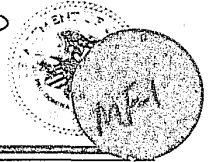


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**National Institute  
of Justice**

*Issues and Practices*

# Confronting Domestic Violence:

## A Guide For Criminal Justice Agencies

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U.S. Department of Justice  
National Institute of Justice

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**James K. Stewart**

*Director*

# **Confronting Domestic Violence: A Guide For Criminal Justice Agencies**

by

**Gail A. Goolkasian**

**May 1986**

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*Issues and Practices in Criminal Justice* is a publication series of the National Institute of Justice. Designed for the criminal justice professional, each *Issues and Practices* report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion in the subject. The intent is to provide criminal justice managers and administrators with the information to make informed choices in planning, implementing and improving programs and practice.

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## Foreword

Policies which support the family are imperative for the survival of our society, for the family is the fundamental unit of American life. Because we all want to help families thrive within our communities, we must address seriously the domestic violence which too often shatters families from all walks of life. Spouse abuse can mean a push down the stairs, a kick in the abdomen, a series of beatings, stabbings, or even a murder. These are not simply disagreements, arguments, "family spats," or cases of "mutual combat," but violent crimes involving criminals and injured victims. Research has found that such violence often continues and escalates over time, becoming both more frequent and more severe. For example, one study found that in over 50 percent of domestic homicides, the police had previously been called to the residence five times or more. However, more recent research has found that an appropriate law enforcement response can deter future violence.

On a national level, attention to domestic violence has taken several forms, from the formal hearings and report of the Attorney General's Task Force on Family Violence to media portrayals in television, movies, and documentaries. On a local level, there have been increases in both vital services for victims and intervention strategies aimed at offenders.

*Confronting Domestic Violence: A Guide for Criminal Justice Agencies* reviews the policies that criminal justice professionals in several jurisdictions have developed to protect victims and to hold perpetrators accountable for their violent behavior. Based on a review of the literature, consultation with experts in the field, and on-site study of individual programs, this report outlines the role which police, prosecutors, probation officers, and judges can take in improving the handling of these cases. Improving police reporting and arrest practices, forwarding case incident reports to prosecutors, working with victim advocates, imposing conditions on pretrial release, incarcerating offenders when appropriate, and mandating some offenders to programs aimed at ending their violent behavior are just some of the strategies examined in this document.

The criminal justice system plays a critical role in shaping a community's response to domestic violence and in heightening recognition of the serious criminal nature of these cases. The National Institute of Justice hopes that this report will inform the policy choices of criminal justice professionals in that effort.

James K. Stewart  
Director  
National Institute of Justice

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Gail A. Goolkasian  
March 1986

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# Preface

The term "family violence" encompasses a broad range of violent behaviors that occur within the context of families and intimate relationships. These violent behaviors may be directed at children, spouses, parents, or other present or former household members. Within the general area of family violence, this report focuses on domestic violence—also called spouse abuse or battering—and the manner in which the criminal justice system responds to cases involving this kind of violence.

During the last few years, reports have examined improved policies and procedures for handling domestic violence cases by police and prosecutors, and the increasingly common option of court-mandated counseling for batterers. Studies that have taken a broader perspective, such as those of the Attorney General's Task Force on Family Violence and the U.S. Commission on Civil Rights, stress the need for many different agencies in each community to improve their response to domestic violence, and to coordinate with one another in making these improvements. Within the criminal justice system, these groups have offered recommendations for police, prosecutors, and the judiciary. This Issues and Practices report reviews the criminal justice process, step by step, in order to provide a more integrated look at the kinds of improved policies and procedures that can be implemented by each agency. While the report's primary focus is on criminal justice agencies, the roles of some other agencies and professionals in the community are also discussed to the extent that they interact with the criminal justice system.

## Methodology

This project began with a selective review of the literature on domestic violence, with a particular emphasis on materials dealing with the criminal justice system. A number of leading experts and practitioners were contacted early in the project, in order to elicit their thoughts on the type of document that would be most useful to the field, and to identify individuals who could serve as advisors for the duration of the project. Members of the advisory board include a police administrator, a prosecutor who supervised a family violence unit, a psychologist who developed a group counseling program for court-mandated batterers, the director of a domestic violence intervention program, two researchers with specialties in the domestic violence area, and an educator who specializes in multicultural and bilingual issues and education. The advisors provided assistance in selecting 20 agencies and programs throughout the country that had adopted some of the more recent innovations in the handling of domestic violence cases, with particular attention to agencies providing court-mandated counseling to batterers. These agencies were contacted by telephone for further information and written materials describing their approaches. Three jurisdictions from this group—Seattle, Washington; San Francisco, California; and Westchester County, New York—were chosen for on-site study, again with advisor input. Selected examples from these jurisdictions, along with Duluth, Minnesota (which was visited by the author in conjunction with a previous project), are used to illustrate various policies and practices described in this report.

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# Chapter 1

## Domestic Violence: The Problem

The physical abuse escalated during the marriage in frequency and seriousness over time and so did my feelings of guilt, of shame about it, of dependence on the relationship and a desperate desire to be a better person so he would not beat me.

— a victim<sup>1</sup>

While the problem of domestic violence has moved into public awareness, it is still shrouded in misunderstanding. People ask, "What does it mean?" "How could he do it?" and "Why does she put up with it?" For many, the existence of domestic violence is difficult to comprehend. For many others, a life without continual fear of violence at the hands of a loved one is equally difficult to envision.

There are a variety of ways to define domestic violence. Within the justice system, it must be defined in terms of applicable laws and criminal sanctions. Assault, battery, homicide, weapon use, kidnapping, unlawful imprisonment, and trespassing are some of the most frequent crimes involved in domestic violence cases. For clinical purposes, domestic violence can be defined as "assaultive behavior [involving] adults in an intimate, sexual, theoretically peer, and usually cohabitating relationship."<sup>2</sup> It represents a pattern of behavior rather than a single isolated event. It can take on many different forms, all of them violent.

There are also several terms used to refer to domestic violence: battering, domestic assault, marital violence, spouse abuse, and wife beating, just to name a few. In this report, the terms domestic violence, battering, and spouse abuse are used interchangeably. The term "family violence" is used in this report to include child abuse, elder abuse, and violence involving other related parties in addition to spouse abuse. It is important to note that, despite the use of the term "spouse abuse" which implies a marital relationship, our focus is not restricted to married couples. Along with most authors, experts, and practitioners in the field of domestic violence, we consider violence

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among boyfriends and girlfriends, ex-spouses, and others with an on-going or prior intimate relationship in the same category as violence among married couples. Our focus is, however, restricted to male-to-female violence rather than the reverse. This focus is based on a number of factors, including the far greater incidence of violence against women.<sup>3</sup>

## Myths

A number of misconceptions or myths surround the problem of domestic violence. Our acceptance of these myths has perpetuated spouse abuse by preventing society from taking action to stop this form of violence, and from holding abusers accountable for their violent behavior. Some of the most common myths are summarized below.

*Domestic violence is a private "family matter." Officials are acting "in the best interest of the family" if they don't interfere.* Few would argue that a man who assaults a stranger in a public place should not be held accountable for this act. For many, an assault by the same man, when directed at his wife and carried out in his own home, is somehow "different" and does not merit a similar response from society. These people may feel that the privacy of one's family and home should not be violated by outsiders, or that the family unit should be preserved at all costs—which demands that the parties be allowed to "work the problems out on their own."

Despite these views, a man has no right under existing laws to beat his wife or any other family member. It is the violent behavior, the assault, that constitutes a crime; the assault is no less a crime when it is carried out against one's wife or girlfriend. As stated by the Attorney General's Task Force, "The legal response to family violence must be guided primarily by the nature of the abusive act, not the relationship between the victim and the abuser."<sup>4</sup>

*Domestic violence is usually precipitated by the victim's provoking statements or actions.* This myth stems from a belief that, on some level, men still have a right to chastise their wives for behavior that the men do not like. Experts in family violence refute models of spouse abuse that blame the battered woman for her own victimization and relieve the batterer of responsibility for his violent behavior. A recent study has found no support for the "mutual combat" view of spouse abuse wherein both parties are responsible for the violence.<sup>5</sup> In the overwhelming majority of these cases, it is women who are being routinely and severely victimized by men.

*Battered women must be masochistic. If they wanted the abuse to end, they would seek outside help, or would leave or prosecute their abusers.* Battered women face enormous pressures to remain in an abusive relationship, including economic dependency, lack of support from relatives and friends, and threats of increased violence if any action is taken against their abuser. Despite these pressures, battered women often do seek outside help in an effort to end the abuse. However, they have typically faced a lack of support and assistance from public institutions and professionals in their communities. Shelters for battered women do not exist in many communities and,

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where they do exist, their limited capacity often forces shelter staff to turn away many more women than they can accept. Welfare agencies often refuse to provide battered women with financial assistance because their husbands' incomes disqualify them from receiving public funds. Physicians, hospital staff, mental health professionals, and the clergy have typically overlooked, ignored or failed to act appropriately in domestic violence cases. Traditional training provided to these professionals has reflected a bias toward keeping the family together at all costs. Furthermore, there has been a pervasive attitude within the criminal justice system that battering is not a crime, and this attitude has prevented justice agencies from providing adequate legal remedies.

Barriers to action are even greater for women from certain social, ethnic, or cultural groups. For example, some women feel compelled to remain in an abusive relationship because of their religious views on divorce, or because separation carries a tremendous social stigma in their community. They may also feel that police and other officials hold racial and cultural stereotypes which will affect the amount of help they receive, or will result in harsher action against their abusers.

*Batterers are "sick," poor, or alcoholic.* Many assumptions about batterers stem from a desire to deny the widespread occurrence of violence in "normal" families. Many people believe that batterers must be "sick," yet researchers and clinicians have consistently refuted the notion that these men are mentally ill. Experts also agree that, contrary to some popular opinion, domestic violence is not primarily a lower class phenomenon. Critics of the "class myth" cite a reporting artifact which confounds statistics that show a higher incidence of domestic violence among lower socioeconomic groups. Lower class families are more likely to gain official attention from police, hospitals, and other public agencies because they have less privacy and fewer private resources than middle and upper class families. As a result, recorded figures do not necessarily reflect the actual incidence of spouse abuse among various social and economic classes.

The frequency of alcohol and drug abuse among batterers has also been the focus of much attention and controversy. Many people presume that batterers are typically alcoholics or drug addicts, or that battering episodes are always precipitated by abuse of alcohol or drugs. Some data do suggest that drug-related problems, most commonly alcohol-related, are evidenced by a large proportion of violent husbands.<sup>6</sup> However, some researchers argue that the prevalence of alcohol abuse or the importance of alcohol as a precipitating factor in domestic violence is highly exaggerated. Based on extensive clinical experience with batterers, one psychologist notes that "while some men who batter also abuse drugs or alcohol, there are many other batterers who are social drinkers or abstainers."<sup>7</sup> There are also many men who abuse alcohol or drugs and never assault their partners. From this perspective, the existence of alcohol- and drug-related problems in batterers is viewed as the overlap of two widespread social problems.

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Most researchers agree that a large number of assaults do occur when batterers abuse drugs or alcohol, yet no clear causal link between substance abuse and battering has been demonstrated. Indeed, it has been difficult for researchers to establish a causal link between substance abuse and any form of aggression.<sup>8</sup> It may be that alcohol reduces an individual's inhibitions against battering,<sup>9</sup> that there is a learned association between alcohol and violence in certain cultures, or that alcohol is used as an excuse for engaging in deviant behavior.<sup>10</sup> One study of 262 "domestic disturbance" incidents reported by police found that a batterer's history of problems with alcohol led to more severe injuries in the female, while drinking associated with the battering incident itself did not trigger more serious injuries.<sup>11</sup>

*Battering is caused by an inability to express anger or handle stress.* While domestic violence is sometimes associated with anger, counselors who work with batterers report that this is not the cause of the use of violence. If battering reflected solely an inability to control anger, it is unlikely that the same target would be singled out time after time. As stated by Pennsylvania attorney Barbara Hart:

It is not his impulses. Clearly, he doesn't beat up his boss. He doesn't beat up his secretary. He doesn't, you know, beat up the kids on the block.<sup>12</sup>

More appropriately, battering can be viewed as a type of behavior used by one person in an attempt to control and dominate another person. According to some experienced counselors, batterers usually exhibit extremes of jealousy, impulsiveness, competitiveness and possessiveness, needing to exert control over people and situations.<sup>13</sup> Anger and stress can contribute to battering in a variety of ways. For example, a batterer may become angry because his wife did not behave in a certain way, and then resort to violence as a means of establishing control. Anger and stress stemming from outside sources, such as work, may mean that battering is more easily triggered at home.

## Assumptions

*Spouse abuse is a crime.* The assumption that spouse abuse is a crime underlies this entire Issues and Practices report. While battered women are the obvious victims of these crimes, there can be other victims as well. These include the battered woman's children (who are sometimes assaulted in order to batter their mother further), bystanders, or individuals who try to intervene in battering incidents. Batterers themselves can also be at risk. Women may turn around and attack their persecutors, with lethal results.<sup>14</sup> Finally, the community as a whole suffers greatly from crimes involving domestic violence. This form of violence diminishes the quality of family life and consumes financial, medical, legal and other resources in our society.<sup>15</sup>

As the perpetrators of criminal behavior, batterers are subject to legal sanctions by the criminal justice system. Batterers also benefit from legal sanctions, which can include intervention designed to help them end the pattern of violent behavior. Criminal

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justice agencies in many communities have made major improvements in the handling of spouse abuse cases. This positive trend in criminal justice agencies represents movement away from "soft" policies like mediation and crisis intervention and toward more traditional law enforcement and prosecution, in recognition of the serious criminal nature of domestic violence cases.

*The needs of battered women for protection, support, and assistance are paramount.* The past few years have brought increased recognition of the problems, needs, and experiences faced by victims of all kinds of crimes.<sup>16</sup> Battered women share a number of additional needs, both emotional and physical, because of their present or former relationship with the perpetrator. Most important, for example, battered women need access to shelters that offer a safe, violence-free environment for them and their children. When spouse abuse cases reach the criminal justice system, policies and procedures are needed to protect victims from further abuse and intimidation at the hands of their abusers as their cases proceed through the system. Battered women, like other crime victims, also need to be informed about each step in the often-confusing criminal justice process. The complexities inherent in the criminal justice system are even more confusing and intimidating for many non-English speaking women, women of color, and women from various ethnic backgrounds who historically have faced stereotypes, prejudice, discrimination, and language and cultural barriers. While this report focuses primarily on criminal justice policies and procedures aimed at batterers, several strategies designed to protect victims are also examined.

## **Domestic Violence as a Crime**

In recent years, a number of studies have examined the extent of domestic violence. Battering incidents range from threats and physical assaults usually classified as misdemeanors to more serious felony assaults and homicides. They are acknowledged to be one of the most frequent crimes, and yet they have also been one of the most under-reported.

### *Flaws in Official Reporting and Recordkeeping*

Paradoxically, official reporting and recordkeeping methods are probably the greatest contributors to underestimates of the incidence of domestic violence. Police dispatchers may screen out a certain number of calls involving spouse abuse, deciding that they are not serious enough to warrant police intervention.<sup>17</sup> In responding to domestic violence incidents, officers were often trained to defuse the situations without filing formal reports, possibly dissuading victims from pressing charges as well.<sup>18</sup> Even when domestic violence incidents have been reported by police, they have typically been relegated to a low-priority "family disturbance" category along with many types of nonviolent domestic disputes. At the same time, the most serious of domestic violence incidents were likely to be reported simply as homicides or felony assaults, without reporting the relationship between the parties or assigning the cases a "domestic" classification.<sup>19</sup> Given both of these reporting practices, the incidence and nature of crimes involving domestic violence have been largely unknown.



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## *Danger to Police*

One impact of domestic violence that has been explored is the danger to police officers in responding to domestic violence incidents. Police officers,<sup>20</sup> police managers,<sup>21</sup> police researchers,<sup>22</sup> and family violence researchers<sup>23</sup> have commonly believed that domestic disturbances pose an exceedingly high physical threat to responding officers. Training materials from the International Association of Chiefs of Police and other organizations regularly emphasize the dangerousness of domestic disturbances.<sup>24</sup> Officer concern is partially based on a misinterpretation of official statistics on police officer deaths compiled by the FBI. Until 1982, all felonious deaths of police officers which occurred when they responded to bar fights, "man with a gun" situations, general disturbances, and "family quarrels" were reported by the FBI under the category of "disturbances," and for a number of years this category was the single most frequent category of officer deaths. In 1977, for instance, 17 percent of all felonious deaths of police officers were listed in the "disturbance" category.<sup>25</sup>

Many authors assumed that all incidents in the "disturbance" category were domestic, or at least that domestic incidents made up a large percentage of that category. In 1983, and again in 1984 and 1985, the FBI has clarified this situation by publishing a breakdown of the "disturbance" category which distinguishes between domestic disturbance calls and other types of disturbance calls. For the preceding ten-year periods, 1973 to 1982, 1974 to 1983, and 1975 to 1984, these FBI figures show that domestic disturbances account for only about 5 percent of all felonious deaths and are one of the *least* frequent types of incidents involved in police homicide.<sup>26</sup>

Death is only one type of danger. Garner and Clemer have reviewed the available evidence on police officer deaths, assaults, and injuries. They found that domestic disturbances account for as low as two percent of all assaults on officers in New York City to eight percent of all assaults that resulted in an arrest in Detroit.<sup>27</sup> Evidence from several southwest states and rural communities generate similarly low assault and injury rates associated with domestic disturbances.

Because police are dispatched more frequently to some types of incidences than others, Garner and Clemer controlled for the amount of officer activity associated with five different types of incidents—domestic disturbance, other disturbance, robbery, burglary, and traffic—and again examined the danger experienced by responding officers. Their findings suggest that robberies represent the greatest risk of officer death, assault, or injury, while domestic violence is among those incidents posing the smallest risk.<sup>28</sup>

The belief that domestic violence incidents are especially dangerous to police is still quite common among officers. In some instances, this belief may lead them to avoid domestic calls, to delay responding, or to avoid any type of confrontational action when they do respond. In many departments with one officer cars, the standard policy is to wait for a backup before entering a domestic disturbance situation.

The question of officer danger is obviously salient to officers on patrol. While

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the fatality and injury rates for officers who respond to domestic disturbances are not as high as suggested by earlier estimates, comprehensive law enforcement training on domestic violence is an important step to improving officer safety, as well as ensuring that police provide needed protection to victims and hold abusers accountable for their violent behavior. While we do not know whether the high level of officer concern about their own safety in domestic disturbances affects the low rates of officer deaths, assaults, and injuries in these cases, this recent clarification by the FBI and police researchers may help to improve the willingness of policymakers and police officers to consider new ways of responding to domestic violence incidents.

### *Victim Surveys*

Given the historical absence of law enforcement statistics on domestic violence, people have relied heavily on victim surveys and interviews to estimate the incidence of battering. In the most well-known study to date in this area, Straus, Gelles, and Steinmetz examined the incidence of spouse abuse and child abuse in a national probability sample of 2,143 families in 1976.<sup>29</sup> Survey respondents were asked how many times they had engaged in eight different violent acts against their partner, ranging in severity from pushing to using a knife or gun. Looking only at the more serious end of the spectrum, the researchers found that approximately 1.5 out of every hundred couples reported a beating against a spouse during the past 12 months, and a gun or knife was used against one's spouse in one out of every 200 couples. Translating the percentages into the total U.S. population, the researchers estimated that in the previous year over 1.7 million Americans had at some time faced a spouse wielding a knife or gun, and well over 2 million had experienced a beating at the hands of their spouse.<sup>30</sup> Furthermore, they concluded that these figures probably represent substantial underestimates. The study's reliance on self-report data is one major reason for drawing this conclusion.<sup>31</sup>

### *Improved Reporting and Recordkeeping Procedures*

Clearly, there is a tremendous need to improve and revise official reporting and recordkeeping on domestic violence incidents in order to develop more reliable statistics on the incidence and nature of these crimes. During the past few years, police domestic violence reporting practices have improved dramatically in many jurisdictions throughout the country. In some cases, these improvements were mandated by state law, while in others they were initiated by the police department itself. Dispatchers in several departments have been trained to screen domestic violence calls according to level of seriousness and harm to the victim, just as they screen calls for other violent crimes. This means that police in these departments respond to more domestic violence calls than they did in the past.

In addition, police officers in many departments are now directed to file reports on all domestic violence incidents to which they respond, regardless of whether the suspect is arrested. Revised case incident report forms in these departments contain

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a box labeled "domestic violence" that is checked off by officers as appropriate so that they can be readily identified. Officers in other departments complete a separate incident report form designed specifically for domestic violence cases.<sup>32</sup> On a national level, both the Attorney General's Task Force on Family Violence and the U.S. Commission on Civil Rights have recommended that the FBI's Uniform Crime Reports be revised to collect and publish data indicating victim-offender relationships for violent crimes that occur within families.<sup>33</sup> The Task Force also recommends collection and publication of data on family violence incidents in which police respond but do not arrest a suspect.<sup>34</sup>

### *State-level Data: Minnesota and New Jersey*

While improved reporting and data collection procedures have not yet been implemented on a nationwide basis, the statistics available in some individual states can be illustrative. Two states that have published data on domestic violence crimes are Minnesota and New Jersey.

The Minnesota Department of Corrections Program for Battered Women receives reports on incidents of battering from medical, law enforcement, and human service professionals. The Department of Corrections received 24,949 unduplicated reports from these sources on incidents of woman battering in Minnesota from 1978 through 1983. Based on research estimates of the proportion of battered women reporting to professionals and the proportion of professionals reporting to the Department of Corrections, the Department estimates that 187,115 incidents of woman battering actually occurred in Minnesota during the six-year period. This is equivalent to an average of about 31,200 incidents per year in the state.<sup>35</sup>

New Jersey's state Uniform Crime Report for 1984 contains a separate section on domestic violence aimed at "identifying violence occurring behind closed doors."<sup>36</sup> The introduction to this section states that:

[r]eported domestic violence acts increased 43 percent over 1983. This increase is largely attributed to the willingness of victims to come forward; the improved investigative and reporting procedures by the police; and the improved methods of processing domestic violence complaints through the courts. All of these improvements are the result of the combined efforts of many organizations and individuals, too numerous to mention. The message being communicated is that domestic violence will not be tolerated in our state!<sup>37</sup>

Exhibit 1 contains a summary of domestic violence statistics from the 1984 New Jersey UCR Report, which indicates that there were 35,050 domestic violence offenses reported by the police in 1984, compared to 24,477 reported in 1983. In both of these years, 85 percent of the offenses involved female victims. Exhibit 2 shows the number of domestic violence offenses reported during three consecutive years for each of 11

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offense types, while Exhibit 3 displays the 1984 offenses by victim-offender relationship and type of offense. Finally, Exhibit 4 shows the type of weapon and extent of injury involved for all domestic violence offenses reported in 1984.

Other states should follow New Jersey's lead in collecting this type of domestic violence data, and should publish these data in an equally useful and readable format. With such information available in all 50 states, we could confirm the true magnitude and severity of domestic violence in this country as a whole.

## **Exhibit 1**

### **STATE OF NEW JERSEY DOMESTIC VIOLENCE STATISTICAL SURVEY**

Highlights of the 1984 domestic violence statistics are listed below:

- There were 35,050 domestic violence offenses reported by the police in 1984, a 43% increase compared to the 24,477 reported in 1983.
- Assaults occurred in 68% (23,686) of the reported offenses in 1984.
- Arrests were made in 19% of the offenses reported.
- The most frequent days of domestic violence occurrences were Sunday (6,474) and Saturday (6,247).
- For the second consecutive year, the most frequent hours of occurrences were between 8:00 p.m. and midnight, when 30% of the offenses were reported.
- Children were involved or present during 56% of all domestic violence offenses occurring in 1984. Specifically: 13% were involved and 43% were present.
- Wives were the victims in 46% (16,025), and female friends were the victims in 29% (10,096) of the reported domestic violence offenses in 1984. Overall, females were victims in 85% (29,657) of all domestic violence offenses; the same percentage as in 1983.
- The number of domestic violence complaints that had prior court orders issued against the offender increased from 2,510 in 1983 to 4,213 in 1984.

**SOURCE:** *Crime in New Jersey: 1984 Uniform Crime Report*  
(Trenton, N.J.: Division of State Police, 1985), p. 181.

## Exhibit 2

### STATE OF NEW JERSEY DOMESTIC VIOLENCE OFFENSE TOTALS 1983-1984

OFFENSE	1983	1984	Percent Change
Homicide	*	36*	—
Assault	17,027	23,686	+39
Kidnapping	19	26	+37
Criminal Restraint	55	54	- 2
False Imprisonment	8	9	+13
Sexual Assault	37	24	-35
Criminal Sexual Contact	15	11	-27
Lewdness	8	9	+13
Criminal Mischief	908	1,461	+61
Burglary	71	113	+59
Harassment	6,329	9,621	+52
<b>Total</b>	<b>24,477</b>	<b>35,050</b>	<b>+43</b>

\*Homicide data was not collected until the last six months of 1984.

**SOURCE:** *Crime in New Jersey: 1984 Uniform Crime Report*  
(Trenton, N.J.: Division of State Police, 1985), p. 183.

### Exhibit 3

## STATE OF NEW JERSEY DOMESTIC VIOLENCE OFFENSES BY VICTIM 1984

Type of Domestic Violence Offense	Total Number of Offenses	Relationship of Victim to Offender					
		Husband	Male Relative	Male Friend	Wife	Female Relative	Female Friend
Homicide	36*	4	7	2	9	4	10
Assault	23,686	1,610	1,149	802	11,033	2,082	7,010
Kidnapping	26	2	—	1	9	2	12
Criminal Restraint	54	1	2	—	32	4	15
False Imprisonment	9	—	—	—	4	2	3
Sexual Assault	24	—	—	—	14	—	10
Criminal Sexual Contact	11	—	—	—	7	2	2
Lewdness	9	1	2	—	5	1	—
Criminal Mischief	1,461	83	95	78	526	273	406
Burglary	113	13	6	8	31	8	47
Harassment	9,621	716	455	356	4,355	1,158	2,581
<b>Total</b>	<b>35,050</b>	<b>2,430</b>	<b>1,716</b>	<b>1,247</b>	<b>16,025</b>	<b>3,536</b>	<b>10,096</b>

- For the second consecutive year assault was the most prominent of the eleven types of domestic violence offenses (23,686). Females were assault victims in 85% (20,125) and males 15% (3,561).
- Wives were the victims in 46% (16,025), and female friends were the victims in 29% (10,096) of the reported domestic violence offenses in 1984. Overall, females were victims in 85% (29,657) of all domestic violence offenses; the same percentage as in 1983.
- Harassment was the second highest reported domestic violence offense in 1984 (9,621).

\*Homicide data was not collected until the last six months of 1984.

SOURCE: *Crime in New Jersey: 1984 Uniform Crime Report*  
(Trenton, N.J.: Division of State Police, 1985), p. 184.

## Exhibit 4

### STATE OF NEW JERSEY DOMESTIC VIOLENCE OFFENSES BY TYPE OF WEAPON AND EXTENT OF INJURY 1984

Type of Weapon	Extent of Injury			Total
	Aggravated Serious	Non-Aggravated Minor	None	
Gun	85	77	139	301
Knife	339	606	267	1,212
Other Dangerous	455	1,217	227	1,899
Hands, Fists, etc.	1,366	17,028	2,265	20,659
None	—	—	10,979	10,979
<b>Total</b>	<b>2,245</b>	<b>18,928</b>	<b>13,877</b>	<b>35,050</b>

- Sixty percent (21,173) of all Domestic Violence Complaints resulted in injury.
- Hands, fists, etc. were used in 86% of all Domestic Violence Offenses in which a weapon was used.

**SOURCE:** *Crime in New Jersey: 1984 Uniform Crime Report*  
(Trenton, N.J.: Division of State Police, 1985), p. 185.



## References

1. Attorney General's Task Force on Family Violence, *Final Report* (Washington, D.C.: U.S. Department of Justice, 1984), p. 34.
2. Anne L. Ganley, *Court-Mandated Counseling for Men Who Batter: A Three-Day Workshop for Mental Health Professionals--Participant's Manual* (Washington, DC: Center for Women Policy Studies, 1981), p. 2.
3. See Russell Dobash and R. Emerson Dobash, "Wives: The 'Appropriate Victims' of Marital Violence," *Victimology: An International Journal* 2 (1977): 426-442; and Murray A. Straus, "Sexual Inequality, Cultural Norms, and Wife-Beating," *Victimology: An International Journal* 1 (1976): 54-76.

In a 1976 national probability study of 2,143 families, Straus, Gelles, and Steinmetz did find a fairly comparable number of wives and husbands who had committed a violent act against their spouse during the previous year. One must be cautious in drawing any conclusions based on this finding, however. First, there is no indication of what proportion of the wives' violent acts were conducted in self-defense. Second, the study's definition of violence included acts like "threw something at spouse," "pushed, grabbed, or shoved spouse," and "hit or tried to hit spouse with something," which, in many cases, may have been minor, non-criminal acts. Data revealed that husbands did have higher rates of the more dangerous and injurious forms of violence, "beat up a spouse" and "used a knife or gun on spouse," which clearly would constitute criminal behavior. Murray A. Straus, Richard J. Gelles and Suzanne K. Steinmetz, *Behind Closed Doors: Violence in the American Family* (Garden City, N.Y.: Anchor Press, 1980), pp. 36-44.

4. Attorney General's Task Force on Family Violence, *Final Report*, p. 4.
5. Richard A. Berk, Sarah Fenstermaker Berk, Donileen R. Loseke, and David Rauma, "Mutual Combat and Other Family Violence Myths," in *The Dark Side of Families: Current Family Violence Research*, David Finkelhor, Richard J. Gelles, Gerald T. Hotaling, and Murray A. Straus, eds. (Beverly Hills: Sage, 1983), pp. 197-212.
6. For example, Morton Bard and Joseph Zacker, "Assaultiveness and Alcohol Use in Family Disputes," *Criminology* 12 (November 1974): 283-292.
7. Ganley, *Court-Mandated Counseling for Men Who Batter*, p. 34.
8. For example, Robert Straus, "The Social Costs of Alcohol in the Perspective of Change, 1945-1980," in *Alcohol, Science and Society Revisited*, Edith Lisan-sky Gornberg, Helene Raskin White and John A. Carpenter, eds. (Ann Arbor: University of Michigan Press, 1982), pp. 142-143.
9. Ganley, *Court-Mandated Counseling for Men Who Batter*, p. 35.
10. Richard J. Gelles, *The Violent Home* (Beverly Hills: Sage Publications, 1972), pp. 116-117.

11. Berk, Berk, Loseke, and Rauma, "Mutual Combat and Other Family Violence Myths."
12. Barbara Hart, Testimony, Hearing before the U.S. Commission on Civil Rights, Harrisburg, Pennsylvania, June 1980, as cited in the U.S. Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (Washington, D.C.: U.S. Commission on Civil Rights, 1982), p. 3.
13. Daniel G. Saunders, "Counseling the Violent Husband," in *Innovations in Clinical Practice: A Source Book, Vol. I*, P.A. Keller and L.G. Ritt, eds. (Sarasota, Fla.: Professional Resources Exchange, 1982), p. 18; and Ganley, *Court-Mandated Counseling for Men Who Batter*, p. 29.
14. See Marvin E. Wolfgang, "Victim-Precipitated Criminal Homicide," *Journal of Criminal Law, Criminology and Police Science* 48 (1957): 1-11. Wolfgang analyzed empirical data of victim-precipitated homicide in 588 consecutive cases of criminal homicide in Philadelphia. The findings suggest that "connotations of victim as a weak and passive individual, seeking to withdraw from an assaultive situation, and of an offender as a brutal, strong and overly aggressive person seeking out his victim, are not always correct." In one out of every four criminal homicides in the sample, these traditional connotations of victim-offender roles were mitigated or reversed. Regarding victim-offender relations, Wolfgang concludes that "It seems highly desirable . . . that the police thoroughly investigate every possibility of strong provocation by the male victim when he is slain by a female—and particularly . . . if the female is his wife, which is also a strong possibility."
15. Anne L. Ganley, Testimony, Hearing Before the Attorney General's Task Force on Family Violence, Sacramento, California, 1984.
16. See, for example, President's Task Force on Victims of Crime, *Final Report* (Washington, D.C.: Office of the President, 1982).
17. U.S. Department of Justice, *Calls for Service: Citizen Demand and Initial Police Response*, by Eric J. Scott (Washington, D.C.: Government Printing Office, 1981); Raymond Parnas, "Police Discretion and Diversion of Incidents of Intra-family Violence," *Law and Contemporary Problems* 36 (1971), p. 546.
18. Morton Bard, *Training Police as Specialists in Family Crisis Intervention* (Washington, D.C.: Government Printing Office, 1970); Del Martin, "What Keeps a Woman Captive in a Violent Relationship? The Social Context of Battering," in Donna M. Moore, ed., *Battered Women* (Beverly Hills: Sage, 1979), pp. 48-51; Eva Jefferson Paterson, "How the Legal System Responds to Battered Women," in Moore, *Battered Women*, pp. 87-91; and Roger Langley and Richard C. Levy, "Wife Abuse and the Police Response," *FBI Law Enforcement Bulletin* 47 (May 1978), p. 6.
19. Nancy Loving, *Responding to Spouse Abuse and Wife Beating: A Guide for Police* (Washington, D.C.: Police Executive Research Forum, 1980), p. 15.

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20. Raymond Parnas, "The Police Response to Domestic Disturbances," *Wisconsin Law Review* 914 (Fall 1967): 914-960.
  21. Darrel W. Stephens, "Domestic Assault: The Police Response," in *Battered Women: A Psychosociological Study of Domestic Violence*, Maria Roy, ed. (New York: Van Nostrand Reinhold, 1977), p. 164; James D. Bannon, "Assaults Upon Police Officers: A Sociological Study of the Definition of the Situation," Ph.D. dissertation, Wayne State University, 1976, *Dissertation Abstracts International* 37-07A, pp. 4639.
  22. Police Foundation, *Domestic Violence and the Police: Studies in Detroit and Kansas City* (Washington, D.C.: Police Foundation, 1977), p. 1.
  23. Murray A. Straus, Richard J. Gelles, and Suzanne K. Steinmetz, *Behind Closed Doors: Violence in the American Family* (Garden City, N.Y.: Anchor Press, 1980), pp. 16, 232.
  24. International Association of Chiefs of Police, "Training Key Number 246: Investigation of Wife Beating" (Gaithersburg, Md.: International Association of Chiefs of Police, 1976).
  25. U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed--1977* (Washington, D.C.: Federal Bureau of Investigation, 1978).
  26. U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted--1982* (Washington, D.C.: Federal Bureau of Investigation, 1983), Table 10, p. 17; U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted--1983* (Washington, D.C.: Federal Bureau of Investigation, 1984), Table 11, p. 18; and U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted--1984* (Washington, D.C.: Federal Bureau of Investigation, 1985), Table 11, p. 18.

In addition, Konstantin examined FBI reports on all felonious line-of-duty deaths of law enforcement officers in the U.S. from 1978 through 1980, and found that domestic disturbances accounted for only 5.2 percent of police line-of-duty deaths. David N. Konstantin, "Homicides of American Law Enforcement Officers, 1978-1980," *Justice Quarterly* 1 (March 1984): 29-45.

27. Joel H. Garner and Elizabeth C. Clemer, "Danger to the Police from Domestic Disturbance Calls: A New Look at the Evidence," U.S. Department of Justice, National Institute of Justice, Washington, D.C., 1985.
28. Ibid.
29. Only intact families, where both husband and wife lived together, were included in the study sample. Straus, Gelles, and Steinmetz, *Behind Closed Doors: Violence in the American Family*, p. 25.

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30. Ibid., pp. 32-36.
  31. In addition, 35 percent of the potential sample was unreachable or refused to be interviewed. Ibid., pp. 25-26.
  32. In a Michigan study, Buzawa and Buzawa found that requiring police to complete separate report forms on domestic violence incidents lowered reporting of these cases. E.S. Buzawa and C.G. Buzawa, "Legislative Responses to the Problem of Domestic Violence in Michigan," *Wayne Law Review* 25 (March 1979): 859-881.
  33. Attorney General's Task Force on Family Violence, *Final Report*, pp. 82-84; and U.S. Commission on Civil Rights, *Under the Rule of Thumb*, p. 93. The crimes listed in this category by the Task Force are aggravated assault, simple assault, rape, sex offenses, and offenses against family and children. At present, homicide is the only offense for which the victim-offender relationship is reported to the FBI.
  34. Attorney General's Task Force on Family Violence, *Final Report*, pp. 82-84.
  35. Minnesota Department of Corrections, Program for Battered Women, "Data Summary Report for Calendar Year 1983," St. Paul, Minnesota, update 2, published winter 1984, p. iii.
  36. *Crime in New Jersey: 1984 Uniform Crime Report* (Trenton, N.J.: Division of State Police, 1985), Section X, pp. 179-191.
  37. Ibid., p. 180.

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## Chapter 2

### General Recommendations

Do what must be done. If it's an arrest, do it. If it's a 72-hour hold, do it. It isn't worth taking a chance with somebody else's life. It isn't worth the loss.

—a former batterer<sup>1</sup>

Recognition that the justice system has a duty to provide adequate legal remedies in domestic violence cases is increasing rapidly among members of the criminal justice community. In the past, criminal justice policies reflected society's attitude that battering is a personal family matter rather than a crime. This attitude left the criminal justice system with no strong role in domestic violence cases. Instead, the justice system tended to "look the other way" when confronted with spouse abuse, to offer services like mediation and couples counseling rather than arrest and prosecution and, when these cases did gain entry into the system, to route them exclusively to family courts rather than criminal courts. As with the rape crisis movement, the grass roots battered women's movement has been key to effecting changes in the community response to spouse abuse, bringing domestic violence issues to the attention of the public as well as government agencies at every level.

As our understanding about domestic violence increases, more and more criminal justice officials are realizing that spouse abuse is a crime and should be treated as such. This reorientation is important not only for the changes it implies in the handling of individual cases, but also because the criminal justice system plays a major role in determining societal norms and values. To the extent that justice agencies deliver a clear message that domestic violence is unacceptable behavior that will not be tolerated, this attitude is encouraged throughout society.

While it is clear that domestic and stranger violence cases are alike on many dimensions and demand an equally rigorous response from criminal justice agencies, the

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relationship between the domestic violence victim and offender also creates some important differences between the two types of cases. Because of the parties' relationship, for example, a domestic violence offender typically has more access to the victim, and is better able to intimidate and manipulate her. In addition, the sentence imposed on a batterer often has a major impact on the victim's day-to-day life. For reasons like these, it is important for the criminal justice system to maintain some of the distinctions between domestic and stranger violence cases, and establish special domestic violence policies and procedures.

## **The Role of Legislation**

State legislation plays a critical role in shaping criminal justice policies in all areas, including domestic violence. In an increasing number of states, legislators are enacting laws aimed at improving the entire community response to domestic violence. For example, these laws can establish mechanisms for funding shelters and other forms of victim assistance; institute orders for protection; provide for information-sharing among criminal justice agencies; require domestic violence training programs; define the boundaries of proper police arrest practices; and mandate data collection and reporting on domestic violence incidents. These and other provisions may be embodied in a single domestic violence statute, or may be included in two or more separate pieces of legislation.

The value of domestic violence legislation cannot be overstated; such laws attest to the importance of domestic violence as a societal problem, allocate necessary resources, and set certain parameters for an appropriate community approach to domestic violence. In several states, domestic violence legislation has provided the foundation for major criminal justice policy improvements.

Legislation alone, however, is not enough. This fact was made strikingly clear by an evaluation of Washington's 1979 Domestic Violence Act. The evaluation revealed that, four years after the legislation was enacted, many criminal justice personnel were not conforming with the Act, were not sufficiently familiar with the Act or, in some cases, were not even aware that the Act existed.<sup>2</sup> The authors conclude that "although the Domestic Violence Act articulates specific procedures, it is not enough that they be written into the law. Police departments, prosecutor's offices, and courts must implement the law."<sup>3</sup>

Just as the existence of domestic violence legislation does not guarantee compliance in individual criminal justice agencies, the absence of domestic violence legislation should not be construed as a roadblock to those who seek criminal justice policy changes in their own communities. Many of the strategies described in this report can be adopted without specific enabling legislation.

## **Action Steps for Criminal Justice Agencies**

Major changes in policies and procedures throughout the justice system require a great deal of planning, coordination, monitoring, and staff training. Because each

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community is unique, it is impossible to offer a packaged "formula for success" that can be applied to any jurisdiction. Based on the experiences of those who have met with success, however, some general recommendations for effective criminal justice policy changes can be given.

*Designate domestic violence cases as high-priority.* Spouse abuse must be recognized as a serious crime that demands attention by criminal justice agencies. In order for this to occur, the head of each agency should take a strong stand and set the tone for subordinates. Agency staff cannot afford to ignore a mandate from the chief of police, district attorney, or chief probation officer to assign domestic violence cases a high priority. In virtually every criminal justice agency where policy improvements were made, these changes were strongly endorsed by at least one high-ranking official in the agency hierarchy.

*Establish detailed, written policies and procedures for handling domestic violence cases.* It is not enough to direct people to "change their ways" without telling them precisely how to go about it. The development of detailed, written policies and procedures is recommended for all police, prosecutor, and probation agencies. Many of these agencies have offered no guidance to staff in the past, and those that have offered guidance often recommended strategies, such as mediation, that are no longer considered appropriate.

As a general rule, written policies should begin with a precise definition of the types of cases covered by the policies, i.e., those that fall into the "domestic violence" or "spouse abuse" category. In some states, these definitions can be obtained from domestic violence statutes.<sup>4</sup> In other states, agency decisionmakers must develop an appropriate definition.

Written policies are intended to identify the range of appropriate and effective responses to domestic violence cases, given both existing state statutes and agency goals and priorities, and to provide a standard for monitoring staff behavior in these cases. Furthermore, such policies can minimize the impact of personal prejudices or biases on staff behavior, and create a degree of uniformity in the manner in which similar incidents are handled throughout the community.<sup>5</sup>

Developing these policies forces decisionmakers to think carefully about how to implement the agency's new approach to domestic violence. During this process, agency officials should talk to experts and professionals in the community who handle spouse abuse cases, such as staff of battered women's shelters, legal aid attorneys, and therapists. Written policies from comparable agencies in other jurisdictions can also provide a solid starting point for the development of new policies.

Once established, domestic violence policies should not be cast in stone. The policies should be reviewed periodically to determine whether any modifications are necessary or appropriate. Of course, legislative changes often necessitate changes in the policies and procedures of local criminal justice agencies.

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*Ensure employees' familiarity and compliance with written policies.* When policies for handling domestic violence cases are developed, steps must be taken to ensure that the policies are *followed*. Copies of the written policies should be distributed to all staff who are responsible for carrying them out. Training should also be provided before the policies are implemented. Domestic violence experts and service providers in the community are often willing to collaborate in the design and presentation of training materials.

While many agencies have distributed written policies and provided the necessary training, fewer have gone beyond these steps to see that the policies are actually carried out. These further steps are essential; even if staff make an honest attempt to adhere to the new policies, it is all too easy for them to revert to their old and more familiar ways of doing business.<sup>6</sup>

It is usually beneficial to vest major responsibility for overseeing domestic violence policy implementation in one mid- to high-level staff member within the agency. While strong support from the head of an agency is essential, it is unrealistic to expect that person to monitor policy implementation at the operational level. The person selected to fill this role should be someone with good communication skills and political savvy, "hands-on" experience with domestic violence cases, a comprehensive understanding of the complex issues involved in these cases, a genuine desire to work for and institutionalize policy improvements, and sufficient clout within the organization to supervise line staff.

Polymakers must also establish concrete incentives for staff to comply with newly developed domestic violence policies, as well as sanctions for noncompliance. Staff should be required to document their reasons for departing from official policies when they feel that such action is appropriate. In some jurisdictions, supervisors routinely review case incident report forms, case files, sentencing recommendations, and the like to see if the policies are being followed properly. In the San Francisco Police Department, the inclusion of questions about domestic violence policies on promotional exams also offers a strong incentive for officers to become familiar with these policies.

*Coordinate with other criminal justice agencies.* The need for coordination and communication among criminal justice agencies cannot be overemphasized. Agency policies should all carry the same message: the policies developed by one agency (e.g., to arrest batterers) can be more effective if they are reinforced by policies of other agencies (e.g., to prosecute and sentence batterers). Staff in each agency should also be familiar with the entire criminal justice response to domestic violence in their community, not just the way that these cases are handled by their own agency. It is important for staff to know how their procedures are followed up by other agencies. In some areas, for example, police officers cite the failure of prosecutors and the courts to treat battering as a crime to explain their own inaction in these cases. This includes magistrates' failure to arraign assailants, prosecutors' refusal to accept the cases, and judges' refusal to hear the cases or sentence the assailants.<sup>7</sup> Officers are more likely to see the value of arresting batterers if they know that many of these arrests lead



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to prosecution. Similarly, prosecutors are more inclined to devote their time and energy to domestic violence cases if they know that meaningful sentences are being imposed and conditions of probation are being monitored properly by probation officers.

Without a reasonably comprehensive knowledge of how domestic violence cases are processed in the jurisdiction, staff cannot provide victims and offenders with correct information about how their cases will be handled. In one jurisdiction, police officers routinely referred battered women to the prosecutor's office to obtain orders for protection, although the prosecutor's office had no involvement with these orders.

Coordination among agencies also makes it less likely that cases will "fall through the cracks" due to unclear divisions of responsibility. This problem is mentioned frequently with regard to sentences involving court-mandated counseling for batterers. While all parties agree that failure to participate in counseling constitutes a violation of probation conditions, it is often unclear who is responsible for reporting violations to the court—the probation officer, the counselor, or both. In many communities, the unfortunate result is that none of the parties takes responsibility, and batterers face no sanctions for their lack of compliance.

*Collect separate data on domestic violence incidents.* Agencies should adopt reporting systems that require data collection on *all* domestic violence incidents that come to the agency's attention. These data should be collected in such a way that they are readily identifiable as domestic violence incidents, not lumped into the same general categories as stranger assaults or nonviolent domestic disputes. In order to accomplish these two steps, agencies must define the types of cases that should be placed in the "domestic violence" category, establish a policy of mandatory reporting in those cases, and modify report forms and recordkeeping systems so that domestic violence cases are designated as such. The data collected on domestic violence cases must then be analyzed and disseminated to appropriate audiences, both within and outside of the agency itself.

Improved reporting and data collection carries several benefits. It is likely that more domestic violence cases will be identified. Agencies can get a real sense of the nature and volume of these cases, the manner in which cases are being handled, and the strategies that appear to be most effective. Reports on domestic violence incidents can also establish a pattern of abusive behavior in individual offenders. Data on prior incidents, regardless of the type of official action that was taken, can inform police officers' actions when responding to future calls, prosecutors' screening and charging practices, judges' release and sentencing decisions, and probation officers' treatment recommendations and monitoring procedures. Improved data collection will also result in more accurate estimates on the nature and extent of domestic violence in individual jurisdictions and the country as a whole. At a local level, knowledge of the past volume of documented domestic violence cases is vital to future resource allocation, including funding for general agency operations, training programs, shelters, and other victim services.

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*Sensitize staff members to the subtle ways in which their language and attitudes affect the parties in domestic violence cases.* The language used and attitudes revealed by criminal justice practitioners can have a major impact on both abusers and victims, independent of the official action taken in their cases. Victims should always be treated with empathy and respect, and offenders should always be given a clear message that battering is unacceptable and they are accountable for their violent behavior. Subtle differences in statements and mannerisms can completely change the underlying message given to the parties. Consider the different messages contained in the following hypothetical quotes from a police officer responding to a call:

I can't arrest him just on your say-so. I need some evidence. If you want, you can make a citizen's arrest, but you better think it over carefully, because a lot of battered women change their minds later on. Of course, you could get an order of protection if you want one.

I don't see the kind of evidence I need to make an arrest. You have the option of making a citizen's arrest if you wish, though. I'm sure you must be afraid that he might try to hurt you even more if you take this step, but you can get an order of protection from the court which says that he can't contact, harass, or assault you. If he does try to do any of these things, we can arrest him on the spot.

Prosecutor statements to victims are affected by the same kinds of differences:

I will file charges against your partner—you do not even have to sign the complaint. But domestic violence victims are notorious for changing their minds later and wanting to have these charges dropped. I am going to refer you to a victim advocate so that you can talk things over.

I will file charges against your partner—this is my responsibility as a prosecutor in any case where a crime was committed. For a lot of reasons, including pressure from batterers, domestic violence victims have often been reluctant to follow through with these cases. I am going to refer you to a victim advocate, who will try to give you the information, help, and protection you need while the case is underway.

*Address special problems faced by non-English speaking women and women of color.* Domestic violence occurs among people from all kinds of racial, religious, cultural, and ethnic backgrounds.<sup>8</sup> While battered women as a whole have traditionally faced a number of barriers from the criminal justice system, battered women from certain racial, cultural and religious groups also face unique pressures and problems when their cases reach the justice system. Due to past experience with racially biased institutions, some women of color are less likely to want criminal justice intervention because their experience suggests that their abusers will be treated more harshly than their white counterparts. Since many battered women seek criminal justice involvement in order to help their abuser to change rather than to punish him, some women of color are more likely to avoid any contact with criminal justice agencies.

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Some battered women with very traditional religious or cultural beliefs may consider any steps taken against their husbands, including prosecution, unthinkable despite continued, life-threatening violence. Non-English speaking victims of spouse abuse also face significant barriers to intervention. If the complexities of the criminal justice system are overwhelming to many crime victims, they surely are incomprehensible to most non-English speaking victims.

Criminal justice agencies can take steps to respond to the needs of these victims. Agencies should hire bilingual staff and members of various racial and ethnic groups from the community to handle domestic violence cases. The Family Violence Project in the San Francisco District Attorney's Office is notable in this regard. Project staff include representatives of local Asian and Latino communities, who conduct outreach and educational efforts in these communities in addition to handling appropriate cases. Staff should also become familiar with relevant community resources, such as language interpreters, members of the clergy who believe in a woman's right to live in a violence-free environment, and battered women's support groups in local ethnic communities. Agencies need to develop working relationships with these groups so that staff can make the necessary referrals. Brochures or pamphlets describing services available to battered women can be developed for various foreign-language groups. If people who speak these languages are not readily available to victims, tape recordings that describe the criminal justice process and community resources for battered women should be made available.

The Domestic Abuse Intervention Project (DAIP), an independent agency in Duluth, Minnesota, has taken a model approach to address the potential for race, sex, or class bias in criminal justice agencies. In 1985, DAIP established an eight-member committee composed of women of color and women of lower socioeconomic status who were victims of battering and had received criminal justice intervention in Duluth. With the cooperation and assistance of local criminal justice agencies, the committee obtained the names of 450 battered women of color from police and court records. A questionnaire was distributed to these women, asking about their experiences with various criminal justice agencies, including the way that they were treated as well as the official action taken. All respondents were invited to a meeting where the results of the survey were discussed, and individual working groups were formed to talk with officials in each agency where changes appeared to be needed.

*Coordinate with other community agencies and professionals that handle domestic violence cases.* Criminal justice strategies are just one component of a community's overall approach to domestic violence. In addition to coordination among various segments of the criminal justice system, justice agencies should work with other relevant agencies and professionals in the community. Many jurisdictions have established active networks, coalitions, or task forces for this purpose. These networks can include representatives from each criminal justice agency, family courts, shelter programs, legal services, welfare departments, hospitals, mental health agencies, private counselors who work with victims and batterers, and the city council. Meetings should

be held at regular intervals, such as once each month or every other month, to share information and ideas, engage in mutual problem-solving, set priorities, receive training, and establish agendas for action.

## References

1. Attorney General's Task Force on Family Violence, *Final Report* (Washington, D.C.: U.S. Department of Justice, 1984), p. 23.
2. "The Domestic Violence Act Evaluation Project," a joint project of the Washington State Shelter Network, Evergreen Legal Services, and Washington Women Lawyers, supported by a grant from the Northwest Area Foundation, 1984. The project report was distributed by the Washington State Shelter Network, Olympia, Washington.
3. *Ibid.*, p. 11.
4. For example, Section 2 of Washington's Domestic Violence Prevention Act, 1984 Wash. Laws. Ch. 263, offers the following definition:
  - (1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or (b) sexual assault of one family or household member by another.
  - (2) "Family or household members" means spouses, former spouses, adult persons related by blood or marriage, persons who are presently residing together, or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.
5. Herman Goldstein, *Policing a Free Society* (Cambridge, Mass.: Ballinger Publishing Company, 1977), p. 112.
6. See Richard A. Berk, Donileen R. Loseke, Sarah Fenstermaker Berk, and David Rauma, "Bringing the Cops Back In: A Study to Make the Criminal Justice System More Responsive to Incidents of Family Violence," *Social Science Research* 9 (1980): 193-215; and Richard A. Berk, David Rauma, Donileen R. Loseke, and Sarah Fenstermaker Berk, "Throwing the Cops Back Out: The Decline of a Local Program to Make the Criminal Justice System More Responsive to Incidents of Domestic Violence," *Social Science Research* 11 (1982): 245-279.

These articles report on an impact evaluation of the Santa Barbara County Family Violence Program. During the first year of the program, significant progress was made in improving the criminal justice response to domestic violence. In the second year, however, "each agency within the criminal justice system experienced strong temptations toward 'business as usual' and away from the treatment of wife battery as criminal activity, worthy of criminal sanction."

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7. Nancy Loving, *Responding to Spouse Abuse and Wife Beating: A Guide for Police* (Washington, D.C.: Police Executive Research Forum, 1980), p. 47.
  8. Murray A. Straus, Richard J. Gelles, and Suzanne K. Steinmetz, *Behind Closed Doors: Violence in the American Family* (Garden City, N.Y.: Anchor Press, 1980).

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## Chapter 3

# Police: Gatekeepers to the Criminal Justice System

It was such an extreme experience having actually been arrested and dealt with rather harshly . . . that I sought help.

—a former batterer<sup>1</sup>

The response of police to domestic violence is particularly important because they are most likely to be contacted to intervene in battering incidents, and police departments are the only public agencies that can respond around-the-clock at times of crisis. A call for police service is the most frequent point of entry into the criminal justice system. Within the community, police officers represent “the law” to many citizens. As a result, officers’ actions in responding to domestic violence incidents can convey a strong message to the parties about whether or not spouse abuse is considered unlawful behavior.

Most discussion about the law enforcement response to domestic violence centers on the use of arrest. Prevailing wisdom on the proper use of arrest in domestic violence cases has varied considerably over the last fifteen years. Once considered an inappropriate strategy in these cases,<sup>2</sup> the Attorney General’s Task Force on Family Violence recently stated that “every law enforcement agency should establish arrest as the preferred response in cases of family violence.”<sup>3</sup>

Increased use of arrest in accordance with state laws is one way that police departments can improve their response to spouse abuse cases. There are several other aspects of police intervention, from prioritizing calls for service to arranging emergency shelter for victims, in which policies can be implemented to reflect the serious criminal nature of domestic violence and officers’ legal duty to protect battered women.

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## Written Policies

Research on spouse abuse conducted by the Police Executive Research Forum found that:

[officers] consistently mentioned their need for "greater direction" and "more specific guidance from top brass" on how to handle spousal violence calls. Rather than viewing [such policies] in a negative light, these patrol officers seemed to welcome advice and guidance. Several officers said they felt poorly equipped, with only "seat of the pants" skills, and were eager to receive any available materials on the subject.<sup>4</sup>

Written policies should detail appropriate actions in all phases of police intervention in spouse abuse cases. These policies should begin with a general definition of spouse abuse or domestic violence. The policies in some departments also include a number of general provisions, such as a statement on the criminal nature of domestic violence, and a list of factors that should *not* influence police behavior in responding to spouse abuse incidents. Such lists are a particularly useful reminder to officers in departments where domestic violence training is minimal or nonexistent, although they also appear in policies for some departments that do have a heavy emphasis on training. For example, the San Francisco Police Department's General Order on domestic violence contains the following provisions:

- A. Domestic violence is defined as any harmful physical contact or the threat thereof between persons who are spouses or cohabitants or who have previously been spouses or cohabitants.
- B. Officers shall treat all domestic violence as criminal conduct. Domestic violence incidents shall be treated the same as all other requests for police assistance in cases where there has been physical violence or the threat thereof.
- C. Dispute mediation shall not be used as a substitute for appropriate criminal proceedings in domestic violence cases where physical violence has occurred.
- D. The existence of the elements of a crime and/or the willingness of the victim to sign a Citizen's Arrest Card shall be the sole factors that determine the proper method of handling the incident. The following factors, for example, are not to influence the officer's course of action in domestic violence incidents:
  - 1) the marital status of the suspect and the complainant—i.e., not married, separated, or pending divorce;
  - 2) whether or not the suspect lives on the premises with the complainant;
  - 3) the existence or lack of a temporary restraining order, and/or stay away order;

- 4) the potential financial consequences of arrest;
- 5) the complainant's history of prior complaints;
- 6) verbal assurances that violence will cease;
- 7) the complainant's emotional state;
- 8) injuries are not visible;
- 9) the location of the incident (i.e., public or private);
- 10) speculation that the complainant may not follow through with the criminal justice process or that the arrest may not lead to a conviction.<sup>5</sup>

In other departments, such as Duluth, officials feel that written policies should be as brief and concise as possible so that officers will be more likely to read and remember them. For this reason, they recommend that policies describe only the concrete actions that officers *are* expected to take in these cases. Appendix A contains a copy of the Duluth Police Department's General Order on domestic violence.

The process by which police domestic violence policies are established differs from one jurisdiction to the next. The impetus for change can come from new state legislation, members of the police department and other criminal justice agencies, or battered women's advocacy groups within the community. A cooperative atmosphere between legislators, criminal justice officials, and advocacy groups generally leads to smoother implementation and better results. In Seattle, representatives of the newly established Family Violence Project in the City Attorney's Office approached Police Department officials in 1978-79 to coordinate policy improvements in both agencies. Procedures were developed to bring more cases into the system, conduct outreach to victims, and prosecute more offenders. Members of a San Francisco advocacy group called the Coalition for Battered Women joined forces in the mid-1970s to negotiate with police officials for improvements in the Department's response to spouse abuse incidents.<sup>6</sup> Over a three-year period, representatives of the Coalition and the Police Department worked together to develop a set of domestic violence guidelines for officers.

In Denver, Colorado, the police chief took a unique approach by establishing a task force of five patrol officers to: (1) develop an improved policy statement for domestic violence incidents; (2) consider a plan of action for implementing the policy; and (3) recommend training topics and strategies for disseminating information about the new policy to all officers in the department. Following consultation with the Presiding Judge of the County Court and representatives of both the City Attorney's Office and District Attorney's Office, the task force submitted a memorandum to the chief containing detailed recommendations for the implementation of domestic violence procedures. This memo, which appears in Appendix B, provided the basis for the new domestic violence policy established by the chief.



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## Handling the Call for Service

Guidelines for police operators and dispatchers in handling spouse abuse calls are often overlooked. Because criticisms of police often focus on their failure to arrest batterers, efforts to improve police practices tend to begin at the scene. If police operators and dispatchers screen out these calls or assign them a low priority because they view them as "not serious," however, officers will never arrive at the scene in the first place. Efforts to improve the police response to spouse abuse must begin at the moment a call for service is received.<sup>7</sup>

If possible, police operators should gather sufficient information from callers to permit a "domestic violence" designation on all such incoming calls. It would be unrealistic and inappropriate to suggest that all domestic violence calls be assigned a high priority for immediate dispatch. Instead, these calls should be subject to the same criteria as calls involving other violent crimes, based on the seriousness of the injuries or threatened harm, and whether or not the assailant is still on the premises. Loving recommends initial questioning by the operator on the level of violence and use of a weapon in the incident. If either is present, the operator should obtain as much information as possible about when the assault occurred, the location of the victim and assailant, the seriousness of the injuries, the presence of children at the scene of the incident, whether either party has been drinking alcohol, and threats of further violence. High priority dispatch status should always be assigned to calls where there is evidence of an assault in progress, such as screams or an interrupted call.<sup>8</sup> If the batterer is still on the premises of the incident, the operator may ask the victim to meet with police officers at a safer location, such as a neighbor's home.<sup>9</sup>

In some departments, dispatchers have leaflets or cards in front of them containing some very basic, simple phrases in different languages, which can be used to gather essential information from callers who do not speak English. In Houston, for example, dispatcher guides include Spanish and English phrases such as "don't hang up," "spell it out," and "wait for me." Of course, these guides are useful in all types of cases, not just those involving domestic violence.

## Arrest

He would have stopped the violence long before if the police had arrested him in the beginning. . . .

—a victim<sup>10</sup>

The majority of criticisms about the way that police have responded to domestic violence center on police officers' misapplication of crisis intervention strategies, failure to arrest batterers, and failure to explain the option of citizen's arrest to victims.

Beginning in the late 1960s, clinical psychologists encouraged police agencies to increase their responsiveness by training officers to mediate interpersonal disputes. Police training in crisis intervention for "family disputes" spread to many police departments throughout the country during the 1970s.<sup>11</sup> Loving recommends the use of crisis

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intervention for incidents that do not involve injury or harm, when the officers believe there is no likelihood of future violence, and because of lack of evidence or insufficient probable cause, an arrest is neither legal nor appropriate.<sup>12</sup> In such cases, the officer may be able to calm down the participants in an argument, and perhaps make a referral to an agency in the community, such as a counseling service. Crisis intervention is *not* recommended as an appropriate substitute for law enforcement actions in situations involving violent criminal behavior where there is a legal basis for arrest. In these situations, there is a clear perpetrator and a clear victim, not two parties who share equal responsibility for a dispute.

Among experts in domestic violence, there is growing agreement that arrest, consistent with state law, should be presumed the most appropriate response to domestic violence incidents. Arrest is believed to:

- prevent further criminal behavior;
- prevent further injury to the victim;
- demonstrate to the offender that he will face legal consequences;
- demonstrate to the victim, the offender, and the community that domestic violence is criminal behavior; and
- increase the number of offenders subject to prosecution, court supervision, treatment, and other community intervention.

Recommendations favoring arrest received empirical support from an NIJ-sponsored study by Sherman and Berk to examine the effectiveness of various police actions in domestic violence cases.<sup>13</sup> An experimental design was implemented by several cooperating police officers in Minneapolis during an 18-month study period. These officers systematically selected one of three different tactics<sup>14</sup>—arrest, advice or mediation, and ordering the offender to leave the house for an eight-hour period—to handle misdemeanor domestic assault incidents. Offenders in the sample who were not arrested had almost twice the repeat violence during a six month follow-up period (based on both official police reports and self-reports from victims) than those who were arrested. The findings indicate that this difference was not due to the fact that arrested offenders had less opportunity to reassault because they spent a large portion of time in jail during the follow-up period; of those arrested, 86 percent were released from jail within a week. Furthermore, since only two percent of arrested offenders were subjected to any further action by the criminal justice system, the study suggests that “arrest and initial incarceration alone may produce a deterrent effect, regardless of how the courts treat such cases, and that arrest makes an independent contribution to the deterrence potential of the criminal justice system.”<sup>15</sup>

As rigorous as the results of the Minneapolis study appear to be, they cannot be interpreted as definitive. The experiment was conducted in only one jurisdiction, which may have some unique characteristics not present in other communities. The Minneapolis study is currently being replicated in other jurisdictions to determine whether the results can be validated.<sup>16</sup>

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## *Arrest Laws*

State law determines when and under what circumstances police may arrest. Police officers in every state can arrest without a warrant if they have probable cause to believe that a felony was committed, while police authority to arrest for a misdemeanor is more limited in some states. The precise definition of a felony varies from state to state.<sup>17</sup> In general, either use of a weapon *or* infliction of serious injuries automatically categorizes a crime as a felony. Statutes may offer general guidelines on what constitutes a "serious" injury (e.g., broken bones), but this determination is initially made at the officer's discretion. As noted by the U.S. Commission on Civil Rights based on field studies, a review of police incident reports, and public hearings in two states:

Without guidance or support from the police department and other components of the criminal justice system, some officers simply classify the vast majority of domestic assaults as misdemeanors rather than taking care to determine whether the elements of a felony are present. This presumption leads officers to fail to arrest even in cases in which they clearly have authority to do so.<sup>18</sup>

Other studies have also found that felony-level domestic violence incidents may be recorded as misdemeanors by responding officers. In a study of misdemeanor assault cases involving non-stranger violence in three jurisdictions (Los Angeles, Charlotte, and Minneapolis), more than two-thirds of the victims had sustained injuries and a full quarter required medical attention. Furthermore, over a quarter of the assaults involved guns, knives, bludgeons, or other weapons.<sup>19</sup>

A Seattle Police Department Training Bulletin on domestic violence acknowledges that "it is often difficult to make judgments about what constitutes a felony assault as opposed to a misdemeanor assault." Officers are informed that cases should *always* be considered felonies when the following are present:

1. any gunshot wound;
2. any discharge of a gun in an attempt to wound;
3. any pointing of a gun at a victim;
4. any knife wound;
5. any serious threat with knife or other deadly weapon, such as lunging with the knife or holding the knife to the throat, etc.;
6. any injury that constitutes grievous bodily harm, including:
  - a. any broken bones;
  - b. any injury which requires admission to a hospital (as opposed to first aid treatment only);
  - c. any injury which causes permanent damage (loss of hearing, sight, etc.);
  - d. any intentionally inflicted burns.<sup>20</sup>

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In some states, domestic violence incidents may be classified as felonies even if the assailant did not use a weapon or inflict serious physical injuries. In California, Section 273.5 of the Penal Code on corporal injury to spouse or cohabitant classifies domestic assaults that result in a "traumatic condition," as well as those resulting in serious physical injury, as felonies. The Penal Code does not specify whether the trauma need be physical, mental, or both, so that "traumatic condition" can be broadly defined. In San Francisco, for example, police officers are trained to consider "extreme mental anguish, hysteria, or uncontrollable display of emotions" as indications of trauma and grounds for a felony arrest.<sup>21</sup> This type of definition gives police officers more latitude in making felony arrests than officers operating under laws that consider either weapon use or serious physical harm as a prerequisite for felony assault.<sup>22</sup>

The precise statutory definition of a misdemeanor assault also differs from one state to the next, but always involves less extensive injuries than a felony assault. Arrest without a warrant for misdemeanors is limited in some states in that officers can make a warrantless arrest for a misdemeanor only if the crime occurred in their presence. This requirement generally imposes severe limitations on the number of arrests in domestic assault cases, since these assaults rarely occur in the presence of officers. In such cases, however, the *victim* can usually make the arrest under a state citizen's arrest law.

Understandably, battered women often fear that being an active party in an arrest will bring increased retaliation and violence when the offender is released, usually after only a couple of hours in custody. Even if citizen arrest powers are explained in every appropriate case, it is safe to say that laws requiring police officers to witness a misdemeanor assault in order to arrest on their own authority precludes effective law enforcement in many spouse abuse cases. Furthermore, as noted by one prosecutor who specializes in domestic violence cases, "Citizen's arrest gives all the wrong messages. If an officer tells the victim in front of the man that she can press charges, it implies that the woman controls prosecution and the man can manipulate her."<sup>23</sup>

Nonetheless, in states where police must witness a misdemeanor offense in order to arrest, citizen's arrests become a frequent necessity. Officers should be trained to recognize these cases and to explain the option of citizen's arrest to victims when appropriate. Through training and official department policies, officers can learn to take steps that will minimize the "wrong messages" given by citizen's arrests. In San Francisco, for example, the Police Department's General Order on Domestic Violence states:

When the elements of a lawful arrest are present, officers shall inform complainants of their right to make a citizen's arrest. Whenever possible, such discussion shall be held out of the presence of the suspect.

Officers shall not dissuade complainants from making citizen's arrests.<sup>24</sup>

In several other states, officers can make a warrantless arrest for a misdemeanor domestic assault, even when they did not witness it, if they have probable cause to

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believe that it occurred.<sup>25</sup> Statutes granting police authority to arrest without a warrant may apply to all misdemeanor-level assaults, or only to those involving domestic violence. Most warrantless arrest laws contain certain restrictions. In Minnesota, for example, probable cause arrest is allowed in cases where the assault occurred within four hours of arrest, and the victim and assailant are present or former co-habitants.<sup>26</sup> Minnesota's probable cause arrest law, reproduced in Appendix C, also applies to cases involving threats with a dangerous weapon or fear of immediate bodily harm as well as actual physical assaults. Other statutes may require that there is observable physical evidence of an assault, or that the assailant is present in the home when police arrive. Most state laws permitting warrantless arrests contain provisions to protect police from criminal and civil liability for actions taken in a "good faith" effort to enforce the law. In states where police are allowed to arrest for probable cause in misdemeanors, however, officers in some departments continue to avoid arrests in domestic assaults. Based on interviews with police and prosecutors, field observation, and a review of relevant empirical studies, Lerman concludes that:

Police often impose a higher standard of probable cause in spouse abuse cases than in stranger cases. Injuries which would be grounds for arrest of a stranger assailant are often found insufficient to justify arresting a man who beats his wife or girlfriend.<sup>27</sup>

Police domestic violence policies should clearly spell out the prerequisites for arrest and encourage officers to arrest when these conditions are present.

Some state statutes go a step further than probable cause arrest laws by *requiring* officers to arrest in domestic violence cases when certain criteria are present.<sup>28</sup> These laws apply only to domestic assaults. For example, Washington's Domestic Violence Prevention Act states that, without a warrant, a police officer *shall* arrest and take a person into custody when the officer has probable cause to believe that within the last four hours the person assaulted his or her spouse, former spouse, or other person with whom the person resides or formerly resided.<sup>29</sup> These mandatory arrest laws reflect a legislative intention to increase arrests, and make police failure to arrest a violation of the law.

These laws have generated a great deal of controversy. On one hand, proponents argue that mandatory arrest is the only means of ensuring that police officers will treat spouse abuse incidents as serious criminal matters and arrest offenders when probable cause conditions are met. Even if enlightened police officials in some jurisdictions adopt and enforce proarrest policies in spouse abuse incidents, it is argued, police departments in many other jurisdictions will not adopt these policies.

Critics of mandatory arrest laws feel that it is unwise to compel officers to arrest for any category of crime, including domestic violence. In an article based on the recent experiment in Minneapolis which found that arrest was the most effective police strategy in spouse abuse cases, Sherman and Berk cautiously conclude that:

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[W]e favor a *presumption* of arrest; an arrest should be made unless there are good, clear reasons why an arrest would be counterproductive. We do not, however, favor *requiring* arrests in all misdemeanor domestic assault cases. . . . it is widely recognized that discretion is inherent in police work. Simply to impose a requirement of arrest, irrespective of the features of the immediate situation, is to invite circumvention.<sup>30</sup>

Furthermore, in communities where there is a legacy of distrust between the minority community and police, some minority group women object to mandatory arrest laws because they are viewed as providing police with yet another means of harassing minority group men rather than as protection for battered women.

Whatever one's views about the appropriateness of mandatory arrest laws, there is no doubt that these laws can lead to a huge increase in the number of cases receiving criminal justice intervention. The Family Violence Project within the Seattle City Attorney's Office examined the impact of Washington's mandatory arrest law and found that:

The impact of the law on the criminal justice system and the problem of domestic violence has been phenomenal. The number of arrests has increased by more than a factor of four, the number of cases reported has increased by more than half, and both the number of cases set for trial and successful prosecutions has increased by 300 percent!<sup>31</sup>

Exhibit 5 provides some quarterly figures on the number of misdemeanor domestic violence cases that were reported, filed, and successfully prosecuted by the Seattle City Attorney's Office, both before and after the mandatory arrest law was implemented.

In addition to sparking controversy, mandatory arrest laws have suffered from implementation problems in some jurisdictions. Following the enactment of the mandatory arrest law in Washington, a large number of "double arrests" were made by officers in Seattle. These arrests happened most often in cases where the man claimed that he had assaulted the woman in self-defense.<sup>32</sup> The double arrests may reflect officers' confusion regarding their liability in cases where it appeared that both parties had assaulted each other or even, in some instances, individual officers' attempts to circumvent the law because of the affront to their discretion.

Care must be taken to safeguard against confusion surrounding the implementation of mandatory arrest provisions as well as police misinterpretation of these laws. By gathering input from representatives of law enforcement agencies during the development of domestic violence statutes, legislators can take steps to address areas of potential confusion to officers and minimize the likelihood that implementation problems will arise later on. Better statutory definitions of the situations in which arrest is required may be one answer. Some people argue that arrest should be mandatory only if there are visible injuries.

## Exhibit 5

### Impact of Washington's Domestic Violence Prevention Act (with Mandatory Arrest Provisions) on Misdemeanor Domestic Violence Caseload in Seattle

	Jan.-March 1983	Jan.-March 1984	Law effective: September 1984	Jan.-March 1985
Total police reports filed, then screened by FVP*	542	666		942
Total cases closed	611	698		955
Total cases filed:				
Cases with arrest at time of incident	95	87		448
No arrest at time of incident, FVP outreach to victim	81	98		79
Total successful prosecutions	106	127		345

\*Family Violence Project, Seattle City Attorney's Office.

**SOURCE:** Joanne Tulonen, "Impact of the Domestic Violence Prevention Act," Seattle, Washington, August 1985, pp. 22-23.

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Comprehensive officer training prior to the enactment of mandatory arrest provisions is also needed to ensure proper implementation. Mandatory arrest laws do not eliminate police discretion entirely; officers still need to use their investigative skills and good judgment in handling these cases. Both parties may have "visible injuries," but if one has only a scratch on his forehead and the other has broken bones and a bloody face, an officer knows who should be arrested and who should be taken to the hospital.

In the State of Washington, legislators recently amended the 1984 Domestic Violence Prevention Act to address police officer confusion surrounding the arrest provisions in the original law. The amendment clarifies these provisions in the following manner:

- Arrests can only be made under this statute if both the assailant and victim are 18 or older.
- Arrests must be made when the officer has probable cause to believe that: (a) a felonious assault occurred; (b) an assault occurred which resulted in bodily injury to the victim – which means physical pain, illness, or an impairment of physical condition; or (c) any physical action occurred with the intent of inflicting fear of imminent serious bodily injury or death.
- Officers are not required to arrest both parties if they believe that the parties assaulted each other. Rather, officers must arrest the person who appears to be the primary physical aggressor.
- In determining who is the primary physical aggressor, officers must consider: (a) the law's intent to protect victims of domestic violence; (b) the relative degree of injury or fear inflicted on the two individuals; and (c) the history of domestic violence between the parties.<sup>33</sup>

Another potential source of confusion in the implementation of mandatory arrest laws, as well as probable cause arrest laws, concerns the definition of "probable cause." It can be helpful to give officers some guidance in this area. In Duluth, the police department sought a legal opinion on the issue, which indicated that:

If the officer can state what observable fact or what believable information made him believe the subject should be arrested, and what he states would lead a cautious man to believe the subject is guilty, then the arrest is a valid probable cause arrest . . .

The law does contain a protective measure that gives the officer immunity from civil liability for a reasonable, good faith, probable cause arrest.

A rule of thumb would be that the officer should be able to report an observed evidence or have background knowledge that corroborates a report from a complainant that a subject has violated the domestic abuse



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law. Under this rule, the officer could state why he believed the complaint and would then have good faith probable cause immunity.

Examples of corroborating circumstances could be physical signs of a fight, known pattern of the accused, combative emotional state of the subject, report of other witness or neighbor, etc.<sup>34</sup>

Legislators in many states will continue to grapple with the issues surrounding mandatory arrest in family violence incidents. Individual police departments should be responsible for establishing their own policies for arrest in these cases, given the philosophical and practical advantages to arrest and the parameters established by existing state statutes. While state arrest laws affect the kinds of action that the criminal justice system can take in domestic violence cases, it is important to note that police and other justice agencies can develop an improved response to these cases under a variety of statutory requirements. For example, the jurisdictions studied for this report reflect the full range of legislative climates: In California and New York, police officers must witness a misdemeanor assault in order to arrest, while officers in Minnesota are permitted to arrest on a misdemeanor if probable cause exists, and arrest is mandatory for officers in the State of Washington when there is probable cause.

## **Enforcement of Protection Orders**

Police officers are involved with protection orders in jurisdictions where violation of an order is a criminal offense. Domestic violence statutes often include specific provisions regarding enforcement and arrest in these cases. For example, Washington's 1984 Domestic Violence Prevention Act establishes mandatory arrest for violation of certain terms of a criminal order for protection, in addition to mandatory arrest in cases of domestic assault.

Protection orders, also called restraining orders, stay away orders, or no contact orders, are a legal remedy available to battered women in some states. These orders generally require a batterer to change his conduct in some way, such as refraining from further violence, avoiding contact with the victim, moving out of a residence shared with the victim, or attending a counseling program. There are many differences among states where protection orders are available. For example, the orders can be obtained from civil, family, or criminal courts; orders can be used in conjunction with criminal prosecution (as a condition of pretrial release, pretrial diversion, or probation) or may preclude criminal prosecution; service of process for orders can be made and verified in a variety of ways; orders can remain in effect for a relatively short (e.g., 30-day) or long (e.g., 18-month) time period; and violation of an order can constitute contempt of court, a misdemeanor criminal offense, a combination of both, or no specified sanction. To further complicate matters, some states have two entirely different types of orders. For example, one type of order may be issued as a condition of pretrial release in spouse abuse cases where criminal charges are pending, and another type may be issued by family court in conjunction with a divorce

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or as an independent civil action. The two types of orders may differ on many dimensions, including enforceability. A central listing of all active orders might be maintained by the courts that issue one type of order, but not by courts that issue the other type of order. In addition, violation of one type of order, but not the other, may be a criminal offense. In general, protection orders issued by criminal courts are more likely to carry a criminal sanction than orders issued by civil courts. However, there is an increasing number of jurisdictions in which violation of a civil order also constitutes a criminal offense.

In order to take appropriate action when violation of a protection order is alleged, officers must be able to verify that the order actually exists. Police officers often arrive at an emotionally charged scene, where a distraught victim may be unable to find her copy of the order. The Attorney General's Task Force on Family Violence recommends that law enforcement officials maintain a current file of all protection orders valid in their jurisdiction.<sup>35</sup> Officers should be able to access this file from the field on a 24-hour basis to verify the existence, validity, and terms of an order. This type of system is in place in both Seattle and San Francisco, where all orders are entered on-line in police computer systems (just like warrants) so that police can effect immediate arrests for violations.

Police policies for spouse abuse cases should include specific directions on handling situations where violation of a protection order is alleged. When there are two different types of orders, policies should clearly describe the differences between them and the resulting differences in police procedures. The San Francisco Police Department's General Order provides an illustrative example; the procedures for enforcing both civil restraining orders and criminal stay away orders are reproduced in Appendix D.

It is important to note that, even in jurisdictions where violation of a protection order does not constitute a criminal offense in and of itself, other criminal charges may be appropriately applied. Charges of trespassing or disturbing the peace, for example, should not be overlooked in these cases by responding officers.

## **Officer Assistance to Victims**

This was one of the biggest helps, when the officer took what I was saying seriously, and he showed enough concern to come back and check on me the next morning. That made me feel like somebody was really concerned.

—a victim<sup>36</sup>

When police officers arrive at the scene of a battering incident, they find a victim in crisis who needs help on many fronts. Battered women often need emergency medical treatment, emotional support, financial assistance, and protection from further violence at the hands of their abuser. Of course, police officers cannot be expected to provide all of these services; however, they can address immediate needs for physical

safety and medical care, and link battered women to resources in the community that can address more long-term needs. There are some concrete steps that officers can take to help battered women. These steps should be taken in all spouse abuse cases to which officers respond, regardless of whether the suspect is arrested and taken into custody:<sup>37</sup>

*Medical care.* An officer can often see that the victim's injuries require medical attention. In other cases, the victim may claim that she needs medical treatment though she has no visible injuries. Batterers are often adept at inflicting injuries that are likely to go unobserved, including internal injuries and burns or bruises that are not visible when the victim is clothed. Officers should administer first-aid as appropriate and make provisions for emergency medical care. The latter might include transporting the victim to a local hospital emergency room or arranging for an ambulance.

*Instructing the batterer to leave the victim's premises upon her request.* The Attorney General's Task Force on Family Violence finds this the preferred police action when the suspect cannot be arrested under existing state statutes.<sup>38</sup> In order to take this action, officers usually need proof that the victim, rather than the offender, is in lawful possession of the premises, such as a canceled rent check, lease, rental agreement, rent or mortgage receipts, or verification from an apartment manager. With this proof, the officer should request that the person leave the premises, standing by until he does so. If he refuses to leave upon request, he should be arrested.

*Ensure victim safety while she leaves the premises.* If the victim chooses to leave the premises, officers should stand by to allow her to remove a reasonable amount of personal property, such as clothing, and leave safely.

*Transportation.*<sup>39</sup> Police officers can provide or arrange for the victim's transportation to a shelter for battered women or other safe location if necessary. In some communities, shelter staff arrange to meet the victim and officer at the police department or an alternate address in order to preserve the shelter's confidential location.

*Information on legal options and community resources.* Battered women are often unaware of their legal options and of resources in the community that can provide various forms of assistance. Police officers can provide this kind of information. For example, an officer should explain the options of citizen's arrest, obtaining a protection order, and filing a complaint with the prosecutor in cases where there is insufficient evidence for the officer to arrest the batterer.

Police should distribute written resource lists to battered women, so that officers do not have to repeat or remember all of the necessary information. Also, because the victim is likely to be in crisis when the officers arrive, it is often best to give her information that she can digest later. A one-page card or brochure, small enough to fit in an officer's pocket, can be very useful. Even a one-page list can contain emergency police numbers; instructions for when police arrive; shelter care; legal remedies, both criminal and civil; sources of legal assistance; social service options, including hours and phone numbers; and other vital information. Lists of services

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should always include and identify those community agencies that provide bilingual and bicultural services.

Some departments have developed more elaborate materials for officers to distribute to battered women. For example, the Bellevue, Washington, Police Department developed a 45-page information booklet for victims of domestic violence, including a description of the criminal justice process, local services, and definitions of common words and phrases they are likely to encounter (e.g., misdemeanor, corroborating evidence, preliminary hearing, submitting a case on the record).

Written materials are useful only if they reach their intended audience. If officers are more likely to carry smaller, pocket-sized cards or brochures than larger, more extensive materials, a small format is probably the best choice. Departments can also establish a back-up system whereby a brochure or leaflet is automatically mailed to each victim, to ensure that they receive the necessary information.

*Case follow-up information.* In addition to a resource list, victims should always be given a written card containing the officer's name and badge number, the report number, and a telephone follow-up number. In cases where the batterer is arrested and taken into custody, it is critical that officers inform the victim of the likelihood of pretrial release so that she can seek safe quarters in the meantime.

## **Reporting and Data Collection**

Improved police reporting of domestic violence incidents carries several benefits. With the regular collection and analysis of domestic violence data, police departments can determine the nature of domestic violence calls to police (e.g., the number that involve weapons, require medical treatment, involve protection order violations) and the level of time and resources that officers devote to these incidents. These data can also be used to refine police policies, procedures, and training programs to emphasize the most effective law enforcement strategies in domestic violence cases. Improved reporting policies can lead to better information for officers responding to the scene of a domestic violence incident: whether similar incidents have already been reported from the same location, whether weapons were involved, whether any violent outbursts were directed at officers who responded in the past. Improved reporting also increases officers' awareness and attention to domestic violence incidents, as well as their accountability to the department for following official policies and procedures in these cases. Beyond the police department itself, police reporting practices on domestic violence play a vital role in determining the number and quality of cases brought forward for prosecution, and the number of battered women who can be identified and provided with assistance by victim service providers.

There are two specific ways in which police departments can improve reporting in domestic violence incidents and achieve these kinds of benefits. First, official policies can require that a case incident report be filed on *all* calls involving domestic violence, regardless of whether the call resulted in arrest. Even when no charges are brought,

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these reports are useful because they can establish a pattern of abusive behavior to corroborate evidence in future prosecution efforts and advise other police officers who later respond to calls from the same address.

The second aspect of improved police reporting involves a modification in the department's standard case incident report form so that officers must explicitly note if the case involved domestic violence. This is done by adding a boxed question labeled "domestic violence." The box should contain a forced choice (yes/no) format so that report forms with nothing written in the box will not automatically be placed in the "no" category. Exhibit 6 provides an example of this format from the San Francisco Police Department, and the accompanying written policy appears in Appendix E. Including a domestic violence item on report forms requires officers to review each incident in light of the criteria for domestic violence cases; permits easy identification of these cases for both data collection and case follow-up by prosecutors and victim advocates; and enables supervisors to review officers' performance in these cases.

Some departments have gone a step further by developing a special report form for domestic violence cases. These forms can be designed to obtain the kind of information that would be most useful in prosecuting the case, documenting a history of abuse for future prosecution efforts, and generating local or statewide statistics on domestic violence. The Denver Police Department's domestic violence case summary form appears in Exhibit 7. This form was developed in conjunction with the Denver City Attorney's Office. Exhibit 8 contains a law enforcement data collection form designed by the Minnesota Department of Corrections Program for Battered Women, which receives reports on battering incidents from shelter programs, medical professionals, and human service professionals as well as police. Law enforcement agencies in Minnesota that have not developed their own form for domestic violence cases are encouraged to use this one. The Department of Corrections compiles and analyzes the data provided by each agency, and develops an annual data summary report which is distributed throughout the state.<sup>40</sup>

## Investigation

Police departments rarely conduct any follow-up investigative activities in domestic violence cases. In Baltimore County, Maryland, however, the Police Department established a special Spousal Abuse Unit within the Criminal Investigation Division. The General Order introducing the unit to department personnel stated that:

The Department recognizes the importance of improving our efforts to reduce violence or the threat of violence in our homes. It shall be the policy of this Department to thoroughly investigate all matters dealing with spousal abuse and take the proper action to prevent its recurrence.<sup>41</sup>

# Exhibit 6

## POLICE INCIDENT REPORT

### INCIDENT REPORT FORM

SAN FRANCISCO  
POLICE DEPARTMENT

HEADING

INCIDENT NO. <input type="checkbox"/> INITIAL <input type="checkbox"/> SUPPLEMENTARY		<input type="checkbox"/> BOOKED <input type="checkbox"/> CITED		DOMESTIC VIOLENCE YES NO		STATEMENT TAKEN? YES NO		ASSIGNED	
TYPE OF INCIDENT		M.O. CODE		U. RPTG		DATE(S) & TIME(S) OF OCCURRENCE			
DATE & TIME REPORTED TO POLICE		DATE & TIME REPORTED TO BUREAU/OP CTR				NAME & STAR RPTD TO			
LOCATION OF OCCURRENCE				LOCATION SENT TO		TYPE OF PREMISE			
REPORTING OFFICER		STAR		REPORT APPROVED BY		STAR		HOW CLEARED	
VICTIM CODES: V - VICTIM; R - REPORTEE; W - WITNESS; P - PARENT; N - NOTIFY; F - FOUND; M - MISSING									
CODE	NAME (LAST FIRST MIDDLE)		RACE	SEX	DOB OR AGE	RES. PHONE	BUS. PHONE		
RESIDENCE ADDRESS			BUSINESS ADDRESS			VICTIM OF CRIME NOTIFICATION YES NO STAR:			
OTHER INFORMATION/MISSING PERSON INFORMATION									
CODE	NAME (LAST FIRST MIDDLE)		RACE	SEX	DOB OR AGE	RES. PHONE	BUS. PHONE		
RESIDENCE ADDRESS			BUSINESS ADDRESS			VICTIM OF CRIME NOTIFICATION YES NO STAR:			
OTHER INFORMATION/MISSING PERSON INFORMATION									
SUSPECT CODES: A - ADMONISHED; B - BOOKED; C - CITED; D - DETAINED; E - EXONERATED; S - SUSPECT									
CODE	NAME (LAST FIRST MIDDLE)		RACE	SEX	DOB OR AGE	ALIAS			
HEIGHT	WEIGHT	HAIR COLOR GRY SANDY BLK BLN BRO RED BALD WHI			EYE COLOR GRY GRN HAZ MIXED UNK				
ADDRESS		WARRANT #/CITATION #				BOOK/CITE SECTION			
WHERE BOOKED		BOOK/CITE APPROVED BY				STAR	I.D. # (SOC. SEC.; OR LIC.; ARMY SER. #; ETC.)		
WHEN & WHERE CITED TO APPEAR/OTHER INFORMATION/ADDITIONAL DESCRIPTION OF SUSPECT									

VICTIM/REPORTER

SUSPECT #1

PREPARED BY:  
FAMILY VIOLENCE PROJECT  
DISTRICT ATTORNEY'S OFFICE  
30 IVY STREET, SECOND FLOOR  
SAN FRANCISCO, CA 94102  
(415) 552-6554

## Exhibit 7

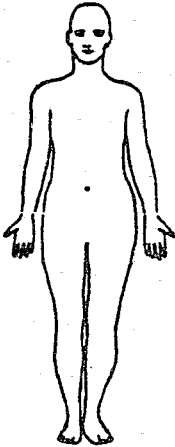
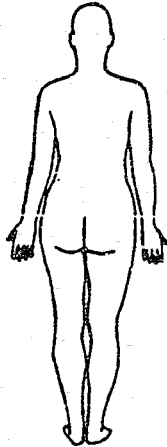
## DOMESTIC VIOLENCE CASE SUMMARY - DENVER POLICE DEPARTMENT

VICTIM	NAME		DOB	PROPERTY	PROPERTY DAMAGE EVIDENT? YES NO
	ADDRESS				DESCRIBE DAMAGE AND ESTIMATE VALUE
	HOME PHONE	BUSINESS PHONE			
SUSPECT	NAME		DOB	PROPERTY	HOUSE OR APARTMENT? OWNED OR RENTED?
	DESCRIPTION				IN WHOSE NAME?
	ADDRESS				
INCIDENT	IS THERE AN EXISTING RESTRAINING ORDER? YES NO			MISC	HAS SUSPECT STRUCK YOU BEFORE? YES NO
	WHO CALLED POLICE? VICTIM FAMILY MEMBER				WHEN?
	NEIGHBOR OTHER				WITNESSES:
	VICTIM/SUSPECT RELATIONSHIP? MARRIED SIBLINGS				
	LIVING TOGETHER DATING OTHER				STATEMENTS OR THREATS MADE BY SUSPECT? YES NO
	CHILDREN PRESENT? YES NO AGE				TO WHOM?
	ALCOHOL INVOLVED? YES NO				WHAT WAS SAID?
	BY WHOM? VICTIM SUSPECT BOTH				
BRIEF EXPLANATION OF WHAT LED TO THE INCIDENT					

<b>INJURIES</b>	WAS VICTIM STRUCK?    YES    NO    HOW MANY TIMES? _____ WAS WEAPON OR OTHER OBJECT USED?    YES    NO WHAT? _____		
	CIRCLE ALL WORDS APPROPRIATE TO EXPLAIN WHAT OCCURRED: (1) THROWING THINGS    (2) PUSHING    (3) SHOIVING (4) GRABBING    (5) SLAPPING WITH OPEN HAND (6) KICKING    (7) BITING    (8) BITTING WITH CLOSED FISTS    (9) ATTEMPTED STRANGULATION    (10) BEATING UP (11) THREATENING WITH WEAPON    (12) USING WEAPON DID VICTIM SUSTAIN INJURIES?    YES    NO DESCRIBE ALL INJURIES: _____		
	WERE ALL INJURIES CAUSED BY SUSPECT?    YES    NO EXPLAIN: _____		
	IS VICTIM IN PAIN NOW?    YES    NO DOES VICTIM DESIRE MEDICAL ATTENTION?    YES    NO VICTIM TO DCH?    YES    NO TREATED BY OWN DOCTOR?    YES    NO DR.'S NAME _____		
	ADDRESS _____		
	ANYONE ELSE STRUCK BY SUSPECT?    YES    NO WHO? _____		
	_____		
	_____		
	_____		
	<b>ADMIN</b>	DATE OF OFFENSE _____	DATE OF REPORT _____
OFFICER _____		SERIAL NO. _____	

THIS PORTION TO BE COMPLETED BY VICTIM

**TO THE VICTIM:** MARK THE AREA(S) ON THE DIAGRAMS WHICH IDENTIFY WHERE YOU WERE STRUCK/INJURED.

FRONT                      BACK

**VICTIM MUST CIRCLE ANSWERS TO QUESTIONS**

(1) I HAVE PHYSICALLY POINTED OUT TO THE OFFICER WHERE I WAS STRUCK.    YES    NO

(2) I HAVE ALSO INDICATED ON THE DIAGRAMS WHERE I WAS STRUCK.    YES    NO

(3) I WAS ABLE TO PHYSICALLY POINT OUT TO THE OFFICER THE PERSON WHO STRUCK ME.    YES    NO

(4) I HAVE PHYSICALLY POINTED OUT TO THE OFFICER THE OBJECT USED TO STRIKE ME.    YES    NO

(5) DO YOU UNDERSTAND ALL THE QUESTIONS?    YES    NO

(6) HAVE YOU CHECKED ALL YOUR ANSWERS?    YES    NO

(7) OFFICER INDICATED VICTIM'S RESPONSES BECAUSE VICTIM UNABLE TO MARK THIS PORTION?    YES    NO

I AFFIRM THIS INFORMATION IS TRUE AND CORRECT.

Victim's Signature \_\_\_\_\_ DATE \_\_\_\_\_





## Exhibit 8

### DEPARTMENT OF CORRECTIONS PROGRAMS AND SERVICES FOR BATTERED WOMEN

#### OFFICER INFORMATION:

You are required by Minnesota Statutes 629.341, Subd. 4, to make a written police report on all alleged incidents of domestic abuse to which you are called whether or not an arrest is made. This statute covers spouses, former spouses and people who are residing together or have resided together in the past. Please complete this form and submit it to your supervisor or other person to whom your employer's rules require reports to be made.

LOCATION OF CALL	LOCATION OF INCIDENT	
VICTIM NAME	VICTIM ADDRESS	
ASSAILANT NAME	ASSAILANT ADDRESS	
NARRATIVE (Describe incident including injuries, property damage, etc.)		
CN/OCA	REPORTING OFFICER(S)	DATE
CR-00145-03		

# Exhibit 8 cont'd

## DOMESTIC ABUSE CASES LAW ENFORCEMENT DATA COLLECTION

### SUPERVISOR INSTRUCTIONS:

According to Minnesota Statutes 241.66, all law enforcement agencies are required to collect data on women who have been assaulted and/or threatened with assault by their spouses, male relatives or males with whom they reside or have resided in the past. Retain copy 1 for your files. Forward copy 2 to the Minnesota Department of Corrections for every female victim over 18 and male assailant. Fold form in half, staple the edge, and mail to return address printed on reverse side.

Date of Incident (1-6) Mo. Day Year			Time of Incident (7-10)			(11) A.M. (1) P.M. (2)	
Victim Zip Code (12-16)			Victim D.O.B. (17-22)			Sex (23) 1. <input type="checkbox"/> M 2. <input type="checkbox"/> F	
						Victim Race (24) 1. <input type="checkbox"/> Am. Indian 2. <input type="checkbox"/> Black 3. <input type="checkbox"/> Hispanic 4. <input type="checkbox"/> White 5. <input type="checkbox"/> Other (specify) _____ 6. <input type="checkbox"/> Asian	
Assailant Zip Code (25-29)			Assailant D.O.B. (30-35)			Sex (36) 1. <input type="checkbox"/> M 2. <input type="checkbox"/> F	
						Assailant Race: (37) 1. <input type="checkbox"/> Am. Indian 2. <input type="checkbox"/> Black 3. <input type="checkbox"/> Hispanic 4. <input type="checkbox"/> White 5. <input type="checkbox"/> Other (specify) _____ 6. <input type="checkbox"/> Asian	
Relationship of victim to assailant (38)							
1. <input type="checkbox"/> Spouse living together 2. <input type="checkbox"/> Spouse or ex-spouse not living together 3. <input type="checkbox"/> Relative 4. <input type="checkbox"/> Friend (living together) 5. <input type="checkbox"/> Ex-spouse (living together) 6. <input type="checkbox"/> Friend (formerly living together) 7. <input type="checkbox"/> Other (specify) _____							
Alleged assault				Alleged Order Violation			
(39) <input type="checkbox"/> Threatened with a dangerous weapon				(45) <input type="checkbox"/> Violation of OFF/Exclusion			
(40) <input type="checkbox"/> Use of dangerous weapon				(46) <input type="checkbox"/> Violation of OFF/Restraint			
(41) <input type="checkbox"/> Assault with physical signs of injury or impairment				(47) <input type="checkbox"/> Violation of OFF/Other			
(42) <input type="checkbox"/> Assault without physical signs of injury or impairment				(48) <input type="checkbox"/> Violation of other restraining order			
(43) <input type="checkbox"/> Threats of immediate bodily harm							
(44) <input type="checkbox"/> Other (specify) _____							
Action taken			Offense				
(49) <input type="checkbox"/> Arrest by officer			(54) <input type="checkbox"/> 1st Degree Assault				
(50) <input type="checkbox"/> Citation			(55) <input type="checkbox"/> 2nd Degree Assault				
(51) <input type="checkbox"/> Separation			(56) <input type="checkbox"/> 3rd Degree Assault				
(52) <input type="checkbox"/> Mediation			(57) <input type="checkbox"/> 4th Degree Assault				
(53) <input type="checkbox"/> Citizen's Arrest			(58) <input type="checkbox"/> 5th Degree Assault				
			(59) <input type="checkbox"/> Violation of OFF				
			(60) <input type="checkbox"/> Disturbing the peace				
			(61) <input type="checkbox"/> Outstanding warrant				
			(62) <input type="checkbox"/> Other (specify) _____				
If no arrest made, indicate reason							
(1) <input type="checkbox"/> Yes (2) <input type="checkbox"/> No (63) Did officer arrive within 4 hours of incident? (1) <input type="checkbox"/> Yes (2) <input type="checkbox"/> No (64) Did officer inform victim of services and legal remedies as required by law? (1) <input type="checkbox"/> Yes (2) <input type="checkbox"/> No (65) Was an order for protection in effect? (1) <input type="checkbox"/> Yes (2) <input type="checkbox"/> No (66) Was officer injured?						Law Enforcement Agency & City  Officer License Number	

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The major goals of the Spousal Abuse Unit are to:

- review all reported domestic violence cases along with statistics on the outcomes of prosecution;
- maintain a repeat offenders file;
- coordinate follow-up investigations of serious assaults and repeat offenders;
- inform individual precincts about repeatedly violent households in their areas;
- coordinate with the State's Attorney's Office to provide information on serious cases or repeat offenders;
- ensure that local service agencies receive the information they need from police; and
- speak to citizens' groups about the police role in domestic violence cases.

Appendix F contains a summary outline of the duties, responsibilities, and organizational objectives of the Spousal Abuse Unit.

## Training

Deputy Chief James Bannon of the Detroit Police Department has asserted that "the real reason that police avoid domestic violence cases to the greatest extent possible is because we do not know how to cope with them."<sup>42</sup> In the past, most police officers received only minimal training on domestic violence, and were often advised that these "disputes" are essentially civil in nature and that crisis intervention strategies are more appropriate than arrest.<sup>43</sup> The frequency of domestic violence calls to police, combined with inadequate prior training and lack of knowledge about domestic violence on the part of many officers, suggest a critical need for improved police training on this topic. As noted by Nancy Loving, "The proportion of spousal violence calls among all calls for police service in itself makes these cases 'legitimate police work' and the topic for training programs."<sup>44</sup>

The police department's written policies on domestic violence should always be distributed and discussed as part of this training. Detailed handouts on specific aspects of police intervention should also be used. For example, trainers in the San Francisco Police Department distribute separate handouts giving step-by-step instructions on verification and enforcement of stay-away orders and temporary restraining orders, including the appropriate computer query format to verify an order's existence. These instructions for criminal stay-away orders are included in Appendix G.

While police training on domestic violence should cover departmental procedures, it is just as important to increase officers' understanding of the dynamics of spouse abuse and to address officers' attitudes toward these crimes. Officers often are

frustrated by the unwillingness of battered women to seek or cooperate with legal remedies. They fail to understand the strong pressures on battered women to remain in violent relationships, including economic dependence and the threat of retaliation and even greater violence. Practitioners and experts from the community on domestic violence can identify the most important issues, and can train trainers within the police department.

Training programs can be made even more effective by including community service providers, staff from other criminal justice agencies, local experts on domestic violence, and victims of spouse abuse as speakers or instructors. For example, representatives from a battered women's shelter, victim witness or domestic violence unit, prosecutor's office, legal services, or counseling agency could be asked to participate.

Domestic violence training is needed by both recruits and in-service officers. There is a large variation among departments in the number of hours devoted to domestic violence during recruit training. Some departments provide as little as two hours, while others provide 20 or more. Clearly, two hours allows only a cursory review of the subject. A course syllabus developed by Loving includes four hours on each of five topics: understanding spouse abuse; statutory requirements, officer procedure, and legal issues; responding to the call; disposition alternatives; and using community resources.<sup>45</sup> In-service training for all officers should accompany the introduction of a department's revised domestic violence policies, and should be updated periodically as relevant statutory provisions and agency procedures are modified.

Readers who are interested in designing domestic violence training programs for police are encouraged to consult Loving's report, *Spouse Abuse: A Curriculum Guide for Police Trainers*, which discusses a training approach for both recruits and veteran officers, including specific activities and training formats (such as role playing and discussion groups), suggested time allocations, resource materials, and a course evaluation form.<sup>46</sup> In addition, several states and local police departments have developed good training programs and manuals in this area.<sup>47</sup>

## References

1. Attorney General's Task Force on Family Violence, *Final Report* (Washington, D.C.: U.S. Department of Justice, 1984), p. 22.
2. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: Government Printing Office, 1967).
3. Attorney General's Task Force on Family Violence, *Final Report*, p. 22.
4. Nancy Loving, *Responding to Spouse Abuse and Wife Beating: A Guide for Police* (Washington, D.C.: Police Executive Research Forum, 1980), p. 82.

5. San Francisco Police Department General Order No. I-6 (enacted 10/10/80, revised 08/01/83).
6. The Coalition includes representatives of: the San Francisco Legal Aid Society; local shelters for battered women; the Family Law Section of the San Francisco Bar Association; the Lawyer's Committee of Legal Affairs; and WOMAN, Inc., a local non-residential assistance program for battered women.
7. J. Thomas McEwen, *An Evaluation Report on Differential Police Response* (Alexandria, Va.: Research Management Associates, Inc. 1984).
8. Loving, *Responding to Spouse Abuse and Wife Beating*, p. 83.
9. Ibid. Loving also suggests that in serious cases the operator may attempt to keep the victim on the telephone in order to monitor the situation and comfort the victim. However, she acknowledges that this measure may not be feasible in departments with a high volume of incoming calls, in light of the need to keep police emergency lines open.
10. Attorney General's Task Force on Family Violence, *Final Report*, p. 21.
11. Morton Bard, *Training Police as Specialists in Family Crisis Intervention* (Washington, D.C.: Government Printing Office, 1970).
12. Loving, *Responding to Spouse Abuse and Wife Beating*, p. 33.
13. Lawrence W. Sherman and Richard A. Berk, "The Specific Deterrent Effects of Arrest for Domestic Assault," *American Sociological Review* 49 (April 1984): 261-272.
14. Cases were included in the experiment only if both the offender and victim were present when police responded. Allowances had to be made for police officers to make an arrest in a non-random fashion under specified circumstances, such as if the officers were assaulted. See Richard A. Berk and Lawrence W. Sherman, "Police Responses to Family Violence Incidents: An Analysis of an Experimental Design with Incomplete Randomization," March 1984.
15. Sherman and Berk, "The Specific Deterrent Effects of Arrest for Domestic Assault," p. 270.
16. Berk and Newton attempted to replicate the findings of the Minneapolis experiment with longitudinal data from a California-county criminal justice system on 783 wife battery incidents. Using an ex post facto design coupled with a propensity-score analysis, the authors found that arrests did substantially reduce the number of new incidents of wife battery. They also found that arrests were especially effective for batterers whom police would ordinarily be inclined to arrest (i.e., when police officers really believed that an arrest was deserved). Richard A. Berk and Phyllis J. Newton, "Does Arrest Really Deter Wife Battery? An Effort to Replicate the Findings of the Minneapolis Spouse Abuse Experiment," *American Sociological Review* 50 (April 1985): 253-262.

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17. U.S. Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (Washington, D.C.: U.S. Commission on Civil Rights, 1982), p. 16.
  18. Ibid.
  19. U.S. Department of Justice, National Institute of Justice, *Non-Stranger Violence: The Criminal Court's Response*, by Barbara E. Smith (Washington, D.C.: Government Printing Office, 1983), p. 89.
  20. Seattle Police Department Training Bulletin 84-2, *Domestic Violence*, issued January 1984.
  21. San Francisco Family Violence Project, "Responding to Domestic Violence: Police Training Course and Curriculum," July 1983 draft.
  22. This kind of latitude is especially significant in states like California, where police officers cannot make a warrantless arrest for misdemeanor assault unless the officer witnessed the crime. Esta Soler, Director of San Francisco's Family Violence Project, feels that it is better to have lower legal standards for felony assaults, coupled with the availability of citizen's arrest in misdemeanors, than to have state laws that permit probable cause arrest in misdemeanors. Under this type of arrangement, Soler argues, the overall level of domestic violence arrests is not necessarily lower than the level in states that do have misdemeanor probable cause arrest provisions, and the proportion of felony arrests may be higher—reflecting the serious criminal nature of spouse abuse.
  23. Susan Kaplan, Assistant City Attorney and former Supervisor, Family Violence Program, Los Angeles, California, Personal Communication, August 1985.
  24. San Francisco Police Department General Order No. I-6.
  25. As of July 1983, 28 states permitted arrest without a warrant where a police officer has probable cause to believe that an abuser committed a misdemeanor offense. Lisa G. Lerman and Franci Livingston, "State Legislation on Domestic Violence," *Response 6* (September/October 1983): 4.
  26. Minn. Stat. Ann. Sec. 629.341 (Supp. 1983).
  27. Lisa G. Lerman, *Prosecution of Spouse Abuse: Innovations in Criminal Justice Response* (Washington, D.C.: Center for Women Policy Studies, 1981), p. 25.
  28. As of July 1983, six states had laws imposing a duty to arrest when probable cause is present. Lerman and Livingston, "State Legislation on Domestic Violence," p. 4.
  29. 1984 Wash. Laws. Ch. 263.
  30. Sherman and Berk, "The Specific Deterrent Effects of Arrest for Domestic Assault," p. 270.

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31. Joanne Tulonen, Director, Family Violence Project, Seattle City Attorney's Office, "Impact of the Domestic Violence Prevention Act," Seattle, Washington, August 1985.
  32. Susan Wilder Crane, Coordinator of Abused Woman Project, Evergreen Legal Services, Seattle, Washington, Personal Communication, August 1985.
  33. State of Washington, Substitute Senate Bill No. 3254, passed in February 1985, effective July 28, 1985.
  34. City of Duluth, Minnesota, Inter-Department Correspondence to Eli Radulovich, Police Department, from Bryan Brown, Deputy City Attorney, regarding Probable Cause Arrest, March 11, 1985.
  35. Attorney General's Task Force on Family Violence, *Final Report*, p. 25.
  36. *Ibid.*, p. 21.
  37. Several of these provisions were adapted from the San Francisco Police Department General Order No. I-6.
  38. Attorney General's Task Force on Family Violence, *Final Report*, p. 18.
  39. A departmental policy change may be needed to allow police officers to transport victims.
  40. Minnesota Department of Corrections, Program for Battered Women, "Data Summary Report for Calendar Year 1983," St. Paul, Minnesota, update 2, published Winter 1984.
  41. Baltimore County Police Department, Towson, Maryland, Draft General Order, 4/13/84, p. 1.
  42. Potter, "Police and the Battered Wife: The Search for Understanding," *Police Magazine* (September 1978): 41.
  43. "When is a 'Dispute' Also an 'Assault'?" *Police Magazine* (September 1978): 46.
  44. Loving, *Responding to Spouse Abuse and Wife Beating*, p. 114.
  45. Nancy Loving, *Spouse Abuse: A Curriculum Guide for Police Trainers* (Washington, D.C.: Police Executive Research Forum, 1981), pp. 95-96.
  46. This guide can be purchased from the Police Executive Research Forum, 2300 M Street, N.W., Suite 910, Washington, D.C. 20036 (202) 466-7820.
  47. Among the jurisdictions studied for this report, for example, San Francisco's Family Violence Project developed a detailed manual called "Domestic Violence: A Training Curriculum on Law Enforcement Intervention." This curriculum can be purchased from the San Francisco Family Violence Project, 1001 Pontrero Avenue, Building One, Suite 200, San Francisco, California 94110 (415) 821-4553.

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## Chapter 4

### Preparing for Prosecution

When I look back at how it used to be with battered women, I can see that it was a self-fulfilling prophesy. We'd file if she really wanted us to, but we knew that she'd want us to drop charges later . . . we may have even told her so. Then we sent her back home, often back to her abuser, without any support or protection at all. Sure enough, she wouldn't follow through and we'd think, "It's always the same with these cases."

— a city prosecutor

Despite the violent nature of battering and the continuing threat posed to victims, children, and other members of the community, domestic violence cases were rarely taken seriously by prosecutors in the past. There are a variety of reasons for prosecutors' historical reluctance to accept these cases and to press for convictions.

Spouse abuse cases have often been plagued with evidentiary problems. Because the crimes generally take place behind closed doors, there are usually no witnesses besides the victim except, in some cases, the children of the parties. Sometimes there is no documentation of prior incidents and no medical reports, police reports, photographs, remaining bruises, or other evidence of the crime. As police and others improve their domestic violence reporting practices, prosecutors have better evidence available with which to build a case.

Prosecutor's offices have traditionally offered few incentives for prosecuting attorneys to become involved in domestic violence cases. Office priorities generally reflected society's view that these cases were not "real crimes," or at least were not important or serious ones. Prosecutors' perceptions that these cases would rarely result in convictions, and that judges would not impose meaningful sentences even if convictions were obtained, served to reinforce the same message: handling domestic violence cases would do little to advance a prosecutor's career.

Victims' ambivalence about prosecution and their role as witnesses has also discouraged prosecutors from taking action. Some battered women are reluctant to cooperate with prosecution because of their emotional attachment to the abuser,



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mistrust or lack of information about the criminal justice system, or the delay and inconvenience of court appearances. A victim's reluctance might also stem from the batterer's threats of further retaliation for taking legal action. Alternatively, a victim might choose not to move forward with prosecution because of a temporary elimination of violence following arrest while the batterer is in custody.

The relationship between victim reluctance and inadequate prosecutorial handling of domestic violence cases is not straightforward. Clearly, there are many reasons why a battered woman might be reluctant to follow through with prosecution. However, prosecutors' traditional approach to domestic violence cases has tended to increase, rather than minimize, this reluctance. Some prosecutors have even imposed special restrictions on battered women (such as a waiting period to let her "cool off and think about it") before filing a case. Indeed, Lerman notes that there appears to be "no correlation between any characteristics of the [domestic violence] cases or the victims and the likelihood of cooperation. The probability of victim cooperation is in fact better predicted by the conduct of the prosecutor than by the conduct of either the victim or the defendant."<sup>1</sup>

There are concrete steps that prosecutors can take to overcome many of the barriers that have plagued domestic violence prosecution in the past. Policies have been adopted in many prosecutors' offices to establish objective criteria for determining which cases to file, to improve evidence collection, and to protect and assist victims in a variety of ways aimed at increasing their cooperation with prosecution.

## **Domestic Violence Unit**

In cities large enough for prosecutor specialization to make sense, prosecutors can establish a special staff unit to handle domestic violence cases. Domestic violence units guarantee that resources and attention will be devoted to these cases. Prosecutors working exclusively on spouse abuse cases are able to develop expertise and understanding on the dynamics of domestic violence, the special needs of battered women, ways to overcome evidentiary problems, and strategies to increase both victim cooperation and conviction rates. According to staff of the San Francisco Family Violence Project, it takes at least six months before a deputy DA becomes fully conversant with the issues unique to domestic violence and learns the skills needed to successfully prosecute these cases. Specialized units also lead to improved data collection on domestic violence.

Ideally, a single prosecuting attorney is assigned to the same case from beginning to end. As stated by one prosecutor, "Vertical prosecution develops trust between the victim and the prosecutor, (a)n individual relationship of trust and concern that both minimizes the negative aspects of the legal process and also strengthens the case."<sup>2</sup>

Domestic violence units cost money because they generally lead to increases in both the office's domestic violence caseload and the amount of staff time devoted

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to each case. Still, arguments that the unit can increase efficiency by focusing resources on cases suitable for prosecution and increasing conviction rates can often be compelling at budget hearings.

The staff composition of domestic violence units varies quite a bit from one office to the next. In the San Francisco Family Violence Project, a different advocate may handle each contact with the victim, but one of two prosecutors assigned exclusively to spouse abuse cases would handle the same case throughout. The Seattle Family Violence Project is staffed exclusively by victim advocates. An advocate handles the same cases from start to finish, but generally works with more than one prosecuting attorney. In Duluth, Minnesota, one city attorney is assigned to each case, along with one victim advocate who is employed by the Women's Coalition, a shelter for battered women.

While domestic violence units are desirable for many reasons, there are many prosecutor's offices in which these units are simply not feasible. Although a specialized unit can facilitate the implementation of appropriate policies and procedures, an improved prosecutorial response is certainly possible in offices without such a unit. In fact, some individuals, including the director of Seattle's Family Violence Project, view horizontal prosecution as an advantage rather than a drawback because it provides more prosecutors with exposure to spouse abuse cases. When domestic violence cases are handled by prosecuting attorneys throughout the office, it is particularly important for all staff to be given training on proper policies and procedures in these cases.

### *Unit Focus*

In prosecutor's offices with domestic violence units that handle both felonies and misdemeanors and have a large caseload, units may need to decide where to focus their resources and attention. This decision is usually made in favor of the more serious (i.e., felony) cases. In the Westchester County Domestic Violence Unit, victim advocates handle both felonies and misdemeanors, while the unit's two attorneys handle only felony-level cases and misdemeanors are referred to the general cadre of prosecutors in the District Attorney's Office. San Francisco's Family Violence Project began with an exclusive focus on felonies and "serious misdemeanors," those cases that were initially classified as felonies by police officers and later reduced to misdemeanors upon screening by a prosecutor. This focus reflected a strategic decision by project planners, designed to illustrate the fact that spouse abuse cases often involve serious violent crimes. This fact became quite apparent when the volume of felony cases overwhelmed the capacity of the project.

A compelling argument can also be made in favor of handling misdemeanor-level cases rather than felonies. Specialized domestic violence prosecutors may want to focus on misdemeanors because they are much larger in number and suffer from more evidentiary problems than felonies. These cases might otherwise be dismissed as "not serious enough" to warrant attention from other prosecutors, while felonies

are more likely to be charged and prosecuted by attorneys who do not specialize in domestic violence. Finally, and perhaps most important, a unit focus on misdemeanors provides an opportunity for prosecutors to intervene *before* the violence escalates to produce more serious physical damage.

The other major decision in defining the caseload of a special unit concerns the types of family violence cases that the unit will handle. There are, of course, two major categories to be considered: those involving adults only, and those involving adults and children. While both categories share some important characteristics that have interfered with successful prosecution—such as perceptions of abuse as a family matter rather than a crime, evidentiary problems, and lack of adequate support to victims—there are also some important differences (hence the exclusive focus of this report on spouse abuse). There are, for example, different applicable statutes, issues surrounding guardianship, and unique considerations for obtaining victim testimony in child abuse cases. In some of the offices studied, including the Westchester County District Attorney's Office and the Seattle City Attorney's Office, the units began with an exclusive focus on spouse abuse and later expanded to include child abuse cases as well. Unless new staff members are added to the unit, this change necessarily reduces the level of resources and staff time devoted to spouse abuse; indeed, many people feel that spouse abuse cases always tend to get shortchanged under this kind of arrangement, because child abuse cases are viewed as more important and child victims as more deserving of sympathy and protection than battered women.

## Written Policies

Written policies for spouse abuse cases should be developed in each prosecutor's office, not just those with domestic violence units.<sup>3</sup> In fact, written policies are even more important in offices without a specialized unit, since more staff with less experience in domestic violence prosecution will be handling these cases. The policies should include rules and guidelines for all phases of prosecutor involvement.

A comprehensive manual developed by the Family Violence Program of the Los Angeles City Attorney's Office can serve as a model for other offices. In the manual's foreword, City Attorney Burt Pines states:

Our experience reinforces the belief that a vigorous criminal prosecution program can affect the "revolving door" syndrome which has characterized the treatment of family disturbances. As a result of early and repeated contacts with victims, more criminal complaints have been filed, and fewer cases have been dismissed.<sup>4</sup>

The manual sets forth the office's goals in handling domestic violence cases,<sup>5</sup> the duties of various personnel (e.g., supervisor, staff attorney, hearing officer), and procedures for case intake, initial review and filing decisions, referrals, office hearings, arraignment, diversion, trial, and revocation of probation. Differences in procedures and legislative provisions applied to adult violence cases and child abuse cases are

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highlighted. Relationships with victims, the office's victim-witness assistance programs, and local battered women's shelters are described, as well as domestic violence training programs available in the Los Angeles area. Finally, copies of form letters, office and court recordkeeping forms, and statutes that pertain to domestic violence cases are included.

Prosecution guidelines for the Duluth City Attorney's Office "provide a framework to make decisions rather than a specific set of absolute procedures to fit the myriad of possibilities these cases present."<sup>8</sup> These guidelines also describe the goals of prosecution; strategies that place controls on the assailant and deter the continued use of violence; procedures to increase the prosecutor's access to evidence and information regarding the case; and the role of victim advocates in prosecution.

## **Filing Charges**

There are three major components of the charging decision: identifying a pool of spouse abuse cases; screening each of these cases and deciding whether or not to file charges; and signing the actual complaint.

### *Identifying Cases*

In many jurisdictions, the large majority of spouse abuse cases are never brought to the attention of the prosecutor's office. In order to have a sizeable impact on domestic violence in any jurisdiction, prosecutors must take steps to increase the number of cases identified for prosecution.

Improved police reporting practices, combined with a cooperative arrangement between police and prosecutors, is the best route to expanding the pool of cases known to prosecutors. This kind of arrangement has been established in several communities, resulting in a large increase in the number of cases that are prosecuted. If officers file reports on every spouse abuse incident to which they respond, and cases are identified by a domestic violence check-off on incident report forms, these forms can easily be pulled for screening and follow-up in the prosecutor's office. In some states, such as Washington, police departments are required by statute to forward domestic violence reports to the local prosecutor's office within a certain time period. Police in several communities, including Westchester County, New York, forward reports on domestic violence incidents to prosecutors as a matter of policy, without being required to do so by law. In Denver, Colorado, the police department's domestic violence case summary form (developed in conjunction with the City Attorney's Office) is completed and forwarded to the City Attorney's Office for each case.

Developing police-prosecutor coordination on domestic violence cases can be difficult, particularly in jurisdictions where special police reporting policies for these cases are not yet established. The situation is even more difficult for prosecutor's offices that receive cases from more than one police department. Until formal reporting and case referral systems are established, police officers in these departments should

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be encouraged to distribute information cards to battered women, describing legal options and the availability and phone number of the prosecutor's office, in an effort to reach some of these cases.

### *The Filing Decision*

The U.S. Commission on Civil Rights found that prosecutors applied more stringent filing requirements and charging policies to domestic assaults than to other assaults.<sup>7</sup> Similarly, Lerman noted that, while many of the domestic violence cases that reach the prosecutor's office have been screened by the police and judged to be serious, prosecutors were rejecting most of these cases before filing charges.<sup>8</sup> In general, prosecutors have been criticized for screening out far too many domestic violence cases because of their subjective views on these cases. The expectations of evidentiary problems and victim reluctance have also discouraged many prosecutors from taking on spouse abuse cases. Just as police policies should include objective criteria for determining when to arrest, prosecutor policies should set forth objective criteria for determining when to file charges. According to San Francisco's Domestic Violence Felony Prosecution Protocol, the filing decision should be based on: the extent or seriousness of the injuries; use of a deadly weapon; defendant's prior criminal history and past history of violence; and the potential lethality of the situation.<sup>9</sup>

Two important issues related to prosecutor screening and filing practices in domestic violence cases deserve special attention and discussion: the use of mediation, and the extent to which victims should be permitted to influence the prosecutor's filing decision.

*Mediation.* The use of mediation in domestic violence cases has generated a great deal of controversy and heated debate. Mediation is a general term which refers to the process by which a neutral third party, a mediator, helps two disputants to tell their sides of a dispute, identify areas of agreement and dissension, and reach a mutually acceptable resolution. For the reasons outlined below, domestic violence cases should be excluded from the mandate of mediation programs.

In most American mediation programs that handle minor criminal matters (e.g., simple assaults, trespassing), mediation consists of one session with a trained mediator.<sup>10</sup> These programs may be based in the justice system (including the courts, prosecutors' offices, and other branches of government) or in private community organizations, which sometimes handle case referrals from the local justice system as well as from the community at large.

Within the justice system, disputes are sometimes referred to mediation programs by prosecutors as a method of screening cases to determine whether charges should be filed. Charges are not filed in these cases if the dispute is resolved through mediation. Cases may also be referred to mediation programs by other parties in the justice system—such as police, court clerks, and judges—and at different points in case processing besides the pre-filing stage (e.g., after a complaint is filed, or as part of pretrial

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diversion or a post-conviction probation sentence). In addition to case screening, mediation programs linked to the justice system may be aimed at diverting cases from the court caseload; reducing the delays associated with court case processing; increasing accessibility to citizens (e.g., by establishing flexible hours and convenient locations for mediation hearings); reducing case processing costs, both to the disputants and the justice system; and providing a more appropriate process for certain types of cases.

The degree of coercion used when parties are referred to mediation varies a great deal: at the two extremes, parties may simply be informed of the availability of a mediation service or may be directed to mediation without being offered any other option. The number of mediation programs in the United States has grown rapidly since the late 1960s, providing an alternative to formal adjudication for a wide range of minor criminal and civil disputes. While additional study is needed to assess the overall benefits of these programs, a growing body of research findings suggests that mediation is often superior to adjudication for some types of matters, particularly if one looks at disputant perceptions of the process and agreements, perceived fairness, and related perceptions.

Mediation appears to be an excellent forum for resolving many types of disputes; however, it does not appear to be an appropriate forum for handling domestic violence cases. This is true for a variety of reasons, both philosophical and practical. Most fundamentally, when used as a substitute for criminal proceedings, mediation implies that spouse abuse does not constitute serious criminal behavior deserving of criminal penalties. Violation of a mediation agreement results in no criminal sanctions. Beyond the failure to hold abusers accountable, the mediation process can imply that battered women share responsibility for the criminal conduct, and may even require them to promise that they will change their own behavior in exchange for the batterer's promise not to commit further crimes.<sup>11</sup>

Furthermore, while mediation presumably requires that both parties be placed on "equal footing" in order to negotiate a mutually acceptable agreement, the balance of power in victim-abuser relationships is so weighted that the possibility of victim coercion during mediation is virtually unavoidable. Mediation, by nature, relies to some extent on the mutual goodwill and fairness of both parties. In some kinds of cases, trained mediators may be effective in equalizing the bargaining power of the parties, but they cannot compensate for a long-term pattern in which one party has consistently controlled and manipulated the other. Indeed, the victim may even be afraid to speak up or register disagreement during a mediation session for fear of retaliation. This imbalance of power would continue after the mediation session as well, since the parties' relationship would not be altered.

The complexity of spouse abuse cases and the fact that battering represents a pattern of behavior, rather than a single isolated event, also mean that mediation will be less successful with these cases. An evaluation of NIJ-sponsored neighborhood justice centers found that mediation was most likely to lead to an effective resolution

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in simple, rather than complex, disputes.<sup>12</sup> In addition, the likelihood of achieving a lasting resolution through mediation was found to diminish when the parties had strong underlying problems. Notably, mediation of domestic violence cases was less successful than expected.

While mediation is an appropriate forum for many kinds of personal and family disputes, those involving acts or threats of physical violence should be handled via traditional criminal action. Voluntary mediation may be able to play a useful role in these cases by helping a couple to explore ways of restructuring their relationship, but only after the criminal justice system has taken action and the abuser has succeeded in ending his violent behavior.

*Victim Influence on the Filing Decision.* In the past, the burden of filing charges in domestic violence cases was typically placed on victims. Victims were generally given no support or protection by prosecutors or the courts if they did want to file charges, and were sometimes explicitly discouraged from filing. Among those who want to improve the prosecutorial response to domestic violence, there is considerable debate surrounding the issue of how victims should be permitted to influence the filing decision, as well as other decisions affecting the case (such as whether or not charges are dropped after filing, whether the victim will testify, and what type of sentence is recommended to the judge).<sup>13</sup>

One side of the debate urges that prosecutors assume full responsibility for filing charges and prosecuting domestic violence cases rather than diverting any of that responsibility to victims. According to this view, policies that virtually eliminate victim influence on decisions about prosecution are recommended for several major reasons:

- to clearly establish that spouse abuse is a crime;
- to force prosecutors to take domestic violence cases seriously, and eliminate prosecutor reluctance to handle these cases because of their view that victims tend to seek dismissals or refuse to testify;
- to protect the community as a whole, as well as innocent bystanders who could be injured as a result of future violence;
- to give the criminal justice system more control over prosecution and increase the number of batterers convicted and held accountable for their actions (either through incarceration or court-ordered intervention); and
- to reduce the likelihood that batterers will intimidate and harass victims because they hold the victims responsible for the fact that they are being prosecuted.

Individuals on the other side of the debate assert that policies that eliminate victim discretion have serious drawbacks. Instead, they argue, each victim should be

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contacted, informed about prosecution as well as other available options, and permitted to make her own decision about whether or not charges will be filed. Several reasons are given in favor of this approach, including the following:

- Battered women have a right and are able to decide whether or not they want criminal justice intervention, when given full information. There are several reasons why a battered woman might choose not to prosecute: for example, she prefers civil remedies, she faces life-threatening danger and must flee the area, she fears race-biased sentencing, or she would lose critical financial support.
- Civil remedies may be appropriate in some cases. If batterer counseling is viewed as a critical intervention, it can be mandated through properly monitored and enforced civil protection orders, as well as through criminal action.
- There are other ways to address the potential for victim intimidation and harassment, including statutes that make intimidation of a witness a substantive crime and the use of protection orders as a condition of release.
- Policies that eliminate victim discretion can serve to alienate battered women and discourage them from calling police or seeking other legal intervention in the future, thereby placing them in jeopardy of extreme injury or death.

Those who favor victim influence on the filing decision agree that, when the lives of others are clearly endangered, battered women must be expected to cooperate with prosecution.

In light of the pro and con arguments presented above, prosecutors have adopted some very different policies regarding the role of victim influence on the filing decision. Some have decided that the benefits of eliminating victim discretion far outweigh the disadvantages. In these offices, prosecutors view themselves as advocates for the state, and file charges in cases when warranted by the facts, despite victim opposition or without even contacting the victim, if such action appears to be in the best interest of both the victim and the community-at-large. In other offices, charges are only filed with the victim's consent. Prosecutors or victim advocates explore all available options with battered women so that they can make informed decisions. Still other offices take an intermediate position. This may mean that the decision rests solely with the prosecutor in "more serious" cases, while victims are able to influence the decision in cases viewed as less serious.

The latter type of system operates in the Seattle City Attorney's Office as a matter of policy. In cases where a police call results in arrest, the City Attorney's Office automatically files charges against the suspect and then makes initial contact with the victim. In cases where the police filed a report but did not make an arrest, the



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victim is contacted to obtain information on the case and discuss legal options, including prosecution. With this information in hand, the victim decides whether she would like the City Attorney's Office to file charges.

The ultimate solution to the victim influence question is not clearcut. It may be that the proper approach differs from one community to the next. Some have suggested, for example, that policies which eliminate victim influence make sense only in settings where the entire community has succeeded in establishing an effective approach to domestic violence—where police, prosecutors, courts, shelters, and programs for victims and batterers are all in gear to protect and support victims and to hold batterers accountable.

In most jurisdictions, the issue may be best addressed through policies that essentially structure the prosecutor's discretion according to some objective criteria. Under this kind of arrangement, the victim's willingness to cooperate with prosecution and to testify (if necessary) are factors in the prosecutor's filing decision, along with other factors in the case such as the extent of injuries, use of a weapon, and the defendant's past history of violence.

When domestic violence cases are referred to the prosecutor's office and charges are not filed, the attorney who makes this decision should be required to note the reasons for rejection in the case file. Supervisors should review the reports to ensure that these cases are being handled properly.

### *Signing the Complaint*

While prosecutors sign criminal complaints in other types of cases, they have often required battered women to sign complaints in order to prove their willingness to comply with prosecution.<sup>14</sup> This requirement symbolically places the responsibility for filing on the victim, and may result in retaliation and pressure from the offender to withdraw the charges.

When charges are filed in domestic violence cases, the prosecutor, not the victim, should always sign the criminal complaint. "When the prosecutor signs a complaint, it is the prosecutor's first opportunity to show the victim that she is a witness rather than a plaintiff."<sup>15</sup> This practice, which was formalized in each of the jurisdictions studied for this report, relieves some of the burden from the victim by demonstrating that the criminal justice system is responsible for prosecuting the case.

### **Pretrial Release and Court Appearances**

The vast majority of defendants in domestic violence cases are released prior to trial, either on their own recognizance (which is the most common), bail, or bond. Release typically occurs at arraignment along with the filing of charges. Because of the defendant's relationship with and access to the victim, she is particularly vulnerable during the pretrial period.

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### *Requiring First Appearance*

A batterer's first appearance in court before a judge is symbolically important because it demonstrates that spouse abuse is viewed and treated as serious criminal behavior. If possible, defendants in all domestic violence cases should be required to appear in court at arraignment, even if appearance can be waived by defendants accused of some other types of crimes. A change in court rules may be needed in order to impose this requirement. In the State of Washington, defendants in domestic violence cases are required by law to appear within one judicial day after arrest.<sup>16</sup>

### *Eligibility for ROR*

A probation agency's first contact with the case generally involves developing a recommendation for the judge on whether to release the defendant on his own recognizance prior to trial. Probation officers should make this decision in domestic violence cases based on community safety and the defendant's likelihood of appearing at trial, just as they do in cases involving stranger-to-stranger violence. In making this decision, they should contact the victim for information regarding her safety needs.<sup>17</sup>

In Duluth, Minnesota, Judicial and Probation Guidelines established for domestic violence cases in the St. Louis County Court set forth certain procedures that probation officers must follow when conducting an investigation for pretrial release.<sup>18</sup> (These guidelines are reproduced in Appendix H.) The probation officer must make a reasonable attempt to contact the victim or victim advocate for information on any aggravating circumstances in the case, such as serious bodily injury, forced sexual contact, use or threat with a dangerous weapon, verifiable history of physical violence, and on-going harassment. These circumstances must be fully documented and reported to the court. The probation officer and victim also discuss release conditions available to the court, and the conditions that the victim feels she needs to protect her safety, such as limited or no contact by the assailant, allowing the assailant only supervised child visitation, or the temporary removal of weapons from the household.

*Protection Order as a Condition of Pretrial Release.* If the defendant is going to be released prior to trial, the prosecutor should be able to request an order restricting the defendant's access to the victim as a condition of pretrial release.<sup>19</sup> Exhibit 9 contains a copy of such an order, issued in the Seattle Municipal Court.

In some states, such as Washington, issuing protection orders in this manner is specifically authorized by state statute. Even without statutory authority, though, judges have wide discretion to impose conditions on the release of any criminal defendant.<sup>20</sup> Written policies for prosecutors and probation officers should require that a protection order be requested in each case where it appears that the defendant would otherwise pose a threat to the victim's safety.<sup>21</sup> Practitioners feel that protection orders are appropriate in the majority of domestic violence cases that are prosecuted.

## Exhibit 9

IN THE MUNICIPAL COURT OF SEATTLE, WASHINGTON

CITY OF SEATTLE,

Plaintiff

v.

Date of Birth    /    /

Defendant.

Court Case Number \_\_\_\_\_

SPD Incident Number \_\_\_\_\_  
(Domestic Violence) - Post Charging

NO CONTACT ORDER UPON RELEASE  
FROM CUSTODY ON BAIL OR  
PERSONAL RECOGNIZANCE

The defendant has been charged with a domestic-violence offense under Seattle City Code § 12A.06.120. As a condition of release from custody before trial on bail or personal recognizance,

THE DEFENDANT IS, ORDERED to have no contact with \_\_\_\_\_ in person, by telephone or letter, through an intermediary, or in any other way, except through an attorney of record, while released from custody on bail or personal recognizance. The clerk shall provide a certified copy of this order to the victim named above.

This order shall remain in effect until the above indicated case has come to trial and the defendant has been sentenced if found guilty.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 12A.06.130 OF THE SEATTLE CRIMINAL CODE (ORDINANCE 102843) AS AMENDED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 198 .

JUDGE

### STATEMENT OF THE DEFENDANT

I have read the order which appears above. I understand that violation of the order would be a criminal offense under Chapter 12A.06.130 of the Seattle Criminal Code (Ordinance 102843) as amended punishable by a fine of not more than five hundred dollars or by imprisonment for not more than one hundred eighty days or by both fine and imprisonment. A copy of the order has been given to me.

Signature of the Defendant

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The defendant's first appearance before the judge is the best time to formally issue the order. The defendant is more likely to take the order seriously if it is issued and described by a judge in a formal courtroom setting. Additionally, it eliminates the problem of locating the defendant to serve him with the order and verifying that service took place. The defendant should be informed about the specific terms of the order, and should be required to sign it before he is released from custody. A copy of the order should be given to the defendant, the victim, and the local law enforcement agency.

A protection or restraining order is meaningful only if violation of the order constitutes a crime and police are able to verify the existence of an order when a violation is alleged. Ideally, information on active orders is entered in a computer system (like warrants) so that it is readily accessible to police officers in the field. If such a system is not in place, victims must be told to keep their copy of the order in a safe place so they can show it to officers if a violation occurs.

### *Use of Bail*

If the prosecutor or probation officer has reason to believe that the defendant would cause further harm to the victim if he is released from custody despite the existence of a restraining order, a high cash bail should be requested in order to make pretrial release unlikely. This action is appropriate in especially serious cases, cases where the defendant has continually threatened the victim with more violence upon his release, and cases where the defendant has reassaulted the victim in the past even though a protection order was issued. Prosecutors should reserve these requests for situations where such action is warranted; judges are more likely to agree when it is clear that prosecutors are recommending this approach in only the most serious cases. Protection orders, or restrictions on the defendant's contact with the victim, can also be imposed as a condition of bail.

### *Judges' Verbal Statements to Batterers*

As primary authority figures in our society, judges should take every opportunity to reinforce the message that battering is criminal behavior, and that the criminal justice system holds batterers accountable for the violence. As expressed by one judge, "The judge represents the law to individual offenders who are brought into court. The judge's attitude, statements and actions can communicate to an abuser that their violence is cruel . . . and criminal behavior which will not be tolerated by our society."<sup>22</sup> The Attorney General's Task Force on Family Violence urges judges not to underestimate their ability to influence a defendant's behavior, noting that "Even a stern admonition from the bench can help to deter the defendant from future violence."<sup>23</sup>

A judge's statements at arraignment are particularly important because most defendants are about to be released from custody. "The judge should caution the

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abuser that release does not mean he is free to continue to harm or intimidate the victim."<sup>24</sup> An explanation of the conditions of the protection order, and action that will be taken if the defendant violates any of these conditions, should also come from the judge. Furthermore, judges should attempt to relieve some of the pressure on victims by informing defendants that the case is being prosecuted by the government, not the victim, and that the defendant is responsible for ending the violence.

### *Preliminary Hearing*

When a preliminary hearing is held, the judge examines the facts of the case and determines whether there is sufficient basis to continue with prosecution. As in arraignment, defendants in domestic violence cases should be required to appear in court at preliminary hearings. Whenever possible, however, victims should not be required to appear. Since it is not legally necessary for victims to be present at this proceeding, they should be spared the discomfort of testifying and confronting the defendant in court.

### **Providing Victim Support and Protection**

Appropriate consideration of the victim results in better cooperation with law enforcement, helps restore confidence and will, therefore, make the system work more effectively.

— an attorney general<sup>25</sup>

Battered women have many needs for services, ranging from emotional support to emergency housing and financial assistance. These needs often become even more acute as a result of criminal justice intervention, which can lead to loss of family income while an abuser is incarcerated, increased vulnerability to an abuser who is not incarcerated while criminal charges are pending, or confusion about the process and end results of prosecution. Several prosecutors have taken active steps to meet the needs of battered women, by working closely with victim advocates and adopting policies intended to reduce the likelihood of victim intimidation or harassment during the pretrial period.

### *Victim Advocates*

Prosecutors rarely have time to educate victims about the criminal justice system and their role as witnesses, or to give victims the emotional support they need as their cases are being adjudicated. Victim advocates can fill this gap by providing a variety of services to battered women. In addition to aiding victims, advocates serve prosecutors by increasing victim cooperation with all aspects of prosecution and improving the quality of victim testimony. Even a simple explanation of the possible outcomes of prosecution, and the role of various sentencing alternatives in ending violent behavior, can make a big difference. A battered woman often sees prosecution as a way to simply punish her abuser, when what she really wants is help in getting him

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to stop being violent. According to one prosecutor, "Many victims equate prosecution with long jail or prison sentences . . . The victim usually wants to help the offender and obtain treatment for him [and] if she can see prosecution as a means to that end, she will be more likely to remain cooperative."<sup>26</sup>

*Identifying Cases.* Cases should be identified for victim services and support in the same manner as they are identified for prosecution — through incident reports on all domestic violence cases to which police respond. Victim services personnel need to work closely with prosecutors so that case screening functions can be consolidated. In the Seattle City Attorney's Office, victim advocates are responsible for screening police reports for both prosecution and victim services. In the San Francisco District Attorney's Office, assistant district attorneys make the filing decision, often with the help of victim advocates, and then advocates have a continuing role in these cases after charges are filed.

It is best for victim advocates to contact and offer services to battered women in *all* domestic violence cases reported by police, not just those on which charges are filed. All offices report an increase in the volume of cases filed as a result of active outreach to a large number of victims. Advocates usually attempt to contact victims with an introductory letter, referencing the incident described in the police report and asking the victim to telephone an advocate to discuss prosecution and other options. Exhibit 10 contains a form letter used for this purpose by victim advocates in the Seattle City Attorney's Office.

Victim advocates can receive cases from a variety of sources other than police reports and cases filed by the prosecutor. Some referrals may come directly from police officers or from hospitals, social service agencies, or professionals in the community. Other clients are self-referred. While it is clearly desirable for advocates to address the needs of all of these victims, programs may have to set limits on their caseloads. For example, as a matter of policy, San Francisco's Family Violence Project accepts all cases on which charges are pending (usually at the felony level), as well as all hospital-referred cases and cases involving non-English speaking victims. Other cases are accepted when resources and staff time permit.

*Nature of Victim Services.* While the nature of services provided by victim advocates varies from one program to the next, some services are given quite frequently to battered women:<sup>27</sup>

- *Short-term counseling:* providing emotional support, probing to clarify the victim's feelings and needs, assisting her in understanding and assessing available options.
- *Referrals:* to sources of shelter (often a shelter for battered women or safehome), medical care, food, financial assistance, longer-term counseling, legal counsel.

## Exhibit 10

### THE CITY OF SEATTLE

#### LAW DEPARTMENT

MUNICIPAL BUILDING . SEATTLE, WASHINGTON 98104

AREA CODE 206 TELEPHONE 625-2402

DOUGLAS N. JEWETT, CITY ATTORNEY

### FAMILY VIOLENCE PROJECT

Dear

My office has received a police report that lists you as a victim of Domestic Violence. The incident occurred on \_\_\_\_\_ with \_\_\_\_\_.

I work on a special project in the City Attorney's Office that assists victims of Family Violence. The Project's primary goal is to stop the violence that is happening to you.

We believe that one of the ways to stop family violence is through prosecution. The court has the authority to order the abusive person into counseling and monitor their attendance through probation. Additionally, the court can ask for restitution for medical expenses and/or property damage. A No Contact Order can also be included, either at arraignment or at the time of sentencing. There is no charge to you to prosecute a case in Seattle Municipal Court.

To stop the violence in your home, to stop the violence that is happening to you, we need your assistance in bringing your case before the courts. Please contact my office as soon as possible to discuss what options are available for you and to answer any questions that you might have. Our phone number is 625-2119. Our office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday.

You deserve to live a life free of violence.

Sincerely

Advocate  
FAMILY VIOLENCE PROJECT

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- *Personal advocacy and support:* obtaining victim input for the sentencing decision (e.g., "victim impact statements" or sentence preferred by victim), intervening with employers regarding absences from work to testify.
  - *Case-related information:* providing explanation of how the criminal justice system works and updates on case status (including when the offender is released from custody, dates and times of court appearances, postponements, etc.).
  - *Courtroom assistance:* accompanying the victim to court, arranging for transportation and child care.

Victim advocates often perform case investigative activities as well, such as interviewing the victim on the facts of the case and the offender's past history of violence, contacting witnesses, ordering medical reports, photographing injuries, and identifying questions and pitfalls in the case to help the prosecutor during trial. Without victim advocates, many domestic violence cases—especially at the misdemeanor level—would not be investigated at all and the victim's first contact with the prosecutor would take place in the courtroom.

Victim advocates may also have other responsibilities that are normally reserved only for prosecuting attorneys. In the Seattle City Attorney's Office, for example, advocates conduct plea negotiations and develop their own sentencing recommendations, which are reviewed by an assistant prosecutor and then submitted directly to the judge. It is, however, very rare for non-lawyer advocates to play this kind of role, which gives them a great deal of power in the court system.

In addition to their services on individual cases, advocates also perform activities aimed at improving the overall response of the community and criminal justice system to domestic violence. These system-wide services often include: providing public education, both to increase general community understanding of domestic violence and to make the public aware of available services; advocating legislative reform, such as changes in arrest laws, statutes authorizing protection orders, and establishing witness intimidation as a separate crime; working for system changes, such as tighter court monitoring of batterer treatment; and conducting domestic violence training in criminal justice, medical, and social service agencies.

*Organization Affiliation.* In jurisdictions studied for this report, battered women's advocates are either employed by the domestic violence unit within the prosecutor's office (Seattle, San Francisco, and Westchester County) or by an independent, community-based shelter program (Duluth). The impact of different advocate affiliations on the number and outcome of cases filed has not been documented; however, each of these affiliations appears to carry certain advantages. Advocates from prosecutor-affiliated programs usually have more stable funding; easier access to clients



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and case information; and greater credibility with and acceptance from police, prosecuting attorneys, and judges. On the other hand, advocates from outside organizations have greater independence in establishing their priorities and objectives and in pushing for changes in criminal justice agencies. These agencies may also enjoy easier acceptance from grassroots organizations and victims who are distrustful of the criminal justice system. In some jurisdictions, such as San Francisco, community-based organizations were instrumental in establishing victim advocacy programs within the prosecutor's office.

### *Case Dismissal Policies*

There are a number of reasons why some battered women decide that they want charges dropped, including fear of testifying, hope that the violence is over, and threats and intimidation from the batterer.<sup>28</sup> Indeed, one prosecutor observed that half of the battered women who came to the office to drop charges were accompanied by their abusers, who had threatened further abuse unless they withdrew charges.<sup>29</sup> Whatever a victim's reasons for wanting charges dropped, prosecutors have been harshly criticized for complying with victim requests in these cases:

The evolution of a system in which criminal enforcement is left entirely to the whim of the victim . . . implies official acceptance of or acquiescence to the policy that violence between "consenting" adults is a private affair.<sup>30</sup>

Of course, the issues surrounding victim influence on case dismissal are similar to those surrounding victim influence in the filing decision, which were described above. To reduce the likelihood of victim intimidation and to prosecute more spouse abuse cases in the interest of the community, many prosecutor's offices have adopted policies that set various degrees of restrictions on the victim's ability to have a case dismissed once charges are filed. Some offices have a general policy that charges will not be dropped at the victim's request. Written policies in the Los Angeles City Attorney's Office advise personnel: "If the victim expresses a desire to 'drop charges,' explain that a criminal offense has occurred and that the prosecutor has the duty to decide whether the court should be asked to dismiss a complaint." Personnel are also reminded that: "Victims usually need reassurance. Private surroundings and the time necessary to provide support are essential."<sup>31</sup> Similarly, in the Seattle City Attorney's Office, victims are informed at the outset that, as a matter of policy, charges cannot be dropped upon their request after a case is filed. As stated by the director of the Family Violence Project in this office, "We EXPECT the victim to ask us to drop in these cases, but we won't do it."

Many prosecutors feel that this kind of policy is highly effective in relieving some of the burden placed on victims: "As a prosecutor, I have seen relief on a woman's face, relief when I have said, 'I am sorry, I am not waiving' . . . it works, it really does work."<sup>32</sup> Prosecutors in the L.A. City Attorney's Office report that, in the vast

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majority of these cases, "no drop" policies do not lead to trials and a need for victim testimony. Instead, most defendants plead guilty when it becomes clear that the charge is going to stick.

Having an official "no drop" policy demonstrates the prosecutors' view that spouse abuse is a serious crime, and that prosecutors should not be able to dismiss a domestic violence case because the victim is reluctant to cooperate with prosecution or testify at trial. In most offices that do have "no drop" policies, like the San Francisco and Seattle City Attorney's Offices, prosecutors and victim advocates examine each case carefully, and will actually dismiss charges at a victim's request under certain kinds of circumstances (if, for example, the victim's safety is believed to be at stake). In this vein, the Domestic Violence Prosecution Protocol in the Denver City Attorney's Office states that:

Cases where the victim is uncooperative will have to be dealt with on an individual basis. While we do not want to re-victimize the victim, we also must preserve the integrity of the system established to protect citizens from abuse.<sup>33</sup>

Some prosecutor's offices have established official policies that do permit charges to be dropped at the battered woman's request, but try first to discourage her from doing so and verify that she is not taking this action because of intimidation from the batterer. In the San Francisco District Attorney's Office, a victim asking for case dismissal is referred to victim advocates in the Family Violence Project to ask about her reasons for requesting a dismissal, provide her with support, and discuss the positive aspects of prosecution. If the victim still wants the prosecutor to drop charges, she must first appear before a judge to state her reasons before the case is formally dismissed.

Case dismissal policies should not enable prosecutors to simply dismiss a case at the victim's request. There should be mechanisms in place to provide emotional support to these victims, encourage them to continue to cooperate with prosecution, and protect them from harassment and intimidation from the accused. The prosecutor's decision on whether or not to drop charges should be made on an individual, case-by-case basis.

### *Subpoenaing Victims to Testify in Court*

In keeping with the view that domestic violence is a crime against the community and the victim's role is that of a witness rather than a plaintiff, some prosecutors subpoena victims to testify in court as a matter of course. "This makes it clear that the victim is not the prime mover in the case, but is a witness for the state."<sup>34</sup> This practice is also intended to relieve some of the pressure from the defendant for the victim not to appear at trial.

In San Francisco, victims are always subpoenaed early in the case. Prosecutors

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in the Seattle City Attorney's Office routinely subpoena both victims and police officers to testify. In line with their view that a victim's participation in prosecution should not be coerced, prosecutors in the Duluth City Attorney's Office will issue a subpoena only at the victim's request in order to shield her from pressure not to testify.

If subpoenas are issued in these cases, they should be used to protect battered women, not to punish them. If a victim does not want to testify, the prosecutor can review all available evidence and determine whether the case will stand without her testimony. If there is substantial evidence from other sources to corroborate victim testimony, the prosecutor can proceed without subpoenaing the victim. Some prosecutors have also hired expert witnesses in these cases, who can say, "I have interviewed the victim. She is a battered woman, and here are some of the reasons why she did not appear in court." This strategy has been used successfully in Los Angeles and other jurisdictions as a way to proceed with a case without forcing the victim to testify.

Critics of the use of victim subpoenas in domestic violence cases cite instances in some jurisdictions where a battered woman is incarcerated for contempt of court when she refuses to testify, even while the offender is released.<sup>35</sup> In other jurisdictions, battered women are never put in jail for refusing to testify, although they are subpoenaed and strongly encouraged to cooperate with prosecution. In San Francisco, for example, the District Attorney's Felony Prosecution Protocol states that:

If a victim who refuses to testify or cooperate in the prosecution is found to be in summary contempt of court, the DA will request that the disposition address her needs such as required counseling or a battered women's support group.<sup>36</sup>

In considering these issues, Lerman concludes that "Unless the judge hearing a case is hostile toward battered women, issuance of a subpoena is more likely to prevent intimidation and to encourage a victim to appear than to result in inappropriate punitive measures."<sup>37</sup>

Victim subpoenas are a useful tool for some cases, in jurisdictions where prosecutors respect a victim's desire not to testify and, when necessary, explore options that do not require testimony for these cases.

## **Pretrial Diversion and Deferred Prosecution**

In pretrial diversion, prosecution is suspended at some point prior to final adjudication while the defendant completes a treatment, counseling, or other intervention program. Criminal charges are dismissed when the program is successfully completed. While this practice is not appropriate for seriously violent offenders (e.g., those who committed felonies or have a long history of abuse), pretrial diversion of batterers in misdemeanor cases is viewed by some as an efficient use of the criminal justice system. Indeed, the end result of diversion (such as a requirement to participate

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in counseling) may be identical to the end result of prosecution, even though there is no trial or conviction. Pretrial diversion also gives the prosecutor another dispositional alternative in cases where the victim does not want to testify. For some offenders, the threat of a permanent criminal record may be sufficient to ensure participation in counseling and to deter further violence.

Many experts believe, however, that counseling and other requirements are more appropriate and effective as conditions of probation. They argue that pretrial diversion can give the impression that the justice system does not regard battering as a serious crime. Unlike pretrial diversion, probationary sentences are imposed after offenders are formally told by the court that they are guilty of a crime. While non-compliance with the conditions of pretrial diversion can lead to the resumption of criminal charges, a trial, and the possibility of incarceration, the threat of incarceration is far more salient to offenders who have already been found guilty and given a stayed sentence. After examining jurisdictions that used both practices, the U.S. Civil Rights Commission concluded that counseling mandated as a condition of probation is more effective and taken more seriously by defendants than pretrial diversion that requires counseling.<sup>38</sup>

A system that combines both pretrial diversion to counseling and post-conviction counseling as a condition of probation may work well in some jurisdictions. Of the jurisdictions studied for this report, only San Francisco has provisions for both of these procedures in domestic violence cases. The city's Domestic Violence Diversion and Probation Guidelines, reproduced in Appendix I, stipulate several conditions defendants must meet in order to be eligible for diversion. These guidelines reflect laws pertaining to pretrial diversion in the State of California. Defendants can be diverted only for misdemeanor offenses where no children were involved. Defendants must have no prior convictions involving violent crimes within the past seven years; no prior domestic violence diversion or probation or parole revocation within the last five years; and no evidence of a history of repeated severe domestic violence against the victim within the last 12 months. The offense in question cannot involve weapons, severe injury, or trauma to the victim. Furthermore, defendants can only be diverted if the victim has no reasonable objection, and the defendant is both motivated and willing to comply with diversion requirements.

San Francisco prosecutors and probation investigators work together to identify and screen diversion-eligible defendants in domestic violence cases. Meanwhile, victims are notified of the defendants' diversion status. Defendants placed on diversion must refrain from further violence and attend one year of batterer counseling, plus concurrent counseling for substance abuse if appropriate.

The effectiveness of diversion depends upon a credible threat of reinstating criminal charges, adequate counseling resources, and close monitoring by probation officers. Steps needed to monitor compliance with conditions of diversion are identical to those involved in monitoring similar conditions of probation (see Chapter 5). When batterers fail to comply with the conditions of diversion in San Francisco,

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probation officers refer them back to the courts for reinstatement of criminal charges. Sometimes defendants become more cooperative merely upon receiving this news. Often, however, prosecutors and the courts do not reinstate criminal proceedings but extend the length of diversion on the grounds that too much time has passed and victims may no longer be willing to prosecute. San Francisco's Family Violence Project is now encouraging district attorneys and judges to terminate rather than continue these cases, which would preclude the same defendants from being eligible for diversion in the future.

## **Plea Bargaining**

In virtually all jurisdictions, the vast majority of domestic violence cases are settled prior to trial. While pleas outnumber trials in all kinds of criminal cases,<sup>39</sup> prosecutors have often been criticized for being too willing to reduce charges against batterers. Systematic over-reduction of charges and penalties means that these cases are being treated less seriously than assaults between strangers.

By accepting pleas, prosecutors can handle a large volume of cases with scarce resources and accommodate victims' wishes not to testify. However, policies regarding charge reductions must be rigorous enough to communicate the seriousness of the crime. Many prosecutors who are concerned with stopping spouse abuse accept only guilty pleas to violent crimes in these cases. The Domestic Violence Prosecution Protocol in the Denver City Attorney's Office states that:

A realistic appraisal of the problems with the court dockets, the tendency for witnesses to be absent on the date of trial and, on the positive side, the value of speedy justice support the concept of plea bargaining. Factors to be considered are the correctness of the charge, the strength of the case, mitigating and aggravating circumstances, the defendant's record and the victim's wishes. It should be made clear to the defendant that plea bargaining is a privilege, not a right.

In cases of multiple charges, if assault is charged, it is generally preferable to obtain a guilty plea to assault and dismiss other charges. Keeping destruction of private property in order to request restitution for damages may be appropriate.<sup>40</sup>

In Westchester County, prosecutors are required by recent legislation to contact victims before accepting a plea. In the San Francisco District Attorney's Office, charge reductions in domestic violence cases must be cleared by supervisors in conjunction with advocates from the Family Violence Project. Charges may be reduced only in misdemeanor cases if a guilty plea is secured and there are substantial evidentiary problems. Battered women's advocates in the Seattle City Attorney's Office handle plea negotiations with defense attorneys, although they must clear final agreements with prosecutors. In plea bargaining, they report that they make certain that the most serious charge, usually assault, stays on the offender's record. With this policy in

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place, advocates have found that charge reductions have no appreciable impact on sentences in these cases, which usually involve court-mandated counseling as a condition of probation.

## References

1. Lisa G. Lerman, *Prosecution of Spouse Abuse: Innovations in Criminal Justice Response* (Washington, D.C.: Center for Women Policy Studies, 1981), p. 4.
2. Norm Maleng, Esq., King County Prosecuting Attorney, Seattle, Washington, in Attorney General's Task Force on Family Violence, *Final Report* (Washington, D.C.: U.S. Department of Justice, 1984), p. 29.
3. Written prosecution guidelines in Duluth and San Francisco are included in the case study reports developed for this project. The case studies are available from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850 (301) 251-5500.
4. Los Angeles City Attorney, "Family Violence Program Manual," third edition, January 1981, p. i. This program, which received federal funding support, ended when these funds were no longer available.
5. The stated goals are to: improve the quality of prosecution cases; provide victims with access to supportive, protective, legal and other resources; inform and reassure victims regularly throughout the course of a prosecution; increase the likelihood of conviction; and reduce recidivism.
6. Prosecution Guidelines (proposed), Duluth, Minnesota, in Ellen Pence, "Criminal Justice Response to Domestic Assault Cases: A Guide for Policy Development," Burt Galaway, ed., Domestic Abuse Intervention Project, Duluth, Minnesota, 1985, pp. 47-50.
7. U.S. Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (Washington, D.C.: U.S. Commission on Civil Rights, 1982), p. 94.
8. Lerman, *Prosecution of Spouse Abuse*, p. 27.
9. The Family Violence Project, San Francisco District Attorney's Office, Domestic Violence Felony Prosecution Protocol, enacted September 1982, p. 2.
10. Descriptive information on dispute settlement programs was obtained from Daniel McGillis, "Dispute Resolution Programs and Public Policy," draft report prepared for the U.S. Department of Justice, National Institute of Justice, January 1985.
11. U.S. Commission on Civil Rights, *Under the Rule of Thumb*, p. 96.
12. U.S. Department of Justice, National Institute of Justice, *Neighborhood Justice Centers Field Test: Final Evaluation Report*, by Royer F. Cook, Janice A. Roehl, and David I. Sheppard (Washington, D.C.: Government Printing Office, 1980).

13. See Lerman, *Prosecution of Spouse Abuse*, pp. 42-44, and Barbara J. Hart, "Testify or Prison!" Reading, Pennsylvania, 1983, which provided a basis for this discussion.
14. Lerman, *Prosecution of Spouse Abuse*, pp. 44-45.
15. *Ibid.*, p. 44.
16. 1984 Wash. Laws. Ch. 263 §23.
17. In some jurisdictions, such as Seattle, information is obtained from victims prior to release on personal recognizance of all violent offenders.
18. Judicial and Probation Guidelines (County Court), in Ellen Pence, "Criminal Justice Response to Domestic Assault Cases: A Guide for Policy Development," Burt Galaway, ed., Domestic Abuse Intervention Project, Duluth, Minnesota, 1985, pp. 51-56. These procedures also apply to presentence investigations. (See Appendix H.)
19. The issuance of a formal protection order in criminal court may require a statutory change in states where these orders are either unavailable or obtained exclusively from family or civil courts.
20. Lisa G. Lerman, "Placing Conditions on Pretrial Release of Batterers," *Response* (January/February 1981): 10.
21. Of course, orders barring contact between the victim and offender are not appropriate if the parties plan to live together. Therefore, information from the victim is essential before an order is requested.
22. Judge Roy O. Gulley, Director, Administrative Office of the Illinois Courts, Springfield, Illinois, in Attorney General's Task Force on Family Violence, *Final Report* (Washington, D.C.: U.S. Department of Justice, 1984), p. 36.
23. Attorney General's Task Force on Family Violence, *Final Report*, p. 36.
24. *Ibid.*, p. 43.
25. The Honorable Kenneth Eikenberry, Attorney General, State of Washington, Olympia, Washington, in Attorney General's Task Force on Family Violence, *Final Report*, p. 37.
26. Lisa G. Lerman, "Elements and Standards for Criminal Justice Programs on Domestic Violence," *Response* 5 (November/December 1982): 13.
27. This list of services was adapted from U.S. Department of Justice, National Institute of Justice, *Issues and Practices: Serving Crime Victims and Witnesses*, by Peter Finn and Beverly N.W. Lee (Washington, D.C.: Government Printing Office, 1984), pp. 60-66.
28. Many authors believe that, relative to assault cases involving strangers, an inordinate number of abuse victims do decide to drop charges. Others believe that this difference has been exaggerated.

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29. Nancy Seih, Assistant District Attorney of Santa Barbara, California, in Lerman, *Prosecution of Spouse Abuse*, p. 19.
  30. Field and Field, "Marital Violence and the Criminal Process: Neither Justice Nor Peace," *Social Service Review* 42 (June 1973): 227.
  31. Los Angeles City Attorney, "Family Violence Program Manual," p. 12.
  32. Prosecutor "Sam" Aaron, in Attorney General's Task Force on Family Violence, *Final Report*, p. 30.
  33. Denver City Attorney's Office, Protocol for the Prosecution of Domestic Violence, p. 3.
  34. Lerman, *Prosecution of Spouse Abuse*, p. 46.
  35. Hart, "Testify or Prison!," p. 1.
  36. The Family Violence Project, San Francisco District Attorney's Office, Domestic Violence Felony Prosecution Protocol, p. 5.
  37. Lerman, *Prosecution of Spouse Abuse*, p. 47.
  38. United States Commission on Civil Rights, *Under the Rule of Thumb*, p. 70.
  39. A recent study by the Bureau of Justice Statistics collected data on felony cases from prosecutors in a number of urban jurisdictions and found that pleas outnumbered trials by 11 to 1. U.S. Department of Justice, Bureau of Justice Statistics, "The Prevalence of Guilty Pleas," Washington, D.C., 1985.
  40. Denver City Attorney's Office, Protocol for the Prosecution of Domestic Violence, p. 3.



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## Chapter 5

### Trial, Sentencing and the Role of Probation Officers

Sentences in this area are very much lighter than comparable situations of stranger violence. It's very discouraging when everything works all the way to the end, somebody is arrested and charged and successfully prosecuted and then the sentence is so light that it's, in a sense, a final way of condoning the violence.

— an attorney<sup>1</sup>

Few domestic violence cases actually reach trial, and those that do often involve particularly serious or repeated violent crimes. As one would expect, courtroom practices vary dramatically in these cases, not only from one jurisdiction to the next, but even from one judge to another within the same court. During interviews conducted for this report, several judges expressed dismay at the lack of judicial education on domestic violence topics and the "unenlightened" attitudes of many of their colleagues on the bench when it comes to these cases. Indeed, some of these attitudes were revealed in interviews with other judges:

Even if the woman shows up in my court with visible injuries, I don't really have any way of knowing who's responsible or who I should kick out of the house. Yes, he may have beaten her, but nagging and a sharp tongue can be just as bad. Maybe she used her sharp tongue so often that she provoked him to hit her.

The good news is that, according to battered women's advocates, the attitudes of many judges have been "turned around" completely as a result of efforts to educate them about domestic violence and the role that they can play in these cases. Like many others, members of the judiciary may simply lack the information necessary to understand the dynamics of domestic violence and the steps that should be taken by criminal justice agencies in response to this kind of violence. While group meetings with judges in a particular court have often proved useful in raising some of the critical issues of judicial involvement in domestic violence cases, some advocates report that

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personal efforts aimed at individual judges have been most effective in changing both the attitudes and courtroom practices of these judges. In fact, one judge who was initially among the most resistant to changing practices in her own jurisdiction has become an ardent supporter of the local domestic violence program and taken an active role in efforts to improve national judicial education in this area.

## **Communicating with the Defendant and Victim in Court**

As noted earlier, judges' words and behavior directed at the defendant should be carefully chosen. During the trial itself, a judge can underscore the fact that the criminal justice system holds abusers accountable for their violent behavior. As one judge told a defendant:

I don't care if she's your wife or not. A marriage license is not a hitting license. If you think that the courts can't punish you for assaulting your wife, you are sadly mistaken.

When another defendant asserted that his girlfriend had provoked a beating, the judge warned:

This is *your* problem, not your girlfriend's. You will damage your next relationship in the same way if you don't get help.

Judges can also help to relieve some of the pressure on the victim for testifying against the defendant:

It's not your wife's fault that she's here to testify. She has no choice. I could have arrested her to make her come. She's not prosecuting you, the city is. She's required to tell the truth—it's perjury if she doesn't.

Even if the victim does not testify in court, the judge can remind the defendant that charges were brought by the prosecutor, not the victim, and that the government is responsible for the case going forward.

Defendants in these cases sometimes try to justify their violent behavior by explaining in court the victim's actions that led up to a battering incident, or by describing general problems in the defendant's relationship with the victim. This type of justification fits with the clinical observation that batterers are often unwilling to accept responsibility for their violent behavior, and tend to deny or minimize the seriousness of the violence—to themselves as well as to others.<sup>2</sup>

It is important for judges to explain to defendants why the violent behavior is being separated out and sanctioned by the criminal justice system: Battering is an illegal and unfair method of dealing with problems. If the victim herself first used violence against the defendant, then the court wants to know about it. However, other relationship issues and actions by the victim are not relevant to the case, and will not be considered as justification for an assault.

While the trial underscores the serious criminal nature of domestic violence to the defendant, for the victim it is often the most stressful part of her involvement

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with the criminal justice system. In particular, testifying in open court, with the defendant present, is often a terrifying experience. In many jurisdictions, victim advocates accompany battered women to the courtroom, to provide emotional support as well as practical information on court procedures during the trial. Advocates also assist these victims by arranging for child care or transportation when necessary.

## **Sentencing Options**

Sentencing options and practices cover a wide range in domestic violence cases. Criticism of the judicial response to battering has typically focused on judges' leniency toward offenders in these cases, failing to impose sanctions commensurate with similar violent crimes involving strangers.<sup>3</sup> Upon a plea or finding of guilty, an offender may be incarcerated, fined, placed on probation, or some combination of these three sanctions. Maximum terms of incarceration, fines, and probation periods are, of course, determined by state laws, a particular court's jurisdiction, and whether the offense constitutes a misdemeanor or a felony.

### *Fines*

Fines are imposed frequently in domestic violence cases, generally ranging from \$25 to \$150. The amount of the fine may be strictly defined by law. The law may also prescribe how the fines are used; some stipulate that they be used to fund battered women's shelters or local family violence projects.

### *Probation*

Sentences involving probation with a suspended jail or prison term are also common. The judge establishes certain conditions of probation. If the offender meets these conditions, the case is closed without any time being served. If the offender fails to adhere to these conditions, probation can be revoked and the offender can be incarcerated. In jurisdictions where there are no specialized programs available for court-ordered batterers, judges may impose a term of straight probation during which the offender is supervised to ensure that he is no longer being violent. In jurisdictions that do have appropriate programs for batterers, judges have a great deal of flexibility in establishing the conditions of probation. Judicial and Probation Guidelines (Appendix H) of the St. Louis County Court in Duluth, for example, suggest that the following conditions of probation be established:<sup>4</sup>

1. Restrain from harassment, molestation, threats or use of violence against the victim.
2. Enter into, cooperate with, and successfully complete the Domestic Abuse Intervention Project's counseling and education program.
3. No further violations of any criminal statutes or ordinances [which would also constitute a separate criminal offense].
4. Payment of any fees in a timely manner.

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5. Other provisions deemed just and appropriate for the protection of the victim and to further promote the efficient administration of justice, i.e.
    - a. No use of alcohol or other mood altering drug and assessment for chemical dependency or alcohol abuse.
    - b. Enter into and completion of chemical dependency program.
    - c. Enter into and completion of a child abuse counseling and educational program.
    - d. Restricted or no contact with the victim.

Properly monitored probation sentences offer a great deal of promise as a vehicle to protect victims' safety and obtain batterer treatment aimed at ending their violent behavior. Often, protection or restraining orders are issued as a condition of probation; orders that were issued as a condition of pretrial release can simply be extended through the probationary period. As in pretrial release, it is essential that the victim be consulted to determine the kinds of restrictions that need to be placed on the offender to provide for the on-going safety of the victim and other family members. If an order is warranted, the terms of the order should be determined in light of the victim's particular safety needs. For example, if the victim plans to continue living with the offender, an order might preclude him from harassing, threatening, or assaulting her, or might require the temporary removal of weapons from the household. If the victim does not plan to live with the offender, he might be barred from contacting her in any way, restricted to having limited contact, or permitted only supervised child visitation.

Courts frequently require participation in batterer counseling or educational programs as a condition of probation. (As noted in the previous chapter counseling and other requirements attached to a probation sentence can also be included through pretrial diversion.) Experts agree that these men typically refuse voluntary treatment even when special batterer programs are available in the community. Impulsive tendencies, denying or minimizing the seriousness of their violent behavior, and a general unwillingness to accept responsibility for the violence lead the vast majority of batterers to avoid or fail to complete intervention programs.<sup>5</sup> The burden of motivating batterers to participate in intervention programs has traditionally been placed on the victim. In discussing her model court-mandated counseling program for batterers, Dr. Anne Ganley refutes the notion that victims can or should be expected to motivate their batterers to accept treatment:

While the batterer, indeed, may need a consistent and external motivator, it is unrealistic to expect a person who is in crisis, as the victim of assault is, to be that . . . motivator. A primary characteristic of a person in crisis, such as the victim, is inconsistency. In addition, the victim remains under tremendous pressure from the batterer.

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It is more effective for the community via its courts to assume that motivating role, which is needed initially by many men who batter. In order to remain battering-free, these men must eventually accept responsibility for their battering, be more internally directed, and be less impulsive. Court-mandated counseling simply provides these men with the opportunity to begin to change their violent behavior—an opportunity which some would not otherwise take. Furthermore, court-mandated counseling places community sanctions against battering, which constitutes a crime against the community as well as an individual victim.<sup>6</sup>

### *Incarceration*

As stated by the Attorney General's Task Force on Family Violence, "In serious cases, incarceration is the only punishment that fits the crime."<sup>7</sup> Incarcerative sentences are both appropriate and necessary in cases involving more serious violence, a long history of abusive behavior, significant threat of continued harm if the offender were released, or failure at previous alternatives to incarceration. Incarceration is rarely ordered for an offender's first misdemeanor offense; it would be appropriate in these cases if the offender has already violated a protection or no contact order, has continued to be abusive despite extensive counseling, or is resistant to treatment.<sup>8</sup> In some jurisdictions, such as Duluth, educational groups (discussed in the next chapter) have been developed for batterers while they are in jail.

### *Creative Sentencing*

Judges are urged to experiment with creative sentences in domestic violence cases, aimed at holding offenders accountable for their crimes, ending abusive behavior, and meeting the needs of victims and other family members. In some domestic violence cases, restitution to victims is appropriate and should be considered in jurisdictions where restitution programs are available for victims of crime. When appropriate, offenders should be ordered to reimburse the victim for expenses resulting from the crime, such as lost wages; medical, counseling, and other treatment fees; and replacement costs of any property that was destroyed.<sup>9</sup> In the Seattle Municipal Court, for example, restitution is ordered in domestic violence cases where the victim's medical bills were not covered by health insurance, or where the violence resulted in some type of property damage.

Experts in domestic violence agree that there is not one type of sentence that is appropriate in all or even a majority of these cases; what "works" with one offender can fail completely with another, even in cases that are similar on several dimensions. For example, some batterers comply with no contact orders and court-mandated counseling because they are frightened by the prospect of serving time in jail, while others readily violate these orders, especially if they have "gotten away with it" before. Some batterers' resistance to therapy is overcome with time when they are ordered

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by the courts to attend counseling sessions, while others continue to resist for the duration of treatment even if they do "participate" at a minimal level.

Multiple interventions are appropriate for some of these offenders, such as sentences that combine fines, restitution, incarceration, and then probation with an order to batterer counseling. For example, a sentence imposed in the Seattle Municipal Court required:

- 90 days suspended jail time conditioned upon two years of probation;
- no contact with the victim;
- batterers' counseling at Family Services of King County;
- alcohol evaluation and treatment as recommended by the probation department;
- good behavior—no alcohol-related offenses, no drug-related offenses, no criminal behavior;
- possess no weapons; and
- medical restitution to the victim—\$250.

With "split sentences," a certain portion of a jail or prison term is committed (i.e., served), with the remainder suspended upon the offender's compliance with specified conditions of probation. Weekend or evening incarceration may be appropriate in cases involving less serious violence when the victim wants the offender to continue to work and provide financial support to the family. Because there is no patent "formula for success," each domestic violence case should be considered individually in light of all available sentencing alternatives.

## **Factors Affecting the Sentencing Decision**

Sentencing recommendations and formal mechanisms for obtaining victim input are often used to inform the judge's decisions in domestic violence cases. As one would expect, judges vary a great deal in the degree to which they actually consider sentencing recommendations and victims' wishes when sentencing offenders; there are many other influences on judges' sentencing decisions. In particular, the present crowded prison and jail conditions throughout the nation can influence judges' decisions about incarcerating batterers.<sup>10</sup> These kinds of factors, in addition to traditional attitudes and myths surrounding domestic violence, must be considered when examining sentencing practices in this area.

### *Sentencing Recommendations*

Prosecutors, probation officers, or both are often called upon to develop a sentencing recommendation for presentation to the judge. Like the judge's ultimate sentence, these recommendations should reflect the facts of the case as well as the impact of the crime and sentence on the entire family. Written domestic violence policies should

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include some guidelines for developing these recommendations. The San Francisco District Attorney's Felony Prosecution Protocol requires that "The DA's recommendation for sentencing will be based on the facts of the case and will be commensurate with sentences for other violent crimes."<sup>11</sup> The Family Violence Program Manual of the Los Angeles City Attorney's Office states that:

The defendant's participation in a court-approved counseling program will be recommended as a condition of probation in all cases . . . . If the victim sustained moderate or severe injuries or the defendant has been convicted of prior acts of family violence, the deputy city attorney will urge that an appropriate period of actual incarceration should be imposed.<sup>12</sup>

In Duluth, Minnesota, Judicial and Probation Guidelines of the St. Louis County Court offer the following guidance to probation officers for misdemeanor domestic-related assault convictions:

The presumptive sentence recommendation for the first conviction absent aggravating circumstances shall be 30-60 days in the county jail, sentence stayed for a period of one year upon conditions which provide for the protection of the victim and attempts to rehabilitate the offender . . . .

Upon conviction for a second offense or similar offense in a domestic related case, the presumptive recommendations, absent aggravating circumstances, shall be 60-90 days in the county jail with the offender serving a minimum of 20 days and probation for a one-year period following incarceration with similar conditions imposed as following the first assault.

There shall be no presumptive recommendation for sentencing following a third conviction except that said recommendations shall not be less than 90 days of incarceration and a minimum of 60 days served.<sup>13</sup>

Aggravating circumstances include serious bodily injury, forced sexual contact, use or threat with a dangerous weapon, verifiable history of physical abuse, and on-going harassment of the victim.

### *The Victim's Influence on Sentencing*

Victims surely should have a voice in sentencing, and this voice is now being sought in an increasing number of states and jurisdictions for many types of crimes, not just domestic violence. The impact of a crime on the victim and the victim's wishes regarding sentencing can be sought and conveyed in a variety of ways. For example, the prosecutor or victim advocate may routinely solicit information from the victim, which may then be described to the judge or incorporated in the prosecutor's own sentencing recommendation to the court. This can be done either orally or in writing.

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In the Seattle City Attorney's Office, victim advocates prepare a written sentencing recommendation in which the victim's preferences regarding sentences are noted, even if they differ from the advocate's own recommendation.

Probation officers solicit information from the victim in many jurisdictions, often as part of a presentence investigation. This may include a formal "victim impact statement" which details the victim's statements on the physical, psychological, and financial effects of the crime, as well as the victim's thoughts and suggestions on sentencing. Fourteen states have statutes that make victim impact statements a mandatory part of presentence investigations.<sup>14</sup> In St. Louis County (Duluth), Minnesota, probation officers must make a reasonable effort to contact the victim, victim advocate, or victim agent as part of each presentence investigation in order to inform the victim of the sentencing options available to the court and obtain a statement from her regarding the case. The probation officer also discusses the need for probation conditions aimed at protecting the victim's safety.<sup>15</sup>

Domestic violence cases differ from stranger violence cases because of the victim's relationship with the offender and the potentially huge impact of the imposed sentence on the victim's daily life. It is often difficult to balance the victim's wishes with the need to enforce the law and impose sentences commensurate with those for other violent crimes. According to many practitioners, the vast majority of battered women want help in stopping the violence without incarcerating the abuser. Indeed, the frequent use of sentences involving batterer counseling, rather than confinement, is often a major factor in a victim's decision to seek or cooperate with prosecution. Some of the victims want to continue their relationship with the offender; some must depend on the offender for financial support or other resources.

Victim advocates, prosecutors, probation officers, and judges should always seek sentences that reflect the victim's wishes when this will not result in penalties that are overly lenient.<sup>16</sup> As noted above, jail or prison time may be necessary in a case involving serious injury, a long pattern of abusive behavior, or an offender who resists rehabilitation efforts, even though the victim may request a non-incarcerative sentence. To prevent victims from developing unrealistic expectations about their role in sentencing, they should always be informed that, while their views are considered, the ultimate sentence is determined by the judge alone. As stated in the Felony Prosecution Protocol of the San Francisco District Attorney's Office, "While the feelings of the victim should be solicited in forming said [sentencing] recommendation, it should be made clear to the victim that the judge has the sole discretion to impose any sentence."<sup>17</sup>

## **The Role of Probation Officers Following Conviction**

A large number of offenders in domestic violence cases are placed on probation. In all of these cases, the probation officer's role is to supervise the offender and request that his probation be revoked if there is any reincidence of the crime.



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Where court-ordered intervention programs are available, probation officers play a more extensive role: they are responsible for developing a court-ordered treatment plan for the offender; linking the offender to counselors and other professionals in the community who provide court-ordered intervention; monitoring the offender's compliance with probation conditions by gathering information from the offender, the victim, and the counselor; and bringing the case back before the judge for probation revocation if the offender fails to comply with any of the conditions that were imposed.

### *Specialization*

In larger cities, probation agencies can establish a special staff unit to handle all domestic violence probationers. As in other criminal justice agencies, this kind of staff specialization carries several advantages. Specialization ensures that resources and attention will be devoted to this group of offenders. Probation officers working exclusively on spouse abuse cases become knowledgeable about the dynamics of battering, the needs of both victims and offenders, programs available in the community for court-ordered batterers, and the procedures to monitor batterers' compliance with the conditions of probation. Specialization also leads to better working relationships between probation officers and offender counselors by virtue of their frequent contact with one another. The relationship between these two groups affects the degree to which an offender's compliance with probation conditions will be properly monitored. In one jurisdiction, several counselors agreed that they are more likely to report information on an offender to the probation officer assigned to the case if the probation officer is someone who they know and work with repeatedly.

Recognizing these advantages, several probation agencies have assigned one or more staff members to handle all domestic violence cases involving a term of probation. In San Francisco, for example, domestic violence probationers were previously supervised by one of 38 probation officers in the Adult Probation Department's Community Services Division. A special domestic violence unit was created "[b]ecause of the extraordinary dynamics of domestic violence, the specialized nature of rehabilitation services for the defendants, and the need for a credible threat of revocation should probation conditions be violated . . ."<sup>18</sup>

While probation officer specialization carries several benefits, many jurisdictions where a special unit is infeasible have nonetheless succeeded in improving domestic violence policies. When the domestic violence caseload is handled by probation officers throughout the department, it is especially important to establish detailed policies and procedures for domestic violence cases, and to familiarize all staff with these policies.

In some jurisdictions, there are no probation officers at all for misdemeanor cases, which typically means that judges are unable to place offenders on probation and mandate them to intervention programs in the community. Some judges have

found creative ways around this limitation, however. One judge in a Republic, Washington court with no probation department has identified some local mental health agencies where batterers can be sent for evaluation and counseling. Offenders must return to court for regularly scheduled review hearings and provide the judge with proof of attendance at court-ordered counseling sessions.

### *Written Policies*

Whether or not a special unit has been established, written policies for domestic violence cases should be developed in each probation department. These policies should include rules and guidelines for all phases of probation officer involvement. Of the jurisdictions studied, St. Louis County (Duluth), Minnesota, has developed the most comprehensive guidelines for probation officers.<sup>19</sup> These guidelines apply to misdemeanor criminal cases involving domestic-related offenses. They contain step-by-step procedures for monitoring conditions of pretrial release and probation, as well as conducting the investigation for pretrial release or presentence investigation; developing sentencing recommendations following conviction; informing the offender of conditions attached to pretrial release or probation; and developing written agreements to document these conditions. Deviations from the procedures outlined in the probation guidelines must be documented in the offender's file, reported to the court, and submitted to the probation officer's supervisor for review.

### **The Intervention or Treatment Plan<sup>20</sup>**

Probation officers are generally responsible for developing a specific plan for court-ordered intervention, often as part of a presentence investigation. Probation guidelines should specify the process, types of information, and information sources to be used in developing this plan. For example, probation officers might routinely contact each victim for information on: the assailant's history of violence; the victim's perception of the assailant's use of alcohol or drugs; and the victim's knowledge of the assailant's previous involvement with treatment, counseling, educational, or other intervention programs.<sup>21</sup> In Seattle, the probation counselor contacts the victim advocate at the City Attorney's Office who is assigned to the case for this type of information, and then sets up a meeting with the defendant in order to develop a treatment plan.<sup>22</sup>

Some batterers need other kinds of intervention in addition to that which focuses on stopping violent behavior. Pence points out that, while the court must use very specific legal definitions regarding alleged criminal acts in order to establish guilt or innocence, effective intervention in these cases depends on a broader understanding of the offender's use of violence, as well as factors that influence this behavior.<sup>23</sup> Counselors report that treatment for alcohol or drug abuse is needed in many of these cases. When alcohol or drug problems exist, they usually must be addressed before the offender enters a specialized program for batterers, although there are some programs that can address both kinds of problems concurrently.

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In order to make appropriate referrals, probation officers must be knowledgeable about the current programs and intervention alternatives available in the community. The fee schedules of different service providers and offenders' health insurance coverage should be considered. Agencies and professionals providing court-mandated counseling may charge different rates and have rules about the kinds of clients they can accept. Many counselors feel that it is important to charge these clients, even a token amount, because it constitutes an added consequence of their violent behavior. The fees also serve as a reminder to offender clients that they are responsible for changing this behavior. Furthermore, to the greatest extent possible, funds available for family violence programming should be devoted to shelter and other services for victims.

In Duluth, professionals from each of three local counseling agencies with sliding scale fee schedules were trained to counsel court-ordered batterers. In the Seattle area, court-mandated counseling is provided by several professionals representing different organizational affiliations: private practice, a United Way counseling agency, a health maintenance organization, and a Veterans Administration medical center. These affiliations do, of course, affect who is eligible for services and the fees charged to clients. Fees range from approximately \$15 per session for a counselor in private practice to free services for eligible veterans from the VA medical center. In San Francisco, batterer counseling is available from two sources: the offender component of the Family Violence Project, which is part of the District Attorney's Office, and the Center for Special Problems, a city-wide outpatient mental health clinic.

Communication, cooperation, and mutual feedback between probation officers and service providers are absolutely essential. For example, if offender counselors feel that they are receiving a large number of inappropriate client referrals from the court system, they must let probation officers know about the problem and how it can be changed. Perhaps probation officers can reduce the number of inappropriate referrals by screening more explicitly for alcohol or drug problems before sending offenders to batterer counseling programs. Some counselors have suggested that the probation department refer batterers to a mental health agency for an initial assessment before the actual court-ordered treatment plan is developed. Counselors in our study sites report that they have detected an improvement over time in probation officers' sensitivity to domestic violence issues and in their ability to develop appropriate intervention plans for batterers. Clearly, probation officers' skills in this area are enhanced when they specialize in domestic violence cases.

## **The Court Order**

The actual court order to treatment is, of course, issued by the judge as part of the offender's sentence. The exact wording of the order can be important and certain aspects may be determined by court rules. An order can stipulate "counseling to end battering behavior" rather than generic counseling, which might not focus on the offender's use of violence. In some courts, orders may be quite specific, e.g.,

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stating that the offender must participate in the group counseling program for batterers at the King County Family Service Agency.

Some probation officers and batterer counselors have suggested that these orders simply require "treatment or other intervention as required by the probation agency" in order to permit greater flexibility in meeting offenders' individual needs. Many situations can arise in which this kind of flexibility is needed. For example, if the program to which an offender was referred is full with a long waiting list, the probation officer may wish to refer him instead to another program that provides the same kind of services and has an opening available. Similarly, if the offender is found to have an alcohol or drug problem that was not identified during the presentence investigation, the probation officer can require the appropriate treatment in addition to that which was already ordered by the court.

A problem with court orders was recently solved in Seattle through a cooperative effort involving batterer counselors, probation officers, and judges. In the past, judges typically mandated counseling for a specified period of probation, such as six months. Counselors noticed that some defendants were entering counseling up to five and one-half months into the probation period, often because they saw this as a way of manipulating the system and avoiding the full dose of counseling. Counselors brought this practice to the attention of probation officers and judges, and judges have responded by trying to mandate a minimum period of *counseling* in the court orders.

## **Probation Agreement and Release of Information Form**

The probation officer should inform the offender about the court-ordered intervention program(s), as well as other conditions of probation. The probation officer should also explain the consequences for violation of these conditions, such as revocation of probation after a reincidence of violence or specified number of absences from counseling. After receiving this information, the offender should be asked to sign: (1) an agreement to comply with court-ordered intervention programs and other probation conditions; and (2) a consent to information exchange between service providers and the probation department or other agency responsible for monitoring the offender's compliance with the conditions of probation. A separate form may be used for each of these purposes, or one form may be developed to include both elements. Copies of the forms used in Duluth appear in Exhibits 11 and 12.

The first type of form sets forth in writing the "ground rules" of probation that were discussed with the offender. This form should be specific regarding expectations of the offender, such as:

- the fact that he must assume responsibility for arranging counseling, paying counseling fees, and reporting to the probation officer;
- the circumstances under which he would be considered in violation of the court order and the consequences of such violation; and

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- the conditions, procedures, and offender's rights regarding a protection order if such an order was issued as a condition of probation.<sup>24</sup>

The form might also include other requirements placed on the offender, such as treatment for alcohol or drug abuse, no further violence, no possession of weapons, and notification procedures if there is a change in the offender's address or telephone number.

The second type of form concerns the release of information between service providers and the probation department or other agency responsible for monitoring the offender's compliance with probation conditions. According to certain state laws and professional ethical regulations, communication between a licensed counselor and client, as well as records of counseling sessions, are privileged communication and cannot be released without the client's permission. When probation is contingent on court-ordered counseling, however, it is essential that the counselor be able to inform the probation officer of an offender's absence from required counseling sessions or failure to participate in counseling. If a counselor discovers that the offender has continued to batter during the probationary period, he or she also needs the freedom to report this information to the probation officer.

Probation officers frequently ask for a commitment from counselors to provide information, without making a commitment to provide information in return. Counselor Anne Ganley stresses the need for a *two-way* information exchange between probation officers and counselors.<sup>25</sup> Just as the probation officer needs information from the counselor, the counselor should also be furnished with information from the probation officer who is assigned to the case. At the time of referral, this should include a summary of all probation conditions and background information on the offender, such as his history of violence and record of prior incidents reported to police. After the offender has begun court-ordered counseling, the counselor should be given information on further acts of violence committed by the client, the client's progress in other court-ordered programs, feedback from the client's meeting with the probation officer, or changes in the conditions of an active protection order. These factors can affect the counselor's ability to assess the client's progress, provide quality services, and report violations of protection orders or other probation conditions.

The confidentiality policy observed for court-ordered intervention must be described fully to offenders before they are actually referred to a program. The offender must then agree to and sign an interagency release of information that will permit the necessary information exchange to take place. This release may specify the kinds of information that will be given, such as attendance and participation at sessions, threats or use of violence, and the counselor's evaluation or recommendation for further intervention and treatment. A copy of this form should be given to the referral agency.

The offender should also be told that, as part of the process of monitoring the offender's compliance with the conditions of probation (see below), the victim will

## Exhibit 11

# DOMESTIC ABUSE INTERVENTION PROJECT Contract for Participation

Name \_\_\_\_\_

On \_\_\_\_\_ you were required by \_\_\_\_\_ to participate in the Domestic Abuse Intervention Project. The project consists of a 26-week educational and counseling program. The first two weeks are orientation sessions. The second phase of the program consists of 12 counseling sessions and the last phase is the Mens Educational Group for 12 weeks. You will also be required to attend at least one intake/assessment session with your assigned counselor.

1. Week 1 and 2, I agree to attend two orientation sessions at Damiano Center, 206 W. 4th St., Rm. 19 on \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ from 4:30 to 5:15.
2. \_\_\_\_\_ I agree to attend 12 counseling sessions at \_\_\_\_\_.  
\_\_\_\_\_ I agree to contact my counselor \_\_\_\_\_ at \_\_\_\_\_ to set up an interview and sign up for the 12-week group by \_\_\_\_\_.  
\_\_\_\_\_ I agree to contact my counselor if I must miss a session and I agree to make up any missed sessions.  
\_\_\_\_\_ I understand that if I miss more than 2 counseling sessions that I may be found in violation of this contract and reported back to the court for failure to fully participate in the DAIP program.  
\_\_\_\_\_ I understand the counseling agency will charge me a fee for services based on my family income and ability to pay.
3. \_\_\_\_\_ I agree to attend one Mens Educational Group meeting each for 12 weeks following completion of the counseling sessions. Mens groups meet each Tuesday, 7-9 p.m. and Thursday, 7-9 p.m. You will be assigned to one of these groups upon completion of your counseling sessions. Mens groups meet at Damiano Center, 206 W. 4th St.  
\_\_\_\_\_ I agree to contact the DAIP at 722-2781 if I must miss a Mens group meeting and to make up any missed meeting.  
\_\_\_\_\_ I understand that if I miss more than two weeks of Mens group meeting that I may be found in violation of this contract and reported back to the court for failure to fully participate in the DAIP program.
4. \_\_\_\_\_ Other.

I authorize my counselors and facilitators of Mens group to report my attendance record to the DAIP. I also authorize them to report any acts of violence on my part that they have knowledge of during the time I am in the program and a brief evaluation of my progress as requested by the court or DAIP.

## Exhibit 11 cont'd

I authorize the DAIP to provide any information regarding my participation in the program or reported acts of violence to the court.

I authorize the DAIP to provide \_\_\_\_\_ with the name of my counselor and to inform her/him of any pending court hearings regarding my involvement with the DAIP. (name of victim)

I agree not to be violent with any person during my participation in the DAIP program.

I have read this contract and understand my requirements with the DAIP.

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

The following applies to persons excluded from a residence or contact with their partner. I have been informed by the DAIP staff that a violation of the court which states:

\_\_\_\_\_  
\_\_\_\_\_  
is a misdemeanor. It has also been explained to me that state law requires police officers to arrest persons violating this order. I also understand that no one, including \_\_\_\_\_ can change the order without the permission of the court. I understand that I can request a court hearing to change the order at any time.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Exhibit 12

### Domestic Abuse Intervention Project

I understand that the courts have ordered my participation in the Domestic Abuse Intervention Project which involves several community agencies. I also understand that the DAIP educational and counseling program is provided by a team of persons from the Human Development Center, Lutheran Social Services, Family Service of Duluth, and the DAIP staff. I authorize members of the DAIP counseling team to exchange information among each other obtained through my participation in court mandated counseling and Mens educational groups.

I voluntarily authorize members of the DAIP counseling team or staff to report the following information regarding my participation to representatives of St. Louis County Court or District Court and Arrowhead Regional Corrections:

1. My attendance at all required meetings.
2. Any use of violence or battering behavior on my part.
3. Any reasons for suspending or terminating me from the program.
4. Any recommendations and their rationale to the court regarding a change in my counseling agreement.

I understand that the only purposes for which this information will be used is to report to the courts on my participation in the project and to allow counselors, DAIP staff and educational group facilitators to cooperatively provide an educational and counseling service to me as part of my court ordered counseling program.

I understand that my records and the information contained therein are protected under certain governmental and ethical regulations and cannot be released without my written consent or unless subpoenaed by a Court of Law.

I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it and that in any event this consent automatically expires on \_\_\_\_\_.

The following persons have been identified to me as members of the Domestic Abuse Intervention Project counseling and education team:

Domestic Abuse Intervention Project -- ELLEN PENCE, PAUL WATERMAN,  
CORAL MCDONNELL

Human Development Center -- RICHARD STEPP, SHIRLEY LEVINE

Lutheran Social Services -- BOB SCHULTZ, SANDY CHRISTIAN

Family Service of Duluth -- NORM HERRON, CHRIS KETELSEN, KEN STEIL,  
KATHY CADY

Mens Educational Groups -- MICHAEL PAYMAR, STEVEN TICKLE, BOB  
BRENNING, JOHN MCBRIDE

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Participant Signature

\_\_\_\_\_  
Witness



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be informed about the probation conditions and encouraged to contact the probation officer if any of these conditions are violated. The fact that this information will be furnished to victims should be included on one of the written forms prepared for the offender's signature.

## **Enforcing the Conditions of Probation**

Probation gives offenders a chance to avoid incarceration by meeting certain specific conditions, which often include participation in a counseling or educational program, compliance with a protection order, and no further use of violence. If an offender's compliance with these conditions is not monitored and he is able to violate them without facing any negative sanctions, the court order—indeed, the entire criminal justice process—has failed in its mission to treat spouse abuse as a crime, hold abusers accountable for their violent behavior, and deliver a clear and consistent message to the entire community that domestic violence will not be tolerated. Probation should be revoked when the offender fails to adhere to the conditions that were established by the courts. In short, the court order must have “teeth”:

The court should not issue orders it is unable or unwilling to enforce. The expression “you can’t con a con” is appropriate with this group of offenders. Assailants will test the limits the court imposes. If, in a class of twenty men, one person is missing from a class because he is in jail for reoffending or non-cooperation with counseling, the other nineteen men firm up their commitment to non-violence and regular attendance. The enforcement of court orders and agreed-upon policies and procedures is the backbone of any effective intervention process.<sup>26</sup>

## ***Monitoring Compliance***

The primary responsibility for monitoring compliance with the conditions of probation rests with the probation officer. However, effective monitoring relies on information that is available from offenders, counselors or other providers of court-ordered services, and victims. Probation officers must take steps to get the necessary information from each of these sources. For example, a victim might not know who to contact if the offender batters her again during the probationary period or violates other conditions of probation. Indeed, she may not even know what conditions were included in the court order. In some cases, probation officers may assume that the offender is complying unless the victim or counselor reports a violation. At the same time, counselors may feel that providing counseling is their sole responsibility and it is the probation officers' job to check on probationers' attendance and monitor compliance with the conditions of probation. Unless the probation officer actively seeks this kind of information from counselors, it may never be reported.

Probation officers can develop a system and establish certain ground rules to prevent such breakdowns in communication. The procedures for monitoring offender

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compliance must be carefully laid out as part of the written probation guidelines for domestic violence cases.

In developing these procedures, it is essential that probation officers and offender counselors work together to reach mutual agreement and understanding of their respective roles in monitoring compliance. A non-criminal justice agency in Duluth—the Domestic Abuse Intervention Project—coordinates and monitors the referral and treatment of all court-ordered offenders to three local agencies that provide group counseling for batterers. DAIP provides feedback and information to probation officers if the court needs to become involved again in a case for any reason. (This function is usually carried out solely by the probation agency.) A written cooperative agreement between DAIP and the three counseling agencies was developed, which specifies the procedures that each side is expected to follow in court-ordered cases, beginning at the moment of referral. This agreement, which is reproduced in Appendix J, can serve as a model for other jurisdictions in developing similar agreements tailored to their own local policies and practices. In most jurisdictions, an agreement would be developed between the probation department and counseling agencies.

Probation officers should make it as simple as possible for counselors to report information. For example, a brief checklist can be developed for the counselors, listing the items that should be reported to probation officers in each case. The kinds of information that probation officers will furnish to counselors should also be clearly outlined. As one would expect, there is wide variation from one jurisdiction to the next regarding the specific agreements reached between probation and counseling agencies, and the specific procedures used to monitor offender compliance in these cases. Some of the major questions and issues that probation agency decisionmakers should consider in developing these procedures are presented below:

• *Reporting Further Acts of Violence*

- What kinds of violent acts should be reported by counselors?  
At a minimum, counselors should be required to report all further battering that constitutes criminal behavior, e.g., assault, harassment, property destruction.
- In some jurisdictions, counselors are only required to report acts that resulted in injury to the victim. If this kind of policy is adopted, how should counselors determine whether a violent act actually resulted in injury?
- Do counselors have the discretion to decide not to report a violent act if they believe that nonreporting is in the best interest of both the victim and the offender?
- What is the process for reporting acts of violence during the probationary period? Do counselors and victims both know who to contact with this information?

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- *The Court-Ordered Referral Process*

- How are offenders assigned to different court-ordered programs (e.g., availability of space, program specialty, offenders' work schedules)?
- What information is routinely furnished to counselors at the time of referral (e.g., demographic data, history of violence, police reports, signed release of information form, active protection orders, summary of other probation conditions)?
- What procedures are followed if a counselor feels that a particular client referral is inappropriate? Is the counselor responsible for recommending an alternative program to the court?
- Who is responsible for scheduling the offender's first appointment with the counselor or referral agency? If the offender must make this appointment, is he given a maximum time frame in which to do it, such as one or two weeks? How does the probation officer determine whether the offender has contacted the referral agency within this time frame? What steps are taken if the offender does not make contact?
- How are offenders supervised while they are waiting to be admitted into a treatment program? (Many programs for batterers are full with long waiting lists. Offenders may have to wait six weeks or more before they can be admitted into treatment.)

- *Participation in Intervention Programs*

- Who is responsible for maintaining offenders' attendance records for required sessions—counselors, probation officers, or an outside agency? Do probation officers need verification of each required session that the offender attends, or just information on absences from required sessions?
- Are offenders required simply to attend sessions, or must they participate as well? If so, how is "participation" defined—completion of homework assignments, speaking in class, etc.?
- How is information on attendance reported? Will probation officers contact offender counselors on a regular basis for oral reports? Are counselors required to call probation officers to report violations? Are offenders required to obtain signed forms from their counselors indicating that they attended each session?
- What steps should be taken by an offender who must miss a required session? Are any absences considered justified? Can an offender make up a missed session?

- How many absences constitute violation of probation? Is the offender notified before he reaches the maximum number of absences? If so, how is he notified?
- What kind of information should the counselor provide to the probation officer at the end of the intervention period—a recommendation on whether further treatment is needed, the client's level of success in ending his violent behavior, etc.?
- *Protection Orders*
  - Is the victim aware of the conditions attached to a protection order? What steps should the victim take if she wishes to change the conditions of an active protection order, for example, to add or eliminate a condition that excludes the offender from her residence?
  - Is the counselor responsible for reporting protection order violations? If so, how are the counselors kept informed about the conditions attached to these orders?
  - What steps should be taken by the victim and/or counselor in order to report a protection order violation? How must violations be documented for the court?
- *Other Conditions of Probation*
  - Is the counselor responsible for reporting on the offender's behavior regarding other probation conditions as well, such as the counselor's knowledge regarding the offender's participation in an AA program? If so, how should this information be reported?
- *Meetings with the Offender*
  - Is the offender required to meet regularly with his probation officer throughout the probationary period? Should these meetings continue for the duration of offender counseling? Most counselors feel that it is inappropriate to substitute counseling sessions for these meetings.

As noted earlier, all requirements placed on the offender should be spelled out in the written agreement that the offender signs prior to referral. In addition, each victim should be given information about all of the probation conditions that were established, as well as the steps that she can take if the offender violates any of these conditions. A form letter containing this information can be sent from the probation department for this purpose. In Duluth, the victim receives a letter from the probation officer, which states that the offender was convicted and describes the conditions of probation. The letter, reproduced in Exhibit 13, urges victims to contact the

## Exhibit 13

### Sample Letter to Victim from Probation Officer, Arrowhead Regional Corrections Probation Department, Duluth

Dear

As you know, on \_\_\_\_\_, \_\_\_\_\_ was  
(date) (offender's name)  
convicted and sentenced for \_\_\_\_\_. I have been assigned  
by the court to monitor his compliance with several court orders including that he: 2) not harass, threaten or physically abuse you in any way  
2) that he not be at or near your residence at \_\_\_\_\_  
(address)  
3) that he participate in counseling through the Domestic Abuse Intervention Project.

If you wish to have the second provision of this agreement altered over the next year or you believe that for your safety, any additional provisions are necessary, you may contact me at \_\_\_\_\_ to discuss  
(phone no.)  
this matter. It is important that you feel free to call me if you are being threatened, harassed or abused by \_\_\_\_\_. You may also find  
(offender)  
the educational groups conducted by the Women's Coalition to be useful in what is most likely a difficult and confusing time for you. I encourage you to call the Women's Coalition at 728-3679 to inquire about these groups.

Sincerely,

Probation Officer

\* Note: Provision 2, restricting assailant from residence, is only ordered at the victim's request.

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probation officer if the defendant threatens, harasses, or abuses her in any way, or if she would like to request any changes in an active protection order. A contact letter at this stage may also be used to inform victims of counseling and support services that are available for them in the community. Accordingly, the form letter used in Duluth encourages victims to call the local battered women's shelter to inquire about educational groups held there. Three months after the offender was placed on probation, the probation officer sends a second letter to the victim, reminding her of the phone numbers that she can call if the offender is not complying with the court order.

### *Revoking Probation*

The monitoring system described above is aimed at identifying those offenders who do not comply with the conditions of probation. Probation guidelines should require that a revocation hearing before the judge is requested according to the rules of court when an offender continues his violent behavior, exceeds the maximum number of absences from court-ordered sessions, violates the terms of a protection order, or otherwise fails to comply with probation conditions. Probation agency guidelines in Duluth require that the victim will be contacted in conjunction with the probation officer's report to the court when requesting a hearing for revocation or review of probationary status. The victim is contacted at this point to determine whether there are any other aggravating circumstances in the case, or particular victim safety needs that should be considered by the court in determining whether probation will be revoked and what the consequences of revocation will be for the offender.

In many jurisdictions, the process of revoking probation may take several weeks. If this is the case, probation officers should work with the courts to develop a system for immediate revocation in crisis situations when the victim is believed to be in danger. In Seattle, for example, where revocation hearings are generally scheduled within two weeks, judges can issue a bench warrant for arrest and hold an immediate revocation hearing when further violence is reported and the victim's safety is believed to be at stake.

In each case that is brought back to court for review and revocation, the judge must determine whether sufficient evidence exists to revoke probation and, if it does, how the offender will be sentenced as a result. Sentencing practices upon revocation vary a great deal based on the reason that the offender was brought back to court and the number of times the offender has failed to comply with probation conditions in the past. It is essential that the offender face some additional requirements because probation was revoked. In most cases, revocation should result in a period of incarceration, however brief, to let the offender know that the courts mean business. A first-time offender who exceeded the maximum number of absences from counseling might be placed in jail for a short period of time—even a few days—and then placed on probation again and mandated back to counseling. In all court-ordered

cases, however, an offender should be sent back to counseling only if his counselor feels that it is appropriate for him to return to the program. An offender who was mandated to an educational program and has continued to batter might be subject to a longer period of incarceration before being placed back on probation and then ordered to participate in both an educational program and a counseling program. An offender who has been brought back to court several times for reoffending while on probation and has already spent brief periods in jail might be given the maximum incarcerative sentence.

## References

1. Ruth Gundle, Esq., Oregon Legal Services, Portland, Oregon, in Attorney General's Task Force on Family Violence, *Final Report* (Washington, D.C.: U.S. Department of Justice, 1984), p. 12.
2. Anne L. Ganley, *Court-Mandated Counseling for Men Who Batter: A Three-Day Workshop for Mental Health Professionals* (Washington, D.C.: Center for Women Policy Studies, 1981), p. 1.
3. For early criticism of the traditional judicial response to domestic violence cases, see Raymond I. Parnas, "Judicial Response to Intra-Family Violence," *Minnesota Law Review* 54 (1970): 642; Beverly Jacobson, "Battered Women—The Fight to End Wife-Beating," *Civil Rights Digest* 9 (Summer 1977): 13.
4. Although judges in the St. Louis County Court have not formally adopted sentencing guidelines for these cases, they have agreed to follow suggested guidelines on an informal basis.
5. Ganley, *Court-Mandated Counseling for Men Who Batter*, p. 1.
6. *Ibid.*, p. 88, as revised by Dr. Anne L. Ganley, Personal Communication, July 1985.
7. Attorney General's Task Force on Family Violence, *Final Report*, p. 36.
8. Ellen Pence, "Criminal Justice Response to Domestic Assault Cases: A Guide for Policy Development," Burt Galaway, ed., *Domestic Abuse Intervention Project*, Duluth, Minnesota, 1985, p. 25.
9. Attorney General's Task Force on Family Violence, *Final Report*, p. 35.
10. See, for example, U.S. Department of Justice, National Institute of Justice, *American Prisons and Jails, Volume I: Summary Findings and Policy Implications of a National Survey*, by Joan Mullen (Washington, D.C.: Government Printing Office, 1980), p. 124; U.S. Department of Justice, National Institute of Justice, "Guidelines Without Force: An Evaluation of the Multijurisdictional Sentencing Guidelines Field Test," by Deborah M. Carrow, Judith D. Feins, Beverly N.W. Lee, and Lois Olinger, Abt Associates Inc., Cambridge, Mass., 1985.

11. The Family Violence Project, San Francisco District Attorney's Office, Domestic Violence Felony Prosecution Protocol, enacted September 1982, p. 7.
12. Los Angeles City Attorney, "Family Violence Program Manual," third edition, January 1981, Exhibit F, p. 5-31, obtained from Los Angeles City Attorney Criminal Branch Attorney's Manual, Chapter Five.
13. Judicial and Probation Guidelines (County Court), in Pence, "Criminal Justice Response to Domestic Assault Cases," pp. 51-56 (reproduced in Appendix H).
14. U.S. Department of Justice, National Institute of Justice, *Issues and Practices: Serving Crime Victims and Witnesses*, by Peter Finn and Beverly N.W. Lee (Washington, D.C.: Government Printing Office, 1984), p. 62. These states are Illinois, Indiana, Kansas, Maryland, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Virginia, and Wisconsin.
15. Judicial and Probation Guidelines (County Court), in Pence, "Criminal Justice Response to Domestic Assault Cases," pp. 51-52 (reproduced in Appendix H).
16. See Lisa G. Lerman, *Prosecution of Spouse Abuse: Innovations in Criminal Justice Response* (Washington, D.C.: Center for Women Policy Studies, 1981), pp. 47-50.
17. The Family Violence Project, San Francisco District Attorney's Office, Domestic Violence Felony Prosecution Protocol, enacted September 1982, p. 7.
18. San Francisco Domestic Violence Diversion and Probation Guidelines, as adopted by the Mayor's Criminal Justice Council, p.3 (reproduced in Appendix I).
19. Judicial and Probation Guidelines (County Court), in Pence, "Criminal Justice Response to Domestic Assault Cases," pp. 51-56 (reproduced in Appendix H).
20. While these are often called "treatment plans," they should not be limited to traditional treatment programs, but should also include other types of intervention as appropriate.
21. Judicial and Probation Guidelines (County Court), in Pence, "Criminal Justice Response to Domestic Assault Cases," pp. 51-56 (reproduced in Appendix H).
22. Seattle Municipal Probation Department, "Task Outline: Intake and Supervision of Domestic Violence Cases," PRB-TSH-003, Approved March 1984.
23. Pence, "Criminal Justice Response to Domestic Assault Cases," p. 34.
24. Judicial and Probation Guidelines (County Court), in Pence, "Criminal Justice Response to Domestic Assault Cases," p. 54 (reproduced in Appendix H).
25. Dr. Anne L. Ganley, Personal Communication, February 1985.
26. Pence, "Criminal Justice Response to Domestic Assault Cases," p. 35.



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## Chapter 6

# Court-ordered Counseling and Education for Batterers

Counseling and education are used because the courts want it, the victims want it, and it is a humane way to treat abusers who are using what has been for years a socially condoned behavior. It does reinforce the message that battering is forbidden. Some men do change not only their behavior but many of the underlying attitudes which have supported that behavior.

—director, domestic abuse intervention project<sup>1</sup>

In the past, batterers were rarely sought out or identified for any kind of intervention at all. Instead, professionals who became involved in domestic violence cases often looked toward the victim in order to determine how or why she was provoking the battering, or toward factors in the relationship between the batterer and victim that led to violence. With the development of a greater understanding about family violence, we have learned that battering is provoked by neither the victim nor the relationship. In the clinical sense, battering is “caused” by the person who engages in this form of violent behavior, and it is perpetuated by a society that has “tolerated” battering for many years. Accordingly, court-ordered intervention programs in these cases focus solely on the batterer. The victim may wish to participate in a battered women’s support group or some form of counseling herself while the offender is involved in a court-ordered program. If both parties want to continue their relationship and seek couples counseling, mediation, or other assistance in restructuring their relationship, these services may be best provided *after* the batterer has succeeded in eliminating his violent behavior.

Intervention models for batterers are still in their infancy. The last five years have seen a dramatic increase in the number of programs designed specifically to help batterers put an end to their abusive behavior. Counseling groups for men who batter have been formed by many organizations throughout the country. Some of these programs accept court-ordered clients, while others do not. EMERGE in Boston, for example, is a private organization that works only with batterers who seek help

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voluntarily and are highly motivated to change.<sup>2</sup> EMERGE offers group and individual counseling to these men, and has also developed educational materials and training programs for counselors. Several military organizations have also formed programs for batterers. Men's Place, Inc. in Madison, Wisconsin; the Men's Anger Control Group at a U.S. Navy base in Groton, Connecticut; and a spouse abuse identification, referral, and treatment program at Schofield Barracks, Hawaii, are examples of batterers' intervention programs aimed at current and former servicemen. In some cases, servicemen are ordered by their commanding officers to participate in these programs.

Because this report addresses the ways that domestic violence cases are handled by the criminal justice system, our discussion will focus on programs that accept court referrals. Educational programs and group counseling are the two major alternatives designed specifically for batterers that are currently available to the criminal justice system. Counseling programs generally include an educational component, and educational programs alone are usually used for first offenders in less serious cases. Pence identifies some fundamental differences between these two kinds of programs.<sup>3</sup> While counseling groups are typically small and encourage interaction between group members, educational programs can accommodate a larger volume of offenders by relying on a lecture format and structured homework exercises. This also makes educational programs less costly per client. For these reasons, several larger cities are exploring the possibility of routinely referring first-time misdemeanor offenders to educational programs, reserving the smaller counseling groups and individual treatment methods for repeat offenders or those with specific mental health problems. This system may be a necessity in urban areas where improved criminal justice policies in domestic violence incidents create a huge infusion of offenders into the court system, and the large number of court-ordered batterers would simply overwhelm local counseling resources.

Both kinds of programs have scheduled weekly meetings, usually of two hours in duration. The length of client participation varies from one program and client to the next. Involvement in counseling programs generally ranges between three and eighteen months; many counselors suggest an average counseling period of one year as a rough guideline, although the decision on when to terminate should be made by the counselor on a case by case basis. While some programs use a standard counseling period of six months, this may be insufficient. As stated by a counselor in Seattle, "At the end of six months, many batterers are just overcoming their denial and getting to the point where they are receptive to learning alternatives to violence. One guy finally said, 'I guess I do beat my wife' during his final counseling session." Involvement in educational programs is often shorter, from two to four months.

Ganley identifies three major factors that affect the ability of counseling programs to change a batterer's violent behavior pattern: the length of the pattern; the batterer's resistance to change; and the strength of the community taboo against domestic violence.<sup>4</sup> It is important to remember that, for some clients, battering

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represents a complex, long-term behavior pattern that is not easily changed. Even an eighteen-month treatment period is insufficient to change some of these patterns. While these programs offer great promise in some cases, they should not be oversold to the victims, the offenders, or the court system as a guaranteed solution.

Most professionals believe that it is desirable to combine court-ordered and non-ordered batterers<sup>5</sup> into a single counseling or educational group, and that this arrangement is beneficial to both types of clients. One counselor explained this mutual benefit in the following manner: "Court-ordered men introduce a degree of reality to the non-ordered men by showing them that they, too, could be subject to the criminal justice system if their battering continues. At the same time, the non-ordered men demonstrate the fact that there are other reasons for [taking steps to change their behavior]."<sup>6</sup>

## Group Counseling for Batterers

A comprehensive description of group counseling approaches and programs for batterers is beyond the scope of this report. There are several counselors who have done pioneering work in this area, and have shared their professional experience from working with this group of clients in order to benefit other counselors and clients. Dr. Anne Ganley's batterer counseling program is one of the earliest documented models of batterer intervention to date and, largely as a result of her extensive training workshops for mental health professionals, fundamental elements of Ganley's model have been adopted by counselors in many jurisdictions across the country. Her manual for mental health professionals on *Court-Mandated Counseling for Men Who Batter* describes a conceptual framework for developing counseling programs, as well as common characteristics of batterers.<sup>7</sup> Ganley identifies some of the fundamental principles that underlie a court-mandated counseling approach:

- Spouse battering constitutes a crime which is under the jurisdiction of the criminal justice system.
- Battering is a learned behavior.<sup>8</sup> Batterers have learned when, where, how, at whom, and under what circumstances to act violently.
- As a learned behavior, battering is under the control of the batterer. This view provides the basis for a therapeutic approach consistent with the criminal justice system, which holds individuals responsible for their behavior. Although battering is not a mental illness, the mental health system is a setting where constructive alternatives to violence can be learned.
- Court-mandated rehabilitation is necessary for many batterers.
- The primary counseling goal is to eliminate all battering behavior. This goal is also consistent with the criminal justice system, because the sole purpose of any court-mandated counseling is to end the criminal behavior.

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Through counseling, the client strives to achieve the following objectives:

- increase his responsibility for his battering behavior;
- develop behavioral alternatives to battering;
- increase constructive expression of all emotions, listening skills, and anger control;
- decrease isolation and develop personal support systems;
- decrease dependency on and control of the relationship; and
- increase his understanding of the family and social facilitators of wife battering.

All objectives and strategies in counseling are designed to contribute to the primary goal of ending the battering.

Ganley's counseling model, which is intended for both court-ordered and non-ordered clients, involves a combination of individual sessions for client assessment and crisis intervention with group sessions for orientation and counseling. The initial phase of the assessment process consists of gathering and evaluating certain initial information to learn whether immediate intervention is necessary. First, the counselor must determine whether battering is in fact occurring. (In court-ordered cases, this determination has already been made and the counselor's job is to confirm the extent of battering and determine whether any additional steps are needed to protect the victim's safety.) Ganley offers descriptive definitions of four forms of battering—physical battering, sexual violence, psychological battering, and destruction of property and/or pets—that should be used to make this determination.

After the existence of battering is confirmed, the counselor must examine the likelihood that battering will lead to severe injury or death (based on factors such as the batterer's access to the victim, access to weapons, the severity and frequency of the violent episodes, etc.). If the potential for injury or death of the victim is high, immediate steps must be taken to protect her (e.g., separating the couple, obtaining a restraining order). The second phase of the assessment process involves gathering additional information that can be used throughout the counseling process.

During assessment, the counselor should conduct a separate interview with the victim if she is willing and able to be interviewed. Victim assessment is intended to gather information from her about the history of violence, assess her own needs and suggest appropriate resources, and provide her with information about the offender's counseling program.

After initial information is gathered during assessment, the client is introduced to a counseling group. Ganley feels that batterers progress more quickly in group rather than individual therapy:

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The group provides a place where a batterer can decrease his isolation and his dependency on the victim. In the group, he learns to make connections with his peers and to develop the interpersonal skills necessary to meeting his own needs constructively. He has instant peer role models for change, as well as the opportunity to be a positive role model for others. Groups are more successful in confronting denial, as well as giving support, once changes in behavior begin.<sup>9</sup>

Groups are also more cost effective in terms of staff utilization.

In some communities, batterers' counseling groups have been established exclusively for men of color. At Family Services of King County in Seattle, for example, such a group began when the therapist, a black male, was approached by a number of black males who were in other batterer counseling groups, but felt that they would be more comfortable discussing their feelings and behavior in a group composed exclusively of other men of color. Clients discuss unique issues and sources of anger that they experience, in a group that fosters cohesiveness and a sense of community.

Two counselors are recommended to lead each batterer counseling group of eight to ten men. Both counselors must possess good communication skills and knowledge about battering and about counseling issues that are linked with gender differences. Therapy sessions are structured and the counselor takes a directive role. The groups are open-ended, which means that individual clients join and terminate from an ongoing group. This system allows new group members to learn from longer-term members, who then have an opportunity to review and reinforce their own knowledge.

Throughout counseling, the group focuses on stopping the battering and developing constructive alternatives to handling their problems, rather than on the personality structures of the men. Routine checks are made at each session to see if any battering occurred since the prior session. Ganley reports that, to her knowledge, a "very small percentage" of men in her program have physically or sexually battered after the first session and while still in counseling, yet most of the men continue psychological battering if they still have access to their victims. The counselor's response to relapses in battering during therapy varies according to variables such as the client's history of violence and whether or not the client is a court-mandated participant. Ganley feels that it is critical to hold clients accountable, and will not interfere with a client's receiving the full legal consequences for his violent behavior:

[I]f a man abuses his spouse while in a court-mandated counseling program, I recommend that the court rule on the basis of his abusive or violent behavior at home or in his community, and not on the basis of his participation in therapy. Once he has started a court-mandated counseling program, it is counter-productive to let him use counseling as a way to avoid the legal consequences of his actions. He can avoid legal consequences by changing his behavior.<sup>10</sup>

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Progress in counseling is measured by the client's behavioral changes — his ability and willingness to use constructive alternatives to battering when he is faced with situations that once triggered abuse; decrease in dependency on and control of the relationship; decrease in isolation; and willingness to ask others to support his end to battering. Counselors can assess this progress by evaluating information from several sources: the offender's behavior during group counseling, including the manner in which he expresses anger and other emotions; the offender's self reports of incidents outside of therapy; and information about the offender from other sources, such as the victim and the probation officer. Termination from counseling is appropriate when the client, the victim, fellow group members, and the counselors are all confident that battering will not reoccur. According to Dr. Ganley, this typically happens after a counseling period of roughly one year. Ganley stresses the importance of including provisions for follow-up contact in the termination agreement. The client and victim are both instructed to recontact the program if they perceive a risk of violence or if battering reoccurs. Other programs provide for follow-up in self-help groups or, when appropriate, couples groups.

## **Educational Programs for Batterers**

Participation in a batterers' educational program may be required by the court as a condition of probation, either in place of or in addition to a counseling program. As noted earlier, educational programs themselves are short-term and are generally reserved for first-time offenders in cases involving less serious violence. These programs typically consist of an initial assessment or evaluation by a counselor followed by a number of weekly classes. Classes generally include ten to fifteen participants and one or two counselors who serve as class leaders. The counselors who lead these classes are quite explicit about the programs' limitations, and are quick to point out that they should be viewed solely as educational, rather than treatment, programs. For some offenders, however, information and heightened awareness about battering may be all that is necessary to change a violent behavior pattern. For others, the educational programs may be a useful first step to minimize some of the batterer's denial and resistance before entering a counseling program, or as a useful step following completion of a counseling program.

Many of these educational programs focus on the participant's ability to manage or control anger in order to stop the violent behavior. The Anger Information School at Family Services of King County in Seattle includes an individual assessment/prescreening interview followed by eight classroom hours. The program is designed primarily for court referrals, but non-court referrals are accepted as well. According to Family Services, by the end of the program participants should have information regarding:

- conditioning that leads to an acceptance of violence in this society;
- ways to increase one's own awareness of behavior patterns related to anger and violence;

- inappropriateness of violence as a response and the need to accept personal responsibility for one's actions; and
- *beginning* techniques of anger management and ways to become more familiar with such techniques and their applications to daily life.

Following these classes, the counselor provides the probation officer and judge with recommendations on further intervention if needed, along with a written evaluation of the offender's risk level based on a standardized anger inventory, family and social history, and self-awareness and attitudes towards violence as revealed during individual interviews and classwork.

In Duluth, the Domestic Abuse Intervention Project has developed an educational Abusers Clinic, which "shifts away from a focus on managing or controlling anger, to challenging the abuser's perception that he has the right to control his partner's thoughts, feelings or actions."<sup>11</sup> During past experience in working with batterers, DAIP staff observed that abuse often occurs as a result of a batterer's inability to control his partner in some manner, and that battering is sometimes, but not always, related to anger. "The clinic focuses on helping men recognize that their acts of abuse are intentional and are not uncontrolled responses to stress or anger, but very specific behaviors which have evolved into a whole system of interrelated behaviors directed at their partners to achieve and maintain power."<sup>12</sup> The Abusers Clinic is designed to stop the violence by giving participants information and practical tools that will facilitate a change in both attitudes and behavior. More specifically, DAIP identifies the following four program objectives:

- 1) To assist the participant in examining and understanding his acts of violence as a means of controlling the victim's actions, thoughts, or feelings.
- 2) To increase the participant's willingness to change his behavior by examining the negative effects of his behavior on his relationship, his partner, his children, and his friends.
- 3) To increase the participant's understanding of the causes of his violence by examining the cultural and social context in which he uses violence against his partner.
- 4) To provide the participant with information on how to change his abusive behavior by exploring noncontrolling and nonviolent ways of relating to women.<sup>13</sup>

The program curriculum is designed in two phases.<sup>14</sup> Phase I focuses on the most common ways participants are abusively controlling their partners, while Phase II explores the cultural and societal facilitators of battering and teaches participants specific skills that will enable them to be noncontrolling in relationships.

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## Conclusion

Programs for court-ordered batterers are constantly being refined as we learn more about the complexities of domestic violence, and as professionals gain more experience in working with this difficult and challenging group of clients. Ideally, the criminal justice system would have a number of different intervention and rehabilitation strategies for batterers at its disposal; each offender could be evaluated and then referred to the program to which he is best suited. If one program or strategy failed, another could be tried until the offender's violent behavior pattern is changed.

The present situation falls far short of this ideal. There may not be any batterer counseling or educational programs in a given community, or there may be only one program to which a court can refer these cases. Rather than choosing from a number of alternatives, offenders in domestic violence cases may be routinely referred to a single available program. Even in jurisdictions where there is more than one program, these programs are often based on the same counseling model. Furthermore, since the field is still new, there have been no formal evaluations on the effectiveness of these programs, so the long-term outcomes of batterer intervention strategies are presently unknown.

Clearly, there is a tremendous need for data collection and evaluation of these programs, further refinement of the programs that already exist, and the development of other intervention strategies for handling batterers. Present experience suggests, for example, that group counseling is extremely effective for some, but it is not necessarily appropriate for all batterers. Some batterers are so resistant to the idea of changing that they cannot benefit from outpatient community services. As noted by Ganley, "It is very likely that, as in the field of alcoholism, different approaches will be successful with different individuals."<sup>15</sup> It becomes the challenge of the criminal justice system, in conjunction with professionals in the community who work with court-referred clients, to identify those batterers who are likely to benefit from available intervention strategies and then to provide the necessary intervention. It is important to remember that these professionals are providing a service to the courts by delivering mandated services to batterers; the final determination of whether a particular offender is appropriate for their program must be left to the discretion of the counselors themselves. When individual offenders are found to be inappropriate for available programs, the criminal justice system must impose other suitable sanctions.

## References

1. Ellen Pence, "Criminal Justice Response to Domestic Assault Cases: A Guide for Policy Development," Burt Galaway, ed., *Domestic Abuse Intervention Project*, Duluth, Minnesota, 1985, p. 29.
2. Andrew J. McCormick, "Men Helping Men Stop Woman Abuse," *State and Mind* (Summer 1980): 46-50.



3. Pence, "Criminal Justice Response to Domestic Assault Cases," p. 34.
4. Dr. Anne L. Ganley, Personal Communication, February 1985.
5. Dr. Ganley and other batterer counselors prefer the term "non court-ordered" to "voluntary" when referring to this group of batterers. While their participation is not mandated by the criminal justice system, they are often compelled to participate by others, such as a victim, relative, or defense attorney.
6. Dr. Anne L. Ganley, Personal Communication, July 1983.
7. Anne L. Ganley, *Court-Mandated Counseling for Men Who Batter: A Three-Day Workshop for Mental Health Professionals* (Washington, D.C.: Center for Women Policy Studies, 1981).

This manual is available from the Center for Women Policy Studies, 2000 P Street, N.W., Suite 508, Washington, D.C. 20036 (202) 872-1770.

Other written materials that document counseling programs for batterers include: Phyllis B. Frank and Beverly D. Houghton, *Confronting the Batterer: A Guide to Creating the Spouse Abuse Educational Workshop* (New City, N.Y.: Volunteer Counseling Service of Rockland County, Inc., 1982); Daniel Jay Sonkin and Michael Murphy, *Learning to Live Without Violence: A Handbook for Men* (San Francisco: Volcano Press, 1982); and Daniel G. Saunders, "Counseling the Violent Husband," in *Innovations in Clinical Practice: A Source Book, Vol. I*, P.A. Keller and L.G. Ritt, eds., (Sarasota, Fla.: Professional Resources Exchange, 1982).

8. Ganley's treatment approach is based on the social learning theory of aggression. A detailed description of this theory appears in Albert Bandura, *Aggression: A Social Learning Analysis* (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1973).
9. Ganley, *Court-Mandated Counseling for Men Who Batter*, p. 69. Similar advantages have been described when group therapy is used for the victims of battering, since both batterers and victims tend to be isolated and highly dependent on one another.
10. Ibid., p. 65.
11. Pence, "Criminal Justice Response to Domestic Assault Cases," p. 30.
12. Ibid.
13. Ibid.
14. Ellen Pence, who wrote the program curriculum with Michael Paymar, identifies four other individuals who had considerable input: Miguel Gil from EMERGE; Barbara Hart; Joe Morse, one of the founders of EMERGE; and Susan Schechter, author of *Women and Male Violence: A History of the Battered Women's Movement*. For further information on the program, readers are encouraged to contact the Domestic Abuse Intervention Project, 206 W. Fourth Street, Duluth, Minnesota 55806 (218) 722-2781.
15. Ganley, *Court-Mandated Counseling for M . Who Batter*, p.5.

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## Chapter 7

### **Bringing Cases into the System: Community Education and Outreach**

Had there been someone years ago to listen to me, to advise me of my rights, of my alternatives, I might have avoided a tragedy in my life—my son wouldn't now need psychiatric care—and possibly, my husband would have sought help.

—a battered woman<sup>1</sup>

The preceding chapters of this report have examined the ways in which criminal justice agencies can respond more appropriately and effectively in domestic violence cases. It is important to recognize, however, that the criminal justice system cannot curb domestic violence on its own. Experts agree that a huge number of spouse abuse cases never even come to the attention of the criminal justice system. In addition to battered women's fear of escalating abuse as a result of "turning in" their abusers, victims may be uninformed, distrustful, or confused by the intricacies of the criminal justice system. Victims often do not know where to turn. When they do seek help, they often go to various service providers in the community for medical, spiritual, financial, legal, emotional, or other assistance rather than seeking remedies from the criminal justice system. These service providers are in a position to identify the signs of abuse, offer appropriate intervention, and refer clients to other agencies and professionals in the community.

Early intervention in domestic violence cases can prevent further psychological damage, physical harm, or even death from future battering incidents. Unfortunately, however, these professionals are sometimes uninformed or ill-equipped to recognize and address domestic violence issues, or even to provide appropriate referrals. An educated community is the best way to bring appropriate cases into the criminal justice system. While a comprehensive review of community education and outreach efforts is beyond the scope and purpose of this document, some illustrative examples of these efforts are offered below.

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## General Community Education

General public awareness and understanding about domestic violence has increased a great deal in recent years. Television movies and documentaries, public speaking engagements, task force hearings, conferences, brochures, and posters are just some of the mechanisms that have been used to educate the community.

Changing public perceptions has been a major objective of many domestic violence groups. Staff of the San Francisco Family Violence Project (FVP), for example, have developed and contributed to numerous editorials, feature stories, and television programs on domestic violence topics, working in conjunction with Bay Area radio and television stations. These efforts are aimed at heightening community awareness of the problems and pervasiveness of spouse abuse, as well as the improved response of criminal justice agencies and the availability of community resources. The experiences of individual victims and data on the scope and severity of domestic violence are often described in these media reports:

- Last February, a woman named Delores Churchill shot her husband in the stomach and chest. But a few weeks ago a jury found her not guilty. The jury decided the shooting was self-defense, because Mrs. Churchill's husband had been beating her for seven years.<sup>2</sup>
- The slight, wiry woman . . . is an emotionally and physically scarred victim of brutal beatings with deadly weapons—a fist, a lamp, and a gun. Her attacker was her husband. . . . He hit her for the first time “hours after the marriage ceremony.” . . . [A] series of assaults sent her first to hospital emergency rooms, then into intensive care wards, and finally into the operating room for reconstructive plastic surgery.<sup>3</sup>
- In 1981, the single largest category of murders in San Francisco was related to relationships or family troubles.<sup>4</sup>
- Of all assault and weapon-related calls to the police, 41 percent are related to family violence.<sup>5</sup>
- In a sample of 2,500 victims and offenders with whom FVP staff have worked over a two and one-half year period:
  - 63 percent of victims required medical treatment for injuries; and
  - 60 percent of offenders had assaulted a partner in a previous relationship.<sup>6</sup>

FVP's executive director observed that “Everyone was concerned about crime in San Francisco, but didn't perceive family violence as part of the crime problem.” Early efforts to heighten public awareness were boosted when the *San Francisco Examiner* ran an extended series on crime in 1981, which included several articles on

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domestic violence. As stated by FVP staff, "With the help of a lot of other people, we made domestic violence the most important issue in this town for a while."

## **Educational Efforts Targeted to Specific Community Groups**

Some educational efforts are designed for groups that are less likely to benefit from more general public education due to language or cultural barriers. In this vein, the San Francisco Family Violence Project developed educational materials and workshops for the city's Latino and Asian and Pacific Islander communities. An eight-page brochure on domestic violence was designed by FVP in conjunction with experts from the Spanish-speaking service community. Artwork for the brochure was designed by a Latino graphics agency. The brochure contains cartoon illustrations of a family's experience with battering and brief sections on why domestic violence happens, the seriousness of the problem, and helpful ideas and local resources for both victims and batterers. A reception was held for agency representatives throughout the Latino community to introduce and distribute the brochures and accompanying posters.

FVP also sponsored a one-day workshop on domestic violence for San Francisco's Asians and Pacific Islanders, with assistance from several groups in these communities. The goal of the workshop was to educate participants about the dynamics of domestic violence, intervention strategies, and the legal rights and options of battered women. Particular stresses faced by the city's large Southeast Asian immigrant population, and the reluctance of victims to seek help from police and other agencies outside the Asian community were also discussed.

## **Detection and Referral in Hospital Emergency Rooms**

Many victims of spouse abuse receive acute medical care for injuries sustained during a battering incident. These women may not volunteer the information that they have been battered. Along with other health care professionals, the providers of emergency medical services often fail to recognize battering as the cause of these injuries and take appropriate action. Some victims do mention that battering caused their injuries, but emergency room staff may ignore this information or adopt a "what can I do about it?" attitude. To address these problems, the San Francisco Family Violence Project developed a domestic violence educational program and case referral system for emergency room staff at San Francisco General Hospital. Training sessions were held for doctors, nurses, and medical social workers to discuss topics such as the medical exam and history taking, problem identification, and medical evidence collection; social work assessment, intervention, and records; and legal options for battered women, both civil and criminal.

Time constraints and heavy caseloads usually prevent emergency room staff from addressing anything beyond patients' acute physical problems that require medical attention. Thus, FVP developed a case referral system that would identify domestic

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violence victims for follow-up without imposing a major burden on busy hospital staff. A domestic violence log book was placed in the emergency room's central communication office. Doctors, nurses, hospital social workers, and clerks were asked to record in the log book very basic information on each case involving suspected abuse, and to provide victims with a card identifying appropriate community resources. A hospital social worker or FVP staff member is responsible for following up on all cases of suspected abuse to discuss options available to the victim, including prosecution. These people report that victims are more likely to choose criminal justice intervention if they are contacted immediately for follow-up, rather than one or more days after admission to the emergency room.

## **Mental Health Intake**

While there is general agreement that most batterers and victims are not mentally ill, the mental health system provides an important arena for helping both offenders and battered women. Many flaws have been cited in the response to spouse abuse by mental health practitioners. Most criticisms focus on counselors' inability to recognize situations in which battering occurs, or their reluctance to deal specifically with domestic violence issues in cases where the existence of battering is recognized.

The lack of professional education on domestic violence is largely responsible for the fact that many spouse abuse cases go undetected and untreated. Inclusion of family violence topics in the curricula of relevant professional schools, as well as conferences and educational efforts for professional organizations, is a long-term goal.<sup>7</sup> Professionals who are likely to come in contact with battering cases must take responsibility for identifying those clients and, at a minimum, providing appropriate referrals to other agencies. Dr. Anne Ganley, founder of a residential treatment program for batterers in Tacoma, Washington, has suggested some general guidelines for mental health professionals in order to identify spouse abuse cases during routine case intake.<sup>8</sup> These guidelines apply to all mental health professionals, not just those who specialize in handling domestic violence cases.

Just as there are routine questions and procedures that have been developed regarding alcohol/drug usage, there needs to be routine inquiry about battering (and all types of family violence) . . . There are no physical signs, personality characteristics, or sociological factors that can accurately identify a person as a batterer. Since battering is a widespread and hidden problem, it becomes the task of every individual who conducts intake interviews to routinely determine whether or not a person is battering or is being battered.<sup>9</sup>

Ganley notes that the intake counselor's tone of voice and general manner should convey concern about the individual, not fear, horror, or accusation. Initial questioning is intended simply to determine whether or not battering is occurring. Areas for further inquiry and assessment include:

- The need for crisis intervention: likelihood of severe injury or death; presence of child abuse, neglect, or sexual assault (which must be reported to Child Protective Services); or suicide potential of offender or victims.
- Current needs of the victim: safety, shelter, medical, legal, financial, counseling.
- Motivation of the offender to change.

Ganley stresses that, whenever possible, this kind of information should be sought from multiple sources, with separate interview time given to the victim and batterer.

## References

1. "Abused Women's Aid in Crisis, Inc. (AWAIC): A Progress Report, 1976-1977," in Maria Roy, ed., *Battered Women: A Psychosociological Study of Domestic Violence* (New York: Van Nostrand Reinhold, 1977), p. 301.
2. KPIX Editorial #3003, Telecast 6/24/81 and 6/28/81, by Art Kern, Vice President and General Manager, KPIX, San Francisco, California.
3. Beth Hughes, "A Hard Look/Battered Women: Family Violence on the Rise," *San Francisco Examiner*, Tuesday, May 19, 1981, p. 1.
4. Dan Borsuk, "Family Violence in City Mounts," *San Francisco Progress*, October 8, 1982, p. 1; "Family Violence Project Gets May Award," *The Recorder*, October 4, 1982, p. 1.
5. Ibid.
6. Ibid.
7. Attorney General's Task Force on Family Violence, *Final Report* (Washington, D.C.: U.S. Department of Justice, 1984), pp. 74-80.
8. Anne L. Ganley, *Court-Mandated Counseling for Men Who Batter: A Three-Day Workshop for Mental Health Professionals--Participant's Manual* (Washington, D.C.: Center for Women Policy Studies, 1981), pp. 42-45.
9. Ibid., pp. 42-43.

## **Appendix A**

### ***General Order Regarding Domestic Violence, Duluth Police Department***

DULUTH POLICE DEPARTMENT  
Duluth, Minnesota

GENERAL ORDER #83-9  
November 29, 1983

REVISION OF GENERAL ORDER #82-3

TO: All Members of the Department

SUBJECT: Revision of General Order 82-3 regarding Domestic Violence

Effective Thursday, December 1, 1983, the following policy will replace the existing policy regarding domestic violence under section 506.92 of the Department manual. Language previously contained in that section will be disregarded.

These language changes are intended to reflect recent legislative changes to the probable cause arrest statute and to increase the department's effectiveness in responding to domestic assault cases. In a continuing effort to cooperate with the St. Louis County Court system and other Duluth agencies to provide a more uniform and consistent response to domestic assault cases, the following guidelines shall be enacted.

1. An officer shall arrest and take into custody a person whom the officer has probable cause to believe has violated an order for protection restraining the person or excluding the person from the residence if the existence of the order can be verified by the officer.

(Note: Because state law requires an arrest regardless of whether or not the person was invited back into the home, county court judges have agreed when issuing this order to inform the excluded party that the court must formally change the order in order for him/her to return to the residence.)

2. An officer shall arrest and take into custody an adult whom the officer has probable cause to believe assaulted another adult with whom he/she is residing with or has formerly resided with if:

- a) There are visible signs of injury or physical impairment

or

- b) There was a threat with a dangerous weapon.

The arrest must take place within four hours of the alleged assault and the officer must believe that the injuries were the result of an assault by the alleged assailant.

(Note: Probable cause is defined as follows: Based on the officers' observations and statements made by the parties involved and witness (if any) the officer using reasonable judgement believes an assault did occur and the person to be arrested committed the assault.)

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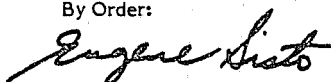
REVISION OF GENERAL ORDER #82-3

SUBJECT: Domestic Violence

3. An officer may arrest when responding to a call involving persons (of any age) residing together or who have resided together in the past if the officer has probable cause to believe that the alleged assailant has within the past four hours placed the alleged victim in immediate fear of bodily harm.
4. Whenever an officer investigates an allegation that an incident described above occurred, whether or not an arrest is made, the officer shall make a written report of the alleged incident and submit that report to the Inspector of the Patrol Division. In addition, the officer shall advise victims of the availability of the Women's Coalition and the Domestic Abuse Intervention Project and give victims legal rights and services cards.
5. Following a domestic related arrest, the officer shall advise the victim that an advocate will contact her/him within the next several hours to explain the legal and service options available. The officer shall request that the jailer contact the Women's Coalition at 728-3679 immediately following the booking procedure and inform them that an arrest has been made. Advocates will be sent to talk to the assailant prior to his/her release.

Note: Section 1, 3 and 4 of this order are required of an officer as department policy and Minnesota state law. Minnesota statute 1982, Sec. 629.341 provides immunity from civil and criminal liability to officers making good faith arrests under this law.

By Order:



Eugene Sisto  
Deputy Chief of Police

ES:sf

## **Appendix B**

*Domestic Violence Task Force Recommendations  
for Implementation of Domestic Violence Procedures,  
Denver Police Department*



## CITY AND COUNTY OF DENVER

DEPARTMENT OF SAFETY

DENVER POLICE DEPARTMENT  
ADMINISTRATION BUILDING  
1331 CHEROKEE STREET  
DENVER, COLORADO 80204  
PHONE (303) 534-2424

June 28, 1984

### MEMORANDUM

To: Thomas E. Coogan  
Chief of Police

From: Domestic Violence Task Force

Subject: Recommendations for Implementation of Domestic Violence Procedures

In order to effectively implement the new procedures proposed by the Domestic Violence Task Force, we recommend that a monthly statistical data base be established during the available time period of July 1, 1984 through December 31, 1984. This recommendation is made after careful deliberations among its members and consultation with the Presiding Judge of the County Court, City Attorney's Office and the District Attorney's Office. Additionally, the Task Force recommends:

1. The final adopted procedures for handling Domestic Violence incidents become effective January 1, 1985 on a city wide basis. See attached draft 104.50 - DOMESTIC VIOLENCE. The rationale for delaying the implementation is to enable the Department to gather statistical justification for implementing the procedures, allow the Department sufficient time to establish a training program, and provide the advocacy groups with statistical data thereby enabling them to effectively set-up their programs. (It is the Task Force's understanding they will not have resources for Domestic Violence follow-up for sometime). Implementing the procedures city wide will eliminate the confusion and alleviate any possibility that any one group of people will think the procedure is addressing them.
2. The Task Force recommends that the Department collect statistics on a city wide basis using the procedures set forth in the Draft Revision to the Operations Manual 104.50(3)d:

Whenever an officer investigates an allegation of Domestic Violence, whether or not an arrest is made or the suspect is present, the officer shall complete a Field Contact Card, D.P.D. Form #305, on the suspect, clearly indicating

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on the top right hand corner of the card DOMESTIC VIOLENCE. In the comments section, the officer will note the name, address, and phone number of the victim and complainant, if known. Notations regarding any resistances/interferences will also be made. If an arrest was not made, the officers are encouraged to note the specific reason(s) why an arrest was not effected.

Department notification on this partial new procedure will need to be identified and published in the Daily Bulletin under authority of the Chief of Police. After generating and analyzing each month's data base, modifications can be made to effectively implement the final procedures for Domestic Violence incidents. The Task Force members believe the results of this study and the additional time allowed will facilitate the successful implementation of the final new procedures in the following areas:

- It will facilitate the advocacy groups in anticipating their caseload so they can start-up their programs with the proper personnel complement; in addition to locating their facilities in the areas of the city most beneficial to the victims, as well as justifying their funding. Their start-up time can be coordinated with the Department's implementation of Domestic Violence Procedures.
- It will allow the City Attorney's Office and the District Attorney's Office approximately six months to identify City Ordinances and other legislation necessary in order to implement officers immunity on Domestic Violence mandated arrests.
- It will enable the Department to project the effects the new procedures will have on the workload of the courts as well as the effects on the jail crowding problem and make timely notifications.
- It will enable the Training Bureau to effectively establish the necessary training program based on this Task Force's recommendations.
- It will help insure officer safety by providing baseline data for the computer system.

Statistics to be collected and evaluated from the Domestic Violence contact card file should include:

- Number of calls of Domestic Violence incidents using the definition provided in proposed Operations Manual Section 104.50(2)a.
- Number of arrests as we do it now.
- Number of repeat calls at same location.
- Number of resistances involving Domestic Violence arrests.

This statistical base would allow comparison of data obtained after formal implementation.

3. The Task Force recommends that the City Council address immunity on Domestic Violence arrests as a City Ordinance. We also recommend City Council address the possibility of a separate Domestic Violence Ordinance similar to 104.50(2)a and make it a violation of the Code:

"Domestic Violence is defined as any harmful, physical contact, or the threat thereof, between two persons, who are or have been previously spouses or cohabitants including the destruction of property, or the threat thereof, as a method of coercion, control, revenge or punishment."

4. The Task Force recommends that changes be made in the bonding schedule by the County Court, i.e., the automatic issuance of "No Contact Bond" in Domestic Violence cases or if possible that no bond be allowed prior to appearance before a judge. If a "No Contact Bond" is used in Domestic Violence cases we recommend the City Attorney's Office and the courts work out a procedure so that officers can verify "No Contact Bond" information when needed on a 24 hour a day basis. Appropriate Operation Manual revisions outlining our legal enforcement requirements on these bonds should also be made.
5. We also recommend mandatory psychological referral be considered as a portion of sentencing for persons convicted of assault in Domestic Violence cases.
6. We believe a legal opinion is necessary on Rules and Regulations RR-1002, Service of Civil Processes. It may be in conflict with CRS 14-10-112 regarding service of a temporary restraining order of Civil Court in divorce, annulments, and separate maintenance by an officer, and CRS 14-4-102 Restraining Orders to prevent Domestic abuse.
7. We recommend that the Research and Development Bureau review the current policies and procedures regarding order-in rather than arrests on minor cases and determine if there is any conflict with the new Domestic Violence procedures where custodial arrests are made on minor Domestic Violence cases.
8. The Task Force members recommend that the training program be no less than a one day training session (to be held on three separate occasions) consisting of Patrol Division Captains, Lieutenants, and Sergeants along with the Radio Room supervisors and command personnel. The Training Bureau will be responsible for determining the actual length of any training sessions. Training for the line level personnel should be disseminated by their respective sergeants in conjunction with a video training tape at roll calls. Training for complaint clerks and dispatchers should be the responsibility of the Radio Room sergeants, and should include a check list for complaint clerks on Domestic Violence calls which can be developed in cooperation with the Research and Development Bureau and the Training Bureau.

9. The Task Force recommends the training curriculum should include at least the following material:
- A brief history of why we are addressing the problem and why pressure is being placed on elected officials and police departments around the country to change policies and procedures regarding the handling of Domestic Violence incidents.
  - Instructions designed to promote self-awareness and empathy among the officers, as well as to provide a framework for their actions in these cases. Emphasis is on understanding the complex causes of the cases, the dynamics of the violence and how it can be stopped.
  - Domestic Violence vs Domestic Disturbance - develop a clear understanding of the differences and thereby alleviate some current misunderstandings of the proposed procedure.
  - Address the resolved legal issues and provide an update on current or proposed legislative changes.
  - Review and discuss the final approved Domestic Violence procedures, Section 104.50.
  - Explanation of any new forms required and procedural changes in preparing old forms for the Department. A suitable designation of "Domestic Violence" should be noted on the General Sessions Summons and Complaint form and Contact Cards. (We recommend that Research and Development coordinate any necessary changes to be made on these forms).
  - Description of the referral process to advocacy groups and how these groups will become involved through the use of a separate contact card file in addition to other methods of referral.
10. We recommend a feasibility study of having the radio room clerk check the computer on Domestic Violence calls to help insure officer safety. This computer check could take place after the call has been dispatched or on request by the officer. The implementation of this computer check would take place after Department implementation of the entire new procedure and data base collection.
11. The Task Force recommends that a unit, such as the Research and Development Bureau, facilitate and coordinate any of these recommendations you approve. This coordination would include the Criminal Investigation Division Domestic Violence Unit, District Attorney's Office, City Attorney's Office, Safety Office of Policy Analysis, and other interested advocacy groups and city agencies. The Task Force members will meet with any unit you assign to explain in detail the recommendations we have made.

12. The following attached draft of Operations Manual Section 104.50 was revised and refined many times from the original draft we received. The Task Force tried to make these procedures compatible to the needs and requests of the citizen groups, the people involved and still allow the necessary discretion for the Department and its officers in handling Domestic Violence situations.

If the County Court is able to establish a verification system of "No Contact Bonds" on a 24 hour a day basis, we recommend the addition of this information and enforcement procedures in Section 104.50(2) as a definition of "No Contact Bond."

Respectfully submitted,

Task Force Members:

Carol Yates 79-57  
Carol Yates (79-57), Chairperson, District 1

Don Rask 64-24  
Don Rask (64-24), Academy, Recording Secretary

Tom Myers 69-23  
Tom Myers (69-23), District 2

Marty Foery  
Marty Foery (68-136), District 3

James Larson  
James Larson (65-53), District 4

cc: Division Chief M. T. O'Neill  
Captain R. M. Phannenstiel  
C. Denny Weller

## **Appendix C**

### *Minnesota Probable Cause Arrest Law*

*41 Minn. Stat. Ann. § 629.341 (West 1985)*



**629.341. Probable cause arrests; domestic violence; immunity from liability**

**Subdivision 1. Arrest.** Notwithstanding the provisions of section 629.34 or any other law or rule to the contrary, a peace officer may arrest without a warrant a person anywhere, including at his place of residence if the peace officer has probable cause to believe the person within the preceding four hours has assaulted, threatened with a dangerous weapon, or placed in fear of immediate bodily harm his spouse, former spouse, or other person with whom he resides or has formerly resided, although the assault did not take place in the presence of the peace officer.

**Subd. 2. Immunity.** Any peace officer acting in good faith and exercising due care in the making of an arrest pursuant to subdivision 1 shall have immunity from civil liability that otherwise might result by reason of his action.

**Subd. 3. Notice of rights.** The peace officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of the legal rights and remedies available. The notice shall include furnishing the victim a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an order for protection from domestic abuse which could include the following: (a) an order restraining the abuser from further acts of abuse; (b) an order directing the abuser to leave your household; (c) an order preventing the abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; (e) an order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so."

The notice shall include the resource listing, including telephone number, for the area battered women's shelter, to be designated by the department of corrections.

**Subd. 4. Report required.** Whenever a peace officer investigates an allegation that an incident described in subdivision 1 has occurred, whether or not an arrest is made, the officer shall make a written police report of the alleged incident. The officer must submit the report to his supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made.

**Subd. 5. Training.** The board of peace officer standards and training shall provide a copy of this section to every law enforcement agency in this state on or before June 30, 1983.

Upon request of the board of peace officer standards and training to the bureau of criminal apprehension, the subject matter of at least one training course must include instruction in the subject matter of domestic abuse. Every basis skills course required in order to obtain initial licensure as a peace officer must, after January 1, 1985, include at least three hours of training in handling domestic violence cases.

Amended by Laws 1983, c. 226, § 1, eff. June 1, 1983; Laws 1984, c. 655, art. 1, § 79.

**1983 Amendment.** Revised this section. For former text see the main volume.

**1984 Amendment.** Laws 1984, c. 655 was a revisor's bill, which by its title purported to correct erroneous references, eliminate redundant and superseded provisions, reenact certain laws and correct 1984 session legislation. The

Act inserted "or" preceding "other person with whom he resides" in subd. 1.

**Law Review Commentaries**

Duluth domestic abuse intervention. Ellen Pence. 1983 Hamline L.Rev. 247.

New family laws. Cathy E. Gorlin. July-Aug. 1983, 52 Hennepin Lawyer 12.

## **Appendix D**

*General Order on Domestic Violence, Excerpt on  
Temporary Restraining Orders and Stay Away Orders,  
San Francisco Police Department*

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## II. TEMPORARY RESTRAINING ORDERS

- A. In domestic violence incidents where a person advises an officer of the existence of a temporary restraining order pertaining to the suspect, the officer shall attempt to ascertain if such an order is on file with the department.
1. Temporary restraining orders are filed in the Records Division (Identification Section), and entered into the CABLE system. The radio query to inquire about such orders is "10-29 Person" giving the suspect's name, address and date of birth, and the location of the disturbance by street address.
  2. The response available to a "10-29 Person" query is whether or not such an order is on file for a particular individual at a particular location. The exact terms of an existing order may be obtained by calling the Identification Section, 553-1415.
  3. A "proof of service" that the restraining order has been served is filed by the offended party in the Identification Section.
    - a. Before the violator of a temporary restraining order can be arrested under Section 273.6 of the Penal Code, there must be proof that the suspect was served or is aware of the terms of the restraining order.
- B. Officers shall affect an arrest when there is reasonable cause to believe that the subject of the temporary restraining order has violated the order in the presence of the officer, and one of the following conditions has been met:
1. The existence of the order and proof of service on the suspect has been verified by the officer; or
  2. The complainant produces a copy of the order and the proof of service on the suspect, each bearing the file stamp of the court.
  3. Violators shall be cited or booked on Penal Code Section 273.6 as per General Order I-3, in addition to any other violations charged, such as aggravated assault, battery or trespass.
  4. The incident report shall note the terms of the existing order that have been violated, when possible.

- C. When an officer verifies that a restraining order exists, but cannot verify proof of service, i.e., that the subject has been notified of the restraining order, the officer shall:
1. Inform the suspect of the fact that there is a restraining order against him/her and of the terms;
  2. Admonish the suspect of the conditions of the order for which he/she is now on notice, and that continued violation of the order will result in his/her arrest; and
  3. Make an incident report recording that the subject was advised of the terms of the restraining order. The incident report will become proof of service with the department, and the subject shall be arrested or cited for a subsequent violation of the order.
  4. Inform the offended party that a proof of service will be filed in conjunction with the incident report and that, if the suspect again violates the restraining order, the responding officer should be informed that a proof of service is on file. Give the victim the incident report number as documentation for subsequent violations.
- D. When the existence of a temporary restraining order cannot be verified by the department, and the complainant cannot produce a copy and proof of service bearing file stamps of the court, officers shall:
1. Advise the complainant of their right to make a citizen's arrest when the basis for a custodial arrest does not exist.
  2. Write an incident report, give the complainant the incident report number and direct the complainant to contact the General Work Section for follow-up.

### III. STAY AWAY ORDERS

- A. A stay away order is issued in a criminal case where the probability of victim intimidation exists. In domestic violence incidents where a person advises an officer that a stay away order has been issued, the officer shall attempt to ascertain if such an order is on file.
1. Request the victim to show a copy of the order. Victims are requested to carry the order with them at all times.

2. Have your district station query the court management system (CMS) to verify that the suspect is still under the court's jurisdiction, thus making sure the order is still in effect. Such orders remain in effect for any sentence or probationary period assessed by the court.
- B. When the victim produces a copy of the order and proof of the order has been verified, officers shall affect an arrest if the suspect has violated any of the terms of the order. The incident report shall note the specific violations of the order and the victim is to be given the incident report number for follow-up.
1. A violation of the order is a violation of Penal Code Section 166, Subsection 4, in addition to any other violations charged, such as battery or assault. Violators shall be booked or cited according to the provisions of General Order I-3.
  2. An act of victim intimidation relating to the court proceedings is a violation of Penal Code Section 136.1. Violators should be booked or cited as per General Order I-3.
    - a. Attempts to prevent or dissuade a victim from attending or giving testimony at any proceeding is a misdemeanor.
    - b. The use of force, or the expressed or implied threat of force or violence related to the court proceeding is a felony.
- C. When the victim is not in possession of the stay away order, or in cases of computer error, officers may not be able to confirm the order's validity.
1. In such cases, officers shall write an incident report, give the victim the incident report number and direct the victim to contact the General Work Section for follow-up.
  2. When the basis for a custodial arrest does not exist, officers shall advise the victim of their right to make a citizen's arrest.

## **Appendix E**

*Special Order on Domestic Violence Incident Report Data,  
San Francisco Police Department*

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SAN FRANCISCO POLICE DEPARTMENT

DEPARTMENT SPECIAL ORDER  
81-28

08/12/81

Subject: DOMESTIC VIOLENCE: INCIDENT REPORT DATA

Termination Date: 08/12/82

I. PROCEDURE

Effective August 1, 1981 the Incident Report Form, SFPD 377, will have a "Domestic Violence" box in the first line of the form. The Domestic Violence box is to be circled YES or NO on all incident reports. Platoon Commanders are responsible for seeing that members fulfill this requirement.

II. DEFINITIONS

- A. Department General Order No. I-6, Domestic Violence, defines domestic violence as:

"Harmful physical contact or the threat thereof between persons who are spouses or cohabitants or who have previously been spouses or cohabitants."

- B. Domestic violence includes any harmful physical contact or the threat thereof, that occurs between current or former:

1. Spouses
2. Cohabitants
3. Boyfriends or girlfriends
4. Adult family members (e.g., elderly abuse)
5. Separated and divorced couples
6. People of the same sex who have an intimate and/or sexual relationship
7. Any two individuals who have or previously have had a sexual relationship.

III. REPORTING

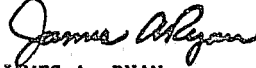
- A. The Domestic Violence box on the Incident Report Form shall be circled YES whenever the genesis of the crime, such as an assault, trespassing, destruction of property or violation of a temporary restraining order, is related to a domestic problem.

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08/12/81

- B. The Domestic Violence box shall be circled NO for all other incidents.
- C. Domestic Violence data will be utilized by the Department to:
  - 1. Determine how much department time and resources are spent responding to incidents of domestic violence.
  - 2. Review and improve, if possible, procedures for handling incidents of domestic violence.
  - 3. Assist the District Attorney's Office, Probation Department and the courts in the prosecution and handling of domestic violence cases.

By order of:



JAMES A. RYAN  
Acting Chief of Police



## **Appendix F**

### ***Duties, Responsibilities, and Organizational Objectives of Spousal Abuse Unit, Baltimore County Police Department***

## SPOUSAL ABUSE UNIT

The following is a summation outline of the duties, responsibilities, and organizational objectives of the Spousal Abuse Unit.

The Spousal Abuse Unit is responsible for the following duties:

- Identifying repeat offenders (batterers)
- Maintenance of an accurate file on all repeat offenders
  - prior offenses of spousal abuse
  - court proceedings and dispositions
  - prior counseling received
- Reviewing the quality of reports for prosecution purposes and for any additional investigation which may be needed.
- Conducting follow-up investigations.
- Arrest of offenders when appropriate.
- Assist Patrol Division in case preparation as needed.
- Identify domestic violent households where the violence is of regularity or the members of the household are prone to assaults on the police.
- Notify the precinct stations of the violent household in their area (especially if the violent household has moved from one area to another).
- Providing or coordinating victim assistance with social services by being in contact with both victims and batterers, as well as civic organizations and public interest groups, to inform them of the existing services available to help them.
- Follow all cases through all prosecutory stages.

### Organization of Follow-Up Procedures

1. Review all reports dealing with domestic situations to:
  - Identify repeat offenders
  - Identify potentially hazardous situations
  - Ensure the quality of the report is sufficient enough to aid in the prosecution of the case, and determine if any additional investigation is needed by the officer who initiated the report to meet the criteria of the department's Report Writing Manual.
2. Follow up those cases in which:
  - A repeat offender has been identified

### Organization of Follow-Up Procedures (continued)

- The victim receives serious injury
  - A weapon (i.e. handgun, knife, etc.) was used to inflict the injury
  - The Spousal Abuse Unit feels the incident warrants further investigation
3. Follow up by the Spousal Abuse Unit shall be conducted in the following manner:
- Contact the victim, either in person or by telephone (preferably in person), to discuss the incident and make the victim aware of his/her legal options along with the various services available to assist both the victim and abuser to end the violence
  - Contact the abuser, if possible, to make him/her aware of the above
  - Alert the District Court prosecutor of the State's Attorney's Office on all cases in which a repeat offender is identified and currently active in the Criminal Justice System
  - Track each case associated with spousal abuse through the court system and maintain the necessary records

### Resources Available to Accomplish Investigation and Follow-Up

- The channeling of all spousal abuse reports to the unit for review and accurate monitoring.
- Computerized central complaint file that provides all offenses of like kind reported by the victim or suspect within the past seven years. (This identifies any escalating violence and/or any pattern of recidivism.)
- State Criminal History files - access made available through inhouse computer terminal.
- Court proceedings - (Also made accessible through inhouse computer terminal or by generated printout by the court.)
  - a. All summonses or warrants issued by the court for all domestic violence related cases.
  - b. Trial location, dates, and times of all cases scheduled.
  - c. Disposition of the cases by the court, including sentence conditions. (Retrievable up to 120 days after trial.)
  - d. Copies of all civil action Domestic Violence Protection orders issued and the results of the full hearing decisions made by the judges in those orders.

Resources Available to Accomplish Investigation and Follow-Up (continued)

- Domestic Violence Coordinating Committee - providing contact with representatives of the following:
  - Criminal Justice Coordinator's Office
  - State's Attorney's Office
  - Victim-Witness Assistance Office
  - Parole and Probation
  - District Court Judges
  - District Court Commissioner's Office
  - Counseling services and shelters for battered spouses
  - Social Services Department
  - Health Department
  - Community Relations Council
- Counseling services available for referral:
  - Maryland Children's and Family Services
  - Sexual Assault and Domestic Violence Center
  - Family Crisis Center

Methods Used to Reduce Violence

- Personal contact with the batterer by the Spousal Abuse Unit.
- Case preparation to convince the court that court-ordered counseling is needed.
- Referral to batterers' counseling groups.
- Arrest whenever possible.
- Enhance public awareness that spousal abuse is a crime.

## **Appendix G**

*Training Bulletin on Verification and Enforcement of  
Stay Away Orders, San Francisco Police Department*

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# TRAINING BULLETIN

83-01

SAN FRANCISCO POLICE DEPARTMENT

3/17/83

## STAY AWAY ORDERS VERIFICATION AND ENFORCEMENT

In an effort to provide protection to the victim in criminal cases where the probability of victim intimidation is great, a court order known as a Stay Away Order may be issued. Stay Away Orders are not to be confused with Temporary Restraining Orders which are discussed in General Order I-6.

A defendant is served with a copy of the Stay Away Order at a criminal court hearing and the victim in the case is given a copy of the order. The order states the various restrictions that have been placed upon the defendant. The order is valid during the pendency of the court's hearing plus any sentence or probationary period.

Stay Away Orders are primarily issued in domestic violence cases. However, the order could potentially be issued in other criminal cases where the probability of victim intimidation exists.

When responding to an incident where a person claims a Stay Away Order has been issued, members should attempt to ascertain if such an order is on file.

1. Request the victim to show a copy of the order. Victims are requested to carry the order with them at all times.
2. Have your district station query the court management system (CMS) to verify that the defendant is still under the court's jurisdiction, thus making sure the order is still in effect. Such orders remain in effect for any sentence or probationary period assessed by the court.

QUERY FORMAT: QCX/COURT NO: DOCUMENT NO.

### During Hearing

(partial return)

-----SCHEDULED ON CALENDAR-----

031483 M14 TR

020483 M14 30/TO OBTAIN PRIVATE COUNSEL

012882/0900 M14 PC for P/T + DOP + PD

012182/0900 M14 HR 30/FR#12 FOR SETTING

### Disposition

(partial return)

-----LAST APPEARANCE-----

072882 M16 SN: DEF P/CUST SENTENCE OCCURRED

If proof of the order is verified, and the defendant has violated any of the terms of the order, the defendant is in violation of Penal Code Section 166, subsection 4. If the suspect has made any threats related to the court proceedings, this is a violation of Penal Code Section 136.1 in addition to any other violations charged, such as battery or assault. Members should book rather than cite due to the likelihood of the recurring offense, per General Order I-3, Paragraph II A.8.

If the victim is not in possession of the Stay Away Order, or in cases of computer error, members may not be able to confirm the order's validity. In such cases, members shall write an incident report, give the victim the incident report number and direct the victim to contact the General Work Section for follow-up.

If the suspect is GOA, members shall write an incident report, give the victim the incident report number and direct the victim to contact the General Work Section.

Writing an incident report and instructions for victim follow-up are particularly critical with a Stay Away Order violation where there exists the possibility of a recurring offense.

## **Appendix H**

### ***Judicial and Probation Guidelines for Disposition of Misdemeanor Domestic-Related Offenses, St. Louis County Court, Duluth***



## JUDICIAL AND PROBATION GUIDELINES (County Court)

Guidelines to be followed by probation officers in the disposition of misdemeanor criminal cases involving domestic-related offenses (i.e. violations of orders for protection, criminal damage to property, assault, and trespassing). Domestic related shall be defined as cases involving perpetrators who have or are currently living with their alleged victims.

The county court is currently requesting pre-sentence investigations in domestic assault and related cases in order to enhance the court's ability to appropriately sentence the offender, to deter continued acts of violence against the victim and assure the court that the offender understands the implications of the various sentencing alternatives. In conducting pre-sentence investigations, making sentencing recommendations and monitoring probation agreements relating to domestic abuse cases, probation officers shall generally follow procedures listed below. Deviations from procedures based on these guidelines shall be documented in the client's file, noted in the written or verbal report to the court, and submitted to the probation officer's supervisor for review.

### Conducting the Pre-Sentence Investigation or Investigation for Pre-Trial Release

1. The probation officers shall make a reasonable effort to contact the victim/victim advocate/victim agent in order to:
  - A. Inform the victim of the sentencing options and/or release conditions available to the court, and obtain statement from the victim regarding the case.
  - B. Discuss the need for conditions of probation or release which will provide for the on-going safety of the victim, i.e. limited contact by the assailant with the victim supervised visitation of children, temporary removal of weapons from the household.

- C. Inform the victim of the resources available through the Women's Coalition including legal advocacy, emergency shelter, and educational groups.
  - D. Obtain information from the victim regarding any aggravating circumstances including the frequency of abuse, history of past abuse, the absence of physical violence in cases other than assault cases, other acts of abusive or threatening behaviors committed by the assailant towards the victim.
- 2. The probation officer shall make a reasonable attempt to contact human service providers and court personnel believed to have information regarding the presence of aggravating circumstances.
  - 3. The presence of aggravating circumstances shall be fully documented and reported to the court verbally or in writing at the time of sentencing or pre-trial release. Aggravating circumstances include but are not limited to:
    - A. Serious bodily injury or threat thereof to any adult or minor in the household.
    - B. Forced sexual contact or threat thereof to any adult or minor in the household or any prohibited intrafamilial sexual conduct.
    - C. Use or threat with a dangerous weapon.
    - D. Verifiable history of physical abuse by the offender to the victim.
    - E. On-going harassment of the victim by phone, mail, or in person by the assailant.

Sentencing Recommendations following convictions for Misdemeanor Offenses  
Related to Domestic Assault

1. The probation officer shall follow the general guidelines listed below in making recommendations to the court regarding sentencing for misdemeanor offenses in domestic related assaults or criminal convictions.
  - A. The presumptive sentence recommendation for the first conviction absent aggravating circumstances shall be 30-60 days in the county jail, sentence stayed for a period of one year upon conditions which provide for the protection of the victim and attempts to rehabilitate the offender, i.e.
    1. Restrain from harassment, molestation, threats or use of violence against the victim.
    2. Enter into, cooperate with, and successfully complete the DAIP counseling and educational program.
    3. No further violations of any criminal statutes or ordinances.
    4. Payment of any fees in a timely manner.
    5. Other provisions deemed just and appropriate for the protection of the victim and society and to further promote the efficient administration of justice, i.e.
      - a. No use of alcohol or other mood altering drug and assessment for chemical dependency or alcohol abuse.
      - b. Enter into and completion of chemical dependency program.

- c. Enter into and completion of a child abuse program.
  - d. Restricted or no contact with the victim.
- 2. Upon conviction for a second offense or similar offense in a domestic related case, the presumptive recommendations, absent aggravating circumstances, shall be 60-90 days in the county jail with the offender serving a minimum of 20 days and probation for a one-year period following incarceration with similar conditions imposed as following the first assault.
  - 3. There shall be no presumptive recommendation for sentencing following a third conviction except that said recommendations shall not be less than 90 days of incarceration and a minimum 60 days served.

The Probation/Pre-Trial Release Agreement

- 1. Immediately following the sentencing of an offender, the probation officer shall prepare a written probation agreement for the signature of the offender.
- 2. Copies of the agreement shall be immediately mailed/forwarded to any person or agency specifically mentioned in the agreement.
- 3. The agreement shall be specific in regard to expectations of the offender placing the responsibility of arranging for counseling, payment of fees and reporting to the probation officer with the offender.
- 4. The probation officer shall fully explain each court condition and the penalties for noncompliance prior to obtaining the offender's signature.

5. Pre-trial release agreements shall be specific, fully explained to the suspect and signed by the suspect. Copies will be forwarded to all interested parties.

#### Monitoring Conditions of Probation and Pre-Trial Release

1. The probation officer shall set up a regular reporting process with counseling agencies to monitor cases involving court mandated counseling (e.g. chemical dependency, Parent's Anonymous) as a part of the probation or pre-trial release agreement. All cases involving mandated counseling for violence shall be referred through the Domestic Abuse Intervention Project which shall monitor the assailant's attendance at counseling and report to the probation officer on a regular basis.
2. The probation officer shall contact victims by phone or letter at least every 90 days to encourage reporting of noncompliance with provisions of agreement related to nonharassment, restricted contact, threats toward victim or reoffenses. (See Attachment 11 for copies of sample letters).
3. Failure to comply with a restraining order prohibiting the use of physical violence or threats of violence, failure to cooperate with court ordered counseling, failure to comply with an order prohibiting the use of harassment or contact with the victim shall result in the probation officer initiating a revocation hearing or a review hearing on the offender's probationary or supervised release status according to the rules of court. Deviations from this practice shall be documented in writing and reviewed by the probation officer's supervisor.
4. Victim involvement in procedures used in the pre-sentence investigation shall also apply in preparing a report for hearings related to revocation or review of probationary or supervised release status.

5. The existence of pending charges on the offender for an offense which involves a revocation of probation shall not prohibit the probation officer from pursuing a revocation of probation hearing in these matters. The probation officer shall consult with the City Attorney in these cases to coordinate the separate cases.

## **Appendix I**

### ***Domestic Violence Diversion and Probation Guidelines, San Francisco***

## DOMESTIC VIOLENCE DIVERSION AND PROBATION GUIDELINES

As adopted by  
the Mayor's Criminal Justice Council

### I. Introduction

Given the volatile nature of domestic violence, the close proximity of the victim to the defendant, and the likelihood that recurring violence will result in serious injury or death, only those domestic violence defendants described below should be eligible for diversion. In other domestic violence misdemeanor cases, it is deemed more appropriate to proceed formally with prosecution. Thereby, counseling as a probation condition will be available as an option for appropriate convicted defendants.

### II. Definition

Domestic violence includes any harmful physical contact, or threat thereof, that occurs between current or former:

- A. Spouses
- B. Cohabitants
- C. Boyfriends or girlfriends
- D. Adult family members (e.g., elderly abuse)

These categories apply whether the parties are of the opposite sex or of the same sex.

### III. Eligibility

- A. The crime charged is a misdemeanor involving domestic violence, but not involving a child (State law).
- B. The defendant has no prior conviction involving crimes of violence within the past seven years (State law).
- C. The defendant has never had a probation or parole revoked (State law).
- D. The defendant has not been diverted for domestic violence within the last five years (State law).
- E. The crime charged was not a corporal injury resulting in a traumatic condition (273.5 P.C.); an assault with a deadly weapon or with force likely to produce great bodily injury (245 P.C.); or a battery resulting in serious bodily injury (243(b) P.C.); (State law).
- F. The victim did not sustain severe injuries, including, but not limited to, broken bones, bone fractures, concussion, loss of consciousness, protracted loss or impairment of



function of any bodily member or organ, any wound requiring extensive suturing, serious disfigurement, serious impairment of physical condition, premature labor or miscarriage, massive bruising, burns, or other abnormal bodily condition resulting from a traumatic injury which injuries have been verified and/or treated by medical personnel; and

- G. The attack did not involve the use of a deadly weapon or force likely to produce great bodily injury though the victim's injuries may not be as severe as described above.

#### IV. Suitability

- A. There has not existed a history of repeated severe domestic violence (as described in III.F.) by the defendant against the victim in the previous 12 months as evidenced by two or more incident reports or medical records.
- B. The victim has no reasonable objection to diversion.
- C. The defendant exhibits sufficient motivation to comply with the diversion requirements, e.g., counseling, no re-offenses, keeping appointments, etc. If the probation officer concludes that the defendant fails to meet this standard, the basis for that conclusion should be stated in the report to the court.
- D. The defendant agrees to the conditions of diversion.

#### V. Standard Diversion Conditions

- A. For divertees who are chronic users or serious abusers of drugs or alcohol, standard conditions should include concurrent counseling for substance abuse and violent behavior, on a weekly basis, for one year and, in appropriate cases, detoxification and abstinence from the abused substance.
- B. For other divertees, standard conditions should include weekly counseling for violent behavior for one year.

#### VI. Successful Completion

Successful completion of diversion should include completion of all designated conditions of diversion. Such success should be based on an evaluation of the therapist and on information from the victim, the divertee, and the probation officer.

## VII. Motion to Reinstitute Criminal Proceedings

Evidence of any of the following should result in a motion to reinstitute the criminal charge:

- A. Any violence by the divertee against the former or a new victim while on diversion;
- B. Non-compliance with any other specific conditions of diversion;
- C. Termination from counseling because of non-acknowledgement of violent behavior, non-participation, or repeatedly missing counseling section.

## VIII. Probation in Domestic Violence Cases

For defendants convicted of a domestic violence offense and not sentenced to state prison, it is critical that a credible threat of incarceration or imprisonment exist to motivate compliance with probation conditions. "Following presentation to the court of a probation report on these defendants' appropriateness for, and suggested conditions of, probation, they should receive formal probation to the Adult Probation Department."

Probation in domestic violence cases should include weekly participation in counseling for violent behavior and, where appropriate, detoxification, treatment, and/or counseling for substance abuse. Other specific conditions, such as staying away from the victim, and paying restitution, fees, fines, etc., should be considered on a case-by-case basis.

Defendants convicted of a domestic violence felony should be on probation for a minimum of three years; misdemeanor defendants for at least 18 months. This period is necessary for the protection of the victim and other possible victims, even if all probation conditions have been successfully completed in less time. Furthermore, misdemeanor probation must be at least 18 months long so as not to discourage eligible defendants from opting for domestic violence diversion, which we recommend be at least one year long.

## IX. Special Domestic Violence Caseload in Adult Probation Department

Because of the extraordinary dynamics of domestic violence, the specialized nature of rehabilitation services for the defendants, and the need for a credible threat of revocation should probation conditions be violated, a particular probation officer or officers be assigned to handle a special caseload of domestic violence probationers, as well as domestic violence divertees.

X. Information for Victims

Where diversion or probation is granted in a domestic violence case, the victim should be so notified in writing by the probation officer supervising the defendant. At that time, the probation officer should include all publicly available information on the defendant's probation or diversion conditions, a listing of resources to which the victim can turn for assistance, and whom to call in case of recurring domestic violence. On-going contact by the probation officer should be by telephone or in person.

XI. Guidelines Advisory

These guidelines are advisory in nature. They do not recommend any restriction on judicial or prosecutorial discretion. They are proposed standards for the handling of most domestic violence cases. As such, it is hoped that these guidelines will be adopted and adhered to by the affected departments and the court.

## **Appendix J**

### ***Cooperative Agreement Between Domestic Abuse Intervention Project and Counseling Agencies, Duluth***

## COOPERATIVE AGREEMENT BETWEEN DAIP AND COUNSELING AGENCIES

1. DAIP staff will provide counselors with referral material on each case including, but limited to:
  - a. Demographic data
  - b. History of violence
  - c. OFP affidavit or summary of police reports
  - d. Signed release of information form and copy of contract with DAIP
  - e. Summary of conditions of probation or court orders for protection
2. DAIP staff will update counselors on changes in probationary status, orders for protection and reports of additional acts of violence committed by their clients.
3. DAIP will assign clients to counselors based on the availability of space in the group, the appropriateness of individuals for certain groups and the work schedule of the client.
4. DAIP will conduct two orientation sessions for clients prior to their entering the counseling program. These sessions will define battering, discuss causes of battering and explain program and group rules.
5. Counselors will conduct an intake interview of each client to assess his/her appropriateness for the counseling group. If, following that interview or at anytime during counseling, the client does not appear to be appropriate for the group, the counselor will recommend to the DAIP an alternate counseling program, i.e. individual counseling, psychiatric care, chemical dependency treatment.
6. Counselors will notify the DAIP if they believe a client needs to be assessed for alcoholism and refer those clients back to the DAIP. This assessment may occur following the initial

interview or during the counseling program if a chemical problem surfaces. (The court does not readily order in-patient CD treatment on an OFP but will in cases where the client is on probation.)

7. Counselors will notify victims by mail or phone encouraging them to contact the counselor to provide a background history on the relationship and the nature of the abuse. Counselors will also encourage victims to report any further assaults to the counselor, DAIP staff, a shelter advocate or the court. (See Attachment 12 for sample letter from counselor to victim.)
8. Counseling provided to clients referred by the DAIP will focus on ending violence and will initially be directed only to perpetrators of violence. Couples counseling will be available following the completion of counseling for violence and will not replace court ordered sessions.
9. Counselors will enforce the following group rules and any additional rules set by the agency or group:
  - a. Abstinence from mood altering chemicals the day of group.
  - b. Clients will not discuss identities of any person in his/her group or information shared by persons in their group.
  - c. Clients will be expected to attend group regularly and all absences will be reported to the DAIP.
  - d. Clients will be expected to be at group on time and bring any assigned homework with them, i.e. anger logs, control logs, etc.
  - e. Clients will be expected to be verbally participate in the group process.

- f. Clients must agree not to use violence against any person during their participation in the counseling group.

10. Re-offenses:

- a. Counselors will always report an act of violence committed by a client which resulted in an injury to the victim.
- b. If the client reports an act of violence and states that the victim was not injured, the counselor will contact the victim to determine the nature of the offense.
- c. If the counselor does not believe it is in the best interest of the victim and the client to report an offense which did not result in injury, he/she will discuss the case at the next counselor's meeting. The counselor will explain the basis for the decision not to report the offense.<sup>14</sup>
- d. All acts of violence will result in a consequence (i.e. additional group sessions, attendance at one or two AA meetings a week, start group over, incarceration following revocation of probation or contempt of court action.)

11. Counselors will provide a written recommendation at the end of twelve sessions to the DAIP regarding the continued participation of the client in the program. The counselor will address the following in his/her recommendations:

- a. Client is prepared for the Men's Educational Group.

---

<sup>14</sup> This is a very controversial agreement, half the counselors want all acts of violence reported and half want discretion not to report minor acts of violence that the victim and/or the counselor feel should not be brought back into the court system but would be better handled by group sanctions. Typically, these cases would involve pushing or grabbing and not physical blows. A similar project organized on the Iron Range (Range Intervention Project) requires counselors report all acts of violence to staff.

- b. The client should participate in marriage counseling in addition to educational groups on a voluntary basis.
  - c. The client should/should not stay in the counselors group additional weeks prior to moving to the educational group.
12. Representatives of the agencies participating in the DAIP will attend the bi-monthly counselor's meetings with the DAIP staff and other participants in the program to promote interagency communication and a continued evaluation of the counseling and educational groups.
13. Counseling fees will be based on a sliding scale and on the clients' ability to pay.

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