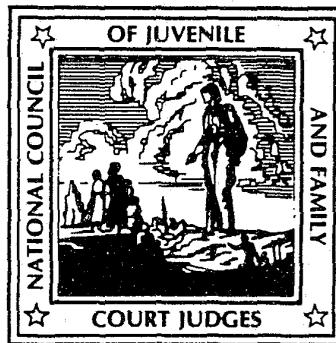


*FAMILY VIOLENCE:*  
*IMPROVING COURT PRACTICE*

*Recommendations from  
The National Council of Juvenile  
and Family Court Judges*

*Family Violence Project*

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**Honorable Stephen B. Herrell, Chairman**

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*The recommendations for improving court practices in family violence cases were adopted as official policy of the National Council of Juvenile and Family Court Judges at the Annual Meeting of the General Membership in San Jose', CA on July 12, 1990.*

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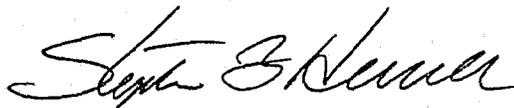
## PREFACE

*The whole area of family violence has long been a troublesome one for the courts. Frankly, we have not handled these cases well. There is in recent years a heightened public awareness of this issue and the severe physical and emotional damage done to families caught in the generational cycle of violence. Yet, the response of the criminal justice system, the juvenile and family courts and the service delivery system has not kept pace.*

*The National Council of Juvenile and Family Court Judges decided in 1987 to try to find a better way by tapping its resources and providing leadership in developing a more effective system. The result was the initiation of the Family Violence Project using three diverse court systems as models and pulling together the combined expertise of judges, prosecutors, victim advocates, court administrators, probation officers and others.*

*Not only have significant system improvements been made at the three sites, but we also learned much that should be shared. This report and its recommendations are offered for that purpose.*

*Surely we still have much to learn. The Council intends to remain actively engaged in this field and hopes for a good deal of feedback from those who continue to work toward a more effective way to prevent future violence. Most important of all, we must insure that our children do not continue to suffer the emotional abuse that comes from growing up in a violent home.*



Honorable Stephen B. Herrell  
Chairman, Family Violence Committee

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## INTRODUCTION

"Violence in the home strikes at the heart of our society. Children who are abused or who live in homes where parents are battered carry the terrible lessons of violence with them into adulthood.... To tolerate family violence is to allow the seeds of violence to be sown into the next generation.

"We as a nation can no longer allow these victims to suffer alone. We must understand the breadth and scope of the problem. We must admit that family violence is found at every level of our social structure. We must let victims know that they need not hesitate to seek help. We must listen with an understanding heart and we must act in ways which prevent, protect and support. This action requires a flexible response."

The histories of the abuse of women and the abuse against children are as intertwined as the threads of a tapestry. Indeed, they represent the socio-political fabric of cultures and societies since the times of the ancient philosophers of Greece and Rome and of the Old Testament. Women and children were generally considered the property of the husband/father to do with as he wished. These notions changed little over the course of thousands of years. English Common Law gave the father absolute authority over his children. The "Rule of Thumb" which permitted a husband to beat his wife with a rod no thicker than his thumb was a liberal reform enacted in the 19th Century to provide a small measure of protection to women. Generally, wives and children possessed no legal status or rights under the law, and lacked any legal remedy against physical abuse and neglect. It was not until the 1870's in the United States that the acceptance of wifebeating began to be questioned. Gradually divorce laws were liberalized, allowing women to divorce on the grounds of "extreme" cruelty. Similarly, in 1870 the first court order in a child abuse case was issued in New York - not on the grounds of child abuse, however, since there were no laws against child abuse at that time. The case was argued and won on the basis that it was cruelty to an animal.

Child abuse, wife beating, incest, neglect, spouse abuse, domestic violence, sexual abuse - all are what we view as forms of family violence. In this series of recommendations, we have taken a broad view of family as well, to include all household members. Of the 1.5 million countable cases of child abuse and neglect each year,<sup>2</sup> and the estimated 1.8 million

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<sup>1</sup>U.S. Attorney General's Office. *Attorney General's Task Force on Family Violence* (Final Report). Washington, D.C.: Author, September 1984.

<sup>2</sup>U.S. Department of Health and Human Services. *Study findings: Study of National Incidence and Prevalence of Child Abuse and Neglect* (Contract 105-85-1702). Washington, D.C.: National Center on Child Abuse and Neglect, 1988.

women beaten in their homes each year,<sup>3</sup> researchers have determined a co-occurrence of at least 810,000 families with both spouse abuse and child abuse.<sup>4</sup> Many writers and researchers in the field believe the tallies or reports and estimates of family violence reveal only the tip of a huge iceberg.

The pace of attention shown to matters of family violence has increased over the past decade. What is apparent is that our consensual beliefs are converging towards a response which acknowledges the criminal nature of family violence along with the special circumstances within which it occurs. It is our conviction that the experience of the family violence project and the recommendations emanating from that experience further our collective understanding of the nature of family violence and the development of significant interventions to check its course.

The appropriate locus for family violence intervention has been debated and studied over the past century. In fact, there is probably no other arena of human affairs which has so challenged the authority and effectiveness of state intervention. In part, the shifting of opinion regarding court intervention in families is the result of significantly different concepts in the processing of cases through different types of courts. As our view of the family, its members and the circumstances in which they find themselves changes, we must look conceptually at the court system(s) to attempt a match.

Beginning with a concept of official state intervention which is least intrusive in the workings of a family, the compelling tragedy of family violence has required the state to become more actively and intrusively involved in family affairs. Rather than simply provide protection to the victim and guidance to the perpetrator, when dealing with family violence the courts have found the need to hold the abuser more accountable and thereby attempt to insure that the violence will cease. The effect of changes which occurred in the 60's and 70's was to shift the emphasis from family matter to criminal matter. This shift has not occurred without a price, however, as we find that the criminal court, while better suited to dispense punishment, is not as well suited to provide the guiding and supportive intervention of its civil, family and juvenile court counterparts.

In real terms, the prosecution of violent family members has resulted in procedural anomalies ranging from high percentages of "no go" decisions in prosecutors' offices, to reactive criminal court judges imposing sanctions on victims who subsequently withdraw from criminal proceedings.<sup>5</sup> It is frequently the non-legal aspects of these cases which mitigate against successful criminal prosecution. This occurs in the most obvious and appropriate cases of criminal assault between adult family members. When one adds to this the more

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<sup>3</sup> Straus, M., Gelles, R., & Steinmetz, S. *Behind Closed Doors: Violence in the American family*. New York: Doubleday/Anchor, 1980.

<sup>4</sup> Roy, M. *Children in the Crossfire*. Deerfield Beach, Florida: Health Communications, Inc., 1988.

<sup>5</sup> See numerous state gender bias task force reports, chapter on domestic violence including New York, Maryland, Washington, Minnesota, Rhode Island, Massachusetts and California for examples of this kind of judicial behavior.

difficult decisions concerning abuse or neglect of children, the provision of financial support, and the need for alcohol or drug treatment, the comfort level of the system in proceeding with a purely criminal court response steadily decreases. The comfort level breaks down entirely in cases such as incest and sexual abuse when the criminal response alone is often destructive.

It is perhaps ironic that civil interventions, predicated on the notion of dispute resolution between opposing parties, have been found to be ineffective in dealing with family violence.<sup>6</sup> Further, in many situations, criminal prosecution, predicated on the concept that the state will replace the victim in seeing that the perpetrator is held accountable, has increased the burden on the victim rather than diminished it. A more complete understanding of the dynamics of family violence forces us to appreciate the reciprocity between the legal and non-legal issues in these cases. The ability of the justice system to respond to the non-legal factors will enhance its ability to effectively deal with the legal matters. Neither the stern process of the criminal court nor the ameliorative process of civil intervention provides all that is necessary to deal with the complex issues surrounding family violence.

The National Council of Juvenile and Family Court Judges began its Family Violence Project in 1987 with support from the U.S. Department of Justice, Bureau of Justice Assistance. Our purpose was to implement and evaluate new, coordinated court procedures for the handling of domestic violence and families with multiple forms of abuse. Three jurisdictions have been involved in developing and documenting the improved procedures. These are the Circuit Court of Oregon in Portland, the Family Court of Delaware in Wilmington, and the District Court Department, Trial Court of Massachusetts in Quincy. Project activities have included case screening and processing, victim assistance, training, case supervision and data collection. Both system and individual case advocacy by project staff have provided much of the impetus for the changes which have occurred. Local project advisory boards have also provided significant input for system changes. Guidelines, legal and procedural issues, and documented court system changes in the three sites have been reviewed at regular meetings of the Council's Family Violence Committee.

The project recommendations presented herein are based on the combined experience and wisdom of the staff at the three sites, the judges and national experts on the project Advisory Committee, several consultants, numerous judges on the Council's Family Violence Committee, and Council staff from Reno and Pittsburgh. We firmly believe that implementation of the recommendations will significantly increase the effectiveness of court intervention in family violence cases.

There are many important questions still unanswered. Further research is critical to

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<sup>6</sup> Grau, J., Fagan, J., Wexler, S. Restraining orders for battered women: Issues of Access and Efficacy *Women and Politics*, 1984, Vol. 4, 13-28.

continued progress. In the area of protection orders, we need to learn how effective they are in protecting victims from future violence. Should they be available to children? And are police departments providing adequate enforcement? In training judges, we need to be able to tell them what the most effective dispositions and court orders should include. Probation departments need guidelines about supervising family violence offenders - how much and for how long? What methods of treatment for batterers, sexual abusers and abusive parents are the most effective?

In terms of allocating court resources, it would be a tremendous advantage to know what the actual co-occurrence of various kinds of court cases involving members of one family is. Is the increase in domestic violence cases going to overload the system, or are we in fact already dealing with these families in other ways? What is the best way to combine or coordinate civil and criminal family matters?

Research into the correlates and causes of family violence will help us devise more significant responses. Is there a unique theory of family violence which outlines the similarities and distinctions between stranger and family violence? Answers to these questions will lead to specialized policies for significant interventions and treatments.

The court system is not in this alone. Nor does the solution to the problem of family violence lie within the court system. Family violence has been around for a long, long time. Our efforts to put an end to it are embryonic. Yet, they are already making a difference. The court does play an important role in molding community values. Ultimately, the solution lies in shaping a society which chooses to be non-violent, just and free of oppression. It is appropriate, we think, that the justice system and the judiciary take a leadership role in promoting those kinds of social values. Implementation of these recommended practices in family violence cases will cause social change far beyond the courtroom.

## SECTION I: POLICY

1

### *Recommendations*

---

1. *Courts, the criminal justice system and the entire legal community must respond to family violence as serious criminal conduct.*
2. *All branches of government must ensure that there are adequate resources devoted to family violence cases.*
3. *State legislatures should adopt omnibus family violence legislation to give recognition to the special nature of family violence.*
4. *Every community should have an officially recognized family violence coordinating council.*
5. *Data in family violence cases must be systematically collected and analyzed to provide a current and accurate picture of system response and case outcome.*
6. *State legislatures should enact statutes which provide that family violence is a factor the court must consider in all legal decisions relating to the family and especially custody and visitation.*
7. *Victims should be able to utilize all available legal remedies without having to choose between them.*

## I. *POLICY*

### 1. *Courts, the criminal justice system and the entire legal community must respond to family violence as serious criminal conduct.*

Criminal justice professionals know that a vast number of homicides and aggravated assaults are committed by and against members of the same family.<sup>1</sup> Yet many law enforcement personnel, prosecutors, judges and others continue to treat initial reported family violence incidents as less serious than the same offense between non-family members. The result can have tragic consequences. Not only will the violence continue, sometimes with fatal consequences, but when children are present they will likely be seriously damaged emotionally from witnessing the ongoing violence. They will also inevitably learn that violence is behavior they should emulate - becoming perpetrators and/or victims of family violence as adults.

When viewed in the context of its far reaching consequences, perhaps family violence is even more serious than non-family assault. In order to stop family violence, it is vital that all who are called upon for help, or whose job it is to intervene and hold offenders accountable, respond to all family violence as criminal conduct no less serious than stranger-to-stranger assault.

The courts offer the last and sometimes only protection available to vast numbers of people who suffer and hope to end the violence in their lives. Failure to deal effectively with perpetrators and victims of family violence contributes to further victimization and certain repetition of violent behavior in the next generation.<sup>2</sup>

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<sup>1</sup>Rose, K. and Goss, J. *Domestic Violence Statistics*. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice, 1989.

<sup>2</sup>See U.S. Surgeon General's Statement to the American College of Obstetricians and Gynecologists conference, 1/3/89, that battery is the single largest cause of injury to women in the United States. See also Jaffe, P.G., Wolfe, D.A. and Wilson, S.K. *Children of Battered Women*. Newbury Park: Sage, 1990.

2. *All branches of government must ensure that there are adequate resources devoted to family violence cases.*

During the past decade, awareness of family violence has increased considerably. Many public policies have been changed to better address family violence issues. As a result, clerks and civil dockets are overwhelmed with applications for restraining orders, many jurisdictions have experienced dramatic increases in criminal family violence filings, and juvenile and family courts are spending constantly increasing proportions of resources on abuse and neglect cases. The National Center for State Courts reports 381,357 filings for family violence cases in thirty-two states in 1988. Larger states such as California, Texas and New York report domestic violence filings in the range of thirty-three to thirty-seven thousand annually.<sup>3</sup> But allocation of adequate resources has lagged behind the huge volume of family violence cases now entering the justice system.

It is imperative that each branch of government take appropriate initiative in response to this public concern. Funding is needed at all levels for research, continued public policy efforts, training, victim services and batterer's treatment. Specialized professional personnel are necessary at each stage of court system processing. Specifically, victim assistance personnel, additional court personnel and more probation officers are needed in order to deal with the increased caseload and to help prevent future incidents. Citizens and public officials must consider the protection of millions of victims from further violence in their homes a high priority.

Local family violence councils such as those proposed in recommendation number I(4.) can develop action plans and comprehensive family violence budgets cooperatively with each applicable local or state agency. Funding bodies should be presented with cooperative and coordinated strategies for application of resources at the time of the allocation request.

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<sup>3</sup>Report prepared by David B. Rottman, Director of the Court Statistics Project of the National Center for State Courts, 1989.

3. *State legislatures should adopt omnibus family violence legislation to give recognition to the special nature of family violence.*

State legislation is key to strengthening existing laws to better protect victims of family violence. Since there are a large number of state and local agencies involved with both administrative policy and direct service delivery for these cases, omnibus family violence legislation is necessary to address a variety of issues. The legislation should provide consistent definitions and take a consistent, comprehensive approach aimed at eliminating family violence.<sup>4</sup>

States are urged to carefully consider the following matters in developing or improving omnibus family violence legislation:

- a. Creation of a unified family court with criminal jurisdiction over adults for crimes committed against family and household members;<sup>5</sup>
- b. Access to the judicial system for economically disadvantaged victims including legal representation in civil cases when needed;
- c. Mandatory incident based reporting of family violence cases, including for medical emergency rooms;
- d. Requirements that agencies coordinate efforts on behalf of families, and exchange case information where appropriate;
- e. Requirements for training in family violence for all those involved in these cases;
- f. Eligibility for victim compensation for victims of family violence;
- g. Priority eligibility for subsidized public housing for victims of family violence;
- h. Availability of emergency protection orders on a 24-hour basis;<sup>6</sup>
- i. Availability of protection orders, of sufficient duration, e.g., up to three years, for child victims as well as adults;<sup>7</sup>
- j. Inappropriateness of mutual protection orders;<sup>8</sup>

<sup>4</sup>See Hofford, Meredith, Ed. *Families In Court*. Reno: The National Council of Juvenile and Family Court Judges, 1989. for a discussion of many of the overall issues surrounding court jurisdiction, coordination of family matters and options for improved case handling.

<sup>5</sup>See the Family Court of Hawaii for a model of this type of court which allows for substantially improved coordination of the justice system response. Hawaii Revised Statutes, Chapter 571.

<sup>6</sup>See California's Emergency Protection Order legislation which empowers law enforcement to issue the protection orders at times when the court is closed.

<sup>7</sup>See Recommendation II(8.) for discussion of the necessary elements of restraining orders.

<sup>8</sup>See Recommendation II(10.) for discussion.

- k. Requirement for written specification of reasons for 1) denying a protection order, 2) not ordering a perpetrator into treatment and, 3) allowing unsupervised visitation or custody to perpetrator;
- l. Making violations of protection orders a criminal offense and provision of mechanisms for monitoring compliance;
- m. Recognition of spouse abuse as a form of child abuse where children are present in the home;
- n. Requirement that family violence is a factor to be considered in custody and visitation awards;<sup>9</sup>
- o. Warrantless arrests on probable cause for misdemeanor family violence;
- p. Requiring notification to the victim prior to release of defendant to ensure safety and protection of victim;
- q. Conditions of bail which recognize the seriousness of the offense, and provide for protection of the victim and other family members;<sup>10</sup>
- r. Presumption to remove perpetrator from the home, pending resolution of civil or criminal cases;<sup>11</sup>
- s. Elimination of the marital rape exemption;
- t. Elimination of marital privilege in cases where spouse is the victim;
- u. Provision of enhanced penalties for repeat offenders in family violence cases;<sup>12</sup>
- v. Removal of requirements which impede prosecution of family violence when victim is unable, unavailable or unwilling to testify;
- w. Inappropriateness of civil compromises in family violence cases.<sup>13</sup>

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<sup>9</sup> See recommendations I(6.) and II(11.) for discussion.

<sup>10</sup> See recommendation II(3.) for discussion.

<sup>11</sup> See Recommendation II(8.) and II(9.) for discussion.

<sup>12</sup> See Recommendation II(7.) for discussion.

<sup>13</sup> See Recommendation II(4.) for discussion.

4. *Every community should have an officially recognized family violence coordinating council.*

For each family violence case that enters the system, several agencies are involved in the ultimate outcome. These agencies rarely coordinate efforts or even share information. Any state or local jurisdiction attempting to improve the justice system response to family violence should make the establishment of a coordinating council a priority. It should be a working body with meetings scheduled at least monthly. The representatives should be at the policy decision-making level of their respective organizations. The size of the council should be kept manageable. Each of the agencies involved in these cases, including law enforcement, prosecutors, courts (civil, criminal, juvenile, family), battered women's shelters, child protective services, and probation should participate as a member of the council. A judge or other local leader should convene the initial gathering of the council, and a professional staff person should be assigned to the council.<sup>14</sup>

Such a group would first identify the problem areas, possibly through research and data collection. The council will systematically explore solutions to the most pressing problems, implement them and move on to other issues. Members of the council should be prepared to commit existing resources and seek the necessary additional funding to implement the solutions.

The council should take an active role in community education about family violence and the appropriate system responses. It should take the lead in holding courts and service providers accountable. The council should write regular reports, and maintain high visibility of the issues.

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<sup>14</sup>Multnomah County (Portland), Oregon has a very active and effective council such as the one described.

The State of Connecticut's Family Violence Prevention and Response Act requires the creation of a statewide system of Family Violence Intervention Units which link the courts and community-based domestic violence networks.

5. *Data in family violence cases must be systematically collected and analyzed to provide a current and accurate picture of system response and case outcome.*

To obtain political support and develop realistic, appropriate services for victims and offenders, it is vitally important that the prevalence, incidence and impact of family violence be carefully documented. Experts agree that family violence cases are among the most underreported of all crimes in both prevalence and severity.<sup>15</sup> Figures on the levels of spouse abuse, child molestation, elder abuse and child battering are estimates, based on public and private research. The estimates vary considerably; for example, estimates on the number of women seriously battered in their homes each year varies from 2,000,000 to 6,800,000.<sup>16</sup> Consistent terminology must be developed and utilized by all agencies collecting and analyzing data.

Most efforts have focused on incident-based reporting of key Uniform Crime Report offenses such as homicide, rape, assault and child abuse, and police-reported victim characteristics such as age and relationship to offender.<sup>17</sup> However, it is equally important to have a clear picture of the criminal justice system's response in family violence cases. In addition to the number and type of incidents and arrests, information is needed on:

- the number of criminal and civil cases filed;
- the number of cases dismissed or diverted;
- the number of cases successfully prosecuted;
- the number of those arrested who re-offend and the circumstances;
- the number of families who receive social or medical services related to the violence;
- the number of other court cases involving members of the same family;
- the number of offenders who successfully complete treatment programs and the correlates of successful treatment.

The data on the response of police, courts, and corrections should be linked to foster public accountability and promote more effective policies. State-run clearinghouses to collect and analyze mandatory incident reports and court data on any kind of family violence should be established to address this problem. Locally, courts should immediately transmit to law enforcement agencies information on protection and restraining orders issued so that they can be effectively enforced.

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<sup>15</sup> Bureau of Justice Statistics. *Intimate Victims: A study of Violence Among Friends and Relatives*. Washington D.C.: U.S. Department of Justice, 1980.

<sup>16</sup> See regular reports from the Bureau of Justice Statistics, the Federal Bureau of Investigation, and the Family Violence Research Program, University of New Hampshire.

<sup>17</sup> \_\_\_\_\_ . *Report of the Attorney General's Task Force on Family Violence*. Washington, D.C.: U.S. Department of Justice, 1984. page 82.

6. *State legislatures should enact statutes which provide that family violence is a factor the court must consider in all legal decisions relating to the family and especially custody and visitation.*

If victims of family violence have children in common with their batterers, courts often must adjudicate the matter of custody and visitation when issuing protection orders and dissolutions. Courts have sometimes failed to evaluate and provide for children who have lived in abusive homes, and such failure can have tragic consequences for those children. If they have not been, state statutes should be amended to require that spouse abuse be a significant factor in consideration of custody awards.<sup>18</sup> Where joint custody or unsupervised visitation is sought and there is evidence of family violence, the statute should require investigation of the violence and forensic custody evaluations by professionals specially skilled in such assessments. State legislators and judges must understand the propensity for continued violence and the impact of the violence on the children.<sup>19</sup> If there is a recent history of violence, offenders should be ordered to successfully complete treatment specifically for the violence, and for substance abuse if necessary, before custody or unsupervised visitation is awarded.

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<sup>18</sup> California is taking this one step further in proposing a requirement that judges consider spouse abuse as detrimental to the best interests of the children when making custody decisions.

<sup>19</sup> See Walker, Lenore E.A. and Edwall, Glenace E. "Domestic Violence and Determination of Visitation and Custody in Divorce" in Sonkin, Daniel J. *DOMESTIC VIOLENCE on Trial: Psychological and Legal Dimensions of Family Violence*. New York: Springer Publishing Company, 1987.

7. *Victims should be able to utilize all available legal remedies without having to choose between them.*

It is not uncommon for victims of family violence to be discouraged from utilizing both civil and criminal remedies in their pursuit of protection in the courts. Obtaining a restraining order should not be conditioned upon pursuing any other remedy, court service or process. Similarly, the existence of a restraining order should have no bearing on the decision to proceed with criminal prosecution. Requiring victims to choose between civil and criminal processes deprives them and the state the ability to fully protect victims and other family members, including children, from violent family members. The denial of criminal prosecution reinforces the rationalization of abusers that family violence does not constitute a crime, and worse, is the fault of the victim. The denial of civil processes leaves victims extremely vulnerable while awaiting trial. Victims of child abuse and neglect should also have equal access to the criminal and civil courts. Cases should be combined or coordinated.

## SECTION II: COURTS

### *Recommendations*

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1. *Judges must provide leadership in their courts and in their communities to ensure that family violence cases are effectively managed and that adequate resources are available.*
2. *All judges must be trained in the dynamics of family violence and how to address it fairly and properly.*
- A. *Criminal*
3. *At arraignment or other first appearance, the judicial officer should ensure that protective orders are made, maximizing protection of the victim including but not limited to:*
  - a) *Setting bail consistent with other assault offenses;*
  - b) *Releasing the alleged offender conditioned upon having no contact with the victim;*
  - c) *Imposing other special conditions of release which protect and maintain victims and family members;*
  - d) *Ensuring that the victim will be notified of a pending release and that adequate provisions will be made for the victim's safety;*
  - e) *Ensuring that release conditions will be monitored and acted upon.*
4. *Judges should not accept civil compromises, deferred prosecutions, reduced charges or dismissals where justice is not served by these devices.*
5. *At the time of sentencing or disposition the judge must have the following information available:*
  - a) *The facts of the case;*
  - b) *The offenders' criminal history;*
  - c) *Victim impact and input;*
  - d) *History of abusive behavior;*

- e) *Drug, alcohol and mental health evaluations where appropriate;*
- f) *History of prior court contacts with the family;*
- g) *Information about children and others living in the home who may be affected by the abuse.*

6. *Every sentence in a family violence case should:*

- a) *Hold the offender accountable;*
- b) *Order offender involvement in activities specifically designed to reduce future violence;*
- c) *Require an alcohol and drug evaluation where appropriate, mandate successful completion of treatment, and provide for mandatory chemical testing;*
- d) *Provide for formal supervision and monitoring of compliance.*

7. *All repeat violations of family violence must result in substantial additional sanctions or penalties for the offender.*

B. *Civil*

8. *Civil restraining orders should be available to all, and issued ex parte on request when family violence has occurred or is threatened. Such orders should be clear and specific and should address:*

- a) *The safety of victims at home, school, work and other places where the victim is subject to harassment or potential violence;*
- b) *Child custody and visitation;*
- c) *Telephone threats or harassment;*
- d) *Removal of the perpetrator from the home;*
- e) *Financial support and maintenance for the victim and family members;*
- f) *Weapons in the home or in the possession of the offender;*
- g) *Physical description of the offender;*
- h) *Expiration date;*
- i) *Method of modification;*
- j) *Provision for service upon offender together with notice and an opportunity for a speedy hearing.*

9. *Civil protective orders should remove the offender from the home and allow the victim and children to remain with appropriate protection, safety plans, and support.*
10. *Judges should not issue mutual protective or restraining orders.*
11. *When the issue of family violence is found to exist in the context of a dissolution of marriage, domestic relations case of any kind, or in a juvenile court case:*
  - a) *The violent conduct should be weighed and considered in making custody and visitation orders;*
  - b) *Judges should be aware that there may be an unequal balance of power or bargaining capability between the parties which calls for a more careful review of the custody and financial agreements before they are approved by the court;*
  - c) *Judges should not presume that joint custody is in the best interest of the children.*
12. *Where a custodial parent removes a child from the jurisdiction of the court, judges should:*
  - a) *Issue a warrant for the fleeing parent;*
  - b) *Ensure that there is an adequate investigation as to whether family violence had any impact on the flight;*
  - c) *Not change underlying child custody orders until such investigation is complete;*
  - d) *Put into place orders to protect the children until final resolution.*
13. *Judges should not mandate mediation in cases where family violence has occurred.*

## II. COURTS

1. *Judges must provide leadership in their courts and in their communities to ensure that family violence cases are effectively managed and that adequate resources are available.*

The court is a unique and vital institution within the American system of government. Judges have a mandate to assert leadership to ensure that their courts respond swiftly and fairly to victims of family violence. Judicial leadership should begin by examining and changing where necessary the practices of the court system itself. However, it should also involve all of the major systems within the community in order to develop a comprehensive, coordinated approach to the complex social, legal, health, safety, and behavior issues associated with family violence.

In their leadership roles, judges should advocate protection of victims and children from violent homes, elimination of gender bias which affects the court's response to these cases, strict accountability and treatment for offenders, and the provision of adequate resources to assist victims and family members.

Judges should encourage statewide, as well as community-level organization for the provision of needed services. They should seek two levels of planning: immediate provision for prevention and intervention programs and resources; and long-term, multi-generational strategies to eliminate family violence from society as a whole.

2. *All judges must be trained in the dynamics of family violence and how to address it fairly and properly.*

Education courses on family violence should be required for all judges hearing civil or criminal aspects of these cases in order to provide effective intervention and to prevent further injury to victims and other family members in family violence cases. The judiciary must be proactive in insisting that this training be made available on an ongoing basis.

Specifically, the judiciary needs to be trained in the:

- dynamics of family violence;
- battered spouse and child syndromes;
- courtroom treatment of victims, offenders and witnesses;
- impact of personal attitudes, gender bias and courtroom demeanor;
- available sanctions and treatment standards for offenders;
- elements of a good protection order;
- effectiveness of coordinating or consolidating civil, criminal and domestic cases involving members of the same family;
- available shelter and support services for victims;
- correlation between spouse abuse, child abuse and juvenile delinquency; and
- sentencing procedures and alternatives.

Training will enable judges to understand these complex issues, become more sensitive to the barriers facing victims, and eliminate any gender bias which contributes to the judicial system's failure to afford the protection of the law to the victims of family violence.<sup>20</sup>

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<sup>20</sup>For additional information on judicial training in family violence, contact The National Council of Juvenile and Family Court Judges Family Violence Project and The San Francisco Family Violence Project National Curriculum for Judicial Education Project.

Family Violence Recommendations, Section II: Courts

A. *Criminal*

3. *At arraignment or other first appearance, the judicial officer should ensure that protective orders are made, maximizing protection of the victim including but not limited to:*
- a) *Setting bail consistent with other assault offenses;*
  - b) *Releasing the alleged offender conditioned upon having no contact with the victim;*
  - c) *Imposing other special conditions of release which protect and maintain victims and family members;*
  - d) *Ensuring that the victim will be notified of a pending release and that adequate provisions will be made for the victim's safety;*
  - e) *Ensuring that release conditions will be monitored and acted upon.*

Safety of the victim and other family members should be one of the court's utmost concerns. Prior to a defendant's release, the judicial officer should consider the nature of the offense, the victim's injuries, prior criminal history, and children as victims or witnesses.<sup>21</sup> If at the initial hearing the judge believes a victim or other family member to be in danger, if state law permits it, the defendant should not be released. Given the likelihood that threats or additional violence will occur,<sup>22</sup> if the defendant is released on bail or on his or her own recognizance, the judge should impose special conditions of release. Specifically, these should include no-contact orders, confiscation of all weapons, allowing the victim to remain in the family home if the residence was shared, and adequate financial support for victim and other family members. The victim must be contacted prior to the defendant's release. Conditions of bail must be monitored, and violations brought to the immediate attention of the court. Defendants should be warned that violations of the conditions may constitute a felony and will result in revocation of release. Mechanisms for monitoring and enforcing the conditions may be a function of pre-trial services, pre-trial probation or by victim's services.

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<sup>21</sup> See an example of a comprehensive bail checklist in:  
Lemon, Nancy K.D. *Domestic Violence: A Benchguide for the Criminal Courts*. San Francisco: The Family Violence Project, 1989. page 15

<sup>22</sup> Langan, P.A. and Innes, C.A. *Preventing Domestic Violence Against Women*. Washington, D.C.: Bureau of Justice Statistics, U. S. Department of Justice, 1986.

4. *Judges should not accept civil compromises, deferred prosecutions, reduced charges or dismissals where justice is not served by these devices.*

Alternative dispositions and diversion in family violence cases are frequently inappropriate, and send a message to both the victim and the offender that the crime is less serious than comparable crimes against non-family members. When these alternatives are proposed, judges should ascertain that they are in the interest of justice and not simply devices for docket management or unsuitable use of diversion. When a victim withdraws the complaint or is reluctant to testify, the judge should inquire about coercion and intimidation.<sup>23</sup> In cases where the victim refuses to testify, it is often possible to prove the case with other evidence.<sup>24</sup> Sometimes the judge should deny motions for dismissal and schedule the case for trial.

Civil compromise should seldom, if ever, be used in family violence cases. Civil compromise statutes are intended to provide economic redress for tortious conduct which may also incidentally be criminal. In family violence cases, civil compromise has sometimes been used simply as a method of inducing the victim to abandon prosecution, without any compensation being paid and without any provision for holding the offender accountable.

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<sup>23</sup> See Lemon, *California Benchguide op. cit.*, Chapter 3 for checklist and recommended practices.

<sup>24</sup> See Lemon, Nancy K.D. *Domestic Violence: The Law and Criminal Prosecution*. San Francisco: San Francisco Family Violence Project, 1990.

5. *At the time of sentencing or disposition the judge must have the following information available:*
- a) *The facts of the case;*
  - b) *The offenders' criminal history;*
  - c) *Victim impact and input;*
  - d) *History of abusive behavior;*
  - e) *Drug, alcohol and mental health evaluations where appropriate;*
  - f) *History of prior court contacts with the family;*
  - g) *Information about children and others living in the home who may be affected by the abuse.*

The primary goals of family violence sentencing are to stop the violence, protect the victim and family members and hold the offender accountable. An effective disposition calls for a substantial amount of information and a pre-sentence report may be necessary whether the offense is a felony, misdemeanor or restraining order violation. Specifically, the judge should insist on:

- a) **information on the offenders' criminal history.**  
Though there is frequently a history of past arrests, criminal records will often reflect a small percentage of the true violence occurring.<sup>25</sup>
- b) **impact of the violence on the victim and the victim's desires as to the disposition.**  
It is important to know the extent of physical and emotional damage to the victim, and to allow victims to submit opinion statements and statements to dispute facts in the record or the pre-sentence report.
- c) **history of abusive behavior.**  
This information is important because it may not be reflected in the criminal record. Judges should particularly look for an escalation of the violence and multiple victims.

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<sup>25</sup>See Sherman, L.W. and Berk, R.A. *The Minneapolis Domestic Violence Experiment*. Washington, D.C.: Police Foundation, 1984.

- d) **drug, alcohol, and mental health evaluations.**  
The coincidence of substance abuse problems with family violence is extremely high.<sup>26</sup> Alcohol and/or drug treatment will not solve the problem, but may be a necessary prerequisite to treatment for the violence. A small but critical percentage of cases are extremely violent, seriously mentally disturbed individuals from whom society needs to be protected.
- e) **history of prior court contacts by the family.**  
Many of these families are seriously dysfunctional and have had a variety of interaction with the court. Some will have current cases pending. The judge should know about all other court contacts and the existence of any other court orders.
- f) **information about children and others living in the home.**  
Children who are bystanders to the violence are seriously victimized. The judge must take care to fashion a disposition which will protect all the family or household members.

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<sup>26</sup> The NCJFCJ Family Violence Project found a very consistent 80% of cases with alcohol and drug problems. Many other research studies have documented this correlation. See *Final Report*.

6. *Every sentence in a family violence case should:*

- a) *Hold the offender accountable;*
- b) *Order offender involvement in activities specifically designed to reduce future violence;*
- c) *Require an alcohol and drug evaluation where appropriate, mandate successful completion of treatment, and provide for mandatory chemical testing;*
- d) *Provide for formal supervision and monitoring of compliance.*

Key to this recommendation is the principle that all four of the items must be a part of every sentence or court order. Offender accountability may be accomplished in a variety of ways. Restitution, supervised probation or jail time are some common examples. Treatment programs should be designed specifically to deal with battering and violent behavior. Individual or couples counseling does not address these issues or remediate the problems of violence, power and control. Alcohol and drug evaluations are also usually appropriate. While treatment for the alcohol and drug problems will *not* solve the violence problem, it is often a necessary prerequisite. Urine testing for alcohol and drug abuse as a condition of probation is absolutely necessary to monitor compliance. Provision must be made for formal supervision and monitoring of the offender's behavior. Unsupervised bench probation is not appropriate or effective. In addition to offender accountability, formal supervision provides a measure of protection for the victim who will have an officer of the court to turn to in the event of subsequent threats or assaults.<sup>27</sup>

Enhanced sentences may be called for in a number of circumstances such as the presence of children; use of a dangerous weapon; elderly, pregnant, youthful or handicapped victim; sexual assault; serious injuries requiring hospitalization; or threats of death or serious bodily injury.

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<sup>27</sup> See Ganley, Anne L. "Perpetrators of Domestic Violence: An Overview of Counseling the Court-Mandated Client" in Sonkin, *op. cit.*

7. *All repeat violations of family violence must result in substantial additional sanctions or penalties for the offender.*

Offenders will violate court orders and diversion agreements with impunity if they believe nothing will happen to them. Law enforcement officers, district attorneys and probation officers are strongly encouraged to arrest and return to court any family violence offender who violates either a civil or criminal court order. The message must be very clear that repeat violence will not be tolerated. Judges can do their part in this scheme by taking the cases seriously, and by always ordering some sort of additional penalty for those found guilty of the violation. Additional sanctions might include fines, a greater jail sentence, community service work, additional time on probation, and restitution to the victim.

Courts must develop means of monitoring compliance and identifying violations of both civil and criminal orders. Judges may wish to set cases for periodic review whether or not a violation has been reported.<sup>28</sup> Ultimately, accountability requires that each infraction be noted in the record and responded to appropriately by the judge.

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<sup>28</sup>The Family Court Division of the Superior Court of Gloucester County, New Jersey has found automatic review hearings, scheduled two weeks to four months after sentencing, to be very effective in reducing repeat violations.

## B. Civil

8. *Civil restraining orders should be available to all, and issued ex parte on request when family violence has occurred or is threatened. Such orders should be clear and specific and should address:*
- a) *The safety of victims at home, school, work and other places where the victim is subject to harassment or potential violence;*
  - b) *Child custody and visitation;*
  - c) *Telephone threats or harassment;*
  - d) *Removal of the perpetrator from the home;*
  - e) *Financial support and maintenance for the victim and family members;*
  - f) *Weapons in the home or in the possession of the offender;*
  - g) *Physical description of the offender;*
  - h) *Expiration date;*
  - i) *Method of modification;*
  - j) *Provision for service upon offender together with notice and an opportunity for a speedy hearing.*

Protection orders have emerged during the past decade as an accessible and effective justice system response to family violence. They are generally available for persons who are or were in a marital type relationship with a member of the opposite sex. Some states include other family and household relationships as well.<sup>29</sup> The use of protection orders for abused children is a growing trend, and one which could impact the juvenile courts significantly.

Judges in all civil and criminal courts which hear family matters should be fully empowered to issue restraining orders. At times when the court is closed, provision should be made for issuing emergency protection orders. To be effective, orders must be comprehensive. Judges should provide all of the relief that the victim needs given the particular circumstances of the case. Many kinds of relief are specifically provided-for by state statutes. Thirty eight states explicitly grant judges the latitude to grant any constitutionally defensible relief that is

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<sup>29</sup> Finn, Peter and Colson, Sarah. *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement*. Washington, D.C.: National Institute of Justice, 1990.

warranted.<sup>30</sup>

Judges may be uncomfortable issuing *ex parte* orders which evict the offender from the family home, require the payment of spousal or child support, or award custody of the children to the petitioner. Without such provisions, however, the victim cannot be protected. Economic dependence is frequently the reason the victim returns to the offender. Such *ex parte* relief is strongly supported by both case law and statute. Property, custody, and due process rights of persons who have jeopardized the physical safety of others should yield until an expedited hearing. Defendants must be provided notice and opportunity for a full hearing as soon as possible, preferably within a few days after the order is issued.<sup>31</sup>

Comprehensive provisions of restraining orders are only as good as their enforcement. To improve enforcement, courts should develop, publicize, and monitor a clear, formal policy regarding violations. This might include follow-up hearings, promoting the arrest of violators, incremental sanctions for violations, treating violations as criminal contempt, and establishment of procedures for modification of orders. In addition, courts can establish procedures for monitoring offenders for compliance.<sup>32</sup>

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<sup>30</sup> *ibid.* See Chapter 4 for discussion and state-by-state analysis.

<sup>31</sup> For further discussion, see recommendations I(6.) and II(9.).

<sup>32</sup> Finn, *op. cit.* Chapter 5 discusses enforcement, statutory authority, and responding to violations.

9. *Civil protective orders should remove the offender from the home and allow the victim and children to remain with appropriate protection, safety plans, and support.*

Every state, with the exception of Michigan, authorizes the court at a minimum to evict the perpetrator, and most authorize awarding the victim temporary custody of the children in ex parte protection orders.<sup>33</sup> Appellate decisions have generally upheld this practice even though such orders significantly interfere with the defendant's rights.

Generally, a family violence case involves a woman or children being abused by the male authority figure of the household. In such cases, the just course of action is to remove the perpetrator from the home, leaving the victims with at least the security of a familiar roof over their heads. This practice is recommended even if the home or its occupancy legally belongs to the perpetrator. Such an order gives a clear message to the offender that such behavior will not be tolerated regardless of who holds legal title, and that the state intends to protect victims from further abuse.

It is extremely important that children not be removed from their home at this point.<sup>34</sup> In families where there is multiple abuse, the mother may be faulted for neglect or failure to protect. Or, an acute incident of family violence will be forgotten and she will reunite with the perpetrator. These are all symptoms of the "Battered Women's Syndrome" and of a family caught in the "Cycle of Violence."<sup>35</sup> Where the mother has herself been a victim of family violence, judges should reserve judgement about her willingness and ability to provide a proper home for her children until such time as she has had ample support services<sup>36</sup> and opportunities provided to break out of the cycle of violence. If it is necessary to remove the children from the home, this should be done with a view towards returning them as soon as the mother has taken strong steps towards her own recovery. Judges should ensure that necessary services are provided, and that adequate safety plans are in place for both the victimized spouse and the children.

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<sup>33</sup> Finn, *op.cit.*, Chapter 4.

<sup>34</sup> See recommendation III (17.) for discussion.

<sup>35</sup> See Douglas, Mary A. "The Battered Woman Syndrome" in Sonkin, *op. cit.*

<sup>36</sup> Intensive services such as those provided by Homebuilders programs in Washington State and elsewhere would be highly recommended for families in this situation.

**10. Judges should not issue mutual protective or restraining orders.**

Issuance of mutual restraining orders raises issues of due process, enforcement, and gender bias. This practice has emerged as a major problem in some areas, and has been cited in several states' gender bias reports as evidence of continued bias in the court's response to family violence.<sup>37</sup>

Frequently mutual orders of protection are issued even when the respondent has filed no cross petition nor alleged any violence by the petitioner. Thus, both parties are labeled as abusers and are treated as equally blameworthy. The message to the batterer is that such behavior is excusable, was perhaps provoked, and he or she will not be held accountable for the violence. Victims who have not engaged in violent behavior are confused, humiliated, and stigmatized when such orders are issued against them.

Mutual restraining orders create due process problems as they are issued without prior notice, written application, or finding of good cause. The petitioner of the original request for restraining order now finds himself or herself a subject of the order of protection, having had no opportunity to prepare a response or consult with an attorney.

Mutual restraining orders create significant problems of enforcement which render them ineffective in preventing further abuse. They are confusing to law enforcement and unenforceable. When an order is violated, police have no way of determining who needs to be arrested. Often, they will arrest both parties further victimizing the real victim.

If both parties are alleged offenders, there should be two separate applications, hearings, findings of good cause, and separate orders issued.

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<sup>37</sup> Kuehl, Sheila J. *Achieving Equal Justice for Victims of Domestic Violence: The Report of the Judicial Council Advisory Committee on Gender Bias in the Courts on Domestic Violence*. Sacramento: Author, 1990.

"Report of the New York Task Force on Women in the Courts." *Fordham Urban Law Journal*. Vol. xv, No. 1, (1986-1987)

"Minnesota Supreme Court Task Force for Gender Fairness in the Courts." *William Mitchell Law Review*. Vol. 15, No. 4, (1989)

Schafran, Lynn H. "Documenting Gender Bias in the Courts: The Task Force Approach." *Judicature*, Vol. 70, No. 5, (Feb-Mar 1987)

11. *When the issue of family violence is found to exist in the context of a dissolution of marriage, domestic relations case of any kind, or in a juvenile court case:*

- a) *The violent conduct should be weighed and considered in making custody and visitation orders;*
- b) *Judges should be aware that there may be an unequal balance of power or bargaining capability between the parties which calls for a more careful review of the custody and financial agreements before they are approved by the court;*
- c) *Judges should not presume that joint custody is in the best interest of the children.*

Family violence is a significant factor which must be considered when deciding custody and visitation matters.<sup>38</sup> Without treatment, the propensity for continued violence remains after the divorce or separation and frequently recurs during unsupervised visitation or joint custody. Court orders which force victims to share custody with their abusers place both victims and children in danger. Further, there is near unanimity that violence in the home has a powerful negative effect on children.<sup>39</sup> Continued aggression and violence between divorced spouses with joint custody has the most adverse consequences for children of any custody option.<sup>40</sup> The long-term effect is intergenerational transmission of abuse, with such children becoming either victims of abuse or abusers as adults. In the shorter term, emotional and physical problems will frequently lead to poor school performance, running away and juvenile delinquency.<sup>41</sup>

Supervised visitation programs, which can ensure the safety of victims of spousal abuse and their children,

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<sup>38</sup> See discussion under recommendation number I(6).

<sup>39</sup> See Roy, Maria. *Children in the Crossfire*. Deerfield Beach, FL.: Health Communications, Inc. 1988.

Jaffe, P., Wolfe, D. and Wilson, S. *Children of Battered Women*. Newbury Park, CA.: Sage Publications, 1990.

Goodman, G. and Rosenberg, M. "The Child Witness to Family Violence: Clinical and Legal Considerations" in Sonkin, *op. cit.*

<sup>40</sup> See Wallerstein, Judith S. and Blakeslee, Sandra. *SECOND CHANCES: Men, Women and Children a Decade After Divorce*. New York: Ticknor and Fields, 1989.

<sup>41</sup> Known family violence should also receive significant consideration in delinquency hearings.

should be available to all persons, regardless of their income.<sup>42</sup> If, after a thorough investigation and forensic custody evaluation, the court does order joint custody or unsupervised visitation, then there is an obligation to ensure measures are taken to protect those at risk.

Determination of custody and visitation of children are ways in which batterers frequently continue their harassment and other abuse. Because of his control and her fear, the battered spouse may agree to custody provisions which are not really desirable for herself or the children. Alternatively, the battered spouse may trade financial support or equitable distribution of assets for more protective custody or visitation. Judges should be sensitive to these dynamics and carefully review custody agreements when there is evidence of family violence.

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<sup>42</sup>The Creative Visitation Program designed by the YWCA of San Diego is a successful example of such a program.

12. *Where a custodial parent removes a child from the jurisdiction of the court, judges should:*

- a) *Issue a warrant for the fleeing parent;*
- b) *Ensure that there is an adequate investigation as to whether family violence had any impact on the flight;*
- c) *Not change underlying child custody orders until such investigation is complete;*
- d) *Put into place orders to protect the children until final resolution.*

One of the unfortunate results of inappropriate or uninformed custody decisions in violent families is that women, in seeking safety for themselves and their children, refuse to allow visitation in apparent contravention of court orders. This can lead to a contempt charge with an *ex parte* award of custody to the violent parent. An instance of flight to avoid abuse should not be considered grounds for modification of custody. In many states, protection of oneself or one's children is grounds for custodial interference.<sup>43</sup> Particularly, when the spouse who has failed to comply with the court's custody or visitation order is not available to explain, judges should be very reluctant to alter custody orders in favor of the spouse who may be or is a known batterer.

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<sup>43</sup> Colorado (preserve child from danger), Florida (protect child from danger; spouse victim of domestic violence), Idaho (parent escaping domestic violence), Illinois (fleeing domestic violence), Louisiana (protect welfare of child), Maryland (child in danger; conditioned), Michigan (child in danger), Missouri (fleeing domestic violence; conditioned), New Hampshire (protect child; conditioned), New Jersey (protect child), Oklahoma (protect child), Pennsylvania (protect child), Vermont (protect child; conditioned), Washington (protect child from physical harm), Wisconsin (protect child; fleeing domestic violence), Wyoming (protect child).

A Pennsylvania Appellate Court recently concluded that if the standard is best interests of the children, then a contempt is insufficient reason to change custody or visitation.

13. *Judges should not mandate mediation in cases where family violence has occurred.*

Because assault of any kind is a serious crime and needs to be treated as such by the courts, mediation of family violence is simply not an appropriate response. Mediation is a process by which the parties voluntarily reach consensual agreement about the issue at hand. Violence, however, is not a subject for compromise. Thus, when the issue before the court is a request for an order of protection or a criminal family violence charge, mediation should not be mandated.

The victim receives no protection from the court with a mediated "agreement not to batter." And a process which involves both parties mediating the issue of violence implies, and allows the batterer to believe, that the victim is somehow at fault.

A more frequently occurring problem is the use of mediation for divorce-related issues in a family where one spouse has been the victim of violence from the other spouse. The pattern of power, control and dominance by the abusive spouse which emerges over time in such relationships, leaves the victim in a position of fear, dependence and weakness. Even if the mediator is aware of the situation, it may be impossible to overcome the power imbalance between the two such that any agreement reached will not truly have been voluntary.

Victims should be clearly informed of alternatives to mediation, and mediation should never be required when there has been family violence. Family court mediators should be trained to screen for violence and act to ensure the victim's safety when it is discovered. Judges should question mediated agreements presented to the court for couples who have current or recent violence, and should suggest that questionable agreements be reviewed by counsel.<sup>43</sup>

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<sup>43</sup> See Lerman, Lisa G., Kuehl, Sheila J., and Brygger, Mary P. *Domestic Abuse and Mediation: Guidelines for Mediators and Policy Makers* Washington, D.C.: National Woman Abuse Prevention Project, 1989.

Kuehl, Sheila J. *Achieving Equal Justice for Victims of Domestic Violence. op. cit.*

## SECTION III: COURT-RELATED AGENCIES

### *Recommendations*

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#### *A. Law Enforcement*

1. *Law enforcement agencies should develop written policies for responding to family violence. These policies should address:*
  - a) *Response priority;*
  - b) *Arrest decisions;*
  - c) *Evidence gathering, and;*
  - d) *Victim services.*
2. *Law enforcement should provide training for all personnel, including supervisors, on departmental policy and the dynamics of family violence.*
3. *When responding to family violence calls, if there are children in the home, law enforcement officers should attempt to determine whether child abuse is present and take necessary steps to protect the children, including referral to Children's Protective Services.*

#### *B. Prosecutors*

4. *Prosecutors should initiate, manage and pursue prosecution in all family violence cases where a criminal case can be proved, including proceeding without the active involvement of the victim if necessary.*
5. *Prosecutors should have specialized family violence personnel and written procedures for prompt screening and charging in family violence cases.*
6. *Diversion should only occur in extraordinary cases, and then only after an admission before a judicial officer has been entered.*

C. *Court Administration*

7. *Every court system should employ a family violence coordinator.*
8. *Court facilities must be designed to provide protection and security for all parties in family violence cases.*
9. *Barriers must be removed which inhibit victims from seeking relief from the court.*
10. *To the extent possible, cases involving the same family and family issues should be consolidated in one court proceeding utilizing the full range of civil and criminal remedies.*
11. *Docket priority should be given to family violence cases in order to prevent recurrence and serious harm to victims.*
12. *All court personnel with responsibility for initial contact and intake in family violence cases should, at a minimum, have special training including the following:*
  - a) *Sensitivity to victims;*
  - b) *Insuring the safety of the victims;*
  - c) *Referring the victim and family members to needed services.*

D. *Probation*

13. *Probation departments should classify family violence offenders in the maximum supervision category and monitor them intensively.*
14. *Probation officers should maintain periodic, private contact with the victim in monitoring compliance with the terms of probation.*
15. *Probation violations of any kind in family abuse cases should be promptly returned to the court for adjudication.*

E. *Advocates*

16. *Victim advocates should assist in family violence cases by:*
- a) *Participating in training and data collection;*
  - b) *Holding the courts accountable;*
  - c) *Working with coordinating councils to suggest and implement system improvements;*
  - d) *Evaluating and advocating for children in violent families;*
  - e) *Advocating the need for additional resources;*
  - f) *Explaining the court processes and procedures to victims and assisting victims in their role as witnesses;*
  - g) *Promoting safety considerations and other needs of family violence victims; and*
  - h) *Asserting victims' rights in the justice system.*

F. *Children's Protective Services*

17. *Children's Protective Service agencies should screen dependency cases for family violence occurring in the home and when necessary provide prompt legal intervention, develop safety plans for victims and provide rehabilitative services aimed at establishing a violence free home.*

G. *Treatment Providers*

18. *Standards for batterers' treatment and education programs should be established and followed. These should include:*
- a) *Ongoing provisions for ensuring the safety of the victim and children;*
  - b) *Monitoring of the offender and periodic reports to the court;*
  - c) *Approaches which are specially designed to address battering issues, and are considered appropriate and adequate by professionals who are experts in family violence;*
  - d) *Eligibility guidelines.*
19. *Treatment and educational providers must submit regular progress and attendance reports to the court or probation department for monitoring and enforcement purposes. In addition, there should be regular review of treatment agencies for compliance with established standards and reporting requirements.*

### III. COURT-RELATED AGENCIES

#### A. Law Enforcement

1. *Law enforcement agencies should develop written policies for responding to family violence. These policies should address:*

- a) *Response priority;*
- b) *Arrest decisions;*
- c) *Evidence gathering, and;*
- d) *Victim services.*

Every law enforcement agency in the country should have written policies ensuring that family violence cases are treated as serious, potentially lethal crimes. These policies should mandate that family violence calls receive priority over less serious personal crimes or property crimes. Guidelines, consistent with state laws, should be provided for arrest decisions. Most states have adopted legislation calling for mandatory or presumptive arrest.<sup>44</sup> Generally, arrest has proven to have a positive deterrent effect.<sup>45</sup> Policies should specify minimum evidence gathering at the time of the incident such as videotapes, photographs, statements or recordings from victims and witnesses and emergency room reports. Because victims in these cases are often unwilling to testify, policies on evidence gathering should be based on the knowledge that the victim may not be available as a witness. Law enforcement policies should instruct officers as to services which should be made available to the victim at the time of the incident. These include transportation to the emergency room or hospital for treatment of injuries; referral or transportation to alternative housing or shelter; protection while gathering necessary belongings; insuring the safety and care of children in the home; and printed information about court processes, whom to contact for information on the case, the badge number and name of the responding officer and how to obtain additional assistance.<sup>46</sup>

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<sup>44</sup> See \_\_\_\_\_, *Arrest in Domestic Violence Cases: A State-By-State Summary*. New York: The National Center on Women and Family Law, 1987.

Goolkasian, Gail A. *Confronting Domestic Violence: A Guide for Criminal Justice Agencies*. Washington, D.C.: U.S. Department of Justice, 1986.

<sup>45</sup> Sherman and Berk, *op. cit.*

Langan and Innes, *op. cit.*

<sup>46</sup> Contact The Multnomah County (Oregon) Family Violence Intervention Project; The Quincy, Massachusetts District Court Probation Department; the Nevada Coalition Against Domestic Violence for sample brochures and information cards.

2. *Law enforcement should provide training for all personnel, including supervisors, on departmental policy and the dynamics of family violence.*

In order for written policies to be effective, all officers responding to family violence calls should be thoroughly trained. They should receive training in the dynamics of family violence, including the battered woman syndrome, the impact on children who are bystanders, and the historical origins of spouse and child abuse. Officers should understand the cycle of violence, the potential lethality of these cases, and the legal obligation of the department to provide protection.<sup>47</sup> Understanding these dynamics will enable law enforcement to appreciate the need for the policies, and respond more sensitively to victims. In order for the policies to be strictly enforced, supervising officers must receive similar training, emphasizing the importance of leadership and their responsibility to hold individual officers accountable for following the policies. Family violence training should be included in basic training, offered regularly at law enforcement training academies and provided to all new recruits.<sup>48</sup>

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<sup>47</sup> Thurman v. Torrington, Connecticut  
Lewis v. Dallas, Texas: Consent Decree  
Nearing v. Weaver: Oregon Tort Case

<sup>48</sup> Excellent training curriculums for law enforcement have been developed. Two are:

*The Law Enforcement Response to Family Violence - National Seminars on Policy Development for Law Enforcement Executives* available through the Victim Services Agency in New York City.

*Domestic Violence: A Training Curriculum for Law Enforcement* by The Family Violence Project, District Attorney's Office, San Francisco.

3. *When responding to family violence calls, if there are children in the home, law enforcement officers should attempt to determine whether child abuse is present and take necessary steps to protect the children, including referral to Children's Protective Services.*

A growing body of research documents the significant negative impact on the children of growing up in a violent home.<sup>49</sup> Bystanders to violence suffer deep and lasting emotional effects which lead to emotional and psychological problems, delinquency, and future battering or victimization. In addition, research indicates a likelihood of 40-80% that children in violent homes are victims of violence themselves.<sup>50</sup> Law enforcement officers frequently have the first official opportunity to intervene on behalf of children. They should note on the incident report whether there are children in the home, and if so, their ages. Their investigation should include a determination of the safety and well being of the children, a records check as to previous or current child abuse allegations, and official filing with Children's Protective Services of any suspected abuse or neglect.

Prior to removal of the children from the home, Children's Protective Services must investigate immediately and take protective measures to maintain children within the home with the non-abusive parent if possible. However, pursuant to PL 96-272, officers should not remove children from the home unless they are in immediate danger, or until reasonable efforts have been made to allow the children to remain in the home with services and assistance provided to make the home violence-free. Reasonable efforts should include removal of the perpetrator from the home if necessary.

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<sup>49</sup> Roy, *op. cit.*

Jaffe, Wolfe and Wilson, *op. cit.*

Goodman, in Sonkin, *op. cit.*

<sup>50</sup> Hofford, M. and Gable R, "Significant Interventions: Coordinated Strategies to Deter Family Violence" in *Families in Court op. cit.*

Roy, *op. cit.*

Correspondence from Sarah M. Buel, Esq. Harvard Law School - recent studies at Boston City Hospital and Boston Children's Hospital have documented a 60-70% correlation between spouse and child abuse.

**B. Prosecutors**

4. *Prosecutors should initiate, manage and pursue prosecution in all family violence cases where a criminal case can be proved, including proceeding without the active involvement of the victim if necessary.*

The prosecution of family violence cases is a matter of state interest; thus, it is the responsibility of the state to move the case forward. Victims must not be placed in the position of initiating and managing their own cases. Nor should they make decisions to proceed or withdraw. Family violence victims are confronted with pressures that other assault victims do not face. These may include prospective economic hardship, ambivalence about the relationship and issues surrounding the children. A relatively high percentage of them will request that their cases be dismissed. However, a number of jurisdictions have discovered that the withdrawal rate is significantly lower when victims are relieved of the burden of the decision to prosecute.<sup>51</sup> Many victims will testify once ordered to do so by the court. In fact, a number of courts have discovered that victims are more willing and able to testify when they receive emotional support and advocacy from victim assistance personnel.<sup>52</sup>

Further, as experience and special expertise with these cases grows, prosecutors are more and more skilled at proving cases in court even with a hostile or reluctant witness. This can be accomplished with the development of other evidence such as tape recordings of the 911 call for help; neighborhood or family witnesses to the violence; histories of emergency room treatment; law enforcement testimony; written, audio or video taped statements by the victim at the time of the incident; and expert witnesses.<sup>53</sup> By controlling the criminal process, the prosecutor provides a powerful message that the offender or other family members may not avoid criminal sanctions through their control over the victim or refusal to cooperate.

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<sup>51</sup> See for example, San Francisco; Indianapolis; Westchester County, N.Y.; Los Angeles; Seattle.

<sup>52</sup> Goolkasian, *op. cit.*

<sup>53</sup> See: Lemon, Nancy K.D. *Domestic Violence: The Law and Criminal Prosecution, op. cit.*

5. *Prosecutors should have specialized family violence personnel and written procedures for prompt screening and charging in family violence cases.*

A specialized family violence unit ideally includes a district attorney in charge of prosecution in family violence cases, victim assistance professionals or volunteers and specially trained investigators. In addition to handling the prosecution of cases, the family violence unit staff should coordinate policy and efforts with law enforcement, probation, social services, shelters, advocates, judges, emergency rooms, and others. Whenever possible, the same deputy should handle the case from start to finish.

Written procedures should specify criteria for charging, time frames for case processing, principles for declining or not declining, and steps for investigation and case preparation.

In determining whether to issue a case and choosing between misdemeanor and felony charges, consideration should be given to the seriousness of the victim's injuries, the defendant's history of violence and other criminal activity, use of weapons and the potential lethality of the situation. Given the dynamics of domestic violence and the likelihood of recurrence, case processing should be expedited. Cases should be declined solely on the basis of the available evidence. The investigation should begin ideally within 24 hours of the incident since this is the best time to obtain a written or recorded statement from the victim and to take photographs of injuries. Additional methods of investigation have been developed specially for family violence cases and should be followed.<sup>54</sup>

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<sup>54</sup> *ibid.*

6. *Diversion should only occur in extraordinary cases, and then only after an admission before a judicial officer has been entered.*

Concerns about the use of diversion in family violence cases arise when it is used as a calendar management tool, when first offenders are long term abusers, when the required treatment is only of brief duration and is not monitored, and, perhaps most important, when the use of diversion is perceived as a less than serious response to the crime. If diversion is used, policies and guidelines must be in place requiring a determination of the offender's eligibility and suitability.<sup>55</sup> Further, appropriate batterer's treatment must be required,<sup>56</sup> and it must be monitored.

If diversion is to be used, it should be with the consent of the State and the victim. It is a matter within the court's discretion, and a hearing should be required during which the defendant must first plead guilty or no contest.<sup>57</sup> In this manner, the defendant can be sentenced without re-setting the trial if the diversion requirements are not met. It should be incumbent upon the prosecutor to bring any failure of compliance to the court's attention. All grants of diversion must include an order of protection for the victim prohibiting the defendant from further abuse or harassment of any kind and possibly banning all contact with the victim.

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<sup>55</sup> See Lemon, Nancy K.D. *Domestic Violence: The Law and Criminal Prosecution, op. cit.* for checklists on suitability and eligibility.

<sup>56</sup> See recommendation number III (18) for a discussion of standards for batterer's treatment programs.

<sup>57</sup> See Kuehl, S.J. *op. cit.* for special findings regarding post-plea domestic violence diversion p.7 & 53.

Family Violence Recommendations, Section III: Court-Related Agencies

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*C. Court Administration*

*7. Every court system should employ a family violence coordinator.*

Domestic violence cases are typically handled by civil, criminal and family courts, and by multiple practitioners such as counselors, probation officers, shelter workers, victim advocates, drug and alcohol treatment and social service providers. The result can be conflicting and unreasonable demands on victims, inconsistent monitoring and handling of offenders, and failure to coordinate resources to interrupt the cycle of violence. Therefore, it is important that court systems have a staff person assigned to coordinate and bridge these various systems. The coordinator's responsibilities should include streamlining procedures; insuring adequate victim assistance; consolidating and/or coordinating court processes and case information; and serving as liaison with law enforcement, treatment services, Childrens Protective Services, victims assistance, advocates, probation departments, and other relevant agencies. The coordinator may also be assigned to staff the local family violence coordinating council. When necessary, the coordinator should be in a position to intervene in individual cases.

8. *Court facilities must be designed to provide protection and security for all parties in family violence cases.*

Victims and witnesses awaiting hearings in family violence cases are frequently intimidated by defendants in the same room or waiting area. There have been instances in which victims in such circumstances were harmed. In one case a probation department was found liable for failure to protect a victim who had expressed fear and requested to wait in the probation officer's office.<sup>58</sup> Courts must provide secure, separate waiting areas for victims in family violence cases because of the likelihood of threat, intimidation, harassment and recurring violence.

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<sup>58</sup>Baker v. City of New York (1966)

9. *Barriers must be removed which inhibit victims from seeking relief from the court.*

Victims entering the court system seeking assistance or relief from family violence are frequently faced with a series of discouraging barriers and obstacles. These include physical barriers, procedural and processing barriers and attitudinal or personnel barriers.

Examples of physical barriers are:

- departments that are difficult to locate;
- lack of privacy during interviews or while obtaining assistance from the clerk in filling out protection order requests;
- lack of day care or appropriate space for young children who must accompany their mothers to court;
- lack of secure and protected waiting areas.<sup>59</sup>

Procedural and processing barriers include:

- numerous and complicated forms to fill out;
- forms not written in the language of significant minority populations;
- fees which are not waived or reduced according to the victim's ability to pay;
- lengthy processing times and delays with numerous appearances;
- hearings in several different courts and buildings;
- lengthy delays between issuance and service of orders;
- lack of victim assistance, advocacy or representation.<sup>60</sup>

Attitudinal and personnel barriers include:

- gender bias on the part of court personnel;
- workers having little training or knowledge of family violence dynamics, appropriate court responses and local resources;
- attitudes on the part of clerks, prosecutors and judges that these cases are unimportant;
- lack of understanding, sensitivity or appreciation of the courage it took for the victim to be there.<sup>61</sup>

Courts must examine their facilities, procedures, personnel attitudes and training agendas to identify and remove these barriers to victims. Outside input should be sought from victims and advocates to expedite this effort. When the court fails to treat victims effectively and fairly, it contributes to their victimization.

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<sup>59</sup> See Quincy District Court for examples on low-cost solutions to architectural barriers

<sup>60</sup> See Portland, Oregon Circuit Court for examples of streamlined and culturally sensitive forms and informational brochures. See the Family Court of Hawaii, Honolulu for streamlined procedures.

<sup>61</sup> See recommendation number III (12) on training to overcome personnel and attitudinal barriers.

10. *To the extent possible, cases involving the same family and family issues should be consolidated in one court proceeding utilizing the full range of civil and criminal remedies.*

A large majority of violent families have serious, multiple dysfunctions and frequently have other actions such as divorce, custody, restraining orders, delinquency and child abuse pending elsewhere in the court system. When appropriate, coordination and consolidation of these cases would provide for improved efficiency and effectiveness. In courts of general jurisdiction, such coordination may be accomplished by procedure or court rule rather than structure. A unified family court, with civil and criminal (including felony) jurisdiction, such as that which exists in Hawaii and is being considered in California, is the ideal setting in which to consolidate proceedings, coordinate family information, and issue orders and dispositions with a consistent view towards ending family violence and protecting victims.<sup>62</sup>

Alternatively, court systems in large urban areas might explore the possibility of creating a specialized court with subject matter jurisdiction over all family violence cases so as to allow for speedy, comprehensive dispositions of all aspects of the family's cases, whether civil, criminal, domestic or juvenile.<sup>63</sup>

At the very least, court systems must provide for mandatory family case information-sharing between the various courts in one jurisdiction or throughout the state.<sup>64</sup>

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<sup>62</sup> For a thorough discussion of the issues and recommendations see: Hofford, *Families in Court*, *op. cit.*

*California Child Victim Witness Judicial Advisory Committee Final Report*, California Attorney General's Office: Sacramento, 1988.

<sup>63</sup> See Indianapolis, Indiana and Chicago, Illinois for examples of specialized family violence courts.

<sup>64</sup> The *California Child Victim Witness Report op. cit.* contains specific recommendations.

*11. Docket priority should be given to family violence cases in order to prevent recurrence and serious harm to victims.*

The FBI reports that 30 percent of female homicide victims are killed by their husbands or boyfriends. Studies also show that in most violent relationships, the violence increases in severity and frequency over time. Once a person is victimized by family violence, the risk of being revictimized is high. Several reports have concluded that victims of family violence are especially vulnerable to retaliation or threats by the defendant during the pre-trial period.<sup>65</sup> An occurrence of family violence before the court, therefore, is a reliable predictor of additional violence in the future.

Due to the vulnerability of victims, likelihood of additional violence and probability that strict restraining orders and pre-trial conditions have been placed upon the defendant, courts must expedite docketing and processing of these cases. Arraignments should be set preferably before pre-trial release, but no later than seven days after arrest, with trials set 30 to 40 days after arraignment. Long delays before trials not only leave victims vulnerable to more violence, but decrease the likelihood that they will be supportive witnesses during the trial. Sentencing should be imposed as soon as practicable after a trial resulting in a conviction.<sup>66</sup>

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<sup>65</sup> See *FBI Uniform Crime Reports, 1985*

Langan and Innes, *op. cit.*,

Goolkasian, G., *Confronting Domestic Violence: The Role of Criminal Court Judges*. Washington, D.C.: National Institute of Justice: Research in Brief, U.S. Department of Justice, 1986.

<sup>66</sup> See rules and procedures from the State of Hawaii Family Court, First Circuit (Honolulu).

12. *All court personnel with responsibility for initial contact and intake in family violence cases should, at a minimum, have special training including the following:*

- a) *Sensitivity to victims;*
- b) *Insuring the safety of the victims;*
- c) *Referring the victim and family members to needed services.*

Many problems with the court's response to family violence cases stem from not understanding the complex issues surrounding them. Special training should be provided to all court personnel who have initial contact with victims. An understanding of the dynamics of family violence and the cycle of violence will help increase sensitivity to the needs of victims. Training should emphasize the need to ensure that the victim and other family members are safe from immediate danger, that they have a safe place to stay, that adequate measures are taken to protect them from further violence, and that there are safety plans in place for the victim and other family members. Further, court staff having initial contacts with victims of family violence should be familiar with available services such as victim advocates, battered womens' shelters, various counseling and treatment centers, and children and family services. Victims should be referred and assisted in obtaining needed services. Training for court staff should be updated and offered regularly for the benefit of new staff.

**D. Probation****13. Probation departments should classify family violence offenders in the maximum supervision category and monitor them intensively.**

The factors generally considered relevant to determining risk and probation supervision levels include:

- severity of offense
- prior criminal history
- history of violent behavior
- drug and alcohol abuse
- access to victims
- employment history.

By any categorization scheme, perpetrators of family violence require maximum supervision. The reasons are numerous: the risk of recidivism is extremely high; the community is at risk of future violence; the great majority of offenders have substance abuse problems; it is likely they have committed the crime a number of times in the past; these offenders typically rationalize their criminal behavior; they know and have easy access to their victims; and they are likely to have come from a violent home and perhaps suffered abuse as a child.<sup>67</sup>

Maximum supervision entails more frequent contacts with the offender, at least once per week. Probation officers also need to closely monitor attendance at batterers' treatment and alcohol and drug treatment. Conditions of any co-terminus civil protection or restraining orders must also be enforced. In addition to refrain from abuse or no contact, the orders may call for supervised child visitation or child support payments.<sup>68</sup> Lastly, the probation officer should make efforts to ensure the safety of victims and other family members by maintaining regular, direct contact with the victim.

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<sup>67</sup> See Klein, A. *op, cit.*

<sup>68</sup> The Quincy District Court Probation Department collects over \$125,000 per year in child support payments from family violence offenders.

*14. Probation officers should maintain periodic, private contact with the victim in monitoring compliance with the terms of probation.*

Probation officers should maintain contact with the victim to ensure safety, offender accountability and rehabilitation. In order to enforce any stay away or protection orders, the probation officer must check with the victim, particularly in cases where the victim may be threatened and afraid to volunteer such information or psychologically disabled from doing so. In many cases, the victim and offender will reside together. By keeping in contact with the victim and conducting unannounced home visits periodically, the probation officer can help empower the victim to better protect herself and help make sure the probationer does not backslide into abusive behavior patterns. However, the victim should never be placed in the position of monitoring and reporting on the offender. Rather, the probation officer should make it clear that it is the state that is responsible for enforcing the court's order, and the regular contacts with the victim are for the purpose of insuring her safety.<sup>69</sup>

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<sup>69</sup> See A. Klem, *op. cit.*

15. *Probation violations of any kind in family abuse cases should be promptly returned to the court for adjudication.*

Studies have found a direct correlation between violations of technical conditions of probation (violations which, in themselves, do not constitute new crimes) and subsequent criminal violations (new crimes).<sup>70</sup>

Unlike social and human service agencies that must rely on voluntary participation of clients, probation officers are in a position to demand offender accountability. It is incumbent upon the probation officer to react strongly at the first sign of noncompliance on the part of the offender and not wait for a criminal offense to occur. To prevent a future assault, the probation officer should hold the offender accountable at the first violation of probation. To bring a case forward for revocation hearing before the court does not mean the probation officer must or should ask for long term incarceration of the offender if the violation is found. Instead, it may be appropriate and effective to recommend that the judge impose tighter supervision conditions, community work service orders, incarceration or other sanction. A system of imposing incremental sanctions for noncompliance may be appropriate for directing offenders away from long rooted patterns of behavior.<sup>71</sup>

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<sup>70</sup> See Brown et. al., *Executive Summary of Research Findings From the Massachusetts Risk/Need Classification System, Report #5* (Mass. Office of Commissioner of Probation 1984).

<sup>71</sup> Called "tourniquet sentencing" by Quincy, MA Judge Albert L. Kramer, this sentencing and enforcement technique is discussed in detail in A. Klein, "When Should You Send A Probationer Back To Jail?" *JUDGES JOURNAL* (Winter 1989).

**E. Advocates****16. Victim advocates should assist in family violence cases by:**

- a) *Participating in training and data collection;*
- b) *Holding the courts accountable;*
- c) *Working with coordinating councils to suggest and implement system improvements;*
- d) *Evaluating and advocating for children in violent families;*
- e) *Advocating the need for additional resources;*
- f) *Explaining the court processes and procedures to victims and assisting victims in their role as witnesses;*
- g) *Promoting safety considerations and other needs of family violence victims; and*
- h) *Asserting victims' rights in the justice system.*

Advocates have become more and more active in court reform for family violence cases. As courts increasingly embrace reforms, advocates can play a very helpful role. Advocates serve as the bridge between the victim and the justice system. They should also work with the justice system to identify areas needing improvements. They should lend expertise in these matters to family violence coordinating councils, and assist in the data collection tasks necessary to document the need for changes, additional resources and specialized personnel. Their assistance in training court personnel can be invaluable. In working with victims, advocates should help them understand the complexities and limitations of the court system, and make referrals to other agencies for those problems the courts cannot appropriately solve. Perhaps one of the most important roles advocates can play is as advocate for the hidden victims in these cases - the other family members who are bystanders to violence. Advocates should insure that needed services are provided to children in violent families, and that the children are not ignored by the court. Lastly, advocates should hold courts accountable for improperly handled cases by bringing them to the attention of those in charge.<sup>72</sup>

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<sup>72</sup>See Harrell, Adele V. *Domestic Violence Victim Advocates in the Criminal Justice System: What Do They Do and How?*. Paper presented at the Second National Conference on Working With Batterers. Baltimore, 1989.

*F. Childrens' Protective Services*

17. *Children's Protective Service agencies should screen dependency cases for family violence occurring in the home and when necessary provide prompt legal intervention, develop safety plans for victims and provide rehabilitative services aimed at establishing a violence free home.*

Recent studies have found a 60-70% correlation between spouse and child abuse.<sup>73</sup> Growing up in a home where family violence is occurring is in itself a form of child abuse. Children in these homes suffer from low self-esteem, poor school attendance, poor social skills, delinquency, hyperactivity, nightmares, bedwetting, violent behaviors and drug/alcohol abuse. They are far more likely to have serious emotional and psychological problems and to become abusers and victims of violence as adults. Children's Protective Service agencies must develop methods of screening referrals for multiple abuses occurring in families. Referrals and reports of child abuse from judges, shelter workers, law enforcement officers and probation officers involved in a case of spouse abuse must be taken very seriously.

Upon discovering multiple violence in a family, prompt legal intervention may be necessary. CPS staff should be familiar with court processes and procedures for obtaining restraining or protective orders. They must also cooperate and facilitate appropriate exchange of information with courts and agencies involved with the family. A primary consideration should be the immediate and long-term safety of the abused family members. It may be necessary to remove the perpetrator from the home while a variety of services are provided to all family members.

Agencies responsible for protecting children must develop responses to child abuse which do not further victimize an abused spouse by inappropriately holding her accountable for the violence in the home, or removing children from the home before services have been provided, which could enable the mother to provide for and protect herself and her children. Services might include: counseling, parenting classes, financial support, food, clothing, housing, day care, drug or alcohol treatment, children's counseling, life skills training, transportation, and employment training and placement.

Reasonable efforts should be aimed at providing a violence free home for the children and the non-abusing spouse until the abusive spouse has completed appropriate treatment programs.<sup>74</sup>

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<sup>73</sup> See Roy, *op. cit.*  
Jaffe, Wolfe and Wilson, *op. cit.*  
and recent studies at Boston Children's Hospital.

<sup>74</sup> For a discussion of the role of child protective workers and abused women, see Cummings, N. and Mooney, A. "Child Protective Workers and Battered Women's Advocates: A Strategy for Family Violence Intervention, *RESPONSE*, Vol.11, No.2 (1988).

### G. Treatment Providers

18. *Standards for batterers' treatment and education programs should be established and followed. These should include:*

- a) *Ongoing provisions for ensuring the safety of the victim and children;*
- b) *Monitoring of the offender and periodic reports to the court;*
- c) *Approaches which are specially designed to address battering issues, and are considered appropriate and adequate by professionals who are experts in family violence;*
- d) *Eligibility guidelines.*

Courts which have improved their policies and procedures for family violence cases have found a dramatic increase in numbers for both civil and criminal cases.<sup>75</sup> Naturally, this creates pressures on resources, particularly batterers' treatment services which have been virtually non-existent. With this void of services, several locations have experienced the hasty development of services by providers who have little or no expertise in the area of battering. Inappropriate approaches might be those which orient themselves toward the couple before dealing with the offender's criminal behavior; focus on anger control without dealing with the underlying issues of self esteem, power and control; or approaches which put the needs of the offender above the needs of the court system for accountability and victim safety. Such approaches not only will be ineffective in dealing with the battering behavior, they put the victim at substantial risk of revictimization.

Standards for batterer's treatment and education programs should be established in each jurisdiction and followed by the court and probation department. Referrals and court-ordered treatment should only be made to service providers who meet particular standards. At a minimum, standards should include philosophical and treatment approaches which have been approved by recognized experts in batterer's treatment. It is paramount that these programs ensure the ongoing safety of the victim and other family members. Program personnel should be required to report regularly to the court regarding the offender's attendance and progress in treatment. Finally, they should follow established eligibility guidelines and screen offenders for suitability.<sup>76</sup>

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<sup>75</sup>In larger cities, caseloads have increased as much as 300%. Two to three hundred trials and restraining order petitions per month are typical.

<sup>76</sup>See *Colorado Standards for the Treatment of Domestic Violence Perpetrators*, 1989 and *The Denver Domestic Violence Manual*, 1986.

Lemon, Nancy. *California Benchguide op. cit.* for suitability and eligibility checklists.

Ganley, in Sonkin *op. cit.*

19. *Treatment and educational providers must submit regular progress and attendance reports to the court or probation department for monitoring and enforcement purposes. In addition, there should be regular review of treatment agencies for compliance with established standards and reporting requirements.*

Generally counseling and treatment agencies are given latitude in their court reporting practices to establish a trusting therapeutic relationship with the offender. Additionally, some treatment agencies such as alcohol and drug treatment and Children's Protective Services may be prevented from routine reporting by state and federal confidentiality laws. The goal of preserving trust in therapeutic relationships is desirable. Nevertheless, due to the potential lethality and the vulnerability of the victims in family violence cases, batterers' treatment and educational providers must provide regular reports to the court on both the offender's attendance and progress in treatment. Also, where federal confidentiality laws apply, the court must carefully weigh the potential harm to the victim in considering whether to require the submission of confidential information.

The treatment agency's responsibility is to provide the reports, meet the established standards and comply with the reporting requirements. Probation departments should engage in regular reviews which should include on-site visits during a time when treatment or educational groups are in progress. Agencies which do not meet the standards should be suspended until they are in compliance.

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