safety strategies. There are many sources of information including interviews and focus groups with staff, victims, and witnesses; observing justice system processes; reviews and analyses of case reports and files; and regular reports from agency databases and integrated information systems. It is also important to gauge the *public* attitude about cooperating with police and if community members feel they would be protected if they became involved in a criminal case.

Information that can be used to inform evolving strategies that can be collected over a period of time:

- Number of arrests for intimidation
- Number of charges and prosecutions for intimidation (including trends in charge reduction)
- Exposure of victims and witnesses to vulnerabilities in the criminal justice system (based on the gaps identified here) and changes to that exposure
- Prevalence of unprosecuted reports of crime
- Prevalence of statement recantation
- Prevalence of dismissed prosecutions due to witness non-cooperation
- Victim, witness, and community resident attitudes toward safety and capacity of criminal justice system to protect them and how those attitudes change

Interpreting information that is collected and discerning trends is not simple. Be prepared to find that, as new safety efforts are introduced, the number of identified incidents of intimidation may actually be increased due to the fact that individuals who would not have previously felt comfortable reporting threats are now coming forward. Even as the numbers taper off, practitioners can look to case-by-case successes where victims and witnesses safely report, cooperate with investigations and testify at trial, and continue to identify areas for improvement.

CONCLUSION

These best practices principles provide an exciting opportunity for jurisdictions to take a holistic approach to victim and witness safety. This approach takes a step beyond creating safety programs with a limited reach or narrow focus, to the promise of a safer community as a whole, with quantifiable results.

Nonetheless, the gnawing question that remains, for leadership in particular is, “How do we pay for all of this?” While there is no easy answer, the approach presented here does not anticipate that all changes will occur simultaneously or that all will have costs attached. On the contrary, these principles provide benchmarks against which systems can assess their strengths and challenges and make strategic decisions about where needs are the highest. Just as many justice systems have found creative ways to reallocate and reinvest scarce resources into community policing strategies,

so too will systems discover novel approaches to integrate these best practice principles in preventing and responding to witness intimidation. As jurisdictions assess their responses, they may find areas of duplication or opportunities to share information that can result in cost savings. Still, there are some options for funding. The Office on Violence Against Women, the Office on Community Oriented Policing Services, the Bureau of Justice Assistance, the National Institute of Justice, and many other federal and state agencies, private-public partnerships and foundations offer funding for the implementation of research-informed practices.¹⁸ This Resource presents an advantage for systems looking to enhance their safety responses. It provides a model for measuring success and documenting progress, which is often important for attracting private and public resources. Even so, each criminal justice system must decide for itself what these principles mean for their systems and how to shape their safety nets for victims and witnesses.

¹⁸ See, e.g., GRANTS.GOV, www.grants.gov (last visited Aug. 22, 2013); *Funding*, NAT'L INSTITUTE OF JUSTICE, <http://www.nij.gov/funding/welcome.htm> (last visited Aug. 12, 2013); *Grant Programs*, THE DEP'T OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, <http://www.ovw.usdoj.gov/ovwgrantprograms.htm> (last visited Aug. 17, 2013); *Funding*, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, <https://www.bja.gov/funding.aspx> (last visited Aug. 17, 2013).

Part III. Implementing Change: A Process for Witness Safety Assessment and Improvement

A remaining challenge to witness safety is how to apply lessons learned from research into real-life practice. So far in this publication, we have defined both a conceptual model for quantifying the prevalence of intimidation and a set of best practice principles promoting victim and witness safety in the justice system and the community. This translation of research into practice shapes victims' and witnesses' experiences and makes it safer for them to report crimes and participate in the criminal justice process. Part III of this Resource discusses the methodology for implementing this change.

The methodology presented below is informed by the experiences of the *Improving the Justice System Response to Witness Intimidation* (IWI) initiative and is comprised of six action steps that use the best practice principles to guide development of a comprehensive and coordinated response to victim and witness intimidation. The action steps, discussed in greater detail below, are:

1. Ensure that the justice system has the capacity to change
2. Convene an action team to guide the assessment and lead the implementation
3. Define the current state of victim and witness safety
4. Compare existing practice to best practices
5. Develop and implement an actionable plan
6. Monitor, evaluate, and improve victim and witness safety efforts

BACKGROUND ON METHODOLOGY

IWI was the launching point to defining this methodology for implementing change in how justice systems respond to intimidation. From 2010-2013, AEquitas received funding from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance to work with three sites – Duluth, Minnesota; Knoxville, Tennessee; and San Diego, California – to evaluate their systems' responses to witness intimidation.¹⁹ IWI's work with these sites was largely defined by the *Safety and Accountability Audit*, created and used by Praxis International to examine justice systems and other institutions' responses to domestic violence.

The Praxis Safety and Accountability Audit, developed by Ellen Pence, is an application of ethnographic work to domestic violence. It has been used in nearly a hundred communities throughout the United States to evaluate their response to domestic violence by examining how the work routines of criminal justice practitioners account for victim safety and offender accountability. However, IWI may represent the Audit's first application to victim and witness safety across different types of crime.

The three audits conducted under IWI were successful at identifying vulnerabilities and gaps in the justice system where victims and witnesses were being intimidated. One lesson, however, was that the sites needed support to translate their findings and recommendations from the audits into

¹⁹ The Justice Management Institute served as evaluator and advisor to the initiative.

action.²⁰ This lesson is echoed in an unrelated review of safety audits conducted in 2010 by Dr. Lucille Pope for Praxis International. Dr. Pope encouraged future audit teams to engage explicitly in action planning to translate findings and recommendations into responses to the gaps uncovered. She stated, “The Audit is thought of as a distinct and separate event disconnected from implementation. Approaching the audit as a process of reflection and action to improve safety and accountability is key to successful implementation.”²¹ AEquitas and JMI therefore provided additional support to each site’s team to develop action plans and to monitor the implementation of specific responses to the gaps they identified. As a result, it became clear that there was a need to define a process for change. Part III describes the process and how to define and monitor implementation.

ACTION STEP 1. ENSURE THAT THE JUSTICE SYSTEM HAS THE CAPACITY TO CHANGE

Many jurisdictions are ill-equipped to ensure the safety of victims and witnesses. Within the justice system, there are numerous gaps where victims and witnesses can be, and often are, threatened, manipulated, emotionally abused, and physically attacked. To build an effective justice system response to intimidation, current practices must change. The system can accomplish this change by identifying how effectively it protects victims and witnesses and then taking meaningful action to enhance its responses and close gaps.²²

The first step is to ensure that the system has the capacity to change. Assessing capacity²³ can be a helpful way for systems to identify areas of strength and areas where consultation, technical assistance, or other support and development may be needed. [Appendix D](#) provides a tool for practitioners to use when measuring readiness to change that focuses on a common set of indicators.²⁴ There are four major indicators represented:

1. Community and organizational climate that facilitates change,
2. Current attitudes and efforts toward victim and witness safety,
3. Commitment to change, and
4. Capacity to implement change.

Within these four, there are additional indicators that range from the collective efficacy of the working team to the skills and knowledge of the individuals involved in the efforts to change.

These indicators emphasize the importance of collaboration and investment, not only among leadership but also among practitioners. Without these basic ingredients, a justice system cannot effect and sustain change. Technical assistance providers and justice systems looking to develop witness safety reform are advised to take the time to assess readiness to change and to build capacity where it may need improvement. Unlike the implementation of a program with limited scope, systemic witness safety responses are complex and require broad consensus and cooperation. System leaders are most successful at implementing sustainable change when they invest time in building the necessary relationships and systemic capacity to identify and resolve problems creatively.

²⁰ LUCILLE POPE, IMPLEMENTATION OF SAFETY AUDIT RECOMMENDATIONS, PRAXIS INT’L (Mar. 2010),

<http://www.praxisinternational.org/files/praxis/files/Safety%20Audits/TTAImplementationSurveyJune2011.pdf>.

²¹ *Id.* at 8.

²² This approach is based on the leadership theory known as “change management.”

²³ Often called “readiness to change.”

²⁴ See [Appendix B](#) for additional tools.

ACTION STEP 2. CONVENE AN ACTION TEAM TO GUIDE THE ASSESSMENT AND LEAD IMPLEMENTATION

Bringing together a diverse, interdisciplinary group of stakeholders to engage in the process of analysis and change is essential to successful implementation of change. Because the aim is to build a coordinated system response, leadership from each key stakeholder group in the criminal justice system must be included. This “action team” may come together specifically for the purpose of engaging in the witness safety systems analysis or it may already exist, such as in the form of a criminal justice coordinating council or multi-disciplinary taskforce. Where an organization already exists, it may be beneficial to start from that foundation. One of the biggest challenges to implementing a witness safety program is limited resources, so established relationships that allow stakeholders to share staff and resources will be helpful in facilitating swift results.

The victim and witness safety analysis begins with the action team’s shared understanding of witness safety, which involves building consensus around the following three major sets of questions:

1. What does the latest research and practice literature reveal about the nature of victim and witness intimidation? What are the emerging trends?
2. How do we define intimidation in our community? What are the behaviors we need to target in our efforts to prevent and respond to intimidation? What behaviors do we agree necessitate criminal justice intervention at some level?
3. Whom does our witness safety system protect? How does our system define a “victim” or “witness”?

Consensus building may be facilitated internally, although some jurisdictions may find it helpful to have an outside facilitator – independent of the system – to guide the exercise in a retreat setting. While some of these questions may seem basic, they are important to ask as team members often underestimate the degree to which they’ve made assumptions about how their colleagues will answer. These questions are more than boilerplate; they are fundamental to the definition and assessment of community safety. Raising and resolving assumptions early in the process helps to avoid confusion and conflict later. It also provides a benchmark for assessing success and progress and what kinds of responses are necessary. These questions will likely be revisited throughout the process; such reflection is important over time. What is key is that the team maintains a shared understanding of witness safety.

ACTION STEP 3. DEFINE THE CURRENT STATE OF VICTIM AND WITNESS SAFETY

Once convened, the action team should launch into the next task of determining how safe victims and witnesses are in their jurisdiction. This “as is” assessment sets the starting point against which the team will gauge its progress and the success of its work in the future. The aim, of course, is to develop a criminal justice system that is safer for victims and witnesses than when the action team began its work. Making that determination requires a quantifiable understanding of where the system begins. We have already acknowledged that intimidation is difficult to quantify. Figure 1, the *Conceptual Model of Prevalence of Intimidation*, provides a framework for quantifying victim and witness intimidation by distinguishing two things: “opportunities for intimidation” and the “documented incidence of intimidation.”²⁵

²⁵ *Supra* p. 15.

Determining “opportunities for intimidation”

Part II provided a visual representation of the criminal justice process that highlights common “opportunities for intimidation” and provides the basis for Action Step 3.²⁶ See *Figure 2. Map of Common Opportunities for Intimidation and Gaps in Victim and Witness Safety*. The action team should work to determine where it believes vulnerabilities lie in its jurisdiction. It should also validate its assessment with other practitioners and victims and witnesses. Validation helps ensure that the process map and characterization of “opportunities for intimidation” capture real experiences of people involved in the system (rather than an idealized version of events or system responses). This inclusive process also helps to build investment in the witness safety work and communicates the leadership’s commitment to ensuring that victims and witnesses are protected.

A tool for this process, a *Protocol for assessing and quantifying “opportunities for intimidation”* appears at [Appendix E](#). This protocol is based on the map of the criminal justice process (Figure 2) and the opportunities for intimidation that match up with them (*e.g.*, identities of informants not being kept confidential, interviews being taken in presence of alleged perpetrators, ongoing re-assessment of risk is not taking place, etc.). For each stage and opportunity for intimidation there is a scale to measure prevalence: 1) never happens; 2) sometimes happens; 3) often happens; and 4) always happens.

The action team – along with focus groups of practitioners, victims, and witnesses²⁷ – can use this tool to come to a consensus about safety gaps and how they are addressed by scoring each opportunity for intimidation on the four-point scale that characterizes the degree to which it is present in their system. Scores from all groups will then be considered in the aggregate to identify system vulnerabilities. By including multiple perspectives, the analysis is more likely to pinpoint true vulnerabilities. Facilitators may also want to have focus groups summarize their overall perspectives of the stages identified in [Appendix E](#). These summaries may be helpful in quickly flagging stages that are particularly vulnerable.

An example of a scale for these summaries:

- 1 – no safety measures in place; intimidation can easily happen unhampered
- 2 – minimal safety measures in place; overt intimidation may be partially addressed or prevented
- 3 – moderate safety measures in place; overt intimidation is addressed and prevented; other forms of intimidation may be partially addressed
- 4 – highly effective safety measures in place; intimidation is extremely unlikely

Once the focus groups are completed, the action team reviews the scores of each group and summarizes the findings. Again, aggregating these scores helps home in on the vulnerabilities or intimidation “opportunities” in the system. If there are areas of wide disparity among focus groups, the action team may want to prioritize these areas for further investigation through process observation, for instance.

²⁶ Generally, a criminal justice system’s process map will be quite similar to the generic representation offered in this publication, but the action team should certainly revise it to depict accurately its own system.

²⁷ Relatively recent victims and witnesses are best to participate in this process, because their experiences will be reflective of current practices.

Determining “documented incidence of witness intimidation”

The second part of this assessment involves documenting the prevalence of *reported*²⁸ intimidation. Reports of intimidation can happen at any point in the criminal justice process. One measure of prevalence is the number of cases where intimidation is charged criminally. However, this measure focuses only on the adjudication stage and there are other points where reports of intimidation may be made. For a complete understanding of the problem, the action team will want to consider prevalence of reported intimidation at all stages.

Examples of measurable documented incidents, from the map in Figure 2 are:

- Number of 911 calls reporting intimidation
- Number of first responder visits by law enforcement where victim or witness reports intimidation
- Number of reports of intimidation to victim advocates
- Number of reports of intimidation to prosecutors’ offices
- Number of formal intimidation charges brought against defendants
- Number of no-contact orders related to intimidation in a criminal matter
- Number of reports of intimidation within jails and other correctional institutions

At any of these stages, there may be other factors to consider. First, how often are victims and witnesses affirmatively asked to share information about intimidation? Second, what statutes or legal avenues exist that facilitate charging intimidation criminally? If law enforcement does not generally ask about intimidation, that is important to understand and highlight. It is also important for practitioners to understand that intimidating conduct may be chargeable under a variety of statutes, (*e.g.*, threats, harassment, criminal mischief/vandalism, obstruction of justice, witness tampering, etc.) and how charging these offenses might be appropriate in any given situation.

Inevitably, the action team will discover limitations within their information systems. For instance, law enforcement officers and prosecutors may not be documenting what they hear about intimidating behavior. Victim advocates may be recording that information in their paper files but have no way to report it in the aggregate. Alternatively, advocates may be prohibited from disclosing due to privilege and confidentiality laws.²⁹ Convictions might include crimes motivated by intimidation, but not be identified as such in the judgment. These are important findings and will need to be considered as the action team moves to the planning and implementation stages.

As mentioned before, not all jurisdictions have the capacity to integrate their databases among agencies or readily share information. Where the information needed is not available, the action team may consider sampling a random set of cases or files to estimate of the frequency of intimidation. Scarcity of resources to collect and report this information may present an obstacle but not one that is insurmountable. Research partners within the justice system or at local universities may be able to assist with establishing appropriate sampling procedures and

²⁸ “Reported,” includes any time that a victim or witness tells a criminal justice professional about a threat.

²⁹ For further discussion of confidentiality and privilege, see Viktoria Kristiansson, *Walking a Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions, Parts I, 9 STRATEGIES* (2013), http://www.aequitasresource.org/Issue_9_Walking_A_Tightrope_Balancing_Victim_Privacy_and_Offender_Accountability_in_Domestic_Violence_and_Sexual_Assault_Prosecutions_Part_I_May_2013.pdf; and Viktoria Kristiansson, *Walking a Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions, Part II, 10 STRATEGIES* (2013), http://www.aequitasresource.org/Issue_10_Walking_A_Tightrope_Balancing_Victim_Privacy_and_Offender_Accountability_in_Domestic_Violence_and_Sexual_Assault_Prosecutions_Part_II_May_2013.pdf.

conducting the analysis. These steps are a worthwhile investment of effort because it is critical that the action team understand the scope of its existing response to victim and witness intimidation.³⁰

ACTION STEP 4. COMPARE EXISTING PRACTICE TO BEST PRACTICES

Now that the action team understands the scope of intimidation in its system, it is ready to identify where existing practices are already aligned with the best practice principles discussed in Part II. Ultimately, this exercise allows the team to pinpoint specific changes to policy and practice that can improve safety. Two tools are offered to facilitate this process. The first, [Appendix F](#), reiterates the ten best practice principles and provides information-gathering strategies to help understand the current response. These recommendations are meant to guide the action team as it determines where its justice system aligns with the principles and where it does not. They involve a mix of approaches, including quantitative analysis of information systems, policy reviews, observations, interviews, and focus groups. The second, [Appendix G](#), provides a rubric to determine *how well* the system is aligned with the best practice principles. For each best practice principle, there is a low-to-high scale that includes specific examples of activities for each level.

At this point, the action team has quantified key vulnerabilities in its criminal justice system (“opportunities for intimidation”) and the prevalence of reported intimidation. These findings highlight specific practices that can be implemented and/or further developed to enhance witness safety, and provide a baseline against which the action team can measure change. The action team now knows where it is starting and understands what opportunities and needs there are for change with some guidance about strategies it could use to effect change. The team is now poised to choose priorities and begin to take action.

ACTION STEP 5. DEVELOP AND IMPLEMENT AN ACTIONABLE PLAN

Action Steps 1-4 will likely reveal a number of areas for improvement to victim and witness safety as well as suggest areas of focus. The action team cannot focus on all of these areas at once. It will need to work collectively to set priorities and goals/objectives, which can be done by developing an “action plan.” There are many formats for action plans online, but that is less important than the level of agreement and commitment behind the plan.³¹ However, action plans should at a minimum address the following:

³⁰ Sharing information provided by a crime victim implicates privileged and confidential information. For a discussion on how to balance legal obligation with victim safety, see *supra* note 29.

³¹ See [Appendix B](#), *infra*.

Table 2. Action Planning Format

Goal	<p>What target do you want to reach? What is purpose of your action? What will be different as a result of the change?</p> <p><i>Victims and witnesses who visit the court will feel safe; they will understand that the court is committed to protecting them from intimidation and is working hard to do so</i></p>
Objectives	<p>What specific outcomes need to be achieved to reach this goal? Who or what will change, by how much, and over what period of time?</p> <p><i>Over 90 percent of victims and witnesses will understand how to identify intimidating behavior in the courthouse and know the multiple options they have for reporting the intimidation and seeking help.</i></p>
Tasks or Activities	<p>What specific actions steps or tasks must be undertaken to make these objectives a reality?</p> <p><i>Train justice system practitioners to identify, document, and track witness intimidation; practitioners, in turn, will advocate for and educate victims and witnesses.</i></p>
Person(s) Responsible	<p>Who is responsible for ensuring the tasks or activities are accomplished within the specified timeframe?</p> <p><i>In most jurisdictions responsible team members include court security officers, victim liaisons employed by criminal justice agencies (e.g., prosecutor’s office or law enforcement agency), and community-based advocates who accompany victims to court. Depending on the responsibilities of courthouse practitioners and personnel, some teams might also include judges, bailiffs, clerks of court, or court administrators.</i></p>
Resources Needed	<p>What financial, time, space, equipment, and human resources are necessary to implement tasks and activities within the specified time frame?</p> <p><i>Finances for trainers and training materials; space for trainings as well as regular team meetings; equipment such as laptop, screen, and projector, if needed for training; and participation of team members in meetings and training.</i></p>
Timeline	<p>What is the timeframe for implementing the tasks and activities? When should work begin? When should the work end and something be produced?</p> <p><i>Month 1: Investigate relevant law, policy, and any current issues/complaints; Month 2: Secure trainers and venue, draft materials, advertise training; Month 3: Peer review training materials; finalize logistics (e.g., printing, refreshments, or AV equipment).</i></p>
Outputs	<p>What deliverables or products should result from completion of the tasks and activities?</p> <p><i>Facilitator for training identified and contract entered; training curriculum is developed; 20 court security officers have been trained; etc.</i></p>

Many jurisdictions find it helpful to invite a facilitator to guide discussions about priorities and planning for implementation. Making sense of all of the information and conducting the analyses requires thoughtful discussion, which may be easier with an independent, skilled facilitator, guiding team members. The action team remains responsible for the process of choosing priorities and crafting the plan. When the team itself is making the critical decisions, the individuals involved are far more invested in the plan and in its ultimate success.

Making an action plan that is specific is challenging, but with clear expectations, the plan becomes a tool for accountability, indicating when expectations are not being met. Again, an experienced facilitator – whether internal or external – can help to set the right tone by focusing on group accountability to the plan (the action plan is “owned” by the action team) and the accountability of members to one another. The purpose is not to point fingers when things go wrong but to take responsibility and make things right so goals and objectives can be reached. One methodology that can be used to develop specific and measurable objectives is the SMART (Specific, Measurable, Achievable, Realistic, and Time-Bound) process.³² The SMART process provides a checklist for teams to assess and improve objectives. A brief overview of SMART is offered in [Appendix H](#).

Once the action plan has been drafted, the team may want to go back to the groups or individuals involved in Action Steps 1-4 (ensuring capacity for change, forming a team, defining current state of witness safety, comparing existing practices to best practice). Inviting their feedback and comments will help build a sense of ownership among them, which is important for the successful implementation of change. The feedback and comments will also likely provide additional context in which to consider the decisions and ideas, which will help refine and strengthen the plan.

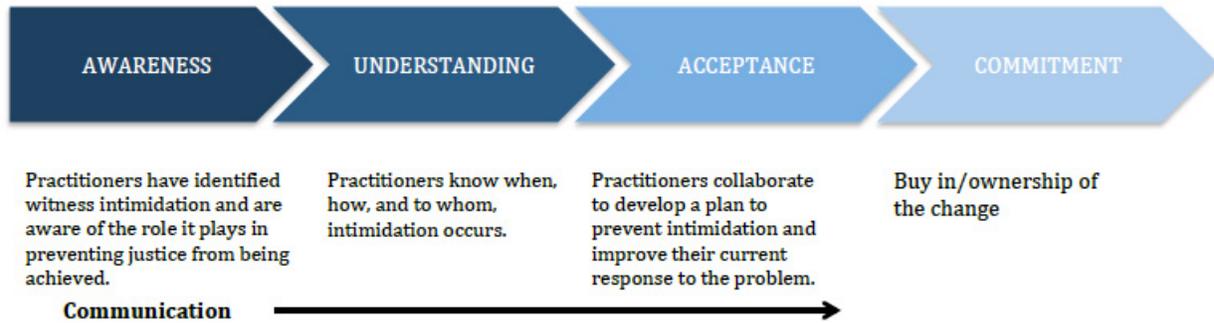
The action team can approach implementation in a variety of ways. It can aim to increase the level of *engagement* among practitioners, with the goal of having them commit to the change efforts. Alternatively, the team’s goals may be to develop *awareness* and understanding of its own witness safety responses. The team should weigh the advantages and disadvantages of these different approaches and should incorporate jurisdictional needs and capacity for change in the process. Figure 3, below, offers a helpful way for action teams to consider the process of communicating about their efforts and the implementation of new initiatives.³³ The figure, from the work of the Queensland Government Public Service Commission, is a “communication continuum.” It depicts levels of engagement that leaders generate in key constituents during communication about change. The commission explains,

When any kind of change is announced, people are hungry for information. In the absence of sufficient information and opportunities to digest it through two-way ‘conversations’, change can be stalled. People will continue to work as they have done in the past; or rather than risk doing the ‘wrong’ thing, they do nothing. Effective communication is designed to create awareness and understanding in order to get subsequent supportive action. The rationale is that if you want people to change, they need to invest in the changes you are asking them to make, and they are more likely to do that if they understand the benefits of the change.

³² George T. Doran, G. T. *There’s A S.M.A.R.T. Way To Write Management’s Goals And Objectives*, 70 *MANAGEMENT REVIEW* (AMA FORUM) 35-36 (1981).

³³ The Public Service Commission (PSC) in Queensland (Australia) advises the government on the administration of the Queensland public sector and the management and employment of public sector employees. Its mission is to develop and implement public sector workforce and organizational management strategies. Among its objectives is building collaboration within government to deliver smarter, simpler outcomes that are responsive to public needs.

Figure 3. Communication Continuum Adapted from Queensland Public Service Commission, *Change Management Best Practices Guide*.



Action planning is critical to implementing change. It is worth taking some time to be specific about goals and objectives, build accountability within the action team, build accountability between the team and outside justice system and community leaders, and communicate a detailed plan to a broad audience. As a result, teams avoid creating a static action plan and instead are able to meet challenges and pressures. This process, known as “chaotic change,” means that action teams learn more as they begin implementing their plans and are prepared to make adjustments that may be necessitated by shifting political priorities, leadership transitions, or new public pressures.³⁴ The team’s *commitment* to change, however, and to its goals and objectives should continue to guide its work though any unanticipated developments.

ACTION STEP 6. MONITOR, EVALUATE, AND IMPROVE VICTIM AND WITNESS SAFETY EFFORTS

In the early stages of the implementing the action plan, teams should meet regularly – ideally monthly – to ensure timelines are met and that tasks are accomplished or activities carried out as expected. Teams should know what activities occurred, their quality, and the strengths and weaknesses of their implementation. Where timelines are not being met, it is important to ask, “How can we get back on track,” rather than, “Who is to blame for this.” Diligently monitoring progress and responding quickly to unexpected situations helps to strengthen and ensure effective implementation of change.

The action plan provides a template for monitoring activities. Regular reviews are not only opportunities to assess progress but also a time when the team can reflect on lessons learned and refine its action plan accordingly. Table 3 below is a tool for teams to determine progress, review the plan, and consider what adjustments may be needed. This is an ongoing process.

³⁴ For more information on “chaotic change” and change management in the public sector, see Tom Karp & Thomas I.T. Helgo, *Change Management to Change Leadership: Embracing Chaotic Change in Public Service Organizations*, 8 JOURNAL OF CHANGE MANAGEMENT 85-96 (2008).

Table 3. Using the Action Plan As A Monitoring Guide

Action Plan Section	Progress Prompts	Lessons Learned
Tasks or Activities	Was the activity or task achieved as described or intended? How was it accomplished?	What does the experience here tell us about how we structure future activities? How might we need to revisit how we have defined other parts of the action plan?
Person(s) Responsible	Did the original person responsible accomplish the task? Who actually contributed to making the activity happen?	Who else needs to be involved in future activities like this one? What support do those responsible need to succeed in the future?
Resources Needed	What resources were actually used to achieve this task? How did that compare to the plan? Was this over/ under budget? Did it take more hours or fewer?	How does this experience inform or change estimates of resources needed for upcoming tasks?
Timeline	When was this task completed? Was this “on time”?	How does this experience inform or change time estimates for upcoming tasks? How does the actual timeframe affect the rest of the plan and expected dates of delivery?
Outputs	What was achieved as a result of this task or activity? (<i>e.g.</i> , How many people attended the training? What was their background? Did they demonstrate new skills and knowledge? How satisfied were participants with the training?) How did the outputs compare to the original plan?	How might we need to compensate for unmet outputs? How does this experience change estimations of outputs for upcoming tasks?
Objectives	What objectives were met? What interim progress was made toward the objectives? What information have we collected to support future analysis of objectives?	What do we need to do differently to ensure that we will meet our desired objectives? What do we need to ensure that the information available can be used to measure our objectives?

In Action Step 2, the team looked at opportunities for intimidation and documented incidence of intimidation, and established a baseline or point of comparison as the implementation process took shape. These measures, used to kick off change, should be used again *during implementation* to assess progress and outcomes. For example, the action team may have identified measures such as intimidation charges filed, police reports of intimidation, and recantations. As the action plan is implemented, they can be revisited and reassessed to determine what has changed as a result of implementation. Analysis of outcomes is not always straightforward and may require discussion. For example, during early implementation, the team might see the prevalence of reports increase as more victims and witnesses know how to report intimidation or feel more comfortable doing so. Over the long term, reports might decrease, suggesting some impact on intimidating behavior. The action team should collect information to gauge outcomes over time or may want to contract with an outside evaluator to do this. If the latter, documenting not only information related to outcomes

but also the process of implementation itself will be invaluable to an evaluator. Potential partners for these kinds of evaluations include local universities or nonprofit research organizations.

CONCLUSION

The safety of victims and witnesses is critical to the administration of justice. This publication advances an understanding of victim and witness intimidation, and provides tools to help translate research into effective practices. The application of this understanding and these best practice principles will result in better outcomes for the victims and witnesses who put so much on the line when cooperating with the justice system. Ensuring their confidence in the system's ability to protect them when they cooperate with law enforcement and prosecutors facilitates the rendering of justice and advancement of public safety. Preventive and protective approaches in many justice systems today are more program than system response and are "siloed" at separate and distinct stages of the justice process rather than sustaining victim and witness safety throughout. *Sustaining* victim and witness safety requires comprehensive systemic commitments and responses that *promote* safety.

This Resource not only helps practitioners define the scope of the intimidation problem in their justice systems but also provides a framework for quantifying the problem and enhancing safety. Translating this knowledge into practice – indeed into systems change – requires a concerted effort to effect and sustain change. Here, we have presented a process to measure change that includes an assessment of the system's capacity to change (Action Step 1), measurement of the intimidation problem using a two-part conceptual model (Action Step 3), and the analysis of gaps and alignment with best practices (Action Step 4). The action plan grows from these analyses and from the commitment and collaboration of leadership and stakeholders from throughout the criminal justice system (Action Steps 2 and 5). An action team then monitors and evaluates progress and outcomes over time (Action Step 6). This process is intensive and takes time. Victim and witness safety is pervasive and complex, requiring a high level of commitment from justice system and community actors. This publication presents an approach that is up to the task of tackling the problem of intimidation and making lasting advances in victim and witness safety.

Appendices: Tools, Tables, and Additional Resources

APPENDIX A: PART II RESOURCES

The following works provided most of the basis for the principles and examples of best practices discussed in Part II:

1. KELLY DEDEL, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, PROBLEM-ORIENTED GUIDES FOR POLICE PROBLEM-SPECIFIC GUIDE SERIES NO. 42, WITNESS INTIMIDATION (July 2006), http://www.popcenter.org/problems/pdfs/witness_intimidation.pdf.
2. PETER FINN & KERRY MURPHY HEALEY, NAT'L INSTITUTE OF JUSTICE, ISSUES AND PRACTICES, PREVENTING GANG-RELATED AND DRUG-RELATED WITNESS INTIMIDATION, ISSUES AND PRACTICES IN CRIMINAL JUSTICE SERIES (Nov. 1996), <http://www.ncjrs.gov/pdffiles/163067.pdf>.
3. KERRY MURPHY HEALEY, NAT'L INSTITUTE OF JUSTICE, RESEARCH IN ACTION, VICTIM AND WITNESS INTIMIDATION: NEW DEVELOPMENTS AND EMERGING RESPONSES (Oct. 1995), <https://www.ncjrs.gov/pdffiles/witintim.pdf>.
4. ELLEN PENCE & DENISE ENG, PRAXIS INTERNATIONAL, THE BLUEPRINT FOR SAFETY: AN INTERAGENCY RESPONSE TO DOMESTIC VIOLENCE CRIMES (2009), *available at*, http://praxisinternational.org/blueprint_materials.aspx.
5. UNITED NATIONS, OFFICE OF DRUGS AND CRIME, GOOD PRACTICES FOR THE PROTECTION OF WITNESSES IN CRIMINAL PROCEEDINGS INVOLVING ORGANIZED CRIME (2008), <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>.

The following Safety and Accountability Audits were also consulted:

1. DOMESTIC VIOLENCE INTERVENTION PROJECT, LA CROSSE COUNTY DOMESTIC VIOLENCE SAFETY AND ACCOUNTABILITY AUDIT FINDINGS AND RECOMMENDATIONS (Oct. 2005), <http://files.praxisinternational.org/LaCrosseAuditFindings.pdf>.
2. BELLINGHAM-WHATCOM COUNTY COMMISSION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE SAFETY AND ACCOUNTABILITY AUDIT, FINDINGS AND RECOMMENDATIONS FOR THE CITY OF BLAINE: POLICE, PROSECUTION, PROBATION AND COURT RESPONSES (Oct. 2007), http://files.praxisinternational.org/Blaine_Final_Report.pdf.
3. RHONDA MARTINSON & MARIJKA BELGUM-GABBERT, AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN, IMPROVING THE JUSTICE SYSTEM RESPONSE TO WITNESS INTIMIDATION, PILOT PROJECT REPORT: KNOXVILLE, TENNESSEE, 2011 (2012).
4. RHONDA MARTINSON & GRAHAM BARNES, AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN, IMPROVING THE JUSTICE SYSTEM RESPONSE TO WITNESS INTIMIDATION, PILOT PROJECT REPORT: DULUTH, MINNESOTA, 2011 (2012).
5. RHONDA MARTINSON, ELIZABETH WOFFORD, SANDRA TIBBETTS MURPHY & MARIJKA BELGUM-GABBERT, AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN, IMPROVING THE JUSTICE SYSTEM RESPONSE TO WITNESS INTIMIDATION, PILOT PROJECT REPORT: SAN DIEGO, CALIFORNIA, 2011 (2012).

Other sources that informed this part:

1. JOHN ANDERSON, NAT'L GANG CENTER BULLETIN, GANG-RELATED WITNESS INTIMIDATION (Feb. 2007), <http://www.nationalgangcenter.gov/Content/Documents/Gang-Related-Witness-Intimidation.pdf>.
2. Nicholas Fyfe & James Sheptycki, *International Trends in the Facilitation of Witness Cooperation in Organized Crime Cases*, 3(3) EUROPEAN JOURNAL OF CRIMINOLOGY 319-55 (2006).
3. JENNIFER GENTILE LONG, CHRISTOPHER MALLIOS & SANDRA TIBBETTS MURPHY, BATTERED WOMEN'S JUSTICE PROJECT, MODEL POLICY FOR PROSECUTORS AND JUDGES ON IMPOSING, MODIFYING AND LIFTING CRIMINAL NO CONTACT ORDERS (2010), http://www.aequitasresource.org/model_policy.pdf.
4. OFFICE FOR VICTIMS OF CRIME, ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE (2011), http://www.justice.gov/olp/pdf/ag_guidelines2012.pdf.
5. JULIE WHITMAN & ROBERT C. DAVIS, THE NAT'L CENTER FOR VICTIMS OF CRIME, SNITCHES GET STITCHES: YOUTH, GANGS, AND WITNESS INTIMIDATION IN MASSACHUSETTS (2007), <http://archives.lib.state.ma.us/bitstream/handle/2452/38544/ocn137337215.pdf?sequence=1>.

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APPENDIX B: PART III RESOURCES

For more information about change management and action planning, please refer to the following resources:

1. LEILAH GILLIGAN & MADELINE M. CARTER, CENTER FOR EFFECTIVE PUBLIC POLICY, STATE JUSTICE INSTITUTE, *THE ROLE OF FACILITATORS AND STAFF IN SUPPORTING COLLABORATIVE TEAMS* (Jan. 2006), *available at* <http://nicic.gov/Library/021203>.
2. PAUL W. MATTESSICH, MARTA MURRAY-CLOSE & BARBARA R. MONSEY, *COLLABORATION: WHAT MAKES IT WORK. A REVIEW OF RESEARCH LITERATURE ON FACTORS INFLUENCING SUCCESSFUL COLLABORATION* (Amherst H. Wilder Foundation, 2d ed. 2001).
3. AIMEE WICKMAN, BARRY MAHONEY & M. ELAINE BORAKOVE, JUSTICE MANAGEMENT INSTITUTE, *IMPROVING CRIMINAL JUSTICE SYSTEM PLANNING AND OPERATIONS: CHALLENGES FOR LOCAL GOVERNMENTS AND CRIMINAL JUSTICE COORDINATING COUNCILS* (2011), <https://www.bja.gov/Publications/CJCCWhitePaperExecSummary.pdf>.
4. SHELLEY, WISEMAN, MATTHEW CHINMAN, PATRICIA A. EBENER, SARAH HUNTER, PAMELA IMM, ABRAHAM WANDERSMAN, *GETTING TO OUTCOMES™: 10 STEPS FOR ACHIEVING RESULTS-BASED ACCOUNTABILITY* (RAND Corporation 2007).

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APPENDIX C. RUBRIC TO ASSESS OPERATIONAL KNOWLEDGE OF VICTIM AND WITNESS SAFETY AMONG CRIMINAL JUSTICE PRACTITIONERS

	1 (Low)	2	3	4 (High)
Demonstrates knowledge of what witness intimidation is, its various forms, and how it impedes his/her work	Cannot explain what witness intimidation is, examples of overt and implicit intimidation, and its specific impact on his/her work.	Defines witness intimidation and provides some examples of overt and implicit intimidation. May not be able to provide a full understanding of the impact on his/her work and the criminal justice system.	Understands witness intimidation tactics, both overt and implicit, that are most commonly used across a variety of cases (e.g. domestic violence, gang). Explains the specific impact of intimidation on his/her work in terms of obstruction of justice and obstacles to public safety.	Assesses and recognizes evidence of present and past intimidation when interviewing victims or witnesses. Explains the specific impact of intimidation on his/her work in terms of obstruction of justice and obstacles to public safety.

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	1 (Low)	2	3	4 (High)
Assess vulnerability of a witness or victim to intimidation using objective tools and best practice safety responses in each case	Does not ask questions or investigate whether intimidation is taking place.	Asks some questions about intimidation when speaking with victims and witnesses. May make some judgment about risk of future intimidation based on professional experience.	Asks questions about past intimidation and other behaviors by alleged perpetrator when speaking with victims and witnesses. Makes judgment about risk of future intimidation based on professional experience and training. Takes differential safety measures based on the perceived level of risk.	Uses a structured protocol or objective assessment tool to (1) uncover intimidation when speaking with victims and witnesses and (2) determine risk of future intimidation. Professional judgment continues to inform actions and enhances the findings from the structured protocol under specific conditions. Takes differential, best practice safety measures based on the perceived level of risk.
Advise and educate victims and witnesses about how to recognize, report, and protect themselves against intimidation	Does not regularly discuss intimidation with victims and witnesses.	Inconsistently discusses intimidation with victims and witnesses.	Provides victims and witnesses with literature or access to resources on intimidation at the onset of criminal cases, upon request.	Proactively reaches out to victims and witnesses about intimidation. Literature and resources provided regularly at onset of cases.

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	1 (Low)	2	3	4 (High)
Make meaningful referrals to services for victims and witnesses when they request assistance	Does not offer assistance to witnesses or victims.	Provides victims and witnesses with a number to call for assistance or with standard literature with resources.	Engages in dialogue with victims and witnesses about the assistance they need and directs them to specific resources.	Individualizes referrals to resources to the needs of each victim or witness and follows up to ensure they have connected with the appropriate services. Troubleshoots referrals as necessary.
Work with victims and witnesses to build a prosecutable case of intimidation	Does not document information about intimidation. Perceives no role in prosecution or that prosecutors do not charge intimidation with any regularity.	Documents some information about intimidation as it happens. Does not share information with prosecution unless requested. May not perceive prosecution as involved in charging intimidation at this stage.	Documents key information about intimidation according to a standard protocol developed with prosecution in mind. Actively seeks out information from victims and witnesses about intimidation when interacting with them.	Proactively advises victims and witnesses about prosecution of intimidation and what information is important to the success of those cases. Documents key information about intimidation according to a standard protocol. Actively and regularly seeks out information from victims and witnesses about intimidation when interacting with them.

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	1 (Low)	2	3	4 (High)
Adjust his/her own work strategies to minimize exposure and opportunities for intimidation among victims and witnesses	Treats all victims and witnesses the same way.	Makes adjustments to interaction with victims and witnesses based on their disclosure of intimidation or other safety risk (e.g., conduct interviews in alternative areas, change questioning tactics, provide safety information surreptitiously).	Assesses the risk level of victims and witnesses and uses best practice to adjust work strategies to minimize risk.	Assesses the risk level of victims and witnesses and uses best practice to adjust work strategies to minimize risk. Problem-solves (individually or collaboratively with allied professionals) with the victim or witness to identify novel or individualized strategies to ensure safety.
Demonstrate understanding of how his/her work fits into a broader coordinated response to promote witness and victim safety	Is not aware of what the criminal justice system approach to victim and witness safety is or believes the approach is weak or failing	Understands the system approach to victim and witness safety but not his/her role in that process. May not believe the system approach is adequate.	Explains that victim and witness safety are priorities for the criminal justice system and is able to describe some of the major systemic responses. Articulates how his/her own work and that of his/ her colleagues contributes to safety goals.	Explains that victim and witness safety are priorities for the criminal justice system and is able to describe the major systemic responses. Articulates how his/her own work and that of his/ her colleagues contributes to safety goals. Describes ongoing efforts to coordinate efforts across stakeholders in the system.

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APPENDIX D. INDICATORS OF READINESS TO CHANGE³⁵

Major Indicators	Additional Indicators
1. Community and organizational climate that facilitates change	a. <u>Organizational climate</u> : The degree to which current system conditions are oriented to identifying intimidation and ensuring victim/ witness safety b. <u>Community climate</u> : The degree to which the broader community is supportive of the criminal justice system and its efforts to promote victim/ witness safety
2. Current attitudes and efforts toward victim and witness safety	c. <u>Current awareness</u> : The extent to which stakeholders know about the causes of the problem, consequences, and how it impacts their agencies or organizations d. <u>Current values</u> : The relative worth or importance that stakeholders and the broader community place on witness safety e. <u>Current efforts</u> : The witness safety efforts that are already underway or under serious consideration
3. Commitment to change	f. <u>Hope for change</u> : The belief among stakeholders that the criminal justice system can change and improve victim and witness safety g. <u>Need for change</u> : The extent to which stakeholders and the community feel that there are legitimate reasons and a need for enhanced witness safety efforts h. <u>Commitment to change</u> : The extent to which leadership (e.g., agency heads, chief executives) is committed to and supports enhanced witness safety efforts
4. Capacity to implement change	i. <u>Relational capacity</u> : Relationships that are necessary for change are in place and oriented toward change (e.g., social ties, community attachment, and stakeholder involvement) j. <u>Collective efficacy</u> : The belief in one's own or the workgroup's capacity to effectively accomplish a task or to engage in future change efforts k. <u>Leadership</u> : The extent to which leaders are supportive of enhanced witness safety efforts; the extent to which leadership is effective l. <u>Resources</u> : The local resources (people, time, money, and space) available to support witness safety efforts m. <u>Skills and knowledge</u> : The extent to which stakeholders collectively have the skills necessary to implement innovative efforts (e.g., adaptability, evaluation, technical, research and data dissemination, cultural competency, and training)

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³⁵ Adapted from Shiela F. Castañeda, Jessica Holscher, Manpreet K. Mumman, Hugo Salgado, Katherine B. Keir, Pennie G. Foster-Fishman, Gregory A. Talavera, *Dimensions of Community and Organizational Readiness for Change*, 6 PROGRESS IN COMMUNITY HEALTH PARTNERSHIPS: RESEARCH, EDUCATION, AND ACTION, 219-26 (2012).

APPENDIX E. PROTOCOL FOR ASSESSING AND QUANTIFYING “OPPORTUNITIES FOR INTIMIDATION”

Stage in criminal justice continuum	Opportunities for intimidation	1	2	3	4
<i>Four-point scale: 1- Never happens, 2- Sometimes happens, 3- Often happens, 4- Always happens</i>					
Incident occurs	<i>Community-based, community-level intimidation.</i> Residents are generally reluctant to report crimes or cooperate with law enforcement, because they fear retaliation or because they fear hostility from community members.				
	<i>Community-based, individual-level intimidation.</i> Individual victims are reluctant to report crimes or cooperate with law enforcement because they fear retaliation or hostility from community members.				
Incident reported to police	The identities of informants and reporters of crime are not kept confidential or otherwise protected adequately from potential intimidators				
	Mechanisms to report crime do not provide sufficient avenues for anonymity or protection of identity				
	Signs of existing or potential intimidation are not recognized or recorded by 911 calltakers; instruction for particular care regarding the identity of informants not communicated to first responders				
Police initial response	Interviews during first response and during investigation take place in public areas or are otherwise not kept confidential (<i>e.g.</i> , uniformed police visiting witnesses' homes)				
	Interviews with victims take place in presence of alleged perpetrators				
Police investigation (initial/ pre-charge)	Signs of existing or potential intimidation are not recognized or recorded by first responders; assessment of safety risk not conducted				
	Victims and witnesses are not informed about the threat of intimidation and what they can do about it				
	Victims and witnesses are not provided with resources/ people they can access when they need help				
Police/ prosecutor investigation (ongoing/ during adjudication)	Ongoing interviews are not conducted confidentially or in safe places				
	Ongoing re-assessment of risk not taking place				
	Victims and witnesses do not receive pro-active communication (<i>e.g.</i> , from police, from victim services) to check in on needs and safety				

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Stage in criminal justice continuum	Opportunities for intimidation	1	2	3	4
<i>Four-point scale: 1- Never happens, 2- Sometimes happens, 3- Often happens, 4- Always happens</i>					
Arrest Jail hold/ pretrial detention	Little or no ongoing contact with appropriate criminal justice system professionals (e.g., police, prosecutors, victim services) about their needs and safety concerns				
	Calls and other communication from jail are not monitored adequately				
	If monitored, information that might be used to prosecute intimidation or to take some other action is not shared with appropriate parties				
	Detainees circumvent existing controls, such as blocked calls or PINs for making calls, in order to contact victims and witnesses or to instruct families and friends to do so				
	Detainees who are defendants are not adequately separated from detainees who are victims or witnesses and who also happen to be detained				
First appearance/ arraignment Pretrial proceedings Trial Sentencing	Little or no ongoing contact with appropriate criminal justice system professionals (e.g., police, prosecutors, victim services) about their needs and safety concerns				
	Appearances in court include long periods of waiting in public spaces, creating ample opportunity for defendants, victims and witnesses to interact				
	Victims and witnesses are not visually or physically separated from defendants in public spaces of the courthouse				
	Victims and witnesses are not adequately separated from defendants in courtrooms during actual hearings				
	Intimidating behavior in the courthouse and in courtrooms is not identified or policed				
	Information about offender release status is not provided or provided too late to be useful				
	When intimidating behaviors are identified, they are not documented or shared with others (e.g., prosecutors, police)				
Supervision/ corrections	Little to no safety planning takes place in high-risk cases with victims and witnesses				
	Information about the release status of offenders is not provided or provided too late to be useful				

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Stage in criminal justice continuum	Opportunities for intimidation	1	2	3	4
<i>Four-point scale: 1- Never happens, 2- Sometimes happens, 3- Often happens, 4- Always happens</i>					
	Victims and witnesses are not provided with resources/ people they can access when they need help				
	Victims and witnesses do not receive pro-active communication (<i>e.g.</i> , from police, from victim services) to check on needs and safety				
No-contact order issued	Victim or witness wishes are not considered in the issuance of no-contact orders, which may place them at greater risk				
	Conditions of no-contact orders are not specific (<i>e.g.</i> , use vague terms such as “may have reasonable visitations with the children”) or comprehensive enough (<i>e.g.</i> , do not account for social media contact)				
	Conditions are not uniformly enforced; consequences are not swift and certain				
	Terms and conditions of orders not clearly communicated throughout the criminal justice system (<i>e.g.</i> , to jails)				
	Victims and witnesses do not clearly understand what recourse they have when no-contact orders are violated or what role they can play in their own safety				
Throughout the criminal justice continuum	Patterns of intimidating behavior are not tracked between stages in the process and among actors involved in a case				
	Information about history or escalation of intimidating behavior by case or by individual is not readily available to criminal justice professionals				

APPENDIX F. INFORMATION-GATHERING STRATEGIES FOR DETERMINING SYSTEM ALIGNMENT TO THE BEST PRACTICE PRINCIPLES

Principle	Information Gathering Strategies
<p>1 Plan and implement coordinated criminal justice responses to victim and witness intimidation that span from the stage of reporting to after the release of the offender.</p>	<ul style="list-style-type: none"> • Identify cross-system planning groups with the capacity to advance witness safety efforts • Document and map current responses • Survey courthouse visitors about their awareness of safety efforts
<p>2 Use community-based approaches to build trust among neighborhood residents and encourage reporting of information about crimes, including intimidation.</p>	<ul style="list-style-type: none"> • Identify community-based programming and initiatives in place or under consideration • Survey law enforcement or prosecutors who may be involved in these initiatives about the nature and success of this work • Survey community members about these efforts
<p>3 Educate victims and witnesses about witness intimidation.</p>	<ul style="list-style-type: none"> • Identify print materials and other resources that are used to educate victims and witnesses about witness intimidation • Identify training programs that are in place and review their curricula • Determine number of people reached by these strategies
<p>4 Equip justice system leadership and staff with an operational knowledge of intimidation and safety.</p>	<ul style="list-style-type: none"> • Identify training programs for leadership and staff and review curriculum • Survey leadership and staff to determine level of operational knowledge
<p>5 Build trust with individual victims and witnesses by maintaining consistent teams of criminal justice actors who work with them and respond holistically to their needs</p>	<ul style="list-style-type: none"> • Review policies and procedures regarding personnel assigned to work on cases and specifically to work with victims and witnesses • Survey justice professionals and victims and witnesses about their experiences

Principle	Information Gathering Strategies
<p>6 Use objective assessments and input from victims and witnesses to determine risk of and vulnerability to intimidation and use those data to target witness safety efforts.</p>	<ul style="list-style-type: none"> • Document what tools (informal and formal) justice professionals use to assess risk • Identify factors considered in these risk assessments • Identify when and where in the system these assessments take place • Document how information from these assessments is used to define responses
<p>7 Create information-sharing policies that link criminal justice actors and allow them to identify patterns of behavior and possible intimidation in individual cases.</p>	<ul style="list-style-type: none"> • Identify the information systems used by each of the stakeholders in the criminal justice system • Document the interoperability of these systems • Determine the <i>capacity</i> of each system to document and track intimidation • Determine the <i>use</i> of these systems to document and track intimidation • Identify other sources of information about reports of intimidation and how they are used
<p>8 Make all reasonable efforts to minimize contact between victims/witnesses and defendants throughout the criminal justice process.</p>	<ul style="list-style-type: none"> • Identify policies and procedures that separate these parties • Observe current practices in the courthouse • Survey victims and witnesses about their experiences when interviewed by police or prosecutors, when in court, and generally when in the community
<p>9 Create a safe space in their courthouses.</p>	<ul style="list-style-type: none"> • Observe current practices in the courthouse • Review policies and speak with staff • Survey victims and witnesses about their experiences when visiting court • Identify strategies to prevent and respond to intimidating behavior in the courthouse

Principle	Information Gathering Strategies
<p>10 Track progress and outcomes and use those data to inform system improvement.</p>	<ul style="list-style-type: none"> • Identify measurable progress and outcome indicators used by leadership to assess success of safety efforts • Document how often these data are reviewed and used by leadership to tweak programming • Document how these indicators shape what data are collected and reported in information systems • Document how individuals or agencies are held accountable when the data reveal a problem

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APPENDIX G. RUBRIC TO DETERMINE ADHERENCE TO BEST PRACTICE PRINCIPLES

		1 (Low)	2	3	4 (High)
1	Plan and implement highly visible and coordinated criminal justice responses to victim and witness intimidation that span from the stage of reporting to after the release of the offender.				
Effective cross-system coordinated response team focused on witness safety	No formal or informal workgroups that include leaders from across the justice system is in place. There may be occasional meetings that bring together these individuals, but these meetings do not include substantive policy discussion or decision-making.	One or more working groups exist throughout the justice system, which may include representatives from a number of stakeholder groups. These groups are limited in scope (<i>e.g.</i> , to a specific stage of the justice system) but nonetheless, function effectively to bring together diverse interests and to implement complex responses and interventions. No such group, however, has had system-wide success.	A functioning working group with a systems focus is currently in place or has succeeded in the past. This group may be informal or formal, but does meet periodically. The working group may not be completely representative of all system stakeholders. It has not wholly focused on witness safety but has succeeded in other areas.	A formal workgroup of leadership from each key stakeholder group in the criminal justice system is in place and meets regularly to discuss and decide substantive issues. The group includes, as at least one major priority, promoting witness safety. The group includes representatives from law enforcement, prosecution, the judiciary and courts, pretrial services, court security, jails and corrections, probation, etc.	
Continuum of coordinated responses across the system and risk levels	The criminal justice system does not have any witness safety programs or they remain largely unused. Victims and witnesses are not	The criminal justice system has some witness safety programming in place at certain stages, such as during adjudication or at the jail.	The criminal justice system has an array of witness safety responses from arrest through adjudication, sentencing, and	The criminal justice system has a coordinated system of witness safety responses from arrest through adjudication,	

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		1 (Low)	2	3	4 (High)
		systematically or reliably afforded protective and support services when requested.	Nonetheless, major gaps in witness safety persist in the community or at key stages of a criminal case. Safety responses are not consistently provided to victims and witnesses based on identified safety risk.	corrections. However, these efforts are not well-coordinated and communication is inconsistent. Some of these responses may be used based on identified safety risk.	sentencing, and corrections. These responses are strategically based on the identified risks and needs of victims and witnesses. The responses are aligned with best practice principles.
High visibility of commitment to witness safety	There are no special efforts to communicate witness safety as a priority of the criminal justice system. Stakeholders do not generally discuss witness safety measures with witness and victims and may not be aware of those responses themselves. Witness safety is not mentioned in literature or signage for the public.	There are some efforts to communicate witness safety as a priority of the criminal justice system. Witness safety may be mentioned in literature or signage for the public. However, stakeholders do not generally discuss witness safety measures with witness and victims and may not consistently be aware of those responses themselves.	Victim and witness safety are communicated as a priority of the criminal justice system. Witness safety features prominently in literature or signage for the public. However, there are still gaps in communicating safety efforts and services to victims and witnesses. Efforts may be underway to enhance safety and that initiative may be highly visible.	Key stakeholders in the criminal justice system broadcast its commitment to witness safety. Whether a member of the public victim or witness in a criminal matter, any person interacting with law enforcement, courts, prosecutors, or detention facilities is reminded of the key importance of witness safety. Witness safety measures are visible parts of criminal cases and court security is clearly focused on preventing intimidating behavior.	

	1 (Low)	2	3	4 (High)
2	Use community-based approaches to build trust among neighborhood residents and encourage reporting of information about crimes, including intimidation.			
	There are no witness safety programs in place in the community. Neither community policing nor community prosecution strategies are used.	There are some efforts to publicize witness safety efforts to communities. These efforts may not be focused on specific, at-risk communities. Community members may still not be consistently aware of these safety efforts.	Community policing and/or community prosecution strategies are in place and may have a focus on witness safety. Specific, at-risk communities are targeted. However, residents are not consistently aware of and receptive to witness/ victim safety efforts.	Efforts to promote victim and witness safety are in place in the community. Community policing and/or community prosecution strategies are centerpieces of this approach. At-risk communities are targeted and residents not involved in the justice system are still aware of and receptive to its safety messages and efforts in the community.
3	Educate victims and witnesses about witness intimidation.			
	No specialized education is provided to witnesses/ victims regarding intimidation and safety.	Victims and witnesses may be provided information about intimidation and safety in certain cases. This information may not be comprehensive and may be largely in the form of print materials. More thorough information	Formal and consistent education of at-risk victims and witnesses is in place and focuses on providing victims and witnesses with the tools to identify intimidation, anticipate when it may take place, prevent it, and take	Formal and consistent education of at-risk victims and witnesses is in place and focuses on providing tools to identify intimidation, anticipate when it may take place, prevent it and take action if it does happen. In addition,

		1 (Low)	2	3	4 (High)
			may be provided if victims/ witnesses identify themselves a need for services.	action if it does happen. Follow-up discussions to identify and problem-solve intimidation may occur but are not consistent.	justice system staff interacting with victims and witnesses throughout the system regularly engage in trusting conversations to help identify and problem-solve intimidation. Victims and witnesses know when and where to go for help when their safety is threatened.
4 Equip criminal justice leadership and staff with an operational knowledge of intimidation and safety.					
	<i>Detail for this section of the rubric has been presented in "Table 2. Rubric to Assess Operational Knowledge of Victim and Witness Safety Among Criminal Justice Practitioners".</i>	Criminal justice practitioners generally show evidence of high performance for 0-1 of the 7 domains in the "Rubric to Assess Operational Knowledge of Victim and Witness Safety".	Criminal justice practitioners generally show evidence of high performance for 2-3 of the 7 domains in the "Rubric to Assess Operational Knowledge of Victim and Witness Safety".	Criminal justice practitioners generally show evidence of high performance for 4-5 of the 7 domains in the "Rubric to Assess Operational Knowledge of Victim and Witness Safety".	Criminal justice practitioners generally show evidence of high performance for 6-7 of the 7 domains in the "Rubric to Assess Operational Knowledge of Victim and Witness Safety".
5 Build trust with individual victims and witnesses by maintaining consistent teams of criminal justice actors who work with them and by responding holistically to their needs.					
		No special efforts are in place to minimize the changes in personnel working with victims and witnesses. Transitions	Some measures are in place to minimize changes in personnel working with victims and witnesses. Vertical	Formal policies and infrastructure minimize the number of different people victims/witnesses	Formal policies and infrastructure minimize the number of different people victims/witnesses must

		1 (Low)	2	3	4 (High)
		across staff are common, and there may be institutional policies, such as law enforcement shift changes or horizontal representation among prosecution, that necessitate these “hand offs”.	prosecution is in place at the prosecutor’s office and similar measures may be in place in law enforcement. These kinds of measures are not consistent across the system.	must interact with in the criminal justice system. They can generally expect to work with the same law enforcement professionals, prosecutors, and advocates. Communication between system staff and victims/witnesses is inconsistent. Victims and witnesses are not consistently provided timely and accurate information about major case events, especially release status.	interact with in the criminal justice system. They can generally expect to work with the same law enforcement professionals, prosecutors, and advocates. Communication between system staff and victims/witnesses is frequent and regular. It focuses on safety, needed services, and clarification of the investigation or adjudication processes. Victims and witnesses are provided timely and accurate information about major case events, especially release status.
6	Use objective assessments and input from victims and witnesses to determine risk of and vulnerability to intimidation and use those data to target witness safety efforts.				
		No formal or informal assessments of safety risk are conducted with victims and witnesses.	Criminal justice professionals at certain stages of the criminal justice continuum generally ask questions of victims and witnesses	Criminal justice professionals throughout the system use common protocols to ask questions that help them to make	Validated threat assessments are used across the criminal justice continuum with victims and witnesses to determine their risk

		1 (Low)	2	3	4 (High)
			that allow them to make a judgment about safety risk. These determinations are based on professional experience. This information is used, perhaps inconsistently, to define safety plans for victims and witnesses.	judgments about safety risk. These determinations are based on professional experience. This information is used to define safety plans for victims and witnesses. Plans may be underway to validate these protocols and convert them into formal assessments.	levels. These tools may be focused on specific types of threats or cases, such as domestic violence. Nonetheless, all at-risk victims and witnesses are assessed. These assessments happen several times throughout the life of a case to gauge changes in threat levels and responses for high-risk individuals are swift and appropriate.
7	Create information-sharing policies that link criminal justice actors and allow them to identify patterns of behavior and possible intimidation in individual cases.				
		There are no systems in place allowing a criminal justice professional to identify patterns of intimidation over time associated with an individual (either as the intimidator or intimidated).	Some information systems capture reports of intimidation in ways that are searchable or trackable. Their use may be inconsistent. These systems allow for searches within one or more parts of the criminal justice continuum, but are not integrated and not readily available to professionals throughout the system.	Information systems throughout the criminal justice continuum capture reports of intimidation in ways that are searchable or trackable. Their use may be inconsistent. With some effort, these systems have been used to build a profile of intimidating behavior over time	Information systems are in place that (1) identify and document witness intimidation and (2) provide system stakeholders with seamless access to historical complaints by or about the same people. Staff can see intimidation complaints over time for a single individual and assess the escalation of a

		1 (Low)	2	3	4 (High)
				related to a specific case.	threat. These data also follow victims, witnesses, and defendants throughout the case process. This information system may involve a mixture of high- and low-tech strategies, but the information does flow seamlessly and rapidly throughout the system.
8 Make all reasonable efforts to minimize contact between victims/witnesses and defendants/offenders throughout the criminal justice system.					
		No specialized efforts are in place to separate victims/witnesses from offenders at any stage of the criminal justice continuum. No-contact orders are rarely used or generally not enforced.	Specialized efforts to separate victims/ witnesses from defendants/ offenders exist at some stages of the criminal justice continuum (<i>e.g.</i> , investigation). No-contact orders are used readily, but enforcement is not consistent.	Specialized efforts to separate victims/ witnesses from defendants/ offenders exist at all stages of the criminal justice continuum (<i>e.g.</i> , investigation). However, they may not be applied consistently. No-contact orders are among a number of community-based safety strategies. They may be used regularly but not consistently.	Throughout the criminal justice continuum, victims/ witnesses are insulated from offenders as part of the witness safety response. This separation includes conventional efforts such as separation during investigation and interviews, monitoring communications when the potential intimidator is detained, physical separation in

		1 (Low)	2	3	4 (High)
					courthouses and detention facilities, availability of short- and long-term relocation, and issuance of no-contact orders. In addition, innovative and creative approaches have evolved that continue to promote appropriate separation as an effective safety strategy.
9 Create a safe space in their courthouses.					
		Courthouses have standard security measures in place. Victims and witnesses are not systematically separated and there are no targeted measures in place to prevent intimidation. Security in the courthouse may periodically intervene in cases of overt intimidation.	Courthouses have standard security measures in place. There are some additional measures in place to elevate victim and witness protection in high risk cases. If requested by individual victims or witnesses or their advocates, court security may focus attention on specific individuals. The visiting public is not generally aware of safety measures in place.	All courthouse areas are regularly monitored for intimidating behavior. There may be some signage or other indication of the consequences to intimidation. Responses to intimidation are not tracked consistently by perpetrator or victim/witness.	Courthouses, including courtrooms, hallways, entrances, and grounds, are generally free from threats – both overt and implicit. Visitors to the courthouse generally feel safe and are aware of some of the safety mechanisms in action. They also understand the penalties for intimidation. Key strategies include: (1) signage and literature setting ground rules for

	1 (Low)	2	3	4 (High)
				behavior and penalties for intimidation; (2) active and visible security, who identify, report, and track patterns of intimidation; and (3) secure waiting areas for victims and witnesses.
10 Track progress and outcomes and use those data to inform system improvement.				
	The criminal justice system does not systematically document the prevalence of witness intimidation. The infrastructure to collect such data may not be in place or may be fragmented.	The criminal justice system has begun to identify indicators of the prevalence of witness intimidation, but comprehensive process and outcomes are not yet in place or cannot easily be measured using current information systems. Available data is used by a coordinating workgroup to make decisions, but efforts to build better information systems are still underway.	The criminal justice system has defined key, quantifiable metrics for success and measures those on an ongoing basis. Measurements indicate prevalence of identified intimidation. There may be some qualitative measures, such as surveys and focus groups. The data are reviewed regularly by a coordinating workgroup. Future responses and improvements are driven by these data.	The criminal justice system has defined key, quantifiable metrics for success and measures those on an ongoing basis. Measurement focuses on vulnerabilities or opportunities for intimidation, and on the prevalence of identified intimidation. Methods for data collection also include qualitative measures, such as surveys of and focus groups with victims and witnesses. Because of the importance of community-based intimidation, the

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		1 (Low)	2	3	4 (High)
					general public is also included in this ongoing analysis. The data are reviewed regularly by the coordinating workgroup. Future responses and improvements are driven by these data.

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APPENDIX H. SMART OBJECTIVES³⁶**SMART OBJECTIVES**

One of the most well known methods for setting objectives is **SMART**. Below we discuss each of the principles of SMART objectives and diagnostic questions to guide the development of these objectives.

Specific	Measurable	Achievable	Realistic	Time-Bound
<i>concrete, detailed, and well-defined</i>	<i>quantifiable and comparable</i>	<i>feasible, actionable</i>	<i>considering resources</i>	<i>defined timelines, deadlines</i>

Specific: The objective is concrete, detailed, focused, and well defined. It is straightforward and emphasizes action and outcomes.

- What exactly are we going to do?
- What strategies will be used?
- Is the objective described as actionable?
- Is the outcome clear? Will this objective lead to the desired results?

Achievable: Objectives need to be achievable. Setting reachable objectives is critical to maintaining motivation among all those involved in an action plan. Even though they are obtainable, objectives still need to stretch and challenge a team to be creative.

- Can we get it done in the proposed timeframe?
- Do we understand the limitations and constraints?
- Is this possible? Has anyone else done this successfully?

Realistic: The achievement of an objective requires resources, such as skills, money, and equipment, to support the tasks required to achieve the objective.

- Do we have the resources available to achieve this objective?
- Do we need to revisit priorities in other areas to make this happen?
- Is it possible to achieve this objective?

Measurable: Measurable objectives allow us to track the results of our actions, as we progress towards achieving our goals. If you cannot measure it, you cannot manage it! Measurement helps us know when we have achieved our objective.

- How will we know that the change has occurred?
- Can these measurements be obtained?

Time-Bound: Deadlines create an important sense of urgency and encourage action.

- When will this objective be accomplished?
- Is there a stated deadline?

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³⁶ George T. Doran, G. T. *There's A S.M.A.R.T. Way To Write Management's Goals And Objectives*, 70 MANAGEMENT REVIEW (AMA FORUM) 35-36 (1981).



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