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Foreword

I am pleased to present the monograph, *DOMESTIC VIOLENCE: Prosecutors Take the Lead* prepared by the American Prosecutors Research Institute, which examines the prosecutor's role in domestic violence cases. Funded by the Bureau of Justice Assistance (BJA), the text focuses on policy issues and the changing role of the prosecutor in domestic violence cases.

Recently, law enforcement officials and representatives from the criminal justice system as well as the media and general public have begun to treat domestic violence as a distinct and significant crime problem. Previously, disputes between intimates were treated as private matters. In numerous cases, the victim was blamed and the offender left unpunished. As a result of the changes in public attitudes toward domestic violence, law enforcement and the justice system's response has intensified to address violent and abusive domestic crimes.

BJA is working with law enforcement officers, prosecutors, and judges to dispel the public's attitude that acts of domestic violence are private disputes not fit for public scrutiny or legal judgment. During the last two decades, spouse/partner abuse has been recognized more and more not only as a critical societal problem but as a crime. As a result, the use of the criminal process in addressing family and domestic violence has also increased.

An important part of this approach has been the Department of Justice's focus on preventing family violence as well as achieving just outcomes in individual cases. Since the President's signing of the Violent Crime Control and Law Enforcement Act in September, 1994, the Violence Against Women Act has supported efforts to address criminal justice policy issues raised by domestic violence. BJA's mission in this effort is

to provide leadership and assistance in support of local criminal justice strategies to achieve strong neighborhoods and safe communities. This monograph helps achieve that goal by focusing on the challenges prosecutors face and the multi-disciplinary strategies employed by local prosecutors' offices. BJA applauds the American Prosecutors Research Institute's effort to meet State and local prosecutors needs in prosecuting domestic violence crimes.

Given the important role of the criminal and civil justice systems, the limited resources available to address domestic violence, and the goals relative to intimate abuse that are embodied in the Violence Against Women Act, it is important that all components of the criminal justice system closely examine current domestic violence prevention efforts, prioritize the use of available funds and resources, and coordinate efforts within the Department and with other responsible Federal agencies.

This report represents an important step in analyzing and synthesizing what actions still need to be undertaken to effectively address domestic violence. It will serve as a guide for local prosecutors and individuals who work within the criminal justice system, emphasizing the need for collaboration within the criminal justice system and between policymakers at the Federal, State and local levels. I look forward to building effective partnerships with public and private criminal justice representatives to improve the methods we deal with and treat domestic violence.

Nancy E. Gist
Director
Bureau of Justice Assistance
U.S. Department of Justice



Acknowledgments

The American Prosecutors Research Institute (APRI) is pleased to provide criminal justice practitioners nationwide with a publication documenting innovative policies and practices for the prosecution of domestic violence cases. This publication could not have been completed without the efforts of numerous individuals. APRI is grateful to the individuals who participated in giving the book its direction and focus: Barbara Hart, Battered Women's Justice Project; Mimi Rose, Assistant District Attorney, Philadelphia, Pennsylvania; Leslie Landis, Victim Advocate, Chicago Illinois, and Molly Chaudhuri, Domestic Violence Consultant, Newton, Massachusetts.

The dedication and commitment of APRI staff to researching the subject matter, collecting information, authoring various sections of the work, and coordinating the drafts and editing the monograph cannot be overlooked. APRI recognizes the outstanding work of the following individuals:

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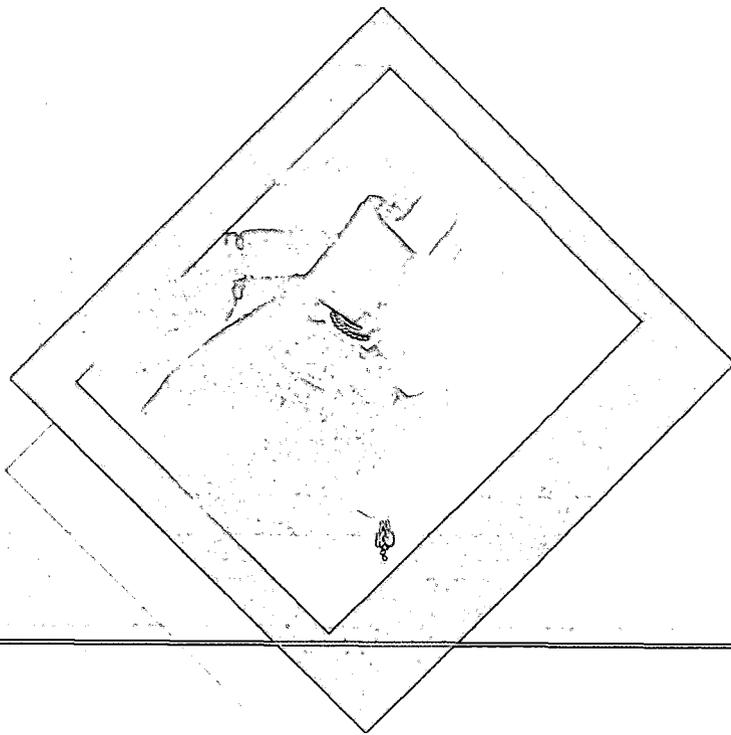
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Introduction

1

During the past decade, our society has become more aware that domestic violence is pervasive and lethal. The U.S. Department of Justice reports that every fifteen seconds a woman in the United States is physically abused by an intimate partner.¹ About 1.7 million women annually experience violence committed by a relative or acquaintance.² Every year, domestic violence claims the lives of 2,000 to 4,000 women in this country.³ Domestic violence is the leading cause of injury for women treated in hospital emergency rooms—more common than car crashes, rapes, and muggings combined.⁴ These women are not the only victims of domestic violence.⁵ Batterers often strike out at children, other family members, or anyone supporting the victim, especially as she attempts to flee the abusive situation. Society also incurs immediate and severe financial costs from this crime. The Colorado Domestic Violence Coalition reports that domestic violence-related medical expenses cost the country \$3 to \$5 billion annually and that each year businesses lose \$100 million in wages, sick leave, absenteeism, and nonproductivity resulting from domestic violence.⁶ These staggering costs are borne by all sectors of society.

Domestic violence is not a new phenomenon. All evidence indicates its historical acceptance across most cultures and continents.⁷ Increased media attention and public outrage over highly publicized cases have brought the extent and severity of this crime into the public consciousness. Batterers, however, do not necessarily fit the public's image of "criminals," which creates problems for prosecutors. Batterers may be lawyers, doctors, judges, police officers, or other professionals. Our society, unfortunately, is reluctant to brand these people as offenders. Easily identifiable populations of "victims" and "batterers" simply do

Introduction

¹ Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Report to the Nation on Crime and Justice* (October 1983).

² Bachman, U.S. Dep't of Justice, *Violence Against Women: A National Crime Victimization Survey Report* (1994).

³ Metropolitan King County Council, *'The Spiral of Violence,' Domestic/ Dating Violence: An Information And Resource Handbook* at 9 (1994).

⁴ The Urban Institute, *Family Violence: A Guide To Research On Family Violence 1* (1993).

⁵ A wide variety of authoritative sources indicate that at least 95% of abusers are men who batter women. See, American Prosecutors Research Institute, *Parental Kidnapping, Domestic Violence And Child Abuse: Changing Legal Responses To Related Violence 2* n.6 (1995). Consequently, references to victims of abuse and batterers in this monograph will reflect this gender-based reality.

⁶ Colorado Domestic Violence Coalition, *Domestic Violence For Health Care Providers*, (3d ed. 1991).

⁷ Instructional Aides, Inc., *Domestic Violence: No Longer Behind The Curtains* (1983).

not exist.⁸ Batterers and victims come from all age, racial, ethnic, religious, economic, professional, and geographical backgrounds. Prosecutors, advocates, judges, and law enforcement officials, therefore, should respond to continuing misconceptions about domestic violence and educate the public as to the true nature of this crime.

The prosecutor's and advocate's roles in preventing domestic violence are fundamental. This monograph will inform prosecutors, advocates, and criminal justice personnel of the issues domestic violence raises by:

- apprising prosecutors and advocates of relevant civil and criminal laws, and legislative and procedural trends;
- discussing the merits and drawbacks of written policy statements;
- explaining why and in what areas prosecutors, judges, police, and health care providers need training;
- exploring effective alliances between agencies;
- discussing advantages and disadvantages of both family and domestic violence courts; and
- examining the intersections between civil protective order law and criminal law and between family law and criminal law.

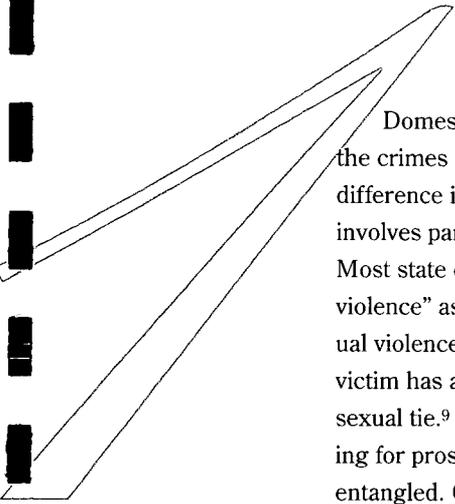
This information will help prosecutors serve as more effective leaders, bring together members of the community, and heighten local awareness of domestic violence. Only by working together can we decrease the overall level of domestic violence in the local community. Before dealing with specific aspects of combating domestic violence, a general understanding of domestic violence crimes is necessary.

⁸ Although domestic violence affects all demographic groups, the Bureau of Justice reports that:

- women aged 19 to 29 are more likely to be battered;
- women from households with incomes lower than \$10,000 are more likely to be battered;
- among battered women, those separated from their husbands were about three times more likely to face abuse than divorced women and about 25 times more likely to face abuse than married women; and
- urban women were slightly more likely to face domestic violence than suburban or rural women.

See Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Violence Against Women: Estimates from the Redesigned Survey 4*, Washington, D.C. (1995).

I. The Unique Characteristics of Domestic Violence



Domestic violence is different from most of the crimes prosecutors confront. The first major difference is that domestic violence, by definition, involves parties who are in a close relationship. Most state criminal statutes define “domestic violence” as actual or threatened physical or sexual violence committed by a person with whom the victim has a familial, marital, romantic, and/or sexual tie.⁹ Domestic violence cases are challenging for prosecutors because the parties’ lives are entangled. Often, the victim and offender are married and have children. Consequently, when the victim decides to seek legal protection from an abusive partner, the victim may also be contemplating divorce, assuming greater financial responsibility, and engaging in child custody and visitation battles. Prosecutors should always be cognizant that the victim is going through an extremely distressing experience.

⁹ Although not covered by most state criminal statutes, emotional, psychological, and verbal abuse constitute equally devastating forms of intimate physical violence.

¹⁰ *Annals Of Emergency Medicine*, 16:10 at 1158 (October 1987).

¹¹ Common threats by batterers include threats of physical violence to the victim or her loved ones, harming himself (e.g., suicide, substance abuse), withholding money, reporting the battered woman to the welfare department or other social service agencies with a variety of false accusations (e.g., child neglect), property destruction (e.g., killing a pet or something of value to her), public disclosure of potentially embarrassing secrets, defamation, and deportation or some other harmful change in immigration status for immigrant battered women.

¹² Lenore Walker, *The Battered Woman* (1979).

The victim’s reluctance to come forward is another unique characteristic of the crime of domestic violence. Frequently, a batterer abuses a victim over a long period of time. The results are serious physical injury, psychological harm, and a victim who is afraid to seek help.

Typical physical injuries inflicted by a batterer include broken bones, lacerations, burns, internal injuries, serious bruising, black eyes, miscarriages resulting from trauma to the abdomen, forced sexual encounters, head trauma, gunshot and stab wounds, and death. Research indicates that the victim’s response, including fear, shock, disbelief, and denial, is comparable to that of victims of war and civil disasters.¹⁰ Typical coercive tactics and psychological abuse inflicted by a batterer include verbal abuse, humiliation, threats, physical and social isolation, deprivation, denial or downplay of the violence, threats to children and other loved ones, and economic control.¹¹

The batterer often engages in a cyclical pattern of violence. Tension builds through increasingly violent behavior, psychological and physical; followed by a crisis, usually a violent episode; followed by a period of apology, contrition, relative calm, and even romance. This cycle repeats, generally becoming more rapid, with the batterer inflicting more severe injuries each time.¹²

In coping with this cycle of violence, many victims fear seeking prosecutorial intervention because the batterer may retaliate, causing even more serious injury. Unfortunately, this fear is warranted. A victim, studies show, is most likely to be seriously injured or killed when she is fleeing her abuser.¹³ For many victims, who have previously experienced inadequate police and court response, this fear is compounded by a lack of confidence in police and prosecutors' ability to protect them from retaliation. Thus, when a victim contemplates seeking help from the criminal justice system, she may waver. Prosecutors handling domestic violence cases should remain aware of the hurdles these victims face and understand the many reasons that battered women have for remaining in abusive relationships. A battered woman may remain with her batterer because of his threats; his promises to reform; her embarrassment or self-blame; her love for the batterer; a lack of financial support; her religious convictions; or a lack of understanding of the judicial process. For example, for each court date the victim must arrange for transportation to and from the courthouse, child care, and time off from employers who are not always willing to cooperate.¹⁴

Training has improved law enforcement's capacity to handle domestic violence cases, but the very private and complex nature of domestic violence continues to make policing and legal resolution challenging, which leads to the final broad characteristic of domestic violence cases: Evidence may be scarce, and witness corroboration is rare. Often, the batterer abuses the victim in their home. Independent physical evidence such as 911 tapes, photographs, medical reports, and eyewitness corroboration rarely exist to document the occurrence and severity of the physical abuse. Compared with injuries suffered

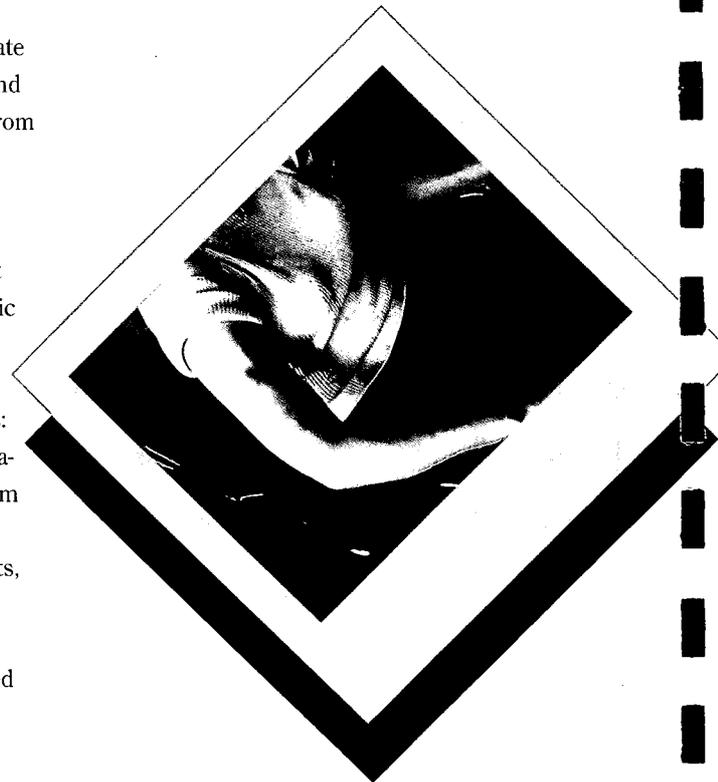
in other crimes, signs of domestic violence may be obscure. Finally, unlike many defendants charged in other crimes, batterers often lack prior records, and may appear to be law-abiding and peaceful.

These factors make it difficult to prosecute a batterer, even when a victim is willing to cooperate with the prosecution. Increased police awareness and training can result in complete, detailed, and accurate police reports that corroborate evidence of battering. Prosecutors should conduct intensive investigations, maintain contact with the victim, plan well thought out strategies, and make detailed motions. Prosecutors should also address the victim's safety, finances, and psychological well-being.

As a consequence of these characteristics of domestic violence, prosecutors should approach domestic violence cases differently, and with different goals: Victim safety should be the highest priority, higher than conviction. ▲

¹³ Domestic violence literature indicates that battered women and their children are at greatest risk when the criminal justice system is engaged. Law enforcement can play a critical role in minimizing the level of danger. Questions involving the need for a safety net, surveillance, and type of protection are difficult ones for battered women and prosecutors to assess and at times, result in lethal consequences. Most battered women slain by an intimate partner had, or were in the process of obtaining, some type of legal protection. See Sonkin et al., *The Male Batterer: A Treatment Approach* (1985) and Browne, *When Battered Women Kill* (1987).

¹⁴ Barbara J. Hart, *Battered Women and the Criminal Justice System*. Am. Behavioral Science 1992.



II. The Role of the Prosecutor in Domestic Violence Cases

Traditionally, the role of the prosecutor has been to hold offenders who violate criminal statutes accountable for their actions, the goal being conviction. In domestic violence cases, however, the prosecutor should make the victim's safety the first priority, because domestic violence victims are in greatest danger when they attempt to seek help.¹⁵ The prosecutor, therefore, should redefine "success" and "winning" in light of the special characteristics of domestic violence. Success, in domestic violence cases, is attaining the victim's safety. Conviction may be part of securing the victim's safety. In many jurisdictions, prosecutors must sign off on whether to accept charges filed by police. In these areas, prosecutors who strive for conviction first and safety later may allow "weaker" cases to slip through the cracks of the system (by rejecting them for prosecution), despite a substantial risk of repeated violence. Houston Police Department Sergeant Sandy Kline reports the frustration that can arise in such a scenario. "My agenda is probable cause; [the Assistant District Attorney's] agenda is, 'Can I win this case in court?' It's the 'Mother May I' system."¹⁶

Many jurisdictions boast of their high conviction rates for domestic violence cases, yet these jurisdictions are often screening out the "push and shove" cases, or the cases in which there is no corroborating evidence, other than the victim's testimony. This screening is not in the interest of the victim, but rather seeks to ensure a conviction with or without the victim's cooperation. The cases that are completely dependent upon the victim's testimony (e.g., slap or push) often never make it to the courtroom because prosecutors are too concerned that losing these cases will result in a decrease in conviction rates. This concern is extremely detrimental to the victim and sends the message that unless a victim's injuries are substantial, the criminal

justice system will not help her. It is imperative when reviewing an office's conviction rate to inquire whether cases with no independent corroboration are accepted. Prosecutors' offices should move away from boasting about conviction rates toward making decisions based on victim safety.

Ideally, prosecutors should treat each case individually, making informed decisions and evaluations based on facts presented in the interview with the victim and evidence collected by the police. Domestic violence victims have many concerns, including divorce, child custody, visitation, and fear of retaliation if they cooperate with the prosecution. The prosecutor should first assess the victim's safety. The following factors should be considered when deciding whether to proceed against the defendant:

- the victim's and defendant's history;
- the victim's wishes;
- the defendant's record; and
- the evidence.

¹⁵ See Barbara J. Hart, *Battering and Family Therapy: A Feminist Perspective* (1993), citing a study asserting that "73% of the battered women seeking emergency medical services sustained injuries after leaving the batterer." Stark, et al., National Clearinghouse on Domestic Violence, *Wife Abuse In The Medical Setting: An Introduction To Health Personnel*, Domestic Violence Monograph Series, No. 7 (1981).

¹⁶ Richard Connelly, *Fighting Family Violence*, *Texas Lawyer*, June 10, 1996, at 2.

Regardless of the decision whether to proceed to trial, it is imperative that a personalized safety plan be created for each victim. A safety plan should list local shelters, domestic violence agencies, and legal assistance organizations. It should also provide a checklist of items for the victim to bring if leaving an abusive situation, including clothing, medication, and money, as well as necessary paperwork such as social security cards, orders of protection, birth certificates for her and her child(ren), and divorce papers. Safety plans will vary depending on the victim's relationship with her batterer. When children are involved, special considerations are required in safety planning. For example, checklists should include medical and school records for child(ren). The plan should also encourage victims to practice escape routes from home, to vary daily routines and to notify friends, family, and neighbors of what to do should the victim need emergency help. Advocacy agencies have traditionally assumed the responsibility of safety planning, but prosecutors should see that the victim's needs are met. The responsibility of maintaining a safety plan for each victim should be an ongoing process throughout the entire case. Nor does this process end when the case is disposed. The prosecutor should continue to provide a plan for the victim, even when the case is not on the call anymore.

The second priority for prosecutors should be to hold defendants accountable for their actions through conviction. Should a conviction be obtained, the prosecutor needs to explore sentencing options that are appropriate in light of victim safety, the facts of the case, and the defendant's criminal background.

Prosecutors can go forward with a domestic violence case with or without the victim. When attempting to proceed with the victim, the prosecutor should persuade her that prosecution

is a viable option. When attempting to persuade the victim to assist in the prosecution, it may be necessary to educate the victim as to the cycle of violence. She needs to know that each instance of abuse is part of a larger, cyclical pattern that will continue and eventually become more severe. Some battered women seek to terminate prosecution because they believe the threat of prosecution alone has brought about the desired changes in the defendant's behavior.¹⁷ They are not aware the batterer will probably continue abusing them.

At times, there may not be enough evidence to go forward, in good faith, on a criminal charge (e.g., the victim believes that the defendant damaged her car, but nobody saw him do it). When the prosecutor informs the victim that proceeding criminally is impossible the victim will often become frustrated and discouraged from availing herself of the criminal justice system in the future. In these cases, it is helpful to discuss other options that the victim may have—including proceeding in civil court, obtaining an order of protection in civil court, and keeping a record of events. ▲

¹⁷ *Id.*

III. Strategies for Enhancing the Prosecution of Domestic Violence Cases

A. CENTRALIZED DOMESTIC VIOLENCE COURTS

Centralized domestic violence courts provide a forum in which all domestic violence cases can be heard in one place. Centralizing domestic violence cases in one court will improve overall administration of the cases and benefit the victim. The two major drawbacks are an increased risk of judicial and prosecutorial burnout and heavy, lengthy court calls.

In centralizing, dedicated court calls should be created to handle domestic violence complaints exclusively. The benefits of this system are that judges and other court personnel become sensitized to domestic violence victims. Judges become familiar with specific victims because they generally preside over each hearing of a case. Centralizing makes it more likely that the victim will appear for the court dates without becoming discouraged by the court system. Domestic violence victims in a centralized court do not suffer the embarrassment of giving emotionally charged testimony following a traffic or theft claim. Some centralized courts allow the victim to obtain civil emergency orders of protection while filing criminal charges.¹⁸ This allows the victim to have both hearings in front of the same judge, in the same courtroom, on the same day. The benefits are obvious. Currently in most jurisdictions, the victim has two or more court dates, at least one for the order of protection and another for the criminal case.

Following the example set by offices in San Diego and Chicago, Dade County, Florida, established a domestic violence court in 1992 to counter the area's weaknesses in prosecuting domestic violence crimes. The court has three full-time judges, victim advocates, prosecutors, public defenders, social workers, and staff members, each trained in domestic violence. The court focuses on early intervention;

misdemeanor cases aimed at preventing fatalities and serious injury; and, recognizing the tendency of domestic violence to pass through generations, on children, providing counseling and support groups to reverse the influence of violence in the home. The court also grants civil injunctions and hears criminal and civil cases for their violations. Finally, the court enters cases into a database for future reference.

Though centralized courts may lead to prosecutor burnout¹⁹ and heavy, lengthy court calls, domestic violence victims stand to gain from the establishment of centralized courts. Jurisdictions will benefit from examining the domestic violence court systems in Chicago, San Diego, and Dade County. Where it may be impractical to dedicate a courtroom on a daily basis to domestic violence cases, smaller jurisdictions may want to consider setting aside a day a month for the domestic violence call, and work with police officers to book cases for that day. A related concept is vertical prosecution, which also helps lessen victims' ordeals by giving them more consistent attention from fewer people.

¹⁸ Generally, legislation gives criminal courts the authority to grant orders of protection. See e.g., 725 ILCS §5/111-8 (1984).

¹⁹ A Johns Hopkins University study found lawyers to be at the top of 103 occupations prone to severe depression. Kate Muir, *Counsel For The Depressed and The Stressed*, *The Times*, July 13, 1995. Prosecutors, especially those who witness the same extensive problem day after day, naturally are prone to stress.

B. VERTICAL PROSECUTION

Jurisdictions that do not have vertical prosecution for domestic violence cases should institute it, unless the logistics of their office make it impractical. In jurisdictions without vertical prosecution, victims of domestic violence often have a different prosecutor each time they come to court. This situation is detrimental to both the prosecutor and the victim. The victim has to repeat the facts of the case every time she comes to court. Reliving the experience in this manner is emotionally draining. The prosecutor has to become familiar with the file, the victim, and the defendant. This makes developing a rapport with the victim difficult, and transferring the cases allows important information to be overlooked.²⁰ Vertical prosecution allows the prosecutor to maintain a relationship with victims. A case can be more thoroughly developed when one prosecutor is assigned from arrest to trial. The victim will still have to discuss the facts of the case more than once, but the ring of futility will be absent. The practice can also equip prosecutors with broader experience in domestic violence cases.

The Family Violence Division in Los Angeles County, introduced in 1994, uses vertical prosecution for felony domestic violence cases. Prosecutors designated for the division are specially trained and are not rotated through other divisions. Acting Head Deputy Donna Wills believes vertical prosecution makes for more confident, committed prosecutors.²¹ The division is producing notable results. Division cases are more likely to proceed to trial and achieve prison sentences. An informal study of 300 cases at the Los Angeles Police Department showed that the 150 cases handled by the Family Violence Division were approximately three times more likely to proceed to trial and twice as likely to get prison sentences than were the 150 cases handled by

general prosecutors. These favorable results stem, in part, from vertical prosecution. Smaller jurisdictions can benefit from designating at least one prosecutor to domestic violence cases.

C. WORKING WITH THE ADVOCACY COMMUNITY

Advocates are essential in maintaining victim participation in the prosecution of the criminal case. Advocates perform many roles. They help the victim as well as the prosecutor. They act as a liaison between the criminal justice system and the victim, explain the procedures the victim will be going through, help the victim gain access to resources and social support, and aid the victim in maintaining a decent quality of life.²²

Advocates can assist the prosecutors by:

- providing victims with information concerning court processes and dates;
- providing information to prosecutors and probation services concerning other possible hearings or proceedings;
- notifying the prosecution of the defendant's behavior pending trial or probation period;
- planning safety methods for the victim;
- educating the victim as to the cycle of violence and the effect it will have on children;
- making referrals for additional advocacy, counseling, or legal services;
- creating follow-up systems;
- establishing or overseeing victim/witness clinics;
- establishing clinics for the victim's support system, including her parents, siblings, or friends;

²⁰ Maureen Castellana, *Panel Calls for Intensive Prosecution of Violent Offenders*, N.J. L.J. 1, Mar. 18, 1996, at 3.

²¹ Telephone interview with Donna Wills, Acting Head Deputy, Family Violence Division (June 21, 1996).

²² Cris M. Sullivan et al., *An Advocacy Intervention Program for Women with Abusive Partners: Initial Evaluation*, 20 Am. J. of Community Psychology, No. 3 (1992).

- fostering a relationship with police officers assigned to domestic violence cases;
- aiding in timely disposition of the case;
- preparing the victim to be an effective witness; and
- assisting the victim with job placement, relocation, and financial support through public aid.

In helping the victim, advocates advise and counsel her on the trauma she may have experienced as a result of a violent incident. When the victim receives support from an advocate (usually in the form of a crisis counselor) who is not a licensed psychologist or psychiatrist, problems often occur. Because these counselors often do not possess testimonial privilege²³ afforded to other professionals, the communications between the victim and the advocate or counselor may not be confidential.

Various states and territories have addressed the issue of confidentiality of communications in recently enacted statutes.²⁴ Many differ in the degree to which confidential communications are protected from disclosure. Some states provide an **absolute privilege** in which disclosure is **not** permitted under any circumstances. Other states provide a semi-absolute privilege in which disclosure is permitted only when it serves the public interest. Still other states provide a qualified privilege in which disclosure is permitted after the defense meets specific requirements or the judge employs a balancing test. The federal government has not enacted legislation addressing confidential communications between victims and witness advocates. In federal court, such communications depend on privileges created by the judiciary.

²³ Testimonial privileges protect communications made within the context of certain relationships by granting individuals (e.g., psychologists) the right to withhold information revealed to them should they be called as a witness during trial.

²⁴ At the date of this writing, approximately 27 states and the District of Columbia have enacted such legislation.

²⁵ See Cook County, Illinois video information.

²⁶ In the Cook County State's Attorney's Office, the victim/witness assistance program notified up to 100 victims each week in 1994. Terry Wilson, *Law To Help Witness Keep Track of Prisoner*, Chi. Trib. Aug. 30, 1994, at 2.

D. IN-HOUSE VICTIM/WITNESS STAFF

Victim/witness programs address the needs of victims and witnesses of crimes. If the prosecuting office has an in-house victim/witness staff, it should be trained to advocate, not merely perform clerical duties. The victim/witness staff should also be responsible for:

- organizing support group sessions to explain the criminal justice system to victims;
- disseminating brochures explaining how the system works, who to call in an emergency, and how to obtain other relief, including divorce, custody, visitation, and orders of protection;
- maintaining a comfortable waiting area for the victims of domestic violence, including magazines and information on employment opportunities, child care, etc.;
- creating a video for victims that explains court processes, roles of court personnel, and the phenomenon of domestic violence;²⁵ and
- notifying victims when their assailants are released.²⁶

Training volunteers from the community is an excellent way to obtain competent help in some of these areas at minimal cost. Several colleges offer internships to students interested in public interest law or social work. Pro Bono Students America, for example, is a national organization that links law students to volunteer projects. Another program, Capital Area Response Effort (C.A.R.E.) of Ingham County, Michigan, is composed of volunteers who have personal experience with domestic violence. C.A.R.E. volunteers work with the Lansing Police Department to ensure immediate victim safety and subsequent access to resources for victims and their families. If they choose to work with domestic violence

cases, students in the program may assume a number of duties, including helping battered women file claims.

Lorna Ragonese, the Victim/Witness Supervisor in Cook County, Illinois, believes that when implementing a victim/witness program, it may be helpful to create two departments. The Cook County State's Attorney's Victim/Witness Unit has *intake* and *courtroom* departments. Intake department specialists complete all legal paperwork for orders of protection and petitions. An intake specialist also interviews the victim to verify allegations and the accuracy of the complaint. The specialist also photographs the victim's injuries and notifies the victim of legal remedies and their possible outcomes. After the case has been initiated, it is transferred to a courtroom victim specialist. This specialist is responsible for extending necessary orders of protection, keeping the victim informed of future court dates, and allaying the victim's fears about testifying. The specialists in both the intake and courtroom departments are highly trained in domestic violence, victim advocacy, and cultural sensitivity. The unit also uses other paid and volunteer personnel to help the specialists with an average monthly caseload of five hundred.²⁷

²⁷ Interview with Lorna Ragonese, Victim-Witness Supervisor for the Cook County, Illinois State's Attorney's Office.

²⁸ The name of the order varies from state to state, but is typically referred to as a temporary restraining order or protective order.

²⁹ In most states, permanent child custody, visitation, and personal financial support issues fall within the jurisdiction of the probate or family courts.

E. ORDERS OF PROTECTION

1. The Law

In addition to criminal prosecution, civil injunctive relief—commonly referred to as a protective or restraining order—is a common legal response to domestic violence.²⁸ Victims can obtain an order concurrently with the criminal case, thereby securing more comprehensive protection under the law. The civil order provides a domestic violence victim with a temporary judicial injunction directing a perpetrator to stop battering or threatening her. A batterer may be directed to stay away from a victim's residence, workplace, or school, and at all times remain a certain distance away from the victim and her children. In addition, under the terms of most states' orders, battered women may obtain other equitable relief, such as the following:

- the batterer vacating the residence regardless of the terms of the title or lease; surrendering keys to the residence or possession of other property, such as an automobile, regardless of title;
- the victim receiving temporary custody or supervised custody of children; temporary child support; and temporary personal financial support,²⁹ including paying for utilities or other necessary expenses or, if financially impossible for the batterer, the utility and phone companies keeping minimal lifesaving services available to the victim;
- the batterer paying damages arising from the abuse (e.g., destruction of property, loss of work time, medical expenses);
- the batterer paying for changing the household locks; or the court impounding the relocated victim's new address;

- the batterer surrendering firearms and license to carry firearms; or
- the batterer having to pursue a mandatory counseling or treatment program.

Once an order is issued, violation of its terms typically results in a criminal offense. The civil order apprises both the batterer and police of exactly what behavior will result in criminal sanctions. Before the institution of these orders, police had broad discretion that often led to charges of police mishandling of domestic violence incidents. The order clarifies the parties' responsibilities.

In most states, for a court to grant an order, a victim must demonstrate a substantial likelihood of immediate danger of physical harm by a preponderance of the evidence. Generally, orders cover current or former spouses, intimate partners, household members, and family members. Although most states require petitioners to be at least sixteen years old, in practice, judges in some jurisdictions grant restraining orders to teenagers or to the parents of abused minors.

The process of obtaining an order is relatively straightforward. Depending on the state, a victim may have a choice of judicial forums, including criminal (trial and appellate), civil, or probate courts. Most state statutes require a victim to submit a detailed affidavit and describe, in open court, the nature of the abuse. The process usually involves two steps. The orders generally are available to battered women on a *pro se* (without counsel), *ex parte* (batterer not present) basis. Upon issuance of the order, a sheriff serves the batterer with the papers. After a short time, ranging from one to two weeks, the court typically affords the batterer a hearing. Victims often require an advocate at both of these proceedings—in the first proceeding, because of the wide range

of orders available; in the second, because confronting the batterer in court is emotional and volatile for the victim.³⁰ After the second hearing, courts generally extend the orders for a fixed duration, usually not exceeding a year. Prosecutors and advocates should be aware, however, that many courts are granting both the batterer and the victim mutual restraining orders against one another, thereby failing to determine who is the primary aggressor.³¹

2. Civil vs. Criminal

In addition to knowing how civil protection orders are issued, prosecutors who handle domestic violence cases should know why many victims prefer protective orders to a criminal conviction, how to solve the problem of training prosecutors on obtaining protective orders given budget constraints, the pitfalls of advising and aiding victims in obtaining protective orders, and how to use protective orders to their advantage.

For most victims of battering, civil injunctive relief is a more attractive option than criminal prosecution, for a number of reasons. First, civil orders have a lower standard of proof. In most states, the plaintiff must demonstrate threatened or actual abuse only by a preponderance of the evidence. A prosecutor, of course, must satisfy the reasonable doubt standard. Second, many victims view an order as a signal to the police to increase their vigilance and responsiveness in the future. Victims also see the protective order as a warning to the batterer, and therefore, a more effective deterrent than more punitive measures, such as criminal conviction. Third, victims have more control over the relief provided and prefer the solutions offered by civil courts, including monetary support and orders to vacate. Depending on the case, these forms of relief can be more useful than the traditional forms afforded

³⁰ See Massachusetts Office Of Victim Assistance And Support, *A Guide to Domestic Violence Court Advocacy in Massachusetts Grant* (1993). ("Court advocates are needed to assist victims of domestic violence who seek court protection from their abusers. Typically, these victims are not represented by legal counsel and have an urgent need for information on their legal options, for support as they encounter an often intimidating court system, for help with safety planning and for referrals to various support services.").

³¹ States such as Massachusetts require judges who issue mutual restraining orders to issue written findings of facts explaining the reasons why both parties are deemed to have been violent.

under the criminal system, such as probation and incarceration. When incarceration is avoided, the victim and her children still may have access to the abuser's income—often their sole means of support. It should be noted that victims of battering often are more likely to cooperate with the prosecution once their extra-legal needs, such as child support, safety, and victim compensation, have been addressed through protective order relief, even if only temporarily.

Because protective orders generally benefit victims and facilitate victim cooperation with the prosecutor, prosecutors should be trained in protective orders and the various forms of relief they can provide. The problem is that protective-order adjudication frequently raises issues involving child custody, child visitation rights, child support, financial personal support, property rights, and other matters that traditionally have been handled in probate court, not by prosecutors. These legal issues generally have remained outside the domain of prosecutorial training and expertise. Most offices lack the budgets to provide full civil protective order representation in every court in the jurisdiction.

Some district attorney offices employ advocates or prosecutors whose primary responsibilities are to assist, inform, and advocate in court for battered women obtaining civil protective orders.³² Given the overlap of probate, criminal, and civil law in most domestic violence cases, prosecutors' offices are broadening their knowledge and referral base to include expertise in these areas of law. In many counties, prosecutors' offices can work with other agencies, such as legal service offices and battered women's shelter legal projects, which already provide civil law assistance to battered women. In so doing, district attorneys can allocate scarce resources to the effective investigation and prosecution of abuse cases.

Certain jurisdictions have integrated injunctive relief with criminal proceedings by allowing criminal courts to issue orders of protection in conjunction with criminal cases. Under Illinois criminal procedure, for example, a prosecutor can, upon giving notice to the defendant, petition the court for a protective order when a criminal proceeding has been initiated. The court can grant emergency relief to the victim without notice to the defendant when there is a threat of immediate harm.³³ Where a criminal court can issue a civil protection order, the victim is saved the burden of going to civil court (often in another building); the judge is more familiar with the parties and facts of the case; the prosecutor's office need not attempt to provide representation in multiple courts; and the prosecutor may ask for an order of protection **even after** a not guilty verdict on the criminal charge has been returned. Prosecutorial agencies should advocate for a similar rule in their jurisdictions.

Very difficult issues can arise, however, when battered women who are assisted by a district attorney's office in seeking protective order relief do not wish to pursue or cooperate in criminal intervention. Prosecutors and advocates are agents of the state and technically cannot maintain client confidences as attorneys can. If a criminal case is opened in conjunction with a protective order proceeding, advocates and prosecutors will have to disclose to the defense exculpatory evidence obtained during the course of assisting the victim with the order. Moreover, an advocate or prosecutor, in the course of helping battered victims with a civil protection order, may obtain sufficient information to go forward criminally with the case. The advocate or prosecutor should then inform the victim of her legal options and the steps she can take to initiate criminal prosecution. In these cases, especially those involving serious

³² Some judges view advocates providing in-court advocacy as engaging in the unauthorized practice of law.

³³ 725 ILCS § 5/111-8 (1984).

documented physical injury and the threat of future injury to the victim, advocates and prosecutors face a particularly difficult dilemma: Should the office go forward with the criminal case? If a victim strenuously objects to criminal sanctions owing to fear of retaliatory violence or destitution, what can be done? Can a budget-constrained prosecutor's office provide any kind of physical or economic safety net to a battered woman? Unfortunately, there are no easy answers to these questions. The challenge to district attorney's offices focusing on domestic violence will be to initiate and remain open to frank discussion and debate, creative solutions, and common sense flexibility in dealing with these matters.

Aside from these questions, once a civil protective order is issued, it may affect criminal prosecution in many other ways. Prosecutors handling domestic violence cases will want to familiarize themselves with any civil orders issued against or violated by the batterer. Most batterers repeatedly victimize women and engage in similar types of threatening and violent acts. An inquiry of existing affidavits can point to a pattern of behavior or modus operandi. When requesting certain terms and conditions for purposes of bail and other pretrial determinations, a prosecutor will want to see whether provisions such as no contact, stay away, firearms confiscation, and compensation orders are in place pursuant to a civil order. If so, the batterer may have violated these provisions between the issuance of the order and the pretrial hearing. In this instance, he may either be charged with additional crimes or may face more stringent pretrial conditions. Added restrictions at the pretrial juncture may afford the victim greater safety.

³⁴ In most prosecutors' offices, domestic violence cases have been tried at the lower court level among a range of other types of violent assaults, motor vehicle offenses, drug offenses and other "lesser serious" crimes. The initial question of whether the office should form a specialized unit geared exclusively toward domestic violence cases is one which every policy maker in the office must address. Another difficult question for prosecutors is when, if ever, should a prosecutor go forward with a case in which the victim refuses to testify or does not want the case prosecuted?

F. Written Policy Statements Issued by a Prosecuting Office

One of the most difficult issues district attorneys face in strengthening their offices' response to domestic violence cases is whether to adopt written domestic violence policies.³⁴ Each district attorney's office may wish to consider the following pros and cons.

1. Pros

A written policy statement on domestic violence sends a clear message to both the entire staff in the office and the community at large that the office treats domestic violence cases seriously and that victims can obtain appropriate legal redress and protection via prosecutorial intervention.

A written policy statement outlining the more difficult issues regarding victims unwilling to testify on behalf of the prosecution ensures greater uniformity and consistency in the handling of domestic violence cases throughout the office. A written policy statement may serve as a shield for the institution against incurring liability for actions.

2. Cons

If a prosecutor or advocate acts contrary to the policy statement, the office may be open to lawsuits.

Defense attorneys may use written policy statements to undermine the case presented by the prosecution. For example, they may highlight apparent inconsistencies between procedures actually followed in collecting evidence for domestic violence cases and the procedures outlined in the policy statement.

Each domestic violence case is different. Prosecutors and advocates should tailor responses to ensure the long-term safety and well-being of

each victim. Written guidelines, however broad, may not offer enough flexibility to meet the individual safety needs of many battered women. At worst, they could actually lull prosecutors and advocates into assuming that there are quick-fix solutions to domestic violence cases.

One possible alternative to having either written or unwritten domestic violence policies in place is to formulate a written policy but not disclose it to the public. Depending on the criminal procedural rules of the jurisdiction, however, a judge may compel a prosecutor's office to disclose the written policy to the court or defense counsel. District attorneys debating this issue should note that the National Council of Juvenile and Family Court Judges adopted a model state code that mandates the adoption of written prosecution policies. The code suggests policies covering the following topics:

*...case management, charging and arraignment, advocacy and safety planning for victims, investigation and evidence collection, trial preparation, intervention with reluctant victims and witnesses, plea negotiations, trial strategy, sentencing, interfacing with batterers treatment programs, post-dispositional practice, press relations, task force participation and data collection and analysis.*³⁵ ▲

³⁵ See National Council of Juvenile and Family Court Judges, *Family Violence: A Model State Code*, 12 (1994). See appendix G for samples of policy statements.

IV. Initiation of Case into the Criminal Justice System

A. PRETRIAL-POLICE

Police officers are often the first criminal justice professionals to intervene in a domestic violence situation; as such, their response has a significant effect on the continuation or cessation of the violence. In the past, police have been criticized for failing to arrest batterers. Recently, however, policing has become more community oriented, and policing philosophy has increasingly recognized the role of social service. Police officers are not social workers, though they may need to be a conduit to social service agencies.

Officers should respond as quickly as possible and be prepared to take appropriate actions. Initial impressions are critical in determining how an officer should proceed. In assessing the situation, officers need to be aware of policing issues unique to domestic violence. For example, frequently, neither the victim nor the batterer requested the police, and one or both parties may turn on the officer. Often, the victim does not want the abuser arrested. Or, she may be afraid to speak freely in his presence and may report false information.³⁶ Further, the victim's prior history may lead her to seem disoriented, "crazy," or out of control, while the batterer seems calm, organized, and amicable. Also, self-blame may cause the victim to misconstrue the incident altogether. Another barrier for police is that valid self-defense may resemble mutual altercation. Thus, many facets of a domestic violence call make it especially difficult for police officers to assess the level of dangerousness of the batterer, but these assessments are critical to establish the victim's safety.

³⁶ For this reason, officers should separate the parties and conduct confidential interviews, locating a translator if a language barrier exists.

³⁷ Lawrence W. Sherman, *The Influence of Criminology on Criminal Law: Evaluating Arrests for Misdemeanor Domestic Violence*, in *Domestic Violence Law: A Comprehensive Overview of Cases and Sources* 491, 502 (Nancy K.D. Lemon ed., 1996).

³⁸ David B. Mitchell, *Contemporary Police Practices in Domestic Violence Cases: Arresting the Abuser: Is It Enough?*, 83 J. of Crim. L. & Criminology 241, 243 (1992).

³⁹ The National Institute of Justice, U.S. Department of Justice, *The Criminalization of Domestic Violence: Promises and Limits* (1996).

1. Mandatory Arrest

The dynamics of domestic violence translate into research that is cursory at best. For example, studies on the practice of mandatory arrest are wholly inconclusive. In 1984, the Minneapolis Domestic Violence Experiment met with success using mandatory arrest techniques, but few jurisdictions were able to duplicate those results. Mandatory arrest tactics appeared to work well in some cities and not in others. In fact, the practice may deter only a small subculture of offenders, specifically, those individuals who would face social humiliation or a significant loss in status. With unemployed suspects, the violence frequently escalates following arrest,³⁷ thereby placing certain women at heightened risk. Short-term arrest has approximately the same negligible effect on these individuals in curbing domestic violence as it has in curbing drug offenses, robberies, and other crimes.³⁸ Consequently, Professor Jeffrey Fagan warns that more in-depth studies are needed before police officers have a cogent guide.³⁹

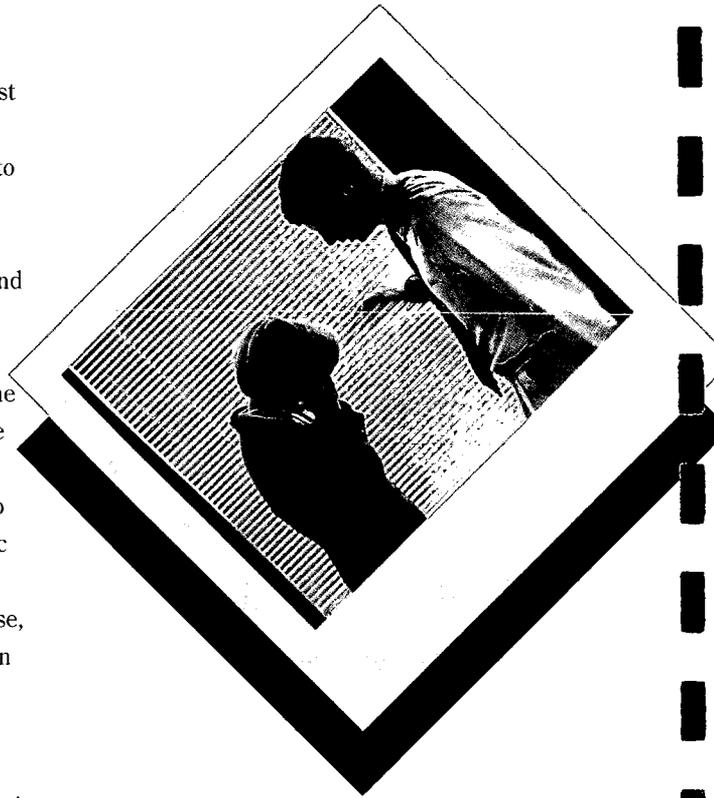
2. Evidence

Sufficient evidence from a domestic violence crime scene can play an integral part in both prosecuting the batterer and protecting the victim. Law enforcement may minimize incidents of domestic violence, with individual officers refusing to become involved in a case they expect will never be prosecuted. Victims themselves often refuse to participate in the legal proceedings because they are afraid or unavailable to testify. Many domestic violence cases, then, must rely on ample, well-documented evidence taken from the crime scene. Crucial forms of evidence include photographs of physical injuries to the victim or destroyed property at the scene of the crime; a complete, detailed, and accurate police report documenting the nature and seriousness of the abuse; medical documentation of the injuries with the name of the

treating physician, date, time, and type of treatment; specific documentation indicating past history of abuse (e.g., past medical records), including times and dates of any previous calls to 911, prior arrests, and criminal convictions; attempts to obtain or actual obtainment of a protective order; outstanding police warrants; and eyewitness corroboration from neighbors or acquaintances.

Recognizing the importance of collecting the proper evidence from domestic abuse cases, the San Diego Police Department requires all officers responding to domestic violence calls to carry a Polaroid Spectra Camera and a domestic violence checklist.⁴⁰ A camera allows for on-the-spot documentation of abuse, alcohol or drug use, the presence of weapons, or physical destruction of property. "Photographic evidence has to be captured as soon as law enforcement is on the scene—before cuts and bruises have healed, broken furniture has been tossed out and victims' and witnesses' memories have faded."⁴¹ The checklist assists officers in gathering the necessary evidence, photographic and otherwise, of victims, suspects, witnesses, the crime scene, and any statements made.

The photographic evidence captured at the scene should be comprehensive. Older bruises or scars should be photographed to establish a pattern of abuse. Efforts should also be made to have follow-up pictures taken 24 to 48 hours after bruises are received because their heightened discoloration will make them more apparent to a jury. If the actual size and location of the injuries sustained cannot be adequately determined by standard photographs, officers can use Polaroid's High-Definition Grid Film, which superimposes a grid over the victim's body to provide an accurate scale. Officers should be sure to examine victims' upper and lower arms for bruises caused while



acting in self-defense. Female officers should check the victim for bruises hidden by clothing. Officers should also conduct a thorough investigation of the crime scene. Photos of the physical environment, including broken furniture or doors, smashed objects, and empty alcohol containers, can be quite powerful in prosecuting a domestic violence case. Officers should photograph any weapons present, placing them next to a ruler or familiar household object to indicate actual size.

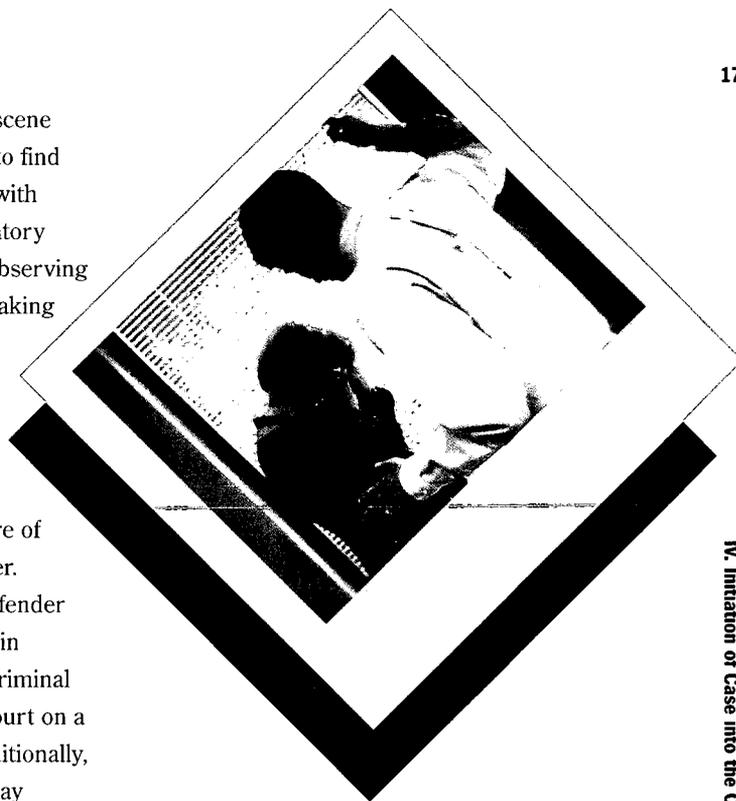
⁴⁰ See Appendix C.

⁴¹ Anne O'Dell,

Collecting the Crucial Chain of Evidence: How to Get Photos That Convict, J. for L. Enforcement Issues, Winter 1996, at 5.

B. ALTERNATIVE CHARGING PROCESS

Many times the police arrive on the scene after the offender has left, or they arrive to find that the victim does not want to proceed with charges. In states that do not have mandatory arrest, the police often leave—even after observing that the victim may be injured—without making an arrest. Some states have provided a process for the victims to file charges against the abuser when the police have not succeeded in arresting him. This process, in some instances, is safer than having the offender arrested, as the nature of arrest is more aggravating for the offender. It also provides a means of holding the offender accountable for his actions. For example, in Chicago, a victim can file a summons in criminal court requiring the abuser to appear in court on a particular day to answer the charges. Additionally, while seeking the summons, the victim may request a warrant for the defendant's arrest and an emergency order of protection. It is ultimately the judge's decision whether to issue a warrant. If a warrant is issued, the defendant is subsequently arrested, served with a summons, and brought immediately to court. If a warrant is not issued, the defendant is served with the summons by a Cook County Sheriff and is then required to be in court on a particular date. If he does not appear, a warrant may be issued for his arrest.



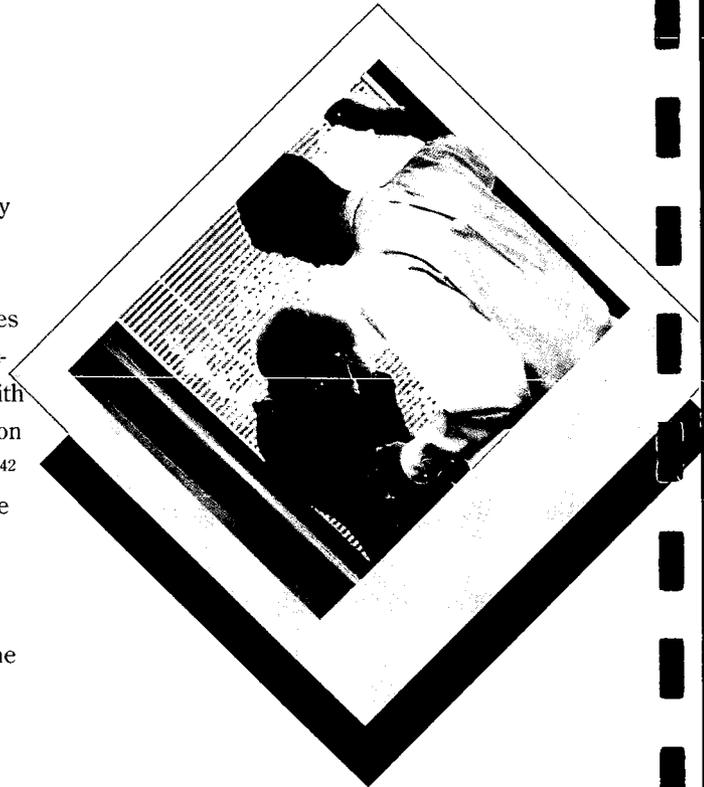
This summons system gives the victim an opportunity to seek criminal relief when she deems appropriate and preserve some type of autonomy by initiating charges herself. In large metropolitan areas where resources are scarce, if the police do not find the offender on the scene, it is unlikely that there will be a great follow-up on the search for the offender, especially for a misdemeanor charge. This system lets the victim avail herself of the criminal system without waiting for the police to initiate the case. Even in smaller jurisdictions where a search is feasible, courts may want to consider this system for the benefits it offers to victims.

C. PROSECUTING WITHOUT THE VICTIM

The issue of whether to prosecute when the victim does not want to has provoked controversy and heated debate around the country. Justification for “no-drop” policies generally fall into one of three categories. First, no-drop policies can be a scare tactic. In some instances, the practice can reduce the need for a victim to testify, with mandatory charges making such an impression on certain defendants that they quickly plead guilty.⁴² Another use of a no-drop policy is to shoulder the woman’s responsibility of pressing charges at a time when she is undergoing heightened confusion and fear. An added advantage here is that the batterer may see that the victim is not the cause of his prosecution. Prosecutors hope this means the batterer will not retaliate against the victim. However, an ironic drawback to no-drop policies may be that they can further victimize a woman. Because domestic violence is a crime of power and control, some studies suggest that the criminal justice system should not render a woman powerless in a case in which she has so much at stake. “[T]he effective use of prosecution as a power resource is premised on the victim’s ability both to demonstrate a significant threat and to control activities relevant to the threat, *including its withdrawal.*”⁴³

Finally, the “we mean business” flag sent up by no-drop policies can signal offenders, victims, and the general public that the system is responsive to domestic violence. Prosecutors with the generalized goal of deterrence in mind should take care to remember that victim safety supersedes public posture.⁴⁴

Several criteria should be established before the invocation of no-drop policies, including the severity level of the policy. “Hard” no-drop policies guarantee that a case with sufficient evidence will go forward, regardless of the victim’s wishes.⁴⁵



⁴² Jane O'Reilly, *Wife Beating: The Silent Crime*, Time, Sept. 5, 1983, at 23, quoting Susan Kaplan.

⁴³ David A. Ford, *Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships*, L. & Soc'y Rev., 313, 319 (1991) (second emphasis added).

⁴⁴ Barbara Hart, *Barriers to Victim Participation in the Criminal Justice System*, Am. Behav. Sci., 625, 634 (1992).

⁴⁵ Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 Harv. L. Rev. 1849, 1863 (1996).

These policies yield greater numbers of prosecutions. "Soft" no-drop jurisdictions are more lenient on victims. They may compel a victim to undergo counseling or appear before a judge to explain the refusal to cooperate. The counselor or judge will encourage the victim to participate. Still, victims in these jurisdictions can generally refuse to testify. Prosecutors should assess cases on an individual bases and proceed only in those cases where the victim's safety is not jeopardized. If, without the victim's testimony, there is little evidence to support a conviction, prosecutors may drop the case.⁴⁶

Even in no-drop jurisdictions, prosecutors should attempt to balance a number of conditions in each case: the victim's expectations and safety, the history of the parties, the ability to proceed without the victim, whether children are being exposed to the violence, and the message sent to batterers when no-drop policies are not enforced. Though hard no-drop policies do not allow for this flexibility, soft no-drop policies can take these factors into account.

When prosecutors in no-drop jurisdictions need a victim to testify, a subpoena can be useful. Theories similar to those supporting no-drop policies can justify use of subpoenas; thus, a woman is lent much-needed support, and a batterer regards the prosecutor, not the victim, as the reason for his prosecution. If the victim fails to appear, the court should not, as a policy, take action against her. Victims disappear for a number of reasons, but the paramount reason in most instances is fear for their safety. Courts that practice "body attachment," civil arrest for victims who do not testify, may be endangering the victim. The woman is best able to assess her situation. Prosecutors should remember that some cases are so severe or unusual that the justice system is not equipped to manage them.⁴⁷ Though rooted in

good intentions, imposing bench warrants or other penalties on victims could also temporarily leave the victim's children without a parent.⁴⁸ Another sanction, court costs imposed on victims who fail to testify, would not involuntarily detain victims. Proponents feel the fees are necessary to avoid the use of criminal charges as leverage in civil suits.⁴⁹ Opponents point to the woman's lack of resources and her ever-present fear for her safety to indicate the injustice of imposing such costs. To reduce the need for sanctions, jurisdictions may adopt the practice of videotaping victim interviews. The Family Violence Division of Los Angeles County uses tapes to supplement victims' testimonies or impeach recanting victims. A videotape of the victim could also help an uninformed jury understand why the victim failed to appear.

1. Hearsay

Without the victim's testimony, hearsay evidence can be used to prove a case. Because spontaneous and excited utterances on 911 tapes are often invaluable to obtain a conviction, prosecutors should develop methods to acquire these tapes. Also important, statements by the victim to medical personnel can be used later for impeachment, if necessary.⁵⁰ Medical personnel can also testify as to a woman's emotional state at the time of treatment. Medical records, bills, and photos are useful as well. Prosecutors should ask every victim where she seeks medical attention. Ideally, the clinic or hospital will have well-documented records with a complete medical history and detailed descriptions of injuries and their explanation by both the victim and the physician.⁵¹ Also, the police may have taken statements of neighbors, friends, or other witnesses to the violence.

⁴⁶ *Id.*, citing no-drop program in Alexandria, Virginia.

⁴⁷ Ted Gest and Betsy Streisand, *Still Failing Women?* U.S. News & World Rep., June 19, 1995 (quoting prosecutor Mimi Rose).

⁴⁸ Deborah Yagge, *DA Taking Harder Line on Domestic Abuse, PD's Say*, *The Recorder*, Apr. 23, 1996, *Court Watch*, at 2.

⁴⁹ Jeri Rowe, *Prosecutors No Longer Drop Abuse Cases*, *News & Rec.* (Greensboro, N.C.), Apr. 29, 1996, *Triad/State*, at B1 (quoting ADA John Nieman).

⁵⁰ Carol L. Rose, *Mommy and Me, Women of Conviction*, Summer 1995.

⁵¹ To eliminate questions of admissibility, storage of records should prevent tampering.

Recently, California passed legislation creating a new hearsay exception that allows into evidence a statement "that purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant by the party against whom the statement is offered...⁵² "The declarant must be unavailable; the statement must have been made near the time of the threat or injury; the statement must have been made within the last five years; the statement must have been made in writing, electronically recorded, or made to a law enforcement official; and the statement must have been made under circumstances that indicate its trustworthiness.⁵³ Even with the above restrictions, valuable statements, which previously would not have fit into one of the exceptions to hearsay, will be allowed into evidence.

⁵² 1996 Cal ALS 416; 1996 Cal AB 2068; Stats 1996 ch. 416.

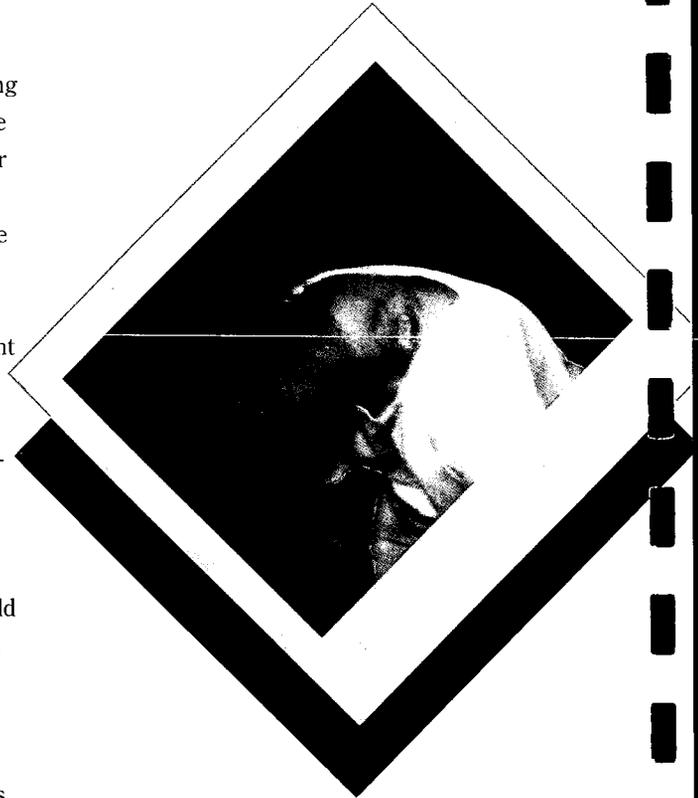
⁵³ *Id.*

2. Prior Acts of Abuse

Although evidence of a defendant's prior acts of domestic abuse can bolster a domestic violence case, such evidence is admissible only under certain circumstances.

Rule 404(b) provides, "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." The Advisory Committee notes for Rule 404(b) note that the rule does not require exclusion of evidence of prior acts, but that admissibility depends on "whether the danger of undue prejudice outweighs the probative value of the evidence in view of the availability of other means of proof and other factors appropriate for making decisions of this kind under Rule 403."

The Supreme Court has not addressed the admissibility of prior acts in cases involving



domestic violence. The Court has addressed this issue, however, in a case concerning “battered child syndrome.” In *Estelle v. McGuire*,⁵⁴ the prosecution sought to introduce evidence of prior injuries to show a pattern of child abuse against the defendant, who was charged with killing his daughter. The trial court allowed the evidence and instructed the jury to use the evidence for the limited purpose of determining whether there existed “a clear connection between the other two offenses and the one of which the Defendant is accused, so that it may be logically concluded that if the Defendant committed other offenses, he also committed the crime charged in this case.”⁵⁵ The Supreme Court upheld the trial court’s admission of the evidence and its jury instructions, holding that evidence of prior injury, used to establish that the child’s death was the result of “battered child syndrome” and not accidental in nature, was admissible, because it was relevant to the question of intent.

In addition to the intent exception of Rule 404(b), prosecutors can use prior acts evidence to establish the identity of the perpetrator, if the defendant’s involvement in the offense is questioned. Prior acts evidence can help to demonstrate motive or lack of mistake or accident on the defendant’s part. By establishing a pattern of abuse through the use of prior acts, prosecutors can explain how seemingly innocent or insignificant behavior is actually threatening, and why the victim’s fear is, therefore, reasonable. Prior acts evidence can also show that the defendant possessed the required *mens rea* because the defendant’s behavior is intentionally abusive or aggressive. When interviewing the victim, it may be helpful to discuss each aspect of the power and control wheel (see Appendix A). Minnesota has a specific statute that allows into evidence prior acts of domestic violence, “unless the probative value is substantially outweighed by the danger of unfair

prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”⁵⁶

D. TRACKING SYSTEM

Prosecutors should develop a computer system to track the history of the victim. They should ask victims for a list of phone numbers and addresses of family and friends who can help the prosecutor find the victim, if necessary. The prosecutor should keep records of every case filed for each victim. This will also help if drafting a motion to admit proof of other crimes.

Police stations can also benefit from tracking systems. Many police departments have adopted “Domestic Violence Intervention Software,” produced by InfoMaker Inc.⁵⁷ The software package is a database for general offense crimes, 911 calls, and arrest histories. The program assigns a number based on these and other factors to rank households with serious lethality risks. This program allows for continual monitoring of individuals and addresses, so that police and counselors may intervene if necessary. Interventions by criminal justice and social service personnel, both proactive and follow-up, are also recorded and can be analyzed in terms of individual or team efforts. This enables police to make a thorough determination of the intervention’s effectiveness, for immediate and future policy or procedure determination. Also, officers responding to emergency calls can access information quickly to determine the potential harm to themselves and victims. For example, officers using the database are immediately warned of prior weapons use by the offender.

⁵⁴ 502 U.S. 62 (1991).

⁵⁵ *Id.* at 67 n.1.

⁵⁶ Minn. Stat.

§ 634.20 (1996).

§ 634.20 Evidence of prior conduct.

Evidence of similar prior conduct by the accused against the victim of domestic abuse, as defined under section 518B.01, subdivision 2, is admissible unless the probative value is substantially outweighed by the danger of unfair

prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

⁵⁷ For more information, contact InfoMaker Inc. at (708) 390-6660.

E. PENDENCY OF CASE

To ensure that the many needs of each victim are met, prosecutors should maintain contact with the victim, the victim/witness staff, and the advocate. The prosecutor's office, with the advocate or victim/witness staff, can increase the victim's knowledge about the system. Though dialogue with the victim is helpful, written materials, such as safety plans, names of contacts, and explanations of the court system and orders of protection, should supplement any conversations. The victim may not be focused or may be distressed while at court; she will be able to read written information at a time when she is more relaxed and comfortable.

⁵⁸ Barbara J. Hart, *Barriers to Victim Participation in the Criminal Justice System*, Am. Behavioral Sci. 625, 635 (1992).

⁵⁹ Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 Harv. L. Rev. 1849, 1889 (1996), quoting Brian Forst, Prosecution and Sentencing, Crime 363, 367 (James Q. Wilson & Joan Petersilia eds., 1995).

⁶⁰ One study suggested victims of domestic violence will be more willing to testify when charges against the abuser are dropped after completion of a counseling program. *Battling the Silence of Violence*, St. Petersburg Times, June 20, 1994, at 1B. Prosecutors with this goal in mind should take care to assure the victim will not be placed in further danger. In many cases, court-ordered treatment will not end the violence. Other measures may be necessary.

⁶¹ David B. Mitchell, *Contemporary Police Practices in Domestic Violence Cases: Arresting the Abuser: Is It Enough?*, 83 J. of Crim. L. & Criminology 241, 247 (1992).

⁶² Andrew Klein, A Review: 1995 State Domestic Violence Legislation, 2 Nat'l Bull. on Domestic Violence Prevention, July 1996, at 2.

F. POST-TRIAL

1. Sentencing

Prosecutors should provide as much information to the judge as possible. Judges have a primary responsibility for sentencing domestic violence offenders. Sentences that address both monitoring the batterers and meeting the victim's safety needs are effective in reducing recidivism.

*[P]rosecutors frequently rely on the pre-sentence report and the statement of the victim at sentencing rather than producing testimony or evidence at a sentencing hearing to buttress arguments in favor of incarceration and victim safeguards. This prosecutorial advocacy may not be necessary in jurisdictions where the pre-sentence investigator attends carefully to the risks of recidivism, but in counties where the court is not otherwise given information about recidivism prediction and the dangers posed by many batterers long after divorce or incarceration, prosecutors should undertake to inform the court of these risks.*⁵⁸

Prosecutors should remind judges that batterers are generally repeat offenders. "Males who make a habit of assaulting their female partners may commit serious crimes in the home as frequently as other offenders...on the street."⁵⁹ A light sentence for the batterer, then, may be a heavy sentence of prolonged violence for the victim.

For a sentence or probation condition, the judge may direct the batterer to undergo drug testing or counseling.⁶⁰ "[W]hereas enforcement via arrest merely controls behavior through fear or force, counseling may succeed at resolving the underlying problem that would otherwise be left unresolved...Unfortunately, a policy of mandatory counseling in all cases involving probable cause of domestic assault would exceed most communities' counseling resources."⁶¹ A coordinated council task force, including a mental health treatment provider, should address this issue. Less costly than one-on-one treatment, court-ordered abuser support-group sessions may also be involved in sentencing.

In lieu of incarceration, the judge may wish to invoke an alternative sentencing option. For instance, medication may be prescribed. When medication is needed to prevent future dangerousness, the sentence may include drug testing to ensure the presence of the drug. This method is invaluable for manic-depressive offenders needing lithium, for example.

Electronic monitoring, another option, is now authorized as a condition for release of domestic violence offenders in states such as Utah.⁶² With this method, the offender wears an ankle bracelet that sets off an alarm when he is within a certain number of feet of the victim's home. Without the monitoring, the offender could enter an empty house undetected or surprise a sleeping victim. The alarm system enables the police to monitor

offenders' violations and respond quickly. To reduce costs, some jurisdictions require the batterer to pay a daily monitoring fee. Hamilton County, Ohio, recently bought forty ankle monitors with a state grant. Monthly domestic violence arrests there currently average five hundred;⁶³ thus, the monitors may have the added bonus of reducing prison overcrowding. There are, however, criticisms of the monitors.

Common criticisms of electronic monitoring include that (1) they create a false sense of security—they are only monitoring devices and cannot stop an offender from violating a restraining order; (2) victims lose their privacy—the monitoring system uses the victim's telephone line, with the side effect that conversations may be recorded and telephone service may be disrupted; (3) judges may be more inclined to order low bail or no bail because the electronic monitoring system is available; (4) the victim should be trusted to report violations rather than relying on the monitoring system; (5) the system is costly—prosecutors' offices often need to charge the offender a fee to defray the cost of the system, and offenders for whom the monitoring system is appropriate may not be able to afford this fee. In light of these criticisms, jurisdictions considering this monitoring system should weigh carefully its advantages and disadvantages.

2. Victim-Impact Statements

In the past decade, courts have become more willing to allow victim-impact statements to be used in the sentencing process. Prosecutors feel that the practice allows victims to explain the effect the crime has had on their finances, relationships, and overall mental health. Also, the process of writing a victim-impact statement gives victims an opportunity to reflect on their experience, collect their thoughts, and present a coher-

ent document to the court. Opponents feel that the practice leads to prejudicial error, a way of allowing emotion, not justice, to guide the decision of the judge or jury. Further, rebuttal of a victim-impact statement by a defendant may lead to an unfortunate character attack on the victim.

In *Payne v. Tennessee*, the Supreme Court held that the use of victim-impact statements in cases involving capital crimes was not per se barred by the Eighth Amendment.⁶⁴ The Court felt such statements were useful in conveying a thorough account of the defendant to the sentencer. The Due Process Clause provides any necessary relief to defendants when victim-impact statements result in substantially unfair trials.⁶⁵ Inclusion of emotionally charged material, then, may enhance the risk of a trial court's decision being questioned on appeal.⁶⁶ To avoid this risk, victim-impact statements should not comprise the bulk of materials used to assess the defendant's blameworthiness, and juries should be carefully instructed in factors to consider during sentencing.⁶⁷ The *Payne* Court was careful to leave the final decision to states but provided compelling reasons to allow admission of victim-impact statements:

*The states remain free, in capital cases, as well as others, to devise new procedures and new remedies to meet felt needs. Victim impact evidence is simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question, evidence of a general type long considered by sentencing authorities.*⁶⁸

The Court also rejected the notion that victim-impact statements should be denied because a rebuttal of a victim-impact statement might involve an attack on the victim's character. Use of victims' statements might not be prudent in some cases, but this is no reason to prohibit their use entirely.⁶⁹ ▲

⁶³ *Stop the Abuse: How To Fight Domestic Violence*, *The Cincinnati Enquirer*, Feb. 28, 1996, at A08.

⁶⁴ *Payne v. Tennessee*, 501 U.S. 808 (1991).

⁶⁵ *Id.* at 825.

⁶⁶ *Cargle v. Oklahoma*, 909 P2d 806, 830 (Okla. Crim. App. 1995).

⁶⁷ See *Rodriguez v. Peters*, 63 F3d 546 (7th Cir. 1995).

⁶⁸ *Payne*, 501 U.S. at 824-825 (emphasis added).

⁶⁹ *Id.* at 823.



V. Training/Education

A. PROSECUTORS

As a result of the rapid turnover in prosecutors' offices, there is a lack of continuity in the methods of prosecution for domestic violence cases. Thus, a training program that offices can duplicate and offer to new prosecutors is necessary. Prosecuting domestic violence cases is unique; there are a number of areas in which the prosecutor should be trained. The following is a list of possible training topics.

1. The Cycle of Violence

First, prosecutors need to understand the cycle of domestic violence. The nature of domestic violence makes prosecution frustrating and exhausting. Thus, prosecutors need to understand the phenomenon behind these cases. The power and control wheel (appendix A) is an effective way of illustrating this cycle. The trainer should explain each segment of the wheel by giving examples and using role play. This will help prosecutors understand all the tactics batterers use when exerting power and control over their victims. Explaining the cycle of violence will lead to a greater understanding of the following:

- the psychological and social dynamics of the cycle;
- why victims do not leave abusive relationship; and
- why they recant and refuse to testify.

A full understanding of the dynamics of the cycle of violence is necessary to ensure that the prosecutor deals effectively with victims, makes informed decisions on whether to prosecute without the victim, and knows how to help the victim avoid future abuse.

2. Interviewing the Victim, Overcoming Reluctance, and Assessing Lethality

Unlike victims of other crimes, battered women often remain in close contact with offenders after the crime takes place. Prosecutors are not accustomed to interviewing victims of crime who may still be living with, or maintaining a relationship with the offender. Thus, prosecutors need specific training on how to interview the victim and how to overcome her reluctance to testify. Training in this area should address the following:

- a. Building a strong relationship with the victim;
- b. Ascertaining the victim's needs and expectations;
- c. Keeping the victim informed;
- d. Using community outreach assistance;
- e. Using victim advocates;
- f. Ascertaining the victim's resources and creating a safety plan based on those resources;
- g. Explaining the criminal justice system to the victim;
- h. Preparing the victim for cross-examination;
- i. Providing the victim with realistic expectations of possible outcomes; and
- j. Overcoming reluctance and ensuring victim cooperation.

3. Prosecutor Demeanor

Prosecutors handling domestic violence cases should have a good demeanor. They are often among the first authority figures the victim meets; and what they say and how they say it will directly affect the victim's decision whether to go forward. The proper demeanor will help reassure the victim and encourage her cooperation. Training in this area should address the following:

- a. How to speak to a domestic violence victim;
- b. What not to say to a domestic violence victim; and
- c. How to act in court when your victim recants or a defense attorney confronts the victim with damaging impeachment of which you were unaware.

4. How Advocacy Agencies Interact with the Criminal Justice System

Advocacy agencies give support to the victim. Prosecutors should know what agencies are located in their jurisdiction and understand how they interact with the prosecutor's office in domestic violence cases. Training in this area should address the following:

- a. What the prosecutor can expect from an advocate;
- b. How prosecutors can leverage the use of advocate;
- c. Definition of an advocate's role;
- d. How the advocate can assist your case;
- e. How to resolve conflicts; and
- d. Confidentiality of advocates' reports.

5. In-house Victim/Witness Programs

Victim/witness programs serve a purpose similar to private advocacy agencies, but they are more integrated with the court system. They too can be of great help to the prosecutor in bringing a victim through the criminal justice system. Training in this area should address the following:

- a. How victim/witness and court specialists can help the prosecutor with victim safety;
- b. How victim/witness specialists can help with cultural diversity;
- c. How victim/witness specialists inform victims about services available to them;
- d. How essential victim/witness specialists are because they keep in touch with the victim while the case is pending (as prosecutors should)—the defendant will try to encourage the victim to drop or recant during this time;
- e. How the specialists help victims write impact statements; and
- f. The jurisdiction's law concerning privilege (i.e., whether victim specialists have a privilege not to testify about conversations with the victim).

6. Legal Particulars of Restraining Orders

Obtaining a restraining order is a civil proceeding. Civil proceedings can create material for impeachment. Therefore, the prosecutor in any domestic violence case should know if the victim has obtained a restraining order and how these proceedings work, as well as the victim's testimony in any of these proceedings. Thus, it is imperative that the prosecutor order all transcripts of prior proceedings. Prosecutors should also work with other attorneys representing the victim to develop a coordinated plan for the victim.

Training in this area should address the following:

- a. How essential it is for prosecutors to know about other civil court proceedings and to order transcripts of all such proceedings;
- b. How orders of protection work; and
- c. When to advise the victim to get an order of protection.

7. Ethical Considerations

The nature of domestic violence cases gives rise to specific ethical considerations. Training in this area should address the following:

- a. Prosecuting without the victim's consent (the prosecutor may have sufficient evidence to go forward without the victim but should consider whether doing so will endanger the victim); and
- b. Obligations to protect: a prosecutor's obligation to report mothers who continue to live in abusive households (thereby exposing the children to repeated abuse) to social services.

8. Trial Issues

Prosecutors' Role: Prosecutors should be trained on how to prepare the victim for trial and, when appropriate, how to prosecute without the victim. Additionally, the prosecutor in domestic violence cases has a responsibility to the victim after the trial. Discussed below are the issues before, during, and after trial in which a prosecutor should be trained.

Prosecutors should explain to the victim the prosecutor's role in the criminal justice system and the extent of their responsibilities to the victim. This explanation should convey to the victim that the prosecutor is there to help her, but that, unlike a civil attorney, a prosecutor represents the state—not the victim. The victim should receive help in developing or building on a safety plan and be taught how to collect evidence from both prior and future incidents. To this end, the prosecutor should determine if there have been any prior acts of abuse. An effective method of establishing this is to go through each segment of the power and control wheel with the victim, asking whether the defendant has ever used any of these tactics. The prosecutor should also determine whether any protection orders have been issued and whether they have been violated. If a protection order has been issued, the prosecutor should obtain the testimony given in that proceeding. Finally, the prosecutor should talk with the victim about what to expect before, during, and after the trial.

Investigation: Prosecutors should be trained in collecting and preserving evidence (e.g., 911 tapes, medical records, and background checks) and encouraging the victim to continue collecting evidence.

Charging Strategies: Prosecutors should assess the circumstances and consider bringing additional charges; determine whether stalking charges should be brought; and determine whether any other felony criminal acts associated with domestic violence are present.

Bail Issues: Prosecutors should assess lethality, consider options for setting bail, determine whether mental health evaluation is appropriate, and evaluate electronic monitoring programs.

Victim Preparation: Prosecutors preparing a domestic violence victim will encounter unique difficulties. To deal with these problems, prosecutors should understand the cycle of violence and gain the trust of the victim.

Child Witnesses: A child who has witnessed domestic abuse will be disturbed. Prosecutors should be trained on the effects of domestic violence on a child and how to handle a child witness in light of these effects. Because so many of the dynamics of a child testifying in court against the abusive spouse parallel the experience of children testifying in child abuse cases, prosecutors are well advised to consult with child abuse prosecutors and other professionals on how to handle child interviews and testimony. Preparation should include a trip to the courtroom, if possible, and a simple explanation of the nature of the charges and the role of the courtroom personnel.⁷⁰ Prosecutors should also recommend that the court take steps to ensure the child's comfort.

For years, the child may have heard the defendant blame the victim for the abuse. Often even the victim will deprecate the abuse to alleviate the child's fears. Further, the prosecutor should recognize that the child may be more than a witness to the violence; spouse abuse and child abuse, in many cases, go hand in hand. Spouse abuse generally precedes child abuse.⁷¹ Prosecutors, therefore, should be particularly diligent when children are involved. In certain jurisdictions, prosecutors can reach out to community programs designed specifically for children. Early intervention and specialized treatment programs dealing with the impact of domestic violence on children are critical in breaking the cycle of violence and ensuring the emotional well being of these children.

Prior Acts of Abuse: Prosecutors should know the law of their jurisdiction on admitting prior acts of abuse.

Victim Safety: As discussed above, the prosecutor should provide for the safety of the victim pending trial.

Forensics: The prosecutor should understand that there are a number of areas of expertise related to trying a domestic violence case and know when to call upon such experts. A forensic anthropologist may be a necessary witness to explain old injuries; a medical examiner may be needed to explain bruises and why a certain injury could not be accidental, to identify fingerprints in bruises, and to explain how an injury could be fatal; an odontologist can explain bite marks; the treating physician and DNA evidence experts may also need to be called.

Jury Selection: Prosecutors should understand that jury selection is the first opportunity for prosecutors to advocate their side of the case. Training should cover what questions to ask jurors during voir dire and how to precondition jurors.

⁷⁰ Nancy W. Perry and Lawrence S. Wrightsman, *The Child Witness: Legal Issues And Dilemmas* 252-254 (1991).

⁷¹ See, e.g., Barbara Hart, *Battered Women and the Duty to Protect Children*, 79 *Juvenile and Family Court Journal* (1992), reprinted in *Domestic Violence Law: A Comprehensive Overview of Cases and Sources* (Nancy K.D. Lemon, ed.) (1996).

Hearsay Issues: There are recurring hearsay issues in domestic violence cases. Prosecutors should be familiar with arguments for the admission of 911 tapes, medical testimony, and statements by the victim to police and paramedics.

Reluctant and Hostile Victims: Victims who testify for the defense, become hostile, or recant pose problems for prosecutors. Prosecutors should be prepared to deal with such occurrences effectively. Recantation can happen in one of three ways: The victim may recant in the middle of the direct examination, the victim may testify in response to a subpoena but be hostile, or the victim may testify only for the defense.

Sentencing Issues: After trial, prosecutors should explore the different sentencing options and know how to prepare a sentencing memorandum. Sentencing memorandums should include risk factors; psychological assessments; substance use; and statistics on recidivism, failure of intervention programs, domestic violence homicides, the relationship of domestic abuse to child abuse, the number of times police responded to the victim's address, and the fact that children exposed to abuse will most likely imitate that behavior. In addition, prosecutors should take steps to safeguard the victim. Victim safety can include safety plans, permanent restraining orders, counseling and treatment programs, and electronic monitoring. When the verdict is not guilty, prosecutors need to explain the verdict to victims and encourage them to avail themselves of the criminal justice system in the future. Some jurisdictions allow the prosecutor to ask for an order of protection even if there has been a finding of not guilty on the criminal charge.

B. ADVOCATES

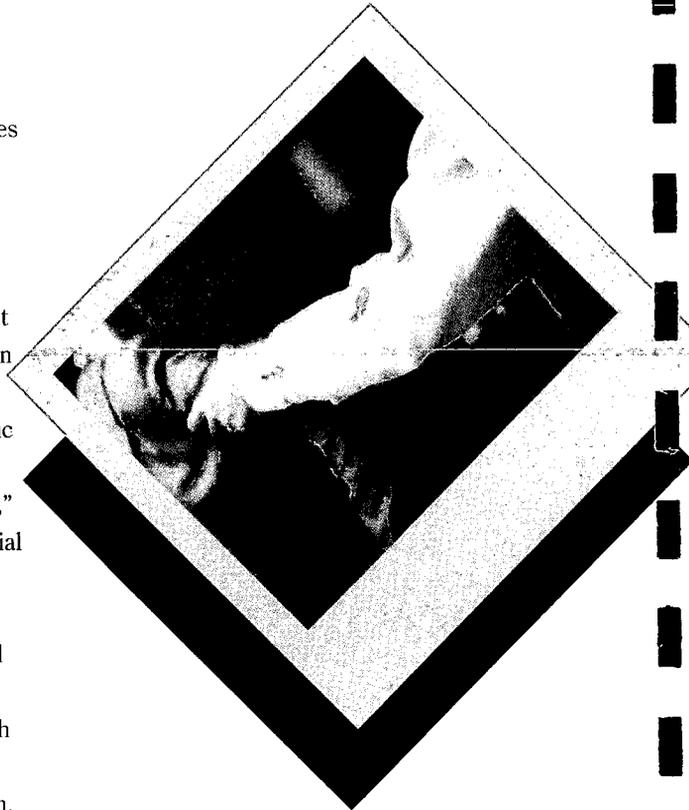
Because advocacy agencies independent of prosecutors offices are especially instrumental in helping prosecutors obtain a conviction, it is beneficial for the prosecution to host training for these outside advocates. Training builds better relationships with the advocacy community because it shows that the prosecutor has a genuine interest in the advocate's role. The first part of the training should focus on the role of the advocate in the courtroom. In this phase, it is imperative to define the role of every player in the court system: judge, social service worker, public defender, prosecutor, etc. The traditionally strained relationship between advocates and prosecution can be remedied by a thorough explanation of the expectations of each. Advocacy training should also include techniques to improve listening skills. Most important, advocacy training should clearly define the role of the prosecutor, paying special attention to the prosecutor's burden of proof, what that entails, evidentiary obstacles, etc.; the fact that prosecutors represent the state; and the fact that prosecutors should proceed in good faith on every case.

C. JUDGES

A judge who is well versed in the complexities of the different areas of law relating to domestic violence can effectively educate victims and batterers, who often appear in court *pro se* with scant information regarding their legal rights. Research indicates that positive judicial treatment is an important factor in enabling battered women to use the legal system to leave their abusers.⁷² A judiciary knowledgeable in the area of domestic violence can send a strong message that these cases are not mere "squabbles" or "disturbances," but serious violations of the law warranting judicial inquiry and criminal sanction. Yet despite the increasing volume of domestic violence cases in the court system, many judges have not received specific training in this area.

In most jurisdictions, judges are saddled with burgeoning caseloads and limited resources. Judges, like others working with battered women, can grow frustrated with victims wavering on whether to cooperate with the prosecution. Repeatedly seeing the same women in court with apparently contradictory stances contributes to "judicial insensitivity" toward victims of abuse.

Teaching judges how to be more aware of the complexities of battered women's cases has been a delicate task for domestic violence policy makers in district attorneys' offices. Prosecutors work closely, on a daily basis, with certain judges, and they cannot easily afford to alienate them. Informal meetings with judges, their key court staff, and the district attorney staff may be an effective starting point for developing and implementing judicial procedural changes.



For effective handling of domestic violence criminal cases and civil restraining order claims, judges in each jurisdiction should be trained comprehensively in the extra-legal intricacies of abuse cases. Topics for such training include the following:

1. The economic, social, and psychological underpinnings of domestic violence cases, including well-established theories such as learned helplessness, the cycle of violence, and the power and control model; fear of retaliatory violence; severe financial constraints; religious dictates and practices strongly pressuring women to remain with their husbands despite abuse; shame, guilt, and humiliation about the violence; family and other social pressures to preserve the family; lack of an emotional support network; and physical and social isolation.

⁷² See Chaudhuri and Daly, *Do Restraining Orders Help? Battered Women's Experience with Male Violence and Legal Process*, in *Domestic Violence: The Changing Criminal Justice Response* (Buzawa & Buzawa eds., 1992).

⁷³ The following are factors many courts and prosecutors currently employ in determining the potential dangerousness a specific batterer may pose: if it is the first time a batterer senses that the victim is attempting to leave the assailant; victim's belief that the batterer will become dangerous (most victims tend to underestimate, minimize, deny, and rationalize their batterer's violent behavior, and thus, when a victim indicates fear of impending violence, her words should be taken seriously); prior criminal or civil record of abuse; possession or use of firearm(s) or possession or use of firearm(s), knives, and other weapons; prior history of frequent abuse (over two encounters of abuse monthly) and severe abuse (abuse causing victim to bleed or require hospitalization); threats to kill victim or others aiding victim; property destruction (especially property valued/cherished by battered woman, including pets); particularly degrading sexual violence; high degree of surveillance of the victim (e.g., stalking, eavesdropping, rummaging through personal belongings/mail of victim); batterer employing bizarre and unpredictable terror tactics (e.g., describing bizarre violent fantasies, showing the victim violent acts of other batterers described in newspaper articles); batterer having a history of substance abuse, alcohol abuse, suicide threats or attempts, paranoia and/or depression; and especially possessive or obsessive batterers behavior demonstrated by the batterer.

- 2.** Ways to channel frustration and anger at wavering victims to other defined forums, such as constructive “venting” sessions at local judicial conferences or meetings, where judges dealing with domestic violence cases can learn from their colleagues’ experiences.
- 3.** How to develop and lead effective, community-based, interdisciplinary domestic violence roundtables or task forces.
- 4.** Relief available in other applicable areas of the law, including probate law, other civil laws, and other injunctive relief.
- 5.** Information regarding the policies of the district attorney’s domestic violence units, especially policies regarding prosecutorial discretion when victims do not wish to cooperate with the prosecution’s case.
- 6.** Information regarding the policies of probation officers specifically handling abuse cases; in particular, issues relating to conditions of pretrial release, probation contact after conviction, and probation surrender.
- 7.** Effective and practical ways judges can be assigned cases to maintain vertical judicial review of domestic violence cases.
- 8.** Information regarding legal procedural issues such as the appropriate forum to try a case involving multiple jurisdiction violations; cases involving instances of violence already being tried in a different court; service of protective orders; and the intersection of criminal, civil, and probate laws.
- 9.** Ways to maintain absolute confidentiality about certain aspects of domestic violence cases, including impoundment of victim’s address if victim has relocated to flee the batterer, and the names of minors seeking civil or criminal relief

from abuse. Absolute confidentiality can never be guaranteed, but the court system should never be the source of the breach.

10. Factors judges should consider in determining conditions of pretrial release, especially bail, future danger posed by the batterer, pretrial diversion eligibility, appropriate sentencing (including post-trial diversion eligibility), how to ensure probation monitoring, and how to avoid indeterminate sentencing such as “continued without a finding.”⁷³

11. Courtroom procedures designed to expedite the adjudication of domestic violence cases, such as affording first priority calling status or separate court sessions for domestic violence cases.

12. Methods of ensuring speedy access to relevant information in domestic violence cases, such as protective orders issued, police reports, arrests, criminal prosecutions, and outstanding warrants.

13. Judicial practices regarding the issuance of mutual protective orders.

14. Ways to coordinate with federal courts to comply with the federal Violence Against Women Act and to develop methods of assisting abuse victims with relocation, identity change, and other safety measures for those moving across state lines to flee from a dangerous batterer.

15. Information regarding programs in the local community that provide counseling and treatment to batterers.

16. Sensitivity to what has been coined a “second assault” on the victim through inappropriate defense questioning of a victim’s prior sexual conduct, manner of dressing, etc.

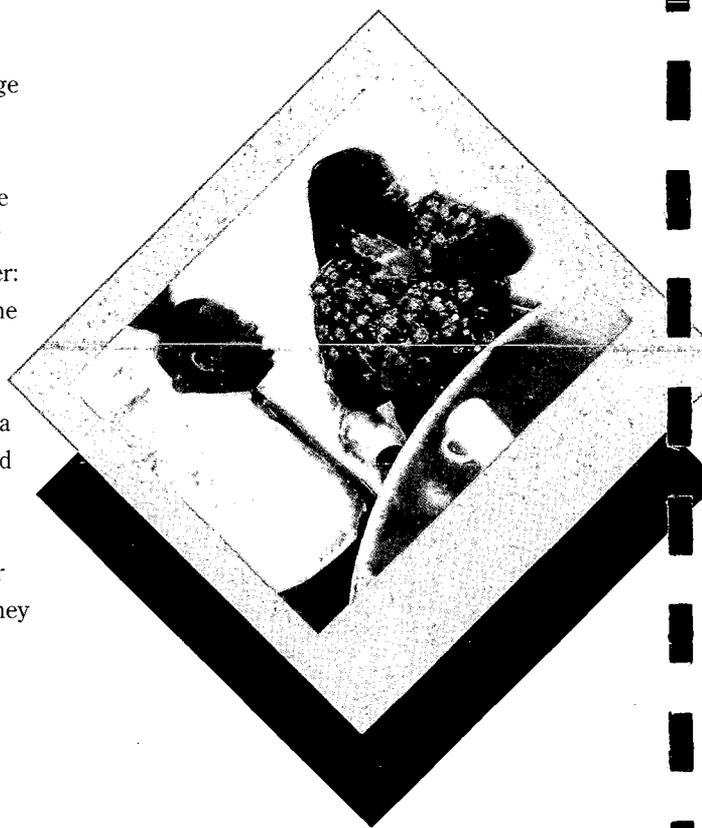
17. Inappropriateness of recommending marriage or couples' counseling or mediation in most instances of domestic violence. The model state code adopted by the National Council of Juvenile and Family Court Judges specifies the following conditions under which mediation may be proper:

- a. Mediation is requested by the victim of the alleged domestic or family violence;
- b. Mediation is provided in a specialized manner that protects the safety of the victim by a certified mediator who is trained in domestic and family violence; and
- c. The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.⁷⁴

Domestic violence cases involve difficult, complex, and painful situations that cannot help but touch upon a fact-finder's core beliefs and values. Judges face daunting challenges in interpreting and applying evolving and diverse areas of the law. Prosecutors' offices undertaking the ambitious task of implementing domestic violence judicial training face difficult hurdles in truly informing and engaging the judiciary on this topic. Cross-court training that brings together judges and court staff from various courts handling domestic violence cases has been effective in strengthening inter-court and intra-court communication regarding responses to domestic violence cases. Innovative measures that use case scenarios, skits, or role playing are particularly useful. The struggle for many jurisdictions, though, lies in securing funding to launch such judicial training programs.

⁷⁴ See National Council of Juvenile and Family Court Judges, *Family Violence: A Model State Code* 36 (1994).

⁷⁵ See National Mental Health Association Information Center, *Aiding People in Conflict: A Manual for Law Enforcement* 47 (1988).



D. LAW ENFORCEMENT

If she [the victim] gets the [arrest] papers, you make the arrest, but before you put the first 'cuff on a wrist you know three things off the bat: low bond or no bond will be set by the magistrate—and the husband will be out of jail in a heartbeat; the wife will probably have second thoughts about the whole thing...and drop the charges before they go to court; and if the case does somehow make it before a judge or jury, it will be dismissed or treated lightly anyway. (A police officer's perspective).⁷⁵

The traditional police responses to abuse have included failing to respond, not arresting the batterer but allowing him to "cool down," blaming the victim, and arresting both parties. Today, however, among the various professionals responding to the needs of battered women, police officers are the most likely to have been trained in

⁷⁶ In states with firearms licensing procedures, the police can seize any unlicensed firearms if the batterer fails to follow proper licensing requirements.

⁷⁷ In many instances, the batterer may have taken the order from the victim and she may have no proof of its existence.

⁷⁸ Over three-fourths of the children who live in abusive households witness the violence. The effects on children who witness domestic violence include the following: sleep disturbances, an unusually high level of separation anxiety from a primary caregiver, increased activity, distractibility, post traumatic stress disorder, increased passivity and detachment. Many studies indicate that a disproportionate number of boys from abusive homes adopt the abuser's violent behavior while girls learn to become victims in similar relationships.

See Massachusetts Office of the Attorney General and Bowdoin Street Health Center, *Family Violence: The Health Provider's Role in Assessment and Intervention* (1995); B. Groves, B. Zuckerman, and S. Marans, *Silent Victims: Children Who Witness Violence*, 269 JAMA 262, 265 (1993); and Metropolitan King County Council, *Effects of Domestic Abuse on Children in Domestic/Dating Violence: An Information and Resource Handbook* (1994).

⁷⁹ See Massachusetts Attorney General and Bowdoin Street Health Care Center, *Family Violence: The Health Provider's Role In Assessment And Intervention* (1995).

⁸⁰ *Thurman v City of Torrington*, 595 F. Supp. 1521 (D.Conn. 1984).

domestic violence. As the first law enforcement contact for battered women, police officers play a critical role in influencing a victim's willingness to go forward with her case. Police officers are on the front lines in saving the lives of battered women and their children. Domestic violence scenes are often extremely emotionally charged, volatile, and highly dangerous. The officers' top priority is to diffuse the danger. They have to remain alert and neutral in gathering evidence to determine whether a crime has taken place and to identify the perpetrator. Weapons should be gathered and, if appropriate, confiscated.⁷⁶ The officers should have the means to check the perpetrator's criminal and protective order record.⁷⁷ They also need to apprise both the victim and the batterer of their legal rights and the options available to them. During this time, the officers should account for the strong possibility that the violence could escalate and should remain vigilant regarding the safety of the victim and her children. This often requires escorting the woman and her children to a safe location or to the hospital for medical treatment. In addition, police officers should look for signs of child neglect or child emotional, physical, or sexual abuse.⁷⁸

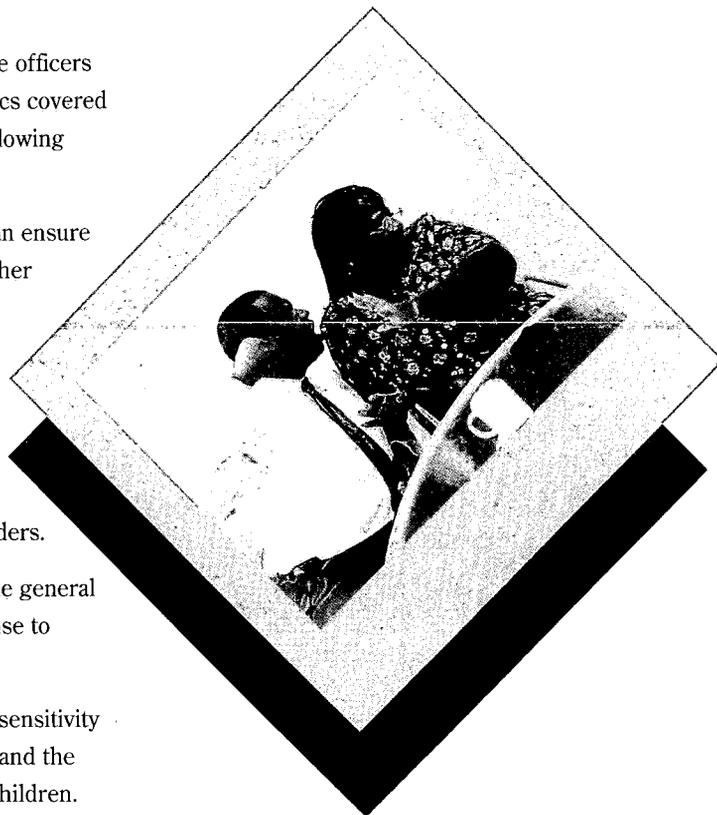
After serving in this wide range of roles and directly confronting the danger inherent in most domestic violence cases, the police expect cooperation from the victim. Understandably, police officers can grow frustrated when victims waver. Many women allow the batterer to reenter the residence after seeking police assistance for his removal, even if they have obtained a protective order. Victims often leave several times before making a final break from their abusers.⁷⁹ Awareness of this fact enables police to perceive their role as helping these women gain long-term safety, well-being, and independence, even if it requires multiple emergency visits to the same home.

Since police gather most of the evidence that prosecutors need in court, it is in the district attorney's interest for police to be well trained on the issue and familiar with the relevant laws, procedures, and policies. Much of the impetus for police departments to develop formal domestic violence policies has come from towns, municipalities, and insurance carriers, which were primarily concerned about their civil liability. In 1984, the Connecticut federal district court awarded Tracy Thurman, a severely beaten, stabbed, and subsequently paralyzed battered woman, \$2.3 million and determined that the Torrington police department had engaged in negligent behavior by failing to protect her⁸⁰. This landmark case prompted both heightened awareness of domestic violence and police training across the nation. In many jurisdictions, subsequent awareness of the need for consistent and effective police response in domestic violence incidents led to the development of statewide standard police practice guidelines in addition to police training.

⁸¹ In its model state code, the National Court of Juvenile and Family Court Judges has specified the following topics to be covered in police training on domestic violence: (a) The investigation and management of cases involving domestic and family violence and writing of reports in such cases; (b) The nature, extent, and causes of domestic and family violence; (c) Practices designed to promote the safety of officers investigating domestic and family violence; (d) Practices designed to promote the safety of the victims of domestic and family violence and other family and household members, including safety plans; (e) The legal rights and remedies available to victims of domestic or family violence, including but not limited to, rights and compensation of victims of crime and enforcement of civil and criminal remedies; (f) The service available to victims of domestic or family violence and their children; (g) Sensitivity to cultural, racial, and sexual issues and the effect of cultural, racial, and gender bias on the response of law enforcement officers and the enforcement of laws relating to domestic and family violence; and (h) The provisions of the Model Code and other applicable state statutes concerning domestic and family violence. See Advisory Committee of the Project of the Family Violence Project, National Council of Juvenile and Family Court Judges, *Model Code on Domestic and Family Violence* 45 (1994).

Topics to include in training police officers and sheriffs generally include the topics covered in the judicial curriculum, with the following minor adaptations and additions:⁸¹

- 1.** Specific ways in which the police can ensure the safety of the battered woman and her children, and aid battered women in developing safety plans.
- 2.** Ways to apprise victims of relevant criminal and civil protective laws.
- 3.** Development of specific policies regarding the service of protective orders.
- 4.** Education on ways to strengthen the general community's awareness of and response to domestic violence cases.
- 5.** Ways to heighten law enforcement sensitivity to the complexities of the crime itself and the plight of individual victims and their children.
- 6.** Ways police can more effectively serve restraining orders and ensure follow-up of outstanding police arrest warrants.
- 7.** Myths regarding domestic violence to which police historically have subscribed, such as telling the batterer to take a walk around the block instead of arresting him, believing that battered women actually enjoy being battered, or believing that marriage is a license permitting a husband to physically or sexually abuse his wife.
- 8.** Ways to access interpreter services on an emergency basis to respond more effectively to battered women when a language barrier exists.



⁸² Presumptive arrest is the automatic arrest of a batterer who is identified and substantiated by the victim, absent clear and convincing reasons not to arrest.

⁸³ Dual arrest in domestic violence situations should be actively discouraged. In instances involving suspected mutual abuse, the officer should try to determine who was the initial and primary aggressor. With incidents involving dual arrest, the police should outline in writing the grounds for arresting both parties. The National Council of Juvenile and Family Court Judges specifies that a police officer "who has not arrested an alleged perpetrator or who made a dual arrest decision to submit a written report explaining the reasons for that decision." National Council of Juvenile and Family Court Judges, *Model Code on Domestic and Family Violence* 8 (1994).

⁸⁴ Police officers should obtain the phone number of the victim and a person with whom the victim is close, such as a family member or friend.

⁸⁵ See Duluth, Minnesota Police Department, *Domestic Abuse Arrest/Incident Report Writing Checklist*.

9. Proper arrest laws and applicable procedures including provisions relating to probable cause, mandatory arrest, presumptive arrest,⁸² dual arrest,⁸³ protective orders and their violation, firearms confiscation, constitutional rules applying to searches, and other necessary procedures for evidence collection.

10. Ways to maintain victim contact without having the batterer suspect that the victim is attempting to leave the abusive situation, if necessary.⁸⁴

11. Effective means by which officers can defuse the violence while responding to the call, keeping the safety of the victim and the children as a primary concern.

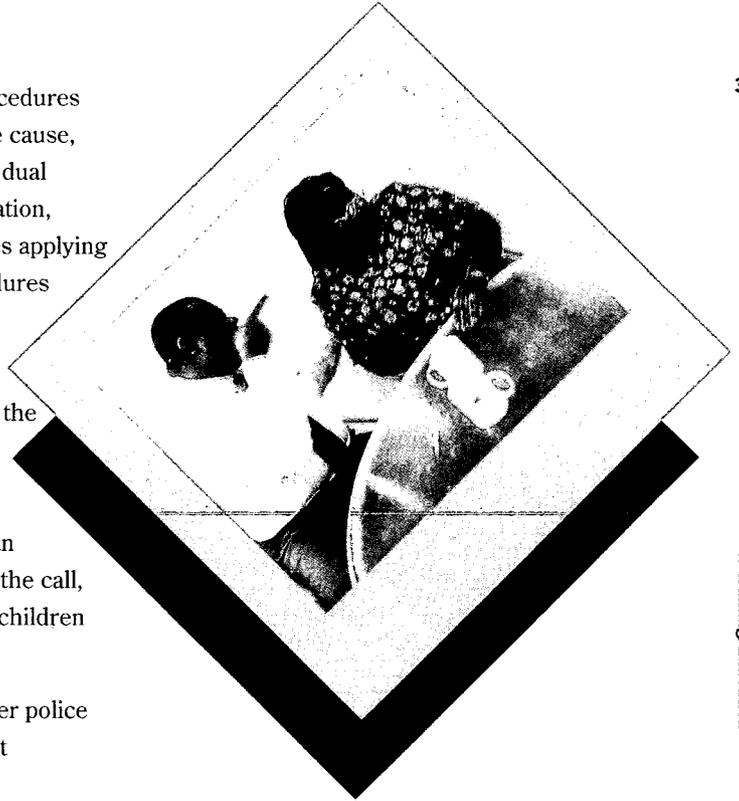
12. Procedures by which police hand over police reports and other evidence to the district attorney's office.

13. Procedures to inform victims of the release of the batterer after any type of detention.

14. The range of abuse perpetrated, including domestic violence in same-sex relationships, elder abuse, child abuse, and courtship violence.

15. Ways to record the identity of batterers at police departments so police can easily track and locate them in the future.

16. Understanding hearsay and its exceptions, especially excited utterances and present-sense impressions, in order to better document such statements.⁸⁵



E. MEDICAL PERSONNEL

Historically, the medical profession has either failed to view domestic violence as a medical problem or has simply ignored it altogether.⁸⁶ Traditional medical responses to patients suspected of being abused have included treatment by tranquilizers and similar types of medication, as well as psychiatric services that mask or perpetuate the violence.⁸⁷ Conventional wisdom blamed battered women by contending that they either provoked or enjoyed the abuse. Other barriers that have prevented medical staff from effectively serving battered women include the following:

1. Time constraints—the practice of seeing patients for short periods of time. Battered women require time consuming sessions to open up and describe all the pertinent medical information relating to the abuse.
2. Fear of opening “Pandora’s box” and having to deal with issues traditionally considered outside the scope of a physician’s duties, such as safety planning and identifying the source of injury.
3. Lack of information and training on domestic violence.
4. The potentially embarrassing, private, and delicate task of inquiring about the injuries of a patient suspected of being physically or sexually abused.

Today, there is growing awareness in the medical community that domestic violence is a prevalent and severe medical problem and not just a law enforcement issue. Approximately one-third of the women seeking care in emergency rooms across the country are there due to injuries caused by a batterer. One-fourth of the women who attempt suicide or obtain emergency psychiatric

services are victims of abuse.⁸⁸ Twenty-three percent of pregnant women seeking prenatal care have suffered from domestic violence.⁸⁹ Inevitably, a wide range of medical staff will come into contact with many battered women.

Medical personnel can play a key role in reducing domestic violence. They may be the first professionals to whom a victim turns for assistance. In addition to causing direct physical injury warranting serious medical intervention, batterers often engage in controlling behavior that has indirect but serious effects on a victim’s well-being. For instance, a batterer may refuse to assist the victim when she needs medical or mental health treatment irrespective of whether he was the source of the injury. Batterers often will restrict a victim’s access to finances, medical insurance, transportation, or child care that would enable her to seek needed medical treatment. If the victim can get to the doctor’s office, hospital, or medical facility, medical personnel can play a key role in identifying the abuse, intervening effectively, documenting the injury, and making appropriate referrals. Medical records are invaluable documents for prosecutors to corroborate the nature and the seriousness of the abuse as presented by the victim or witnesses. General practitioners, emergency room doctors, obstetric/gynecological physicians, and their entire staff, including nurses, medical assistants, social workers, secretaries, and security personnel, should be apprised of how to identify, respond to, and document domestic violence. Emergency room personnel are likely to see the greatest number of severely abused women. They in particular should incorporate domestic violence into their medical lexicon and practice, suspecting abuse as a primary cause of the injuries sustained by many of the female patients they treat.

In January 1992, the Joint Commission on

⁸⁶ Kurz and Stark, *Not-so-Benign Neglect: The Medical Response to Battery, in Feminist Perspectives On Wife Abuse* (Yllo & Borad eds., 1988).

⁸⁷ See E. Stark and A. Flitcraft, *Medical Therapy as Repression: The Case of the Battered Women*, *Health and Medicine*, Summer/Fall 1982, at 29-32.

⁸⁸ *Annals Of Emergency Medicine*, 16:10 at 1159 (October 1987). Statistics indicate that 26% of all females who attempt to commit suicide have suffered from prior physical abuse.

⁸⁹ *American Medical Association Diagnostic and Treatment Guidelines on Domestic Violence*, 1 *Arch. Fam. Med.* at 39-47.

Accreditation of Healthcare Organizations adopted standards that mandate all accredited hospitals to adopt policies and procedures for their emergency and ambulatory care departments that identify, treat, and refer victims of abuse.⁹⁰ But medical personnel find themselves asking the same basic question as police departments and prosecutor's offices: How can we respond effectively to the many and diverse demands posed by victims of domestic violence? Many battered women do not view themselves as victims of abuse or feel extremely uncomfortable in disclosing the abuse to anyone. During a routine checkup or emergency room, obstetric/gynecological, and other types of medical visits, physicians, nurses, medical technicians, and other staff have a unique opportunity to identify abuse. As a matter of course, they should ask women suspected of being abused descriptive, direct, and specific questions regarding the suspected history of abuse, prior medical history, current injuries, and the presence of firearms in the home. Medical personnel should completely and accurately document these responses, as fact-intensively as possible.

Complete treatment of abuse should include a plan for prevention of future injury. It should incorporate a detailed safety plan with ongoing patient contact, such as scheduled appointments for return medical visits. Distribution of educational materials relating to domestic violence in waiting areas may help patients identify domestic violence as a personal health issue. Medical personnel typically depend on tangible solutions such as pills, surgical procedures, or changes in diet. Treating victims of abuse generally requires an array of intangible antidotes, such as building the patient's self-esteem and enacting safety measures. Through active participation in community-based round-tables and

other working groups coordinating local resources for battered women, all medical staff coming into contact with battered women should stay abreast of referrals for shelter, support groups, job training, economic empowerment, and other critical services. Early diagnosis, intervention, and treatment of domestic violence in a doctor's office or hospital emergency room is critical to stem the tide of domestic violence.

Topics to include in training medical personnel include most of the topics covered in the sample curriculum for judicial and law enforcement training, with the following adaptations and additions:

- 1.** The prevalence, frequency, severity, and costs of domestic violence as it relates to the medical community, including the number of abused patients that physicians, nurses, and others should expect to see; ways to deal effectively with the volume of patients needing diagnosis and treatment in abuse victimization; and ways to avoid underestimating the injury or danger of future injury posed by domestic violence.
- 2.** Ways to screen for patients suffering from domestic violence, including routine inquiries about the presence of domestic violence with simple and direct questions; also indirect observation of physical and other symptoms of abuse, such as:
 - a. Black eyes, bruises, cuts, and injuries to the face, neck, throat chest, and breasts.
 - b. Significant delay between occurrence of injury and patient seeking treatment.
 - c. Abdominal or genital injury, especially during pregnancy, miscarriage, and other pregnancy disorders.
 - d. Sexual assault or sexually transmitted diseases.
 - e. Chronic pain syndrome.

⁹⁰ The standard also calls for training for all hospital staff in elder abuse, child abuse, and sexual assault.

- f. Sleep disorders, depression, suicide attempts, and similar mental health disorders.
- g. Post-traumatic stress disorder.
- h. Excess number and types of injuries, including patient repeatedly returning for emergency room or other medical services.
- i. Alcohol or drug abuse.
- j. Child emotional, sexual, or physical abuse or child neglect.
- k. Controlling or overbearing spouse or partner accompanying patient during medical visits.

l. Patient's apparent isolation from her friends, family, and others.

3. Effective treatment that incorporates issues such as the dynamics and indicators of abuse, medical treatment and intervention models, jurisdictional medical reporting requirements, and medical documentation of abuse.

4. Ways to redefine the traditional medical role in treating patients and to incorporate concepts such as patient reluctance, economic empowerment, and self-esteem issues.

5. Role that alcohol and drugs play in exacerbating, but not causing, domestic violence, and appropriate treatment for batterers with substance abuse problems.

6. Awareness of and ways to deal effectively with the fact that detection, reporting, and investigation of possible child abuse in conjunction with spousal abuse may trigger additional violence for the battered mother.

7. The critical role that medical reports can play in strengthening the prosecution's case.

8. Ways to document incidents of domestic violence, such as

a. Color photographs, drawings, x-rays, and other medical imaging means.

b. Medical tests such as blood tests.

c. Description of the injuries, including location, size, severity, prognosis, treatment required, and overall impact of injury on patient.

d. Date, time, and by whom photograph or other measure was taken; name, address, and other characteristics identifying the patient, the perpetrator, and witnesses of the injury; nature of the relationship between the perpetrator and the patient.

e. Ripped or blood-stained clothing and other tangible items in sealed envelopes or bags and labeled thoroughly with identifiers such as time and date collected, person collecting and all handling the evidence, victim and perpetrator name, address, and other relevant characteristics.

f. The treating physician's opinion of the cause and source of the injury, along with relevant medical history corroborating that the patient suffers from domestic violence.

g. Spontaneous utterances and business record exceptions.⁹¹

h. Written notes of all action taken by medical personnel in attempting to ensure patient safety and well-being, including contact with law enforcement, safety planning, information provided regarding the state's abuse prevention law, and referrals given.

i. If required for such documentation, informed consent from the patient.

9. Civil and criminal laws applicable to instances of abuse and ways for medical personnel to impart this information to patients suffering from abuse.

⁹¹ Because they are aware of such potential evidentiary hurdles, prosecutors are in an ideal position to encourage medical staff to routinely document instances of abuse.

F. MULTIDISCIPLINARY GROUPS

1. Coordinating Councils

District attorneys' offices as well as professionals in the community need to be kept abreast of services, resources, and referrals locally available for battered women. These professionals need to work closely to develop uniform and coordinated responses to domestic violence. Nationally, prosecutors have been instrumental in developing task forces, community round-tables, community-wide domestic violence committees, and other forums designed to strengthen the community's response to abuse, expand community domestic violence resources, and generate community awareness of the crime and local responses. (See Appendix E for a complete list of national violence organizations and state domestic violence coalitions.) Coalition building is key to building successful interoffice, as well as community-wide responses to domestic violence. Effective domestic violence coalitions include the following professionals:

- Police;
- Prosecutors and advocates;
- Judges and court personnel, including court clerks;
- Probation officers;
- Battered women's shelter counselors;
- Battered women's service providers;
- Legislators;
- Business leaders;
- Lawyers, including those who provide pro bono assistance to battered women, legal services' attorneys, and attorneys defending battered women;
- Doctors, especially those specializing in emergency room, obstetric/gynecological, and family practices;
- Nurses, midwives, and medical technicians;
- Psychiatrists, psychologists, and other mental health professionals;
- Teachers and guidance counselors; and
- Clergy from all religious denominations.

The coordination of information and resources and the development of community-wide solutions to the problem of domestic violence will promote long-term community alleviation of domestic violence and meaningful community-based solutions.⁹² For a more complete discussion and overview of coordinating councils, see APRI's *Confronting Violence Against Women: A Community Action Approach*.

2. Domestic Violence Death Review Committees

Domestic violence death review committees (DV-DRCs) generally are comprised of public health officials, criminal justice personnel, and representation from the county coroner's office, law enforcement, and the judiciary.⁹³ Similar to the hospital mortality/ morbidity and child death review committees on which they were based, DV-DRCs review deaths or major injuries that occur as a result of domestic violence in a family with a known history of violence.⁹⁴

The overall goal of DV-DRCs is to improve the way the system, including the agencies and courts involved, responds to domestic violence cases, thereby preventing future harm.⁹⁵ By reviewing these deaths and injuries, DV-DRCs develop a better understanding of where and how the system failed to respond adequately to domestic violence. The review process helps to uncover deficiencies so that programs can be instituted and resources devoted to correcting problem areas. DV-DRCs evaluate each tier in the system to ensure that agencies possess specific protocols and procedures sufficient to handle domestic violence cases effectively, and that each agency has an adequate method of sharing information on domestic violence cases with other agencies.⁹⁶

⁹² See Appendix F for coordinating council checklist.

⁹³ Draft copy of the "Interagency Agreement to Establish the Multi-Disciplinary Domestic Violence Fatality Review Committee" Washoe County, Nevada (1994).

⁹⁴ Honorable Michael Town, National Council of Juvenile and Family Court Judges, *Domestic Violence Death Review Teams*, Family Violence: State of the Art Court Programs 89 (1992). Domestic Violence Council, Santa Clara County Domestic Violence Death Review Committee, *Year-End Report* 38 (1994-95).

⁹⁵ Domestic Violence Council, Santa Clara County Domestic Violence Death Review Committee, *Year-End Report* 41, 42 (1994-95).

⁹⁶ Domestic Violence Council, Santa Clara County Domestic Violence Death Review Committee, *Year-End Report* 41, 42 (1994-95).

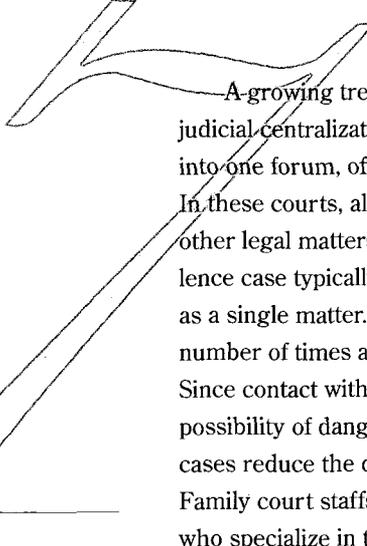
officers, should be made aware of VAWA and its applications, and should effect procedures to develop a coordinated response between federal and state or local departments. Conflicts can arise between state courts and offices, though 18 USC § 2265 directs that foreign protection orders must be given full faith and credit by law enforcement officers and courts. VAWA also provides funding for a national domestic violence hotline, 1-800-799-SAFE. Advocates answering calls speak English and Spanish and have access to information about shelters, legal advocacy, and social service programs in every state.¹⁰⁴ The Department of Health and Human Services reports there have been over 30,000 calls since the hotline's establishment one year ago.¹⁰⁵ The response proves that legislation to curb violence against women was sorely needed and long overdue. ▲

¹⁰⁴ 1-800-799-SAFE - *New National Domestic Violence Hotline Number*, Domestic Violence Rep., June/July 1996, Washington Watch at 11.

¹⁰⁵ Associated Press Online, July 18, 1996, Dateline Washington, 18:05 eastern time.



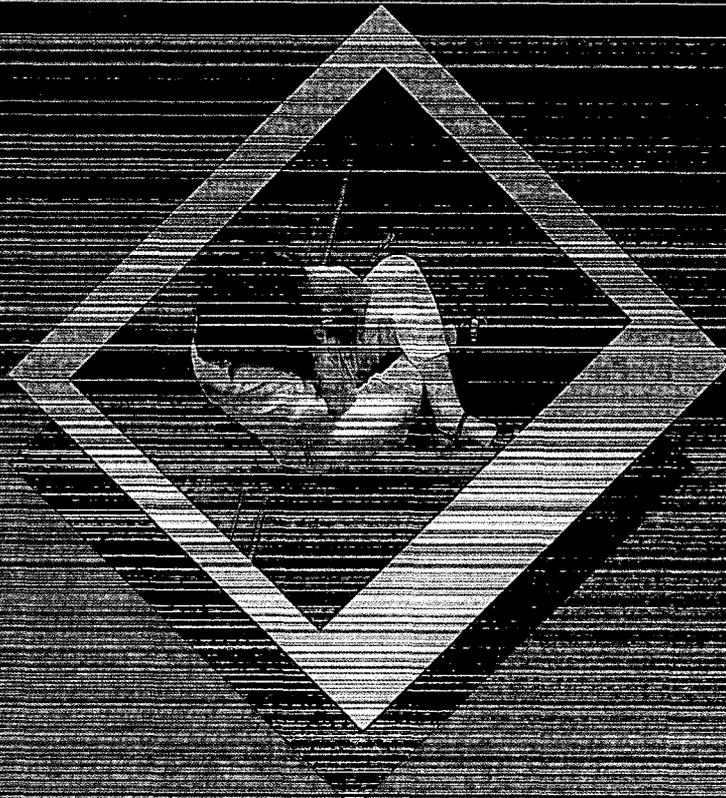
VII. Advantages and Disadvantages of Family Court



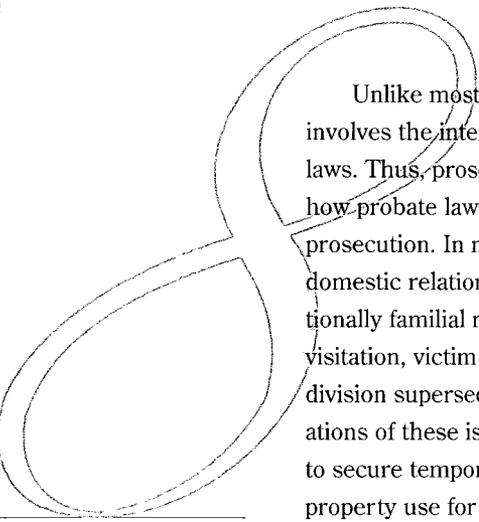
A growing trend in many states has been the judicial centralization of domestic violence cases into one forum, often referred to as family court. In these courts, all criminal, civil, probate, and other legal matters arising from a domestic violence case typically are consolidated and handled as a single matter. Such consolidation reduces the number of times a victim must come to court. Since contact with the batterer increases the possibility of danger, family courts that streamline cases reduce the danger a battered woman faces. Family court staffs typically include personnel who specialize in the field of familial violence and who have a background or significant training in domestic violence. They are sensitive to the complex dynamics and emerging laws in the field, thus increasing the likelihood that a battered woman seeking legal relief will learn of the array of available criminal, civil, and probate remedies. Within family courts, records, evidence, and other relevant legal data can all be centralized and made easily accessible for future investigation and litigation purposes. This can reduce inconsistencies that may arise if legal matters are separated and tried in various forums (e.g., inconsistent visitation, stay-away, or no-contact provisions).

A common complaint is that many judges lack sensitivity to the danger posed by batterers and order inappropriate visitation and custody rights to batterers. Creation of a family court compels fact-finders to hear probate issues in conjunction with criminal and protective order proceedings, which are more likely to highlight instances of violence. There is less likelihood that the danger posed by batterers will go unrecognized by the court. Staffing a court with professionals focusing solely on domestic violence enhances service to victims, since court personnel have a richer

understanding of domestic violence. They also have a more expansive network to access resources. Family courts increase the likelihood of collaboration across the various legal disciplines. However, many prosecutors find the creation of these courts problematic. Consolidation of abuse cases to include probate law with criminal law may dilute the criminal courts' power to hold batterers accountable for their behavior. Isolating the crime of domestic violence from other violent crimes may underscore the social and community perception of the phenomenon. However, it may frame the issue of domestic violence as a separate, non-criminal, social issue. ▲



VIII. How Family Law Issues Affect Prosecution



Unlike most other crimes, domestic violence involves the intersection of probate and criminal laws. Thus, prosecutors should keep abreast of how probate laws and practice affect criminal prosecution. In many jurisdictions, family/domestic relations court orders regarding traditionally familial matters such as child custody, visitation, victim financial support, and asset division supersede any criminal court determinations of these issues. Often, prosecutors attempt to secure temporary support, custody, and property use for the victim to enable her to live safely and escape from the abusive household. Battered women typically lack effective legal representation in probate court and often find themselves in probate mediation sessions on an uneven playing field. The probate court often does not factor in the occurrence of abuse in the marriage. When probate courts revisit or revise terms decided by the criminal courts, such as support, custody, and property use, many battered women receive less favorable settlements, and eventually must return to the batterer for financial reasons. In most states, violations of existing family court visitation, child support, victim compensation, and other provisions result in criminal penalties. Fear of not obtaining equitable property and other asset divisions can significantly sway a battered woman's decision on whether to cooperate with the prosecution. Battered women lacking sufficient income sources of their own will not wish to participate in the possible incarceration of their primary income source. In contrast, criminal conviction of the batterer may in fact substantiate the occurrence of the abuse and provide a battered woman with greater leverage in probate court to obtain a more favorable settlement in states with fault, cruelty, or abuse as grounds for divorce or a factor to be considered by the probate court judge in making key decisions.

The more difficult scenario for prosecutors handling domestic violence cases is one in which the victim chooses to remain with, or return to, the batterer after a criminal case has been initiated against him. The victim typically is the key witness for the prosecution, and her testimony is critical for the prosecutor to convict the batterer. Under these circumstances, prosecutors, particularly those in jurisdictions without a spousal privilege or confidentiality of marital conversations, have compelled victims of abuse to testify. In many jurisdictions, advocates and prosecutors who have sufficient evidence documenting harm to children as a result of the abuse must report the matter to a state child protective agency. In addition, district attorney staff handling cases involving violence perpetrated against a minor may have a duty to report the matter to a child protective agency. Each of these circumstances poses especially difficult situations for advocates and prosecutors. The victim may feel that an implicit expectation of confidentiality between herself and the prosecutor or advocate has been betrayed. Most battered women, typically distrustful of the criminal adjudication process, will view their interests to be at odds with those of the prosecutor once their case has been referred to another state agency. Once the batterer learns that another agency will be intervening, the woman and her children may suffer additional and more serious retaliatory violence.

Prosecutors may wish to inform victims at the onset of the case that failure to leave an abusive situation could result in the victim's loss of custody rights. Recognizing the significant potential for child abuse in domestic violence situations, courts may deem children neglected or abused when a parent has chosen not to leave a batterer. *In Re A.D.R. v. Rankin*¹⁰⁶ found neglect due to an environment injurious to the minor's welfare.

The three-month-old infant had never, in fact, been physically abused; however, the child's mother had suffered extensive abuse, visiting one hospital more than sixty times in a seven-year period.

The mother blamed her injuries on an alleged boyfriend and an accidental fall down stairs. Officials from the police and the Illinois Department of Children and Family Services were unable to find the boyfriend. Further, the victim's stories conflicted with her husband's, and her doctor testified that the victim's explanations were inconsistent with her injuries. Attributing the victim's injuries to domestic abuse, the court affirmed the lower court's finding of neglect, stating,

*Parental autonomy is not absolute. The State has a role as parens patriae, the ultimate protector of the rights of minors. The parents' rights may be secondary to the State's strong interest in protecting children where the potential for abuse or neglect exists, and the State may separate the parents from the child in such situations.*¹⁰⁷

Both parents, then, were denied custody. Though the victim suffered greatly in this case, the court's posture was not wholly unfounded. Even if children are not physically abused, exposure to violence in the home may cause them to become victims or abusers themselves one day.¹⁰⁸ Other courts, though, have been more forgiving to victims. Taking into account the extreme and unusual circumstances of domestic violence, the

West Virginia Supreme Court of Appeals reversed a decision to renege the mother's custody rights, despite actual physical and sexual child abuse by the father.¹⁰⁹ The court found that the mother had been denied a "parental improvement period," a temporary loss of custody in accordance with a state statute which, in this case, would provide the victim time to overcome battered women's syndrome and to rid her house of the influence of domestic violence. ▲

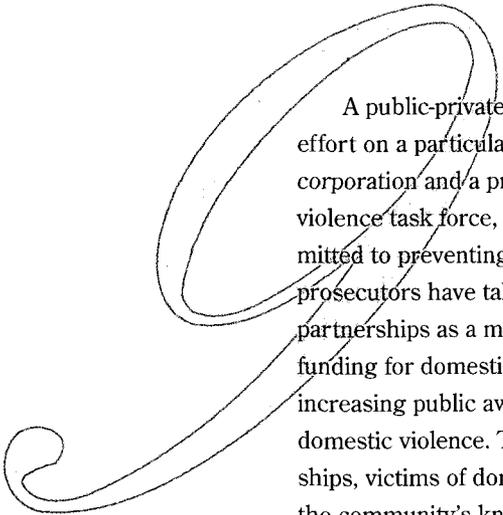
¹⁰⁶ *In Re A.D.R. v. Rankin*, 542 N.E.2d 487 (Ill. App. Ct. 1989).

¹⁰⁷ *Id.*, quoting *Lehman v. Stephens*, 499 N.E.2d 103, 109-10 (Ill. App. 1986).

¹⁰⁸ See, Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 Vand. L. Rev. 1041, 1055-57 (1991).

¹⁰⁹ *In Re Betty J.W.*, 371 S.E. 2d 326 (W. Va. 1988). Note, however, that while the father had sexually abused one of his five children, the court found the mother did not tolerate this abuse. Instead, she removed her children from the house and reported the incest as soon as safely possible.

IX. Funding Projects Through Public-Private Partnerships



A public-private partnership is a collaborative effort on a particular project between a private corporation and a prosecuting office, domestic violence task force, or other organization committed to preventing domestic abuse. Several prosecutors have taken advantage of public-private partnerships as a means of obtaining additional funding for domestic violence programs while increasing public awareness of the problem of domestic violence. Through public-private partnerships, victims of domestic violence are served and the community's knowledge of and ability to respond to domestic violence is improved. Furthermore, the public image of the corporate sponsor is enhanced, as corporations benefit tremendously from campaigns launched to serve their community and customers.

Prosecutors have engaged corporate sponsors to help fund the creation of practical, easy-to-follow safety plans that victims of domestic violence can use when they feel threatened. Partnerships with corporations have offered prosecutors the opportunity to reach a wider audience with their message against domestic violence. Through a partnership, the public can be educated about the magnitude of the problem, enabling witnesses to better recognize domestic violence and understand the best way to help. Victims can learn where and how to acquire assistance. By providing victims with information about women's shelters when they visit the bank or buy groceries, partnerships can offer helpful information without creating suspicion in the batterer or escalating the threat of violence.

Prosecutors and domestic violence groups need to choose corporate sponsors that will easily recognize an association between their product or service and the issue of domestic violence and prevention. Corporate sponsors should be informed of the benefits of such sponsorship and how their contributions will help victims of domestic violence. A budding partnership begins with the choice of an elected official to make initial introductions. The elected official is ideally suited to create more interest, because the credibility stemming from a familiar local figure, rather than an outside consultant, will often alleviate the business participant's concerns. By setting the first impression, the elected official establishes this credibility early on, for a more successful campaign. Second, the organization begins contacting corporations. The "cold calling" telemarketing technique can prove effective and need only be justified by common sense. Important and successful businesses that carry a good deal of clout are the best candidates. The campaign should focus on businesses rather than foundations. A letter campaign can also be a sound tactic, but follow-up calls are necessary to reach those who may have discarded the letter or as reminders to those who read the letters.

The prosecuting office should begin by thinking small. Asking for large amounts of money may be impractical at first, as the corporation will likely want to establish a relationship first. Nor should one company or business be expected to fund the entire project. A better approach would be to pinpoint project elements to be funded by a single corporation. After this is done, the office should target organizations suited to a particular aspect of the program. For example, to fund a project for children, toy companies would be a reasonable target group. The prosecuting office should convince the business that the partnership will enhance its own public image, serve needy victims, and help to create a better community. Also, the prosecuting office will need to overcome any perceptions that contributions to government are often wasted. The corporation will want to know that its money will be used effectively toward the specific project. Once the partnership is established and the projects or programs are produced, a media blitz will generate the publicity needed to promote the desired objective.

The following is a list of some public-private partnerships.

1. The Abused Women's Active Response

Emergency (AWARE) Program: A partnership between ADT Security Systems and prosecutors across the country has been initiated to provide victims of domestic violence with emergency necklace pendants and residential security systems.

The AWARE Program was launched in January 1992 and has been established in seventy-seven jurisdictions and eighteen Canadian cities. The program exists in large cities as well as small towns.

Under the program, ADT installs security systems in victims' homes and provides them with pendants that have an emergency button. If a victim feels she is in danger, she can press the button on either the security panel or the pendant, sending a silent alarm to ADT's customer service center. ADT then notifies the police, who treat the call on a priority basis.

The victims who qualify for the AWARE Program are those who face serious risk from an abuser and have utilized law enforcement and legal procedures to no avail. ADT's suggested criteria for participation include victims whose abusers have been physically violent to their children, who have been abused while pregnant, whose abusers have increased the frequency and severity of the abuse within the past year, who have been hospitalized or treated for injuries resulting from abuse, and whose abusers own weapons or have made threats with weapons.

ADT has also made suggestions concerning the recall of the alarm system. The security system and necklace pendant should be recalled if the threat of violence is removed, as in the event of the abuser's incarceration or if the abuser moves from the state. The security devices are also subject to recall if the victim allows the abuser to move back into the home, contacts the abuser for any reason

other than to discuss court proceedings or child custody, makes the abuser's bail or bond, or makes more than three false-alarm calls. The continued safety of the victims, as well as continued compliance with the participation requirements, should be assessed through follow-up with a victim advocacy program. Follow-up should occur twice a month by telephone and once a month in person.

The AWARE Program has been credited with helping to save the lives of twenty-two women and has provided peace of mind to countless others.

2. Cellular Phone Programs: Various cellular phone companies have created partnerships with prosecuting offices to provide emergency-use cell phones to victims of domestic violence. The programs are similar in that the phones cannot receive calls and can only access 911. The companies have provided prosecutors with these phones free of charge, although the number of phones donated varies from jurisdiction to jurisdiction. Victims must meet certain requirements to qualify for and remain in these programs and can only use the phone in emergency situations.

The following are specific examples of cellular phone programs:

a. *Bell Atlantic NYNEX Mobile, Rockville, Maryland:* The Montgomery County Sheriff's office recently established a partnership with Bell Atlantic to provide cell phones to victims of domestic violence. The partnership was created after Bell Atlantic received a request from a Montgomery County Council member who had read of a similar program in Massachusetts. Bell Atlantic has donated twenty-five phones thus far. This is a pilot program for Bell Atlantic in Montgomery County. The effectiveness of the program will be evaluated after six months to determine whether it should be expanded to other jurisdictions.

The company has not established fixed guidelines for the requirements to participate in the program, but rather, reviews requests for donations on a case-by-case basis. Bell Atlantic urges each recipient to keep track of how the cell phones are used to measure the success and usefulness of the program. Bell Atlantic's emergency cell phones are available to victims in all regions serviced by Bell Atlantic: New England, the New York/New Jersey metropolitan area, Philadelphia, Pittsburgh, the Washington, D.C., metropolitan area, and the Carolinas.

b. *BellSouth Mobility, Atlanta, Georgia:* After receiving a request from the Atlanta Victim-Witness Assistance Program, BellSouth Mobility established a partnership to provide cell phones to help victims of domestic violence. BellSouth donated fifty emergency cell phones to the program. Although the original partnership was established by the Victim-Witness Assistance Program, BellSouth now donates phones throughout the municipality, regardless of the program or court, to help victims in need.

c. *Emergency Victims Escape Network (EVEN) Program, Houston, Texas:* EVEN is a partnership between the Harris County Sheriff's Department and the Houston Cellular Telephone Company. The distribution of the phones is controlled by each Sheriff's Department Patrol District substation, and each participant is allowed to keep the phone thirty days, or longer, if the detective assigned to the case believes it is necessary.

3. Bell Atlantic's Wireless at Work HopeLine

Program: Bell Atlantic first created its HopeLine program in 1993 to offer individuals in homeless shelters free access to voice mail services while trying to obtain housing or employment. This year Bell Atlantic expanded its HopeLine program to domestic violence victims. This service provides voice mail to victims who are staying in battered women's shelters. It offers them access to a private telephone line while searching for housing or employment or contacting social service agencies or the police, and keeps the victims' status confidential, since no one knows victims are calling from a shelter.

Bell Atlantic has established HopeLine in more than eighty organizations. Each organization equipped with HopeLine has access to ten voice mailboxes, accommodating eight clients per box, five calls a day per client. The organizations include shelters, emergency response teams/fire and police departments, community watch programs, and national programs such as the March of Dimes and the Red Cross. Like other Bell Atlantic programs, HopeLine is available only in Bell Atlantic's service areas.

4. Citibank/Dominick's Safety Plans in Cook

County, Illinois: A domestic violence safety plan and two informational brochures have been distributed by Dominick's Finer Foods Stores and Citibank through a partnership with the Cook County State's Attorney. The Domestic Violence Safety Plan offers victims ways to avoid or defuse a potentially dangerous situation with an abuser. The Safety Plan provides the telephone numbers of shelters and a list of items victims should bring if it becomes necessary to leave home. The Safety Plan is available in English, Spanish, and Polish and comes in two sizes: a standard version (8.5 x 3.5 inches) and a wallet-sized version (3.5 x 2.5

inches), which is easy to conceal from abusers. One of the informational brochures, "Domestic Violence," explains the steps a victim must take to obtain an order of protection and prosecute an abuser. The other brochure, "The Illinois Stalking Law," explains the state's stalking law and the protection it affords victims.

5. New Jersey State Bar Association Safety

Guides: Two free guides to help victims of domestic violence understand their legal rights and identify the support services available to them have been published through partnership among the New Jersey State Bar Association, Legal Services of New Jersey, and the New Jersey Division on Women, Department of Community Affairs.

"Domestic Violence: The Law and You" is a sixteen-page overview of domestic violence written in question-and-answer form. This guide discusses the Prevention of Domestic Violence Act and the legal process, both civil and criminal. It explains steps toward filing a temporary restraining order, consulting with an attorney, going to trial, and testifying in court. The guide also discusses the law enforcement response, including arrest and violation of a restraining order, and what victims should do while waiting for the police to respond to a domestic call. In addition, the guide provides numbers a victim can call for assistance.

"Domestic Violence: A Guide to the Legal Rights of Battered Women in New Jersey" is a comprehensive legal reference for victims and their families as well as service providers who work with domestic violence victims. This guide also provides an overview of the legal process and addresses issues involving the family, such as divorce, child custody, visitation, and support. The guide discusses safety measures that victims should take, such as using hotlines, seeking the

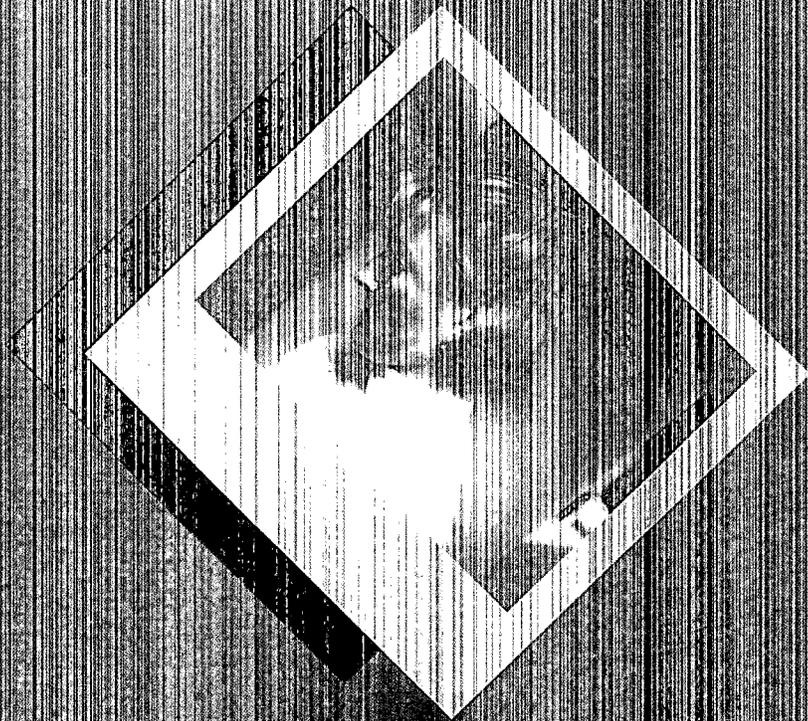
advice of an attorney, calling the police, and locating emergency and permanent housing. The guide lists welfare emergency assistance and food stamp programs, counseling options, local shelters, alcohol and drug treatment programs, referral services, and hotline numbers.

6. Walt Disney Company/American Bar

Association Children's Video: The American Bar Association's Multidisciplinary Commission on Domestic Violence, in conjunction with the Walt Disney Company, has produced a video on domestic violence directed at children. The video, "It's Not OK: Let's Talk About Domestic Violence," was created to help children whose families are suffering from domestic violence understand that the violence is wrong, that it is not their fault, and that they can get help. The video is aimed at children between ages seven and eleven, and includes a booklet that addresses the issues discussed in the video in greater detail. The video is intended for use in shelters, police stations, courts, and medical settings where children have the opportunity to discuss the topic of domestic violence and raise their concerns with a professional after viewing the video.

7. Ryka Inc., ROSE Foundation: In its commitment to ending domestic violence, Ryka donates 7 percent of its pretax profits to the Ryka Regaining One's Self-Esteem (ROSE) Foundation. Ryka, in cooperation with Lady Foot Locker, conducts in-store and community education programs on violence against women. In partnership with the National Victim Center, Ryka has donated \$10,000 to help launch the center's toll-free telephone number, which provides information and referral services to victims of domestic violence.

8. Highland County Jail Trustees, Highland County Florida, Safe House Project: A partnership among trustees from the Highlands County Jail, the Children's Services Council, various local businesses, and private volunteers renovated a building as a safe house for victims of domestic violence. The owner of the house agreed to sell it to the county for less than its appraised value. The Children's Services Council donated approximately \$35,000 for the renovations. Private citizens donated both time and money, helping with the renovations and purchasing furniture. The house contains a processing center, two counseling rooms, and four bedrooms, each capable of accommodating four women. ▲



Conclusion

Traditionally, in the area of domestic violence, it has been the advocates that have continually lobbied for and tended to the needs of the battered woman. They have done a tremendous job in changing the manner in which the criminal justice system handles domestic violence cases, but they cannot continue to do it alone.

Prosecutors should step up and take the lead in developing innovative programs and policies to abate domestic violence in their communities. All agencies involved in the process need to coordinate their efforts in order to see a lasting effect in society. As prosecutors strive to improve domestic violence units, the American Prosecutors Research Institute hopes this monograph will serve as a guide to making improvements, not only in the prosecution of these cases, but in the community as well.

Improving practices requires a substantial time commitment. Additionally, most offices are faced with severe budget constraints. To solve this conflict, please consider innovative ways of forging public private partnerships to supplement resources.

Most importantly, when prosecutors do create and implement practices that work, the information needs to be shared with other prosecuting offices. It is only by working together, sharing practices, and learning from each other that prosecutors will continue to fulfill their vital role, and continue to create a better and safer environment for the members of their communities.



Power and Control Wheel,
Duluth Intervention Project
(Minnesota).



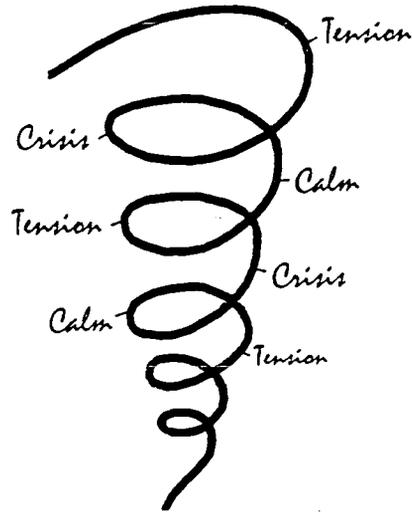
The Spiral of Violence

Tension Phase:

- May last for weeks or months
- Stress builds during this stage
- Communication breaks down
- Victim senses growing danger, tries to avoid abuse
- “Minor” violence/abuse occurs
- Incidents occur more often
- Intensity increases
- Batterer denies, minimizes, blames external factors
- Hopes “somehow” things will change

Crisis Phase:

- May last 2-24 hours or a few days
- Anxiety extremely high
- Major, controlled violence occurs
- Explosive, acute, unpredictable
- May be serious injuries, death
- Abuser blames victim
- Victim adapts in order to survive
- Victim may escape, returns when crisis is over
- Abuser may isolate victim physically and emotionally



Calm Phase

- May last for days or weeks
- Whole family in shock at first
- Abuser continues to justify abuse and blame victim
- Abuser may be remorseful; seeking forgiveness
- Abuser may never explain violence—abuse temporarily stops
- All are relieved crisis is past
- Victim worn down, accepts promises if offered
- Children become caretakers to “keep the peace” or survive
- Victim wants to believe the violence won’t recur
- Survival via negotiation

The victim is trapped in the downward spiral of the cycle. The victim is isolated, immobilized, and scared. The phases of violence may not occur in an orderly fashion. As the violence escalates in intensity and frequency, the time between phases grows shorter and shorter. However, each victim’s circumstances may be different and not fit neatly into this model.

Adapted from L. Walker,
The Battered Woman
Harper and Row, New York, 1980

Metropolitan King County Council

Appendix C

Is the suspect a batterer?

Eighteen questions to ask yourself about the case.

Check if the suspect has ever done any of the following:

1. ___ Does he appear to possess a dual personality like a Dr. Jekyll and Mr. Hyde?
2. ___ Does he try to sever the victim's ties to the outside world by cutting her off from her friends, family, coworkers, and others?
3. ___ Has he threatened the victim to the point where she has felt scared that he would have seriously hurt her?
4. ___ Has he hit, slapped, shoved, kicked, punched, or thrown an object at the victim?
5. ___ Has he forced her to have sex when she said she did not want to?
6. ___ Does he privately or publicly humiliate her (e.g., commenting that she's ugly, fat, dumb, weak, and unable to take care of herself without him)?
7. ___ Does he say hurtful and cruel things directly to the victim to chip away at her self-esteem?
8. ___ Does he try to play "mind control games" with the victim by commenting about other women to whom he may be attracted?
9. ___ Does he act jealous and possessive to the point that the victim feels totally suffocated?
10. ___ Does he try to block the victim's access to the telephone, automobile, or workplace in an effort to control her?
11. ___ Does he attribute his controlling behavior to his concern for the victim (e.g., claiming that the victim lacks judgment to make certain decisions)?
12. ___ Does he think the victim is seeing other men when in fact she is not?
13. ___ Does he isolate the victim from her family, friends, and all the other people she values in her life to the point that she feels totally cut off from the rest of the world?
14. ___ Does he hurt the victim physically and then apologize?
15. ___ Does he engage in violence toward their children or their pets?
16. ___ Does he adhere to rigid gender roles and punish her for not performing them (e.g., the victim should cook or clean for him)?
17. ___ Has he destroyed the victim's most prized sentimental possessions?
18. ___ Has he battered other women in the past? Are there any existing restraining orders against him?

If the victim answered yes to one of these questions, you have a serious domestic violence case.

(Some points adapted from "The Spiral of Violence" in "Domestic/Dating Violence: An Information and Resource Handbook" by the Metropolitan King County Council, December 1994).

Appendix D

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San Diego Regional Domestic Violence Checklist

I. VICTIM

- Described the victim's location upon arrival.
- Administered first aid to the victim.
- Recorded any spontaneous statements made by the victim.
- Described the victim's emotional condition.
- Described the victim's physical condition.
- Documented the victim's injuries in detail.
- Made note of the victim's relationship to the suspect.
- Recorded history of abuse.
- Noted any temporary restraining/court orders.
- Gave victim required written information on social agencies, legal steps, etc.
- Recorded any temporary address/telephone of victim.

II. SUSPECT

- Described the suspect's location upon arrival.
- Administered first aid to the suspect.
- Recorded any spontaneous statements made by the suspect.
- Described the suspect's emotional condition.
- Described the suspect's physical condition.
- Documented the suspect's injuries in detail.
- Documented evidence of substance/chemical abuse by suspect.
- Interviewed the suspect.

III. WITNESS

- Interviewed the reporting party.
- Identified all witnesses and interviewed separately.
- Listed names and ages of children present.
- Interviewed the children, and recorded statements in report.
- Recorded names and addresses of emergency personnel.
- Identified treating physician.
- Recorded the "911" # _____ and incident # _____.

IV. EVIDENCE

- Photographed the crime scene.
- Took "full body" photograph of the suspect.
- Photographed the victim's injuries.
- Photographed the suspect's injuries.
- Impounded all weapons used.
- Impounded weapons for safekeeping.
- Attached related reports, photographs and impound tag to investigator's copy.

* If not applicable mark "NA"

Appendix E

National Domestic Violence Organizations

(prepared as of 9/13/96 by the National Resource Center on Domestic Violence, 800-537-2238, Fax 717-545-9456, TTY 800-553-2508)

Resource information only (not for crisis calls)

National Resource Center on Domestic Violence
Pennsylvania Coalition Against Domestic Violence
6400 Flank Drive, Suite 1300
Harrisburg, PA 17112-2778
Office: 800-537-2238 Fax: 717-545-9456
TTY: 800-553-2508

Battered Women's Justice Project-
Civil Justice Issues c/o PCADV-Legal Office
6400 Flank Drive, Suite 1300
Harrisburg, PA 17112-2778
Office: 800-903-0111 or 717-671-4767
Fax: 717-671-5542

Battered Women's Justice Project-
Criminal Justice Issues
c/o Minnesota Program Development, Inc.
4032 Chicago Avenue South
Minneapolis, MN 55407
Office: 800-903-1011 Fax: 612-824-8965
TTY: 612-824-8768

Battered Women's Justice Project
c/o National Clearinghouse for the Defense of
Battered Women
125 South 9th Street, Suite 302
Philadelphia, PA 19107
Office: 800-903-0111 or 215-351-0010
Fax: 215-351-0779

Health Resource Center on Domestic Violence
c/o Family Violence Prevention Fund
383 Rhode Island Street, Suite 304
San Francisco, CA 94103-5133
Office: 888-792-2873 Fax: 415-252-8991

Resource Center on Domestic Violence:
Child Protection and Custody
NCJFCJ
P.O. Box 8970
Reno, NV 89507
Office: 800-527-3223 Fax: 702-784-6160

American Bar Association Commission
on Domestic Violence
740 15th Street, N.W., 9th Floor
Washington, D.C. 20005-1009
Office: 202-662-1737 Fax: 202-662-1032

Center for the Prevention of Sexual
and Domestic Violence
936 North 34th Street, Suite 200
Seattle, WA 98108
Office: 206-634-1903 Fax: 206-634-0115

Family Violence Prevention Fund
383 Rhode Island Street, Suite 304
San Francisco, CA 94103-5133
Office: 415-252-8900 Fax: 415-252-8991

Mending the Sacred Hoop,
National Training Project
206 West Fourth Street
Duluth, MN 55806
Office: 218-722-2781 Fax: 218-722-0779

National Coalition Against Domestic
Violence—Administrative Officer
P.O. Box 18749
Denver, CO 80218
Office: 303-839-1852 Fax: 303-831-9251

National Coalition Against Domestic Violence
—Public Policy Office
119 Constitution Avenue, N.E.
Washington, D.C. 20002
Office: 202-544-7358 Fax: 202-544-7893

National Network to End Domestic Violence
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004
Office: 202-347-9520 Fax: 202-434-7400

National Resource Center
on Child Abuse and Neglect
American Humane Association
63 Inverness Drive, East
Englewood, CO 80112
Office: 800-227-5242 Fax: 303-792-5333

State Domestic Violence Coalitions

Alabama Coalition Against Domestic Violence
P.O. Box 4762
Montgomery, AL 36104
334-832-4842

Alaska Network on Domestic Violence
and Sexual Assault
130 Seward Street, Suite 501
Juneau, AK 99801
907-586-3650

Arizona Coalition Against Domestic Violence
100 W. Camelback Road, Suite 109
Phoenix, AZ 85013
602-279-2900

Arkansas Coalition Against Domestic Violence
#1 Sheriffs Lane, Suite C
North Little Rock, AR 72114
501-812-0571

California Alliance Against Domestic Violence
c/o MAWS
1717 5th Avenue
San Rafael, CA 94901
415-457-2464

Colorado Coalition Against Domestic Violence
P.O. Box 18902
Denver, CO 80218
303-831-9632

Connecticut Coalition Against Domestic Violence
135 Broad Street
Hartford, CT 06105
860-524-5890

Delaware Coalition Against Domestic Violence
P.O. Box 847
Wilmington, DE 19899
302-658-2958

District of Columbia Coalition
Against Domestic Violence
513 U Street, N.W.
Washington, D.C. 20013
202-783-5332

Florida Coalition Against Domestic Violence
410 Office Plaza Drive
Tallahassee, FL 32301
904-671-3998

Georgia Coalition of Family Violence, Inc.
1827 Powers Ferry Road, Bldg., Suite 325
Atlanta, GA 30339
770-984-0085

Hawaii State Coalition Against Domestic Violence
98-939 Moanalua Road
Aiea, HI 96701-5012
808-486-5072

Idaho Coalition Against Sexual
and Domestic Violence
815 Park Blvd., Suite 140
Boise, ID 83712
208-384-0419

Illinois Coalition Against Domestic Violence
730 East Vine Street, Suite 109
Springfield, IL 62703
217-789-2830

Indiana Coalition Against Domestic Violence
2511 E. 46th Street, Suite N-3
Indianapolis, IN 46205
317-543-3908

Iowa Coalition Against Domestic Violence
1540 High Street, Suite 100
Des Moines, IA 50309-3123
515-244-8028

Kansas Coalition Against Sexual
and Domestic Violence
820 S. E. Quincy, Suite 422
Topeka, KS 66612
913-232-9784

Kentucky Domestic Violence Association
P.O. Box 356
Frankfort, KY 40602
502-875-4132

Louisiana Coalition Against Domestic Violence
P.O. Box 77308
Baton Rouge, LA 70879-7308
504-752-1296

Maine Coalition For Family Crisis Services
128 Main Street
Bangor, ME 04401
207-941-1194

Maryland Network Against Domestic Violence
11501 Georgia Avenue, Suite 403
Silver Spring, MD 20902
301-942-0900

Massachusetts Coalition of Battered Women's
Service Groups
14 Beacon Street, Suite 507
Boston, MA 02108
617-248-0922

Michigan Coalition Against Domestic
and Sexual Violence
913 W. Holmes, Suite 211
Lansing, MI 48910
517-887-9334

Minnesota Coalition for Battered Women
450 North Sydicate Street, Suite 122
St. Paul, MN 55104
612-646-6177

Mississippi Coalition Against Domestic Violence
P.O. Box 4703
Jackson, MS 39296-4703
601-981-9196

Missouri Coalition Against Domestic Violence
415 E. McCarty
Jefferson City, MO 65101
573-634-4161

Montana Coalition Against Domestic Violence
P.O. Box 633
Helena, MT 59601
406-443-7794

Nebraska Domestic Violence/Sexual Assault
Coalition
315 South 9th, #18
Lincoln, NE 68508-2253
402-476-6256

Nevada Network Against Domestic Violence
2100 Capurro Way, Suite E
Sparks, NV 89431
702-358-1171

New Hampshire Coalition Against Domestic
and Sexual Violence
P.O. Box 353
Concord, NH 03302-0353
603-224-8893

New Jersey Coalition for Battered Women
2620 Whitehorse/Hamilton Square Road
Trenton, NJ 08690-2718
609-584-8107

New Mexico State Coalition
Against Domestic Violence
P.O. Box 25363
Albuquerque, NM 87125
505-246-9240

New York State Coalition
Against Domestic Violence
Women's Building, 79 Central Avenue
Albany, NY 12206
518-432-4864

North Carolina Coalition Against Domestic
Violence
P.O. Box 25189
Durham, NC 27702
919-956-9124

North Dakota Council on
Abused Women's Services
418 E. Rosser Avenue, Suite 320
Bismarck, ND 58501
701-255-6240

Ohio Domestic Violence Network
4041 North High Street, Suite 101
Columbus, OH 43214
614-784-0023

Oklahoma Coalition on Domestic Violence
and Sexual Assault
2200 N. Classen Blvd., Suite 610
Oklahoma City, OK 73106
405-557-1210

Oregon Coalition Against Domestic
and Sexual Violence
520 N.W. Davis, Suite 310
Portland, OR 97209
503-223-7411

Pennsylvania Coalition Against Domestic Violence
6400 Flank Drive, Suite 1300
Harrisburg, PA 17112
717-545-6400

Rhode Island Coalition Against Domestic Violence
422 Post Road, Suite 104
Warwick, RI 02888
401-467-9940

South Carolina Coalition
Against Domestic Violence and Sexual Assault
P.O. Box 7776
Columbia, SC 29202-7776
803-750-1222

South Dakota Coalition
Against Domestic Violence and Sexual Assault
P.O. Box 141
Pierre, SD 57501
605-945-0869

West Virginia Coalition Against Domestic Violence
P.O. Box 85
Sutton, WV 26601-0085
304-765-2250

Tennessee Task Force Against Domestic Violence
P.O. Box 120972
Nashville, TN 37212
615-386-9406

Wisconsin Coalition Against Domestic Violence
1400 East Washington Avenue, Suite 103
Madison, WI 53703
608-255-0539

Texas Council on Family Violence
8701 N. Mopac Expressway, Suite 450
Austin, TX 78759
800-525-1978

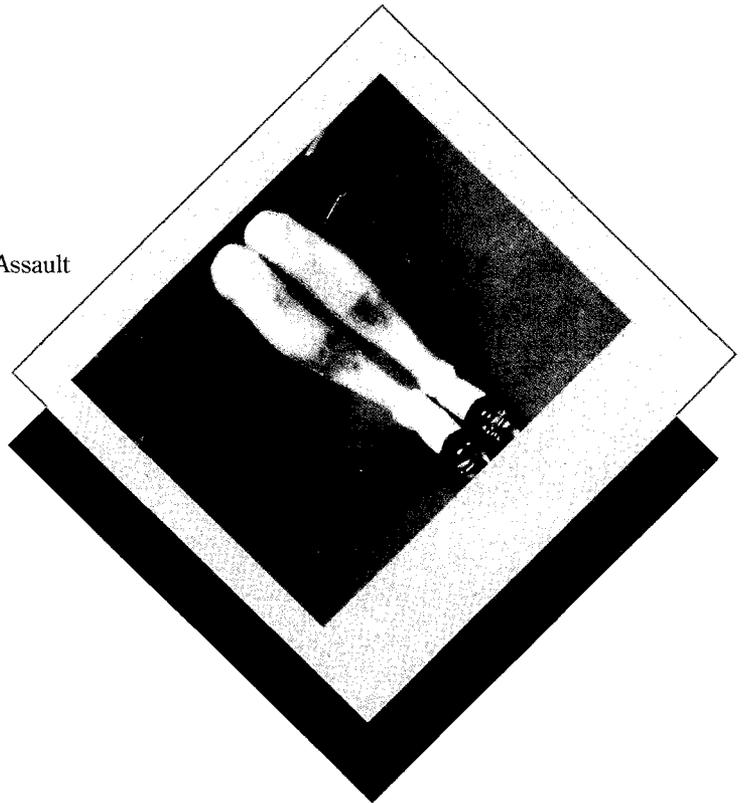
Wyoming Coalition
Against Domestic Violence and Sexual Assault
P.O. Box 1946
Pinedale, WY 82941
307-367-4296

Domestic Violence Advisory Council
120 North 200 West, Room 319
Salt Lake City, UT 84103
801-538-9886

Vermont Network
Against Domestic Violence and Sexual Assault
P.O. Box 405
Montpelier, VT 05601
802-223-1302

Virginians Against Domestic Violence
2850 Sandy Bay Road, Suite 101
Williamsburg, VA 23185
804-221-0900

Washington State Coalition
Against Domestic Violence
2101 4th Avenue, East, Suite 103
Olympia, WA 98503
360-352-4029



Appendix F

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Coordinating Councils: Checklist

The Purpose of a Coordinating Councils: Victim Safety

Victim safety is paramount – changes in the system are to ensure the safety of victims, not coordination for coordination's sake.

Key Elements

I. Clear Vision/Goals - A coordinating council should have a clear vision, goal and objectives

II. Define the Scope and Tasks of the Council

- Interview people on the front lines (police, prosecutors, victim advocates) to determine what initial tasks need to be undertaken.
- Be careful not to expand too quickly. Initially, choose clear, short-term tasks which have a high likelihood of success to boost confidence of the group and get people excited about the council.
- Make sure the scope of the problems being addressed is realistic.
- Scope needs to be fluid and evolve as changes occur or new information is available.
- Maintenance of the group. It is important to invest time in keeping the group functioning well. Evaluate and encourage openness and trust and deal with any conflict whether underlying or blatant.

III. Define Organizational Structure and Operating Procedures

- Establishing leadership: informal/formal.
- Decide on organizational structure or context; consider the pros and cons of each:

1. government agency -what rules and regulations would govern the council
2. independent organization
3. 501(3)(c) non-profit organization

• Leadership

1. open vs. confidential
2. how agenda is set
3. conflict resolution structure
4. meeting logistics
5. frequency of meetings
6. how decisions are made
7. who is in charge

- Develop a media policy and address the issue of loose cannons.

- Develop a communication mechanism for disseminating information among council members.

- Examine the advantages and disadvantages of incorporating:

1. creates autonomy
2. survive political turn-off
3. obtain outside funding with a 501(3)(c) non-profit tax status
4. liability issues

IV. Define Membership

- Membership that includes policymakers ensures that those sitting at the table can make decisions.
- Members should have authority and inclination to effect change.
- Be clear about expectations for policymakers and other members.
- Clarify roles of criminal justice practitioners and others in the system (e.g., job descriptions)

- Be sure that victim representatives understand that they are representing a constituency even when they are not part of an agency.

- Establish committees or task forces consisting of individuals who serve on the front lines such as police, prosecutors, victim advocates. These members have knowledge of the day to day operations—what’s happening on the front line; they will ensure that appropriate questions are asked; they will identify gaps; bring obstacles to the table; and are responsible for developing procedures to make policies function.

- Ensure that membership is diverse and represents the community.

- Ensure that the membership includes victim survivors/advocates.

V. Commitment of Decision-Makers

- Decision-makers allow staff time to work on council matters and avoid making this work all on the personal time of staff.

- Resources: support/administrative staff for council; staff to handle domestic violence cases.

- Longevity and stability are important: designate a person to serve on the council for at least one year.

- Can obtain commitment in writing through formal interagency agreement(s) with signatures.

VI. Participation/Leadership of Providers and Victims

- Victims need to understand that they are representing a constituency rather than themselves; they are in a role.

- Equal representation of all players at the table

regardless of whether they work in the criminal justice system. Need a balance of power.

1. Help those with differing education and experience to participate fully in the council process.
2. Partner a professional with a victim for mentoring to enable the victim to participate more fully.

- Address problems with consensus building.

- Open sharing; ideas need to be valued and respected.

- Disagree respectfully.

- Teach people to become comfortable with solutions as well as criticisms.

- Include providers: legal advocacy projects, counseling program, shelters, service providers.

VII. Assessment of Capacity and Readiness

- Identify gaps and strengths of the current system in handling domestic violence/violence against women.

- Compare strengths vs. obstacles to improving the response to domestic violence/violence against women.

- Map the community in terms of attitudes towards domestic violence/violence against women and willingness to be involved.

- Identify and analyze any past efforts that failed or succeeded.

- Assess the willingness to evolve as a council and examine:

1. Commitment of decision makers
2. Being open to changes; redirect focus as new

- information becomes available; admit mistakes.
3. Put limits on your response to external events, i.e., do not change the whole scope of activities based on one case that receives lots of media attention.
 4. Are we in leadership or respected positions in community?
 5. What kind of collaborative relationships do we have and how can we enhance them?

- Identify and address sabotaging issues—those who may not agree with council policies or even with the existence of the council may try to sabotage your activities.

- Involve and co-op the apathetic.

- Avoid being externally driven.

1. Don't let the outside world change your activity based on crisis
2. Avoid being derailed
3. Capitalize on the crisis
4. Be flexible

- Be internally focused on the activities of your local coordinating council and on the problems in your community:

1. Work to avoid regional conflicts
2. Don't feed regional conflicts
3. Try to be cooperative with other coordinating councils or similar organizations

VIII. Long Term and Short Term Strategic Plans

- Start with short term plan
 1. Needs to be achievable
 2. Needs to be tangible
 3. Needs to be valuable to someone

- Prepare long term plan that is consistent with the council's mission

1. Conduct initial planning retreats

2. Conduct periodic planning retreats

- Monitor interventions to ensure that they don't backfire on victims (e.g., A mandatory arrest policy where victims are also being arrested.)

IX. Marketing of the Council

- Address community awareness of council.

- Publicity upgrades and affirms commitment of policymakers.

- Obtain community buy-in.

- Media campaign

1. Existence of the council
2. Council activities
3. Accomplishments

- Target Corporate America

1. Make council relevant to all segments of community.
2. Demonstrate to Corporate America that domestic violence/violence against women increases medical costs to corporation.
3. Domestic violence/violence against women also results in lost time to employer and affects the security of victims and other workers.

X. Evaluation

- Examine your one year plan to see what you have accomplished.

- Evaluation makes the council accountable.

- Establish baseline of information through:

1. Needs assessment—results become council tasks
2. Assess the capacity for change in the system and community

- Evaluation should address questions such as:
 1. Were strategies/tasks implemented as planned?
 2. Did the council meet short to long term goals?
 3. Did the council accomplish what was intended?
 4. How well is the council functioning?
 5. What changes are needed to improve the council?

Notes on Meetings

- Develop agenda, distribute in advance if possible, always schedule time for other business and obtain input from others in preparing agenda.
- Start and end on time; keep meetings under two hours.
- Meet regularly: biweekly - monthly - quarterly.
- Prepare and circulate minutes; keep records and all documentation.
- Mechanisms for openness, public participation, diversity, truth seeking-pros and cons:
 1. public hearings
 2. open door hearings
 3. regularly scheduled time for public comment
 4. outreach-solicit input
 5. periodically publicize opportunity
 6. issue forums

Possible Activities for Coordinating Councils

- On-going research on the activities of other jurisdictions
- Establishing/enhancing information systems and data collection
- Clarify definitions, promote consistency
- Develop and disseminate victim safety measures

- Community education: media strategies, develop and distribute user friendly materials, hold conferences

- Prevention strategies
 - school curriculums
 - public speaking
 - printed materials

- Policy reform for various agencies

- Protocol development by agency

- Media policy for council

- Statute reform

- Organize media and community events to bring public attention to issues

- Resource development; funding

- Training of professionals
 - plan and initiate for a variety of disciplines (don't sponsor all of them)

- Establish death review teams

- Accountability for batterers

- Establish protection order registries

- Oversight agencies, standards development, quality assurances, prioritize agencies/groups for oversight, court watch case reviews, develop external feedback mechanisms

- Review forms and documents for variety of agencies, for consistency, accuracy, and clarity

- Networking with other agencies, jurisdictions, and coalitions

Appendix G

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Marquette County Law Enforcement Domestic Violence Policy and Procedure

Created and adopted May, 1995
Revised and Updated December, 1995
Revised and Updated February, 1997

Approved by:
Marquette County Prosecuting Attorney's Office
Marquette Law Enforcement
Administrator's Association
Marquette Women's Center/Harbor House

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This policy was originally drafted by Investigator Victor J. La Duke of Northern Michigan University (NMU) Public Safety and Matthew J. Wiese, Assistant Prosecuting Attorney, and prepared by Cindy L. Boyer, Victim/Witness Coordinator for Marquette County. The policy was adopted by NMU Public Safety and has been revised and updated for all Marquette County Law Enforcement Agencies.

The purpose for having a county-wide policy is to create a uniform and consistent law enforcement response to domestic violence. This policy is intended to comply with all the requirements concerning law enforcement's response to domestic violence.

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DOMESTIC VIOLENCE POLICY AND PROCEDURE

INTRODUCTION:

Michigan has recently recognized "domestic violence" as a specific crime. According to Michigan statute MCL 764.15, domestic assault has been defined as an assault on a victim by one who is the victim's spouse, former spouse, or person residing, or previously resided, in the same household as the victim, or a person with whom they have had a child in common.

It should be noted that the terms domestic violence and domestic assault are used synonymously throughout this document; when the term domestic violence is used it should be presumed that it is referring to domestic assault.

PURPOSE AND GOALS:**A. Purpose**

The purpose of this policy is to establish department policy and procedure for the handling of domestic violence incidents, in accordance with MCL 764.15a (1980); 764.15c; 750.81 and 750.81a.

B. Goals

Domestic violence is a crime. The Marquette County law enforcement agencies view domestic violence as a preventable crime. The goals of the Marquette County law enforcement agencies domestic violence policy are:

- a. To establish arrest as the preferred response to domestic violence;
- b. To hold assailants accountable;
- c. To protect victims;
- d. To reduce domestic homicides;
- e. To reduce domestic assaults;
- f. To reduce police call-backs;
- g. To reduce injuries to officers;
- h. To reduce liability risks for the department;
- i. To treat domestic assault as a serious crime;
- j. To provide services to the victim.

DEFINITIONS:**1. Domestic Assault Offender:**

- a. Spouse;
- b. Former spouse;
- c. Person residing in the same household as the victim;
- d. Person that did reside in the same household as the victim at any time in the past; (This will include situations where the parties have had an ongoing relationship and where it can be established that they are or have been cohabitating together);
- e. Or a person with whom the victim has had a child in common.

2. Domestic Violence:

- a. Occurs when a person by means of force or violence causes, or attempts to cause, harm to another family or household member. This may include but is not limited to:
 - Bodily injury (assault and battery);
 - Fear of imminent bodily injury (assault).

3. Victim:

Any person (male or female) who is the object of domestic violence. This includes victims who are unwilling to file charges or to prosecute the offender.

4. Bodily Injury:

Substantial pain to the victim or impairment of the victim's physical condition.

5. Self Defense:

A person's justifiable use of physical force against another person when such force is necessary to defend themselves or a third party from what they reasonably believe to be the use, or imminent use, of unlawful physical force. (Attention needs to be given to offensive vs. defensive wounds such as bite marks and scratches.)

6. Reasonable Cause:

Reasonable cause and probable cause are the same in Michigan. The probable cause standard applied to domestic violence crimes is no different than the standard applied to all other crimes. Probable cause means any facts that would induce a fair-minded person of average intelligence to believe that the suspect has committed a crime. There is no requirement that there be corroborating physical evidence or visible injury to establish probable cause. This means that the word of the victim alone, if believed, is sufficient grounds for establishing reasonable cause.

When determining whether probable cause exists to believe that a crime has been committed, an officer should not consider any of the following factors:

- a. The marital status of the parties;
- b. He/she is living with the abuser;
- c. There is no jail space;
- d. He/she may have dropped a complaint in the past;
- e. The police officer did not witness the crime;
- f. The victim's injuries are not considered "bad enough";
- g. The case cannot be proven without witnesses and therefore an arrest should not be made;
- h. He/she is reluctant or afraid to file charges (another reason why police should initiate the charges when there is probable cause, and why the prosecutor should pursue the case, removing the victim as the target of further threats by the abuser to drop charges);
- i. This is a civil (rather than criminal) matter.
- j. The lack of a personal protection order;
- k. The wishes of either party concerning arrest or prosecution;
- l. Assurances that the violence will stop;
- m. Financial consequences of arrest;
- n. The race, sex, religion, ethnic origin, social class, sexual orientation, education, or occupation of either party.

ARREST**Arrest Policy:**

An officer responding to the scene of domestic violence should arrest the assailant on all of the following circumstances:

- a. Felony committed in the officer's presence;
- b. Felony based on probable cause;
- c. Misdemeanor committed in the officer's presence;
- d. Misdemeanor assault, assault and battery, or aggravated assault based on reasonable cause where a domestic relationship exists (MCL 764.15a);
- e. Violation of a personal protection order (MCL 764.15b); and
- f. A violation of the defendant's bond condition to have no contact with the victim (MCL 764.15e).

Warrantless Arrest; MCL 764.15a grants an officer the authority to make a misdemeanor arrest without a warrant based upon reasonable cause for assault, assault and battery, or aggravated assault when the assailant is the spouse or former spouse of the victim, or is a person residing or having resided in the same household as the victim, or has a child in common with the victim.

1. Dual arrests should be avoided. Those acting in self defense shall not be subject to arrest. A thorough criminal investigation shall always be conducted.

Officers are not required to arrest both parties if they believe the parties assaulted each other. Rather, officers should arrest the person who appears to be the primary physical aggressor.

2. Where there are allegations of mutual battering, an officer should determine who the assailant is by:

- a. Investigating for offensive and defensive wounds;
- b. Considering the prior history of violence;
- c. Considering the size, strength and bulk of the parties;

- d. Considering each party's ability to do what was alleged;
 - e. Considering other evidence (e.g., physical or circumstantial);
 - f. Considering other witness statements (including children); and
 - g. The degree of injury inflicted.
- impairs petitioner's employment relationship or environment.
- i. Any other act or conduct specified by the court in the personal protection order.

3. The person named in the order has received notice of the injunctive order.

4. The personal protection order states on its face that a violation of its terms subjects the individual to immediate arrest and criminal contempt of court and, if found guilty of criminal contempt, the person shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.

An individual may petition the circuit court to enter a personal protection order to restrain or enjoin a spouse, former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has had a dating relationship, or an individual residing or having resided in the same household as the victim.

A "dating relationship" is defined by the act as "frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context". It is the responsibility of the court to judge the eligibility of any petitioner before issuance of an order.

5. The personal protection order will clearly state on its face the law enforcement agency responsible for its entry into LEIN, an expiration date, that the order is enforceable immediately upon signing by a judge and that the order is enforceable anywhere in Michigan by any law enforcement agency.

PERSONAL PROTECTION ORDERS

MCL 764.15b grants an officer the authority, without a warrant, to arrest a person for violation of a personal protection order when the officer has reasonable cause to believe that all of the following exist:

1. A personal protection order was issued pursuant to either MCL 600.2950 or MCLA 600.2950a.
2. The individual named in the personal protection order is in violation of the order. A person is in violation of the order if that individual commits one or more of the following acts the order specifically restrains or enjoins the individual from committing:
 - a. Assaulting, attacking, beating, molesting, or wounding a named individual.
 - b. Removing minor children, except as otherwise authorized by a custody or visitation order issued by a court of competent jurisdiction.
 - c. Entering onto premises.
 - d. Engaging in stalking conduct as prohibited under section 411(b) and 411(i) of Act 328 of Public Acts of 1931, (MCL 750.411h and MCL 750.411i).
 - e. Threatening to kill or physically injure a named individual.
 - f. Purchasing or possessing a firearm.
 - g. Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
 - h. Interfering with petitioner at petitioner's place of employment or engaging in conduct that

A personal protection order is immediately enforceable anywhere in Michigan by any law enforcement agency or officer that:

- a. Has received a true copy of the order;
- b. Is shown a true copy of the order (the victim may have been provided with one or more true copies of the order);
- c. Has verified its existence on the LEIN.

The law enforcement agency or officer responding to a domestic violence call alleging a violation of a personal protection order shall:

1. Serve the individual restrained or enjoined with a true copy of the order (if the individual has not been served);
2. Advise the individual restrained or enjoined of the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order (if not served);
3. Enforce the personal protection order. If the individual enjoined has not received notice of the personal protection order, the individual shall be served, or given verbal notice and given an opportunity to comply before the law enforcement officer makes a custodial arrest for violation of the order.

The failure to immediately comply shall be grounds for an immediate custodial arrest.

This does not preclude arrest for other criminal acts under other provisions of the code of criminal procedure.

4. Immediately enter or cause to be entered into LEIN confirmation that the individual restrained or enjoined has received actual notice of the personal protection order.

Recommended Procedure:

Upon service or advisement of the individual restrained or enjoined officers should:

1. Immediately notify, via LEIN, the law enforcement agency named by the order as responsible for LEIN entry of the service;
2. Document, in the written report, that the individual restrained or enjoined was served or advised and that the entering agency was notified of such service or advisement via LEIN.

A person arrested for a violation of a personal protection order shall not be released on bond. The arrested person must be brought before the circuit court having jurisdiction within 24 hours after the arrest. The circuit court shall set a time for a hearing on the alleged violation and shall set bond. If a circuit court judge is not available within 24 hours after arrest, the arrested person shall be brought before the district court within 24 hours after arrest, at which time the district court shall order the defendant to appear before the circuit court for a hearing on the charge and shall set bond.

When a person is arrested for a violation of a personal protection order it shall be handled in the same fashion as a warrantless arrest on a felony. The police report shall be brought to the Prosecuting Attorney's Office for review so that appropriate action can be taken. After the Prosecuting Attorney has reviewed the paperwork the matter will then be referred to the appropriate court.

OFFICER RESPONSE

The responding officers will approach the scene as a criminal investigation. Officers should use appropriate precautionary procedures when approaching and entering the scene.

Recommended Procedures:

1. When possible, a minimum of two officers should be dispatched to the scene of a domestic violence incident.
2. Upon arrival, officers will establish contact with all parties involved, separating the parties while remaining in sight of each other. Officers will identify and secure weapons and objects that can be used as weapons. When firearms are seized for safety reasons the officer shall request a bond condition stating that the defendant shall not possess firearms.
3. All firearms that are seized and retained by the policy agency shall not be returned to the defendant without a court order. The Prosecuting Attorney's Office shall be responsible for facilitating the ordered release of any firearms or weapons that have been retained by a police agency.
4. Officers should attempt to create a calm, safe environment in which to conduct the criminal investigation.
5. Officers should determine the need for medical attention (if not already dispatched).
6. Provide for the safety and care of children when necessary (i.e.: by other family members, contact with DSS, etc.).
7. When officers respond to a domestic violence call and the victim or offender is a law enforcement officer or agency employee, the officer will notify the appropriate administrative staff.

ON-SCENE INVESTIGATION:

A. The officer will always conduct a thorough criminal investigation. This investigation will include interviewing all witnesses and collecting evidence of all possible crimes committed.

Recommended Procedures:

1. Officers should interview the victim, suspect and other witnesses, including children, as fully as circumstances allow. Officers should be aware that the presence of the assailant may intimidate the victim, children, and other witnesses.
2. In order to respond effectively to the incident the prosecutor needs to know some historical information. The officer should avoid displaying an attitude of disinterest or blame. The officer should ask the victim questions such as the following, using the supportive interview techniques:
 - a. When was the first time this happened?
How often has it happened?
 - b. What was the worst incident? When did it occur?
 - c. Has a weapon ever been used? If yes, what?
 - d. Has the suspect ever been arrested for assaulting you or another family member?
 - e. Have you ever been treated by a doctor or hospitalized for injuries inflicted by the suspect?
 - f. Has the suspect been following, calling, threatening, (stalking) you?
3. Officers should identify and collect all possible evidence, including:
 - a. Documentation of excited utterances made by those present;
 - b. Statements from the parties and other witnesses;
 - c. Documentation of injuries—both visible and complained of (use body diagram);
 - d. Description of the victim's general appearance, both physical and emotional;

- e. Description of the scene;
 - f. Photographs of any injuries and the scene, this includes areas victim indicates are sore;
 - g. Weapons and objects used as weapons;
 - h. Tape recording of the initial call requested from dispatch.
4. Officers should conduct a follow up contact with the victim after 24 hours because sometimes bruises and injuries do not manifest themselves until then.
- B. Officers should determine what crimes they have probable cause to believe were committed and who committed them.**
- C. Officers should arrest the assailant whenever probable cause is established that a felony or domestic assault misdemeanor has been committed and the assailant committed the crime. A police officer making an arrest for a felony of domestic assault misdemeanor shall act as the complainant and shall swear to the complaint and warrant as necessary.**
- D. All warrant requests on domestic violence complaints shall contain a completed domestic violence intake sheet. The domestic violence intake sheet or form will be prepared and distributed to all law enforcement agencies by the Prosecuting Attorney's Office.**
- Recommended Procedures:*
1. Officers should tell the victim an arrest is about to be made. Whenever possible, officers should avoid surprising the victim or making a physical arrest of the assailant in the victim's presence.
 2. Officers should emphasize to the victim and the assailant that the criminal action is being initiated by the officers, not the victim.
- E.** If probable cause exists to believe that a non-assaultive misdemeanor took place prior to the officers' arrival, officers should prepare a request for a warrant in accordance with appropriate procedures and advise the victim of the process.
- F.** If probable cause exists to believe that an assaultive misdemeanor took place prior to the officers arrival but the assailant is not a spouse, former spouse, or a person residing or having resided with the victim (i.e.: where a dating relationship exists but the parties have never lived together), officers shall prepare a request for a warrant in accordance with appropriate procedures and advise the victim of the process.
- G.** If probable cause exists to believe that there was a violation of a personal protection order, the suspect should be arrested in accordance with this policy. Arrest for a violation of a personal protection order should not affect the decision to arrest for any other crime. *Officers should arrest for any new crime committed in their presence or for any felony or domestic assault misdemeanor for which a probable cause determination was made.*
- H.** Bond condition violations (i.e.: no contact with the victim), and violations of probation or parole based on probable cause, are also grounds for arrest.
- I.** If the suspect has left the scene, all reasonable attempts to locate and arrest the suspect should be made. A description should be disseminated to other officers and locations known to be frequented by the suspect should be checked.
- J.** If the suspect cannot be located, a warrant should be sought in accordance with departmental and prosecution policy. (NOTE: The law requires that all reports on domestic violence be submitted to the Prosecutor's Office within 48 hours.)

K. IT IS EXTREMELY IMPORTANT that officers assess the lethality of the situation by determining if indicators of a life threatening attack currently exist, such as:

1. The assailant has threatened to kill;
2. The victim has told the assailant he/she is leaving or filing for divorce;
3. The presence of weapons;
4. The assailant has threatened suicide;
5. A history of domestic violence with the same parties;
6. The assailant has threatened the children;
7. The assailant is a repeat offender or has prior history of violence.

All lethality factors should be thoroughly documented in the police report.

Recommended Procedures:

1. To seize and hold all firearms when responding to the scene of domestic violence.
2. When bond is set for an arrest for domestic violence a request should be made that a condition of bond be that the assailant not possess or have access to weapons/firearms.

POLICY IF NO WARRANTLESS ARREST CAN BE MADE:

Marquette County law enforcement agencies promote a preferred arrest policy on domestic violence complaints when a warrantless arrest can be made. In a number of situations however, the parties may not qualify under the warrantless arrest exceptions of the domestic violence statutes. This can also be known as date or acquaintance violence. This type of relationship may exist more often on a campus setting because the parties have never resided together and usually do not have a child in common. Even though a warrantless arrest cannot be made in this situation, this type of complaint should be investigated like any other domestic violence complaint or other serious criminal offense.

A. If the assailant is still present and a warrantless arrest cannot be made, officers should attempt to create a calm environment while conveying the message that domestic violence is criminal behavior and that the officer is concerned for the victim's safety.

B. Temporary separation can be suggested in these situations. Officers should encourage one party to leave, providing protection while essential property is collected in preparation for leaving, and providing assistance with transportation whenever possible. Officers shall provide the victim with referral information as required by MCL 764.15c.

JUVENILE DOMESTIC VIOLENCE OFFENDERS:

MCL 780.582a requires that a person “arrested” for domestic violence not be released on bond for at least 20 hours. Marquette County Probate Judge Michael J. Anderegg provided the following options regarding juvenile offenders.

Judge Anderegg does not believe that the previously mentioned statute applies to juvenile offenders for the following reasons:

The statute refers to “arrests”. Technically speaking, juveniles are not “arrested”, they are “apprehended”. In other cases where the legislature intended the same rules to apply to both adults and juveniles, they have specifically referred to juvenile offenses.

An officer investigating a domestic violence complaint perpetrated by a juvenile has the option of referring the case to the on-call juvenile court worker by calling the Youth Home. If the officer does take the juvenile into custody, he or she must contact the court for instructions. Once the juvenile court worker has been notified that the case will be referred to court, our court has the responsibility under the court rules for determining the appropriateness of the child’s placement. This is considerably different from the adult criminal court. The adult court, unless the individual is arrested or removed from the home, has no responsibility for continuing supervision of the situation.

Typically, juveniles do not have a position of authority in the home that lends itself to further abuse. In those cases where the parties cannot agree about what should be done, and the on-call probation officer feels, after conferring with the officer on the scene, that there is a significant risk of further violence, the juvenile can be removed.

REPORT WRITING:

A. *Officers shall prepare a written police report on all domestic violence complaints. The report must be submitted to the Prosecuting Attorney’s Office for review within 48 hours. (MCL 764.15c) **This is required even when no charges are being requested.***

When requesting charges the report should be submitted with a warrant request form. The report should be submitted without a warrant request form when formal charges are *not* being requested. A copy of all police reports documenting a domestic dispute shall be retained in the permanent records of the department. (MCL 764.15c).

When documenting a domestic violence response:

- The victim *does not* have to write a statement
- The victim *does not* have to sign a report
- The victim *will not* be asked if prosecution is desired
- The officer will act as the complainant signing on information and belief.

B. In the body of the written report refers to the victim as “victim and on a separate page list the victim’s name, address, telephone number, date of birth, race and gender.

C. If the victim leaves the scene, the confidentiality of the victim’s location must be maintained. (In the written report note on a separate page the victim’s location if other than their residence.)

D. Where probable cause existed and no arrest was made, a written incident report *documenting the reasons no arrest was made must be prepared.*

- E.** The report shall contain, but is not limited to, all of the following:
1. The address, date, and time of the incident.
 2. The suspect's name, address, home and work telephone numbers, race, sex, date of birth, and information describing the suspect and whether a personal protection order covering the suspect exists.
 3. The name, address, home and work telephone numbers, race, sex, date of birth of any witness, including the child of the victim or suspect, and the relationship of the witness to the suspect or victim.
 4. The report must contain the following information:
 - a. The name of the person who called the law enforcement agency.
 - b. The relationship of the victim and suspect and if the parties have any children in common.
 - c. Whether alcohol or controlled substance use was involved in the occurrence or incident, and by whom.
 - d. A brief narrative describing the incident and circumstances that led to it.
 - e. Whether, and how many times, the suspect physically assaulted the victim and a description of any weapon or object used.
 - f. A description of all injuries sustained by the victim and an explanation of how the injuries were sustained.
 - g. If the victim sought medical attention, information concerning where and how the victim was transported, whether the victim was admitted to a hospital or clinic and the name and telephone number of the attending physician.
 - h. A description of any property damage reported by the victim or evident at the scene.

- i. A description of any previous incidents involving domestic violence between the victim and the suspect.
- j. The date and time of the report and the name, badge number, and signature of the officer completing the report.

BONDING POLICY:

A. A person arrested without a warrant under the authority of MCL 764.15a shall not be released on an interim bond or on recognizance.

MCL 780.582a states the suspect must be held until brought before a magistrate for arraignment. If a magistrate is not available within 24 hours the suspect shall be held for 20 hours. After 20 hours the suspect can be released on an interim bond or on recognizance.

Marquette County has developed a procedure whereby all warrantless arrests for domestic violence are reviewed on a daily basis, including weekends and holidays. All complaints shall be forwarded to the Prosecuting Attorney's Office for review within 24 hours or at 9 a.m. on weekends and holidays.

B. It is recommended that all firearms be seized when there is an arrest for domestic violence. The victim can consent to turning these weapons over to the police agency. A bond condition indicating that the defendant shall not possess firearms is required. No firearms are to be returned without a written order from the court. The Prosecuting Attorney's Office shall be responsible for facilitating these orders requiring the return of firearms.

C. A person arrested for violation of a personal protection order under the authority of MCL 764.15b shall be released on bond. The suspect shall be brought before the court in accordance with this policy.

VICTIM ASSISTANCE:

Arrest provides immediate safety and takes control of the situation away from the assailant.

A. Victim assistance when an arrest is made:

1. Officers should not leave any domestic violence scene until the scene has been calmed and the immediate safety of all parties has been provided for.
2. Officers shall provide all victims of domestic violence with referral information as required by MCL 764.15c. This information must be provided whether or not an arrest was made. This information should include The Crime Victims Assistance Card and the Domestic Violence Handbook (if available) provided by the Marquette County Prosecuting Attorney's Office.
3. Officers should explain the information to the victim. Contact should be made with an advocate at the local shelter whenever possible.
4. Following a domestic violence related arrest, the officer shall advise the victim that an advocate can and will contact the victim within the next several hours to explain the service options available (if the victim wishes to utilize such services). The officer shall contact the Women's Center/Harbor House at 226-6611 immediately following the booking procedure and inform the Harbor House that an arrest has been made. The Women's Center/Harbor House will send an advocate to meet with the victim (if the victim wishes to meet with an advocate).

VICTIM'S RIGHTS

A. After conducting a thorough criminal investigation at a domestic violence scene officers *shall* provide the victim with a written notice of rights that includes all of the following:

1. The name and phone number of the responding police agency.
2. The name and badge number of the responding officer.
3. The following statement:
"You may obtain a copy of the police incident report for your case by contacting the Marquette County Prosecutor's Office at the telephone number provided.

The domestic violence shelter program and other resources in your area are:

- Harbor House - 226-6611
- NMU Counseling Center - 227-2981
- Alger/Marquette Community Mental Health - 225-1181
- Marquette County Prosecutor's Office - 228-1545

Information about emergency shelter, counseling services, and the legal rights of domestic violence victims is available from these sources.

Your legal rights include the right to go to court and file a petition requesting a personal protection order to protect you or other members of your household from domestic abuse which could include the following:

- a. An order restraining or enjoining the abuser from entering onto premises.
- b. An order restraining or enjoining the abuser from assaulting, attacking, beating, molesting, or wounding you.
- c. An order restraining or enjoining the abuser from threatening to kill or physically injure you or another person.

- d. An order restraining or enjoining the abuser from removing minor children from you, except otherwise authorized by a custody or visitation order issued by a court of competent jurisdiction.
- e. An order restraining or enjoining the abuser from engaging in stalking behavior.
- f. An order restraining or enjoining the abuser from purchasing or possessing a firearm.
- g. An order restraining or enjoining the abuser from interfering with your efforts to remove your children or personal property from premises that are solely owned or leased by the abuser.
- h. An order restraining or enjoining the abuser from interfering with you at your place of employment or engaging in conduct that impairs your employment relationship or environment.
- i. An order restraining or enjoining the abuser from engaging in any other specific act or conduct that imposes upon or interferes with your personal liberty or that causes a reasonable apprehension of violence.”

Officers shall provide all victims of domestic violence with notice of rights information as required. This information must be provided even when an arrest was not made.

Recommended Procedures:

Victims of domestic violence may require other assistance to meet their immediate needs for safety, medical treatment, shelter and information. Officers should:

1. Help facilitate access to medical assistance whenever possible. Encourage the victim to seek medical attention, even if it is done later. This can provide evidence of additional injury and/or additional documentation of known injury.
2. Explain to the victim and the assailant that the arrest decision was made by the officer in accordance with the requirements of the law.

3. Explain the bonding process to the victim and the assailant (either arraignment or 20 hours, whichever comes first).
4. Facilitate the placement of children if the victim is hospitalized.
5. Provide transportation when safety considerations warrant it. Help arrange transportation in other situations.
6. Explain the importance of photographs and evidence to the victim.
7. Explain to the victim that a condition of bond will be that the assailant will not have any contact with the victim.
8. Attempts should be made to notify the victim of the release of the assailant, whenever possible.

It should be noted that the Domestic Violence Advocacy Team member can assist in many of these areas.

B. Victim assistance if no arrest could be made:

1. If the assailant is gone when officers arrive, they should discuss a safety plan with the victim for when the assailant returns. Officers should encourage the victim to call the police if the assailant returns.
2. Officers should facilitate the victim's immediate contact with the Harbor House and Domestic Violence Advocacy Team.
3. The officers should provide transportation to assist one party in leaving whenever possible.
4. If the assailant is still present and an arrest cannot be made, the officers should assess the lethality of the situation in accordance with this policy, by determining if indicators of a life threatening attack currently exists. If the officer believes that there is a potential for future violence, efforts should be made to separate the parties by encouraging one or the other to leave the premises.

SUPERVISION:

A. All responses to a domestic violence complaint will be reviewed for compliance with this policy.

Recommended Procedure:

When the victim or the assailant is a criminal justice system employee or public official, the supervisor or investigator will investigate to ensure that the response is properly documented and that departmental policy has been followed. Whenever possible the supervisor will respond and take charge of the scene.

B. When a dual arrest is made, the probable cause for each arrest will be reviewed by the supervisor/investigator to ensure that department policy has been followed.

Officers are not required to arrest both parties if they believe that the parties assaulted each other. Rather, officers should arrest the person who is the primary physical aggressor, the officer should consider:

1. The degree of injury inflicted;
2. Any verified history of domestic violence between the parties;
3. The intent of the law is to protect victims of domestic violence.

C. Supervisors will provide feedback to officers to reinforce the intent of this policy.

D. A supervisor finding violations of the policy will take corrective actions in accordance with departmental policy.

E. A supervisor finding violations of the policy shall take appropriate disciplinary action in accordance with departmental policy.

TRAINING:**A. Initial Training**

1. All affected departmental personnel will be trained to follow this policy. The training must be sufficient to ensure an understanding of the provisions of this policy.
2. All affected departmental personnel will be given a copy of the policy and will be responsible for knowing, understanding and complying with the provisions of the policy.

Training Recommendations:

1. It is highly recommended that training on the policy include:
 - a. Training on the dynamics of domestic violence;
 - b. Laws related to domestic violence;
 - c. Officer safety and response procedure;
 - d. Understanding the nature and role of a coordinated community response to domestic violence and interagency cooperation.
2. Training on the dynamics of domestic violence should be done by domestic violence service providers whenever possible.

B. On-going Training

1. On-going training, supervision, and accountability are essential for minimizing the risk of liability.
2. Review training of the policy must be sufficient to create an understanding and retention of the requirements of this policy, to ensure that personnel are able to properly articulate this policy on the witness stand in court.
2. Review training should include all affected departmental personnel.

Training Recommendations:

1. Annual review training of this policy is highly recommended. Personnel will be given a copy of the policy, asked if they have any questions regarding the policy, and be required to sign a statement that they have received, read, and

understand the policy.

2. It is recommended that documentation of the review training be kept by the department.

EVALUATION AND DATA COLLECTION:

A. The evaluation goal of this policy is to ensure 100% compliance with the provisions of this policy.

B. The policy shall be monitored and reviewed annually to determine compliance and the need for modification. Management shall designate the individual who has responsibility for conducting this review.

C. Training needs should be identified as a result of data evaluation and policy review.

D. Officer input should be considered in the evaluation process.

Recommended Procedures:

1. Shelter service providers and members of the community should participate in the review.
2. Results of the annual review should be made available to all departmental personnel, shelter service providers, and other community members directly involved with domestic violence issues. Dissemination of information is key to accountability.

DATA COLLECTION

1. Data should be collected to enable measurement and evaluation of this policy's effectiveness in meeting its goals.
2. A separate incident number shall be assigned to each domestic violence response dispatched.

PUBLIC POLICY STATEMENT

In accordance with the requirements of Michigan law a copy of this policy shall be made available to any member of the public.

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The photographs depicted in this publication are not of actual defendants or victims. We wish to acknowledge the APRI staff members who served as subjects for these photographs.