

**MODEL CRIMINAL JUSTICE SYSTEM
RESPONSE TO DOMESTIC VIOLENCE:**

**THE REPORT OF THE PRO-PROSECUTION TASK FORCE
OF THE
ADVISORY COUNCIL ON DOMESTIC VIOLENCE**

STATE OF NEW JERSEY

**CHRISTINE TODD WHITMAN
GOVERNOR**

September 2000

Dear Colleagues,

As Co-Chairs of the Pro-Prosecution Task Force, it is with great pleasure that we present the report of the Pro-Prosecution Task Force of the Advisory Council on Domestic violence entitled “Model Criminal Justice System Response to Domestic violence”. This Report is the culmination of over three years of hard work on the part of the Task Force members. It is a comprehensive plan for **developing an effective criminal justice response to** [effectively prosecuting] the crime of domestic violence in New Jersey and most of the recommendations are applicable in other jurisdictions. For us, the report is also a concrete manifestation of an informal collaboration begun years ago.

We first met at the National College of District Attorneys’ **Second Annual National Conference on Domestic Violence** in Williamsburg, Virginia in October of 1992. Though we knew of one another back in New Jersey, we had yet to catch up with one another at home. As fate would have it, we met on the final day of the Conference having inadvertently chosen adjoining seats.

For each of us, the Conference was providing information and inspiration on a topic we both considered of critical importance, namely, how to hold batterers criminally responsible for their abusive acts in a way that increased safety for the victim. Mary had recently been assigned non-indictable domestic violence cases in the Gloucester County Prosecutor’s Office. In her advocacy work with the NJ Coalition for Battered Women, Sandy had recently become convinced that one important component of quelling the tide of domestic violence was for the State to shoulder the responsibility for assertively prosecuting this crime in a no-nonsense manner. It was at this Conference that we first became familiar with the basic tenants of pro-prosecution strategies already being implemented in other jurisdictions with promising results. Aspects of these strategies that impressed us both were that they incorporated victim input, victim safety, and victim services into the comprehensive picture of effective prosecution and they stressed early intervention through the prosecution of less serious crimes.

This meeting marked the beginning of a collaboration forged by the commonality of our goal, by the respect we afforded one another and by our willingness to learn from each other. Through the intervening years we have done a workshop on pro-prosecution strategies, met together informally with other interested Assistant Prosecutors and worked in various and sundry ways to further the development and implementation of pro-prosecution policies in NJ.

Therefore, it was with great enthusiasm that we agreed to Co-Chair the Pro-Prosecution Task Force of the NJ Advisory Council on Domestic Violence established in 1996. This is

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THE UNIQUE CHARACTER OF DOMESTIC VIOLENCE

Over the past several years the courts and the criminal justice system have become increasingly involved in domestic violence matters. In order to effectively combat domestic violence there must be an understanding of the special characteristics of domestic violence. Without an understanding of the dynamics of domestic violence, a victim's life can actually be placed in further danger and abusers are not appropriately held accountable for their behavior.

Domestic violence is different from any other crime or case that the courts, law enforcement, prosecutors or probation handle. Domestic violence, by definition, involves people who know each other and are in an intimate emotional relationship. These relationships involve elements of trust and love. The victim's life is entangled with the life of the abuser. The very person who the victim loves and trusts breaks that trust and love when they commit a crime of domestic violence.

Domestic Violence is a pattern of coercive domination and control based on or supported by violence. The abuser uses or threatens to use violence to coerce the victim to comply with the abuser's desires. Abusers will use physical and sexual assaults to force compliance by the victim. Victims suffer varying degrees of injuries including bruises, fractures, burns, head trauma, broken bones, cuts and scrapes and other injuries from weapons that were used. Abusers will also use emotional and psychological abuse by systematically degrading and wearing down the victim by name calling, humiliation through derogatory and demeaning comments, interrupting the victim's sleep, controlling access to money, and isolating the victim from family and friends. When victims state that they will report the abuse, the abuser threatens the victim with further violence, states that the victim will not be believed and blames the victim for provoking the defendant into the abusive acts.

Consequently a victim's reluctance to come forward and report the abuse is another unique characteristic of domestic violence cases. Victims have a real fear of retaliation and statistics show that victims are more likely to be seriously injured or killed when they leave or attempt to leave the abuser.¹ Victims do not believe that the justice system can assist them due to previous experience with an inadequate law enforcement or court response and actual retaliation by the abuser. A victim may remain or return to an abuser out of fear of the abuser carrying out his threats, lack of financial support, lack of alternative living arrangements, embarrassment, love of the non-abusive side of the batterer and a belief that the abuser is sincere in his promise to change and stop the abuse, religious convictions that foster remaining with a spouse and lack of any family support system due to isolation by the abuser. By asking a victim to come forward

¹Lenore Walker, *The Battered Woman*, (1979), American Prosecutors Research Institute, *Domestic Violence Prosecutors Take the Lead*, (1997) at 4, citing Sonkin et al., *The Male Batterer: A Treatment Approach*, (1985) and Browne, *When Battered Women Kill*, (1987).

INTRODUCTION

The Advisory Council on Domestic Violence was established by statute in 1980 (N.J.S.A. 30:14-4). Its nineteen members are drawn from governmental and nonprofit groups, and are appointed by the Governor. The Council is charged with:

- monitoring the effectiveness of laws concerning domestic violence and making recommendations for their improvement;
- reviewing proposed legislation to make recommendations to the Governor and the Legislature;
- studying needs, priorities, programs and policies throughout the State; ensuring that service providers and the community are aware of needs and services;
- making recommendations for community education and training programs.

In 1996, the Council recognized the importance of focusing attention on pro-prosecution strategies and to that end, established its Pro-Prosecution Task Force. The Task Force was charged with the responsibility of exploring successful prosecution strategies and finding ways to encourage statewide adoption of those strategies.

This initiative began against a backdrop of growing interest and efforts to improve the criminal justice response to domestic violence **that was** spreading across the nation. It was evident from model **prosecution** programs in Quincy, Massachusetts and San Diego, California that pro-prosecution strategies could significantly reduce the numbers of domestic violence fatalities. In both [precincts] **jurisdictions**, domestic violence homicides were reduced from ___ to ___ after ___ years of implementation of similar pro-prosecution strategies. **Since the early 1990's, a few counties in New Jersey, motivated by Quincy and San Diego, had been striving to adopt similar policies, but in general New Jersey had not adopted pro-prosecution policies statewide.**

The Task Force first met in June of 1996, bringing together representatives from county prosecutors' offices, police, victim advocates, legal services, the courts and probation. Rural, suburban and urban areas of New Jersey were represented on the Task Force. Together this group developed the mission of the Task Force:

The purpose of the Pro-Prosecution Task Force of the New Jersey Advisory Council on Domestic Violence is to make recommendations on how to improve the criminal justice system's response to domestic violence with a focus on victim safety and batterer accountability.

Next members developed the *Key Elements of a Pro-Prosecution Policy: Indictable and Disorderly Persons Offenses*, which delineates the essential ingredients for effective prosecution regardless of the severity of the offense or the venue in which it is heard. Members researched and examined noteworthy prosecution programs from jurisdictions of various sizes, demographics and methods of organizing the delivery of police services both within and outside of New Jersey. Then the members had in-depth discussions on focus topics in order to arrive at consensus regarding best strategies for use in New Jersey. Finally, the Task Force began to write this report based on its research, discussion and conclusions.

of further harassing the victim. In these cases victims find themselves facing criminal charges. Battered women arrested in these situations often concede guilt [in] to non-indictable charges in order to return home as quickly as possible to their children. **This is often done** without benefit of counsel and without understanding the future consequences of this decision. When facing more serious charges victims often accept a plea bargain for fear of being found guilty of more serious charges by a jury. As we become more assertive about prosecuting acts of domestic violence it is imperative that we are careful not to [vigorously] **arrest and** prosecute victims.

Finally, it is [also] imperative that prosecutors both educate themselves regarding cultural differences in order to be sensitive to all victims, and to mete out justice as fairly as possible regardless of the batterer's and the victim's race, culture, sexual orientation, age, or economic status. We cannot expect victims of [diversity] **color, immigrants and victims of other minority groups** to use the justice system or participate to the extent they are able if they are fearful that the system will treat them and others like them with less sensitivity and justice.

Despite these caveats we remain convinced [having studied numerous pro-prosecution models] that [this is one avenue] **sound prosecution policies are one means, if properly implemented within a coordinated community response**, [that can have a significant impact on] for reducing the incidence of domestic violence. The Task Force considers this Report to be a blueprint for how the New Jersey criminal justice system can work to significantly improve its response to domestic violence.

KEY ELEMENTS

One of the first tasks undertaken by the Task Force was to develop a set of basic, central components absolutely essential to [effective prosecution]**an effective criminal justice system response**. This was a relatively easy undertaking, accomplished quickly with little need for discussion. Despite the ease of development, this set of "Key Elements" remains perhaps the most significant product of the Task Force. Not only did it provide a guideline for writing the full report, it could also stand alone as a single formula for implementing pro-prosecution strategies as defined in this report.

Additionally, the Key Elements provided the Task Force with the resolution of a later debate regarding the most appropriate venue for handling non-indictable domestic violence cases. **Currently, non-indictable domestic violence offenses that are not associated with a violation of a restraining order are heard in the Municipal Court. It has been suggested that these cases should be heard in the Superior court.** Although Task Force members did not agree on whether the Municipal or the Family **Division**/Superior Court was the better venue for hearing non-indictable domestic violence cases, all members agreed that the components included in the Key Elements need to be in place in whatever venue domestic violence offenses are heard. It was further agreed that both venues are currently in need of additional resources if domestic violence cases are to be handled effectively.

Therefore, no discussion regarding the practicalities of prosecuting domestic violence cases in one [venue] **court** versus another is meaningful without incorporating a discussion of which elements need to be created in each and where the resources for establishing and maintaining these elements will come.

1. **Safety of Victim as Guiding Principle**

"First, do no harm . . ." Hippocratic Oath

[The 1992 Victimization Survey documents that more than 1,000,000 women and 143,000 men were violently victimized by intimates. Twenty-six percent of female murder victims and three percent of male murder victims were killed by intimates.]

The 2000 Intimate Partner Violence report of the US Justice Department Bureau of Justice Statistics documents that just over 875,000 women and approximately 160,000 men were violently victimized by intimates in 1998. One thousand three hundred twenty women and 510 men were murdered by intimates. Women were the victims in 72% of intimate murders and the victims of about 85% of nonlethal intimate violence.

Definitions of domestic violence recognized throughout the nation help clarify consideration of the safety issues:

Domestic violence is the use of force within the context of an intimate relationship. Battering is the use of violence as part of a pattern of abusive or coercive behaviors leading the offender to establish control over the victim.

[consistent] with the demonstrated escalating behavior. A conviction also prohibits defendant's firearm possession, reducing the victim's safety risk. Conviction permits monitoring and rehabilitative interventions. When a batterers intervention program or alcohol/drug abuse program is ordered, and defendant jailed if non-compliant, the victim is often safer.

Defendant accountability reduces societal tolerance for domestic violence. Appropriate and firm criminal justice sanctions create a system that supports an improved police emergency response and investigation. Improved emergency response and investigation procedures directly and positively effect victim safety as well as community and law enforcement officer safety.

3. [Trained, sensitive] Appropriate and sensitive initial police response and investigation.

The initial police response is critical to an intervention which produces greater victim safety and batterer accountability. Both victim and defendant will be [mindful of] greatly effected by this initial response. [the effectiveness and appropriateness of the police response.] An improper, casual response will be remembered by a defendant as a reason to believe that he/she can continue to batter. The partner will [understand] this as well.

(This needs better explanation. Jim has almost identical thought in police section) Each step in an effective police response builds on the preceding steps. An inexperienced, untrained and or insensitive officer will never develop the appropriate evidence to hold a batterer accountable as the end result of his/her investigation.

4. Comprehensive evidence collection

Many domestic violence cases can be proven without the victim's active participation if sufficient evidence and witness statements are obtained at the scene. Comprehensive evidence collection is therefore essential to pro-prosecution efforts. Domestic violence and battering are traumatic events that often leave visible injury and property damage. The Rules of Evidence have [traditionally] recognized the reliability of information obtained during a crisis, such as spontaneous declarations and excited utterances. The domestic violence incident, as it was experienced by the victim and observed by the responding police officer, can be literally brought into the courtroom.

This is the most direct route to hold offenders accountable. To do this police must have the training to understand what to do, protocols to structure their response and investigation and the equipment, tools and time to gather the evidence.

5. Trained, sensitive and committed prosecutor, investigator and victim support staff

Even the best emergency response will need follow-up investigation to develop facts sufficiently to sustain conviction. A prosecutor is needed to bring the evidence before the court to ensure findings and accountability. Even a fully "photo-documented" case may not survive an untrained prosecutor. Each decision and stage of the case processing creates different practical and safety concerns for the victim, which require appropriate training for victim-witness staff. Likewise, a mastery of the use of different tools available at different

8. On-going victim support by trained staff

Studies show **(Need cite)** that victims are much more likely to participate in prosecution when they are:

- well-informed about the process
- have input into the decision-making process
- able to express their fears and concerns
- kept current on prosecution developments
- assisted with safety issues and practical concerns
- are given on-going support.

Not only does this describe good prosecution practice, it also describes the kinds of information and support to which victims are entitled. Victim-witness staff, specifically trained in working with domestic violence victims, are key to providing this type of victim information and support and are therefore critical for achieving good prosecution results.

Additionally, victims should be referred to domestic violence programs to benefit from the full range of services provided by them. **Culturally appropriate** individual and group support and counseling, children's programs, housing and financial **and legal** advocacy, safety planning and 24 hour crisis response availability all work towards supporting the victim through the prosecution process. The victim-counselor privilege (N.J.S.A. 2A:84A-22.13) afforded by domestic violence program staff **but not by victim-witness coordinators**, also assures that victims can share their innermost fears and concerns in complete confidentiality.

9. Speedy Trial

[During the pendency of any trial in which a victim was directly impacted by the crime he or she] **While a case proceeds through the criminal justice systems, the crime victim** typically experiences a very reduced ability to continue with day-to-day activities in the same fashion as prior to the incident. The victim is also at ongoing risk of retaliation and or other witness tampering efforts by defendant.

These difficulties are greatly exacerbated in domestic violence situations because the victim often had and or continues in a long term intimate relationship with the defendant. Often there are shared responsibilities to children. The victim may be financially dependent on the offender.

Fast tracking of these cases is essential to reducing the risk to victims while charges are open and pending. **(Needs some more here)**

10. **[Post conviction probation and parole supervision including prosecution of violations of same.] Effective Probation and Parole supervision, including swift and certain violations**

POLICE

Prior to the passage of the **original** *Prevention of Domestic Violence Act* in 1982, there was no standardized police response to instances of domestic violence. A variety of enforcement tactics were employed without regard for such currently commonplace considerations such as victim safety, batterer accountability, lethality assessment, and evidence based prosecution. Police involvement in victim advocacy grew more out of frustration due to a lack of enforcement alternatives than from a belief that their actions were effective deterrents to future acts of domestic violence.

Current practices have improved greatly. A comprehensive set of statutory mandates and guidelines provide clear direction for law enforcement responses to incidents of domestic violence. Research and theory are abundant. All of the involved agencies of government and the private sector have finally established a dialogue that is truly encouraging. Grant funding has been made available for a variety of much needed programs. Model programs from all over the country have demonstrated success that can be transplanted throughout New Jersey with similar expectations.

However, an effective, compliant, and uniform statewide response to domestic violence has yet to be achieved. The disparity in procedures from town to town, city to city, and county to county has left victims confused and frustrated, and provides a measure of asylum to batterers.

The Task Force's recommendations address a number of concerns related to the law enforcement response to domestic violence. These recommendations are essential to an effective police response and are largely cost effective. Prominent among these recommendations is the concept of *evidence-based prosecution*. Evidence-based prosecution is defined as an effort to successfully prosecute a case of domestic violence based on a thorough investigation and the gathering of all available physical, audio, and photographic evidence for a successful prosecution of a batterer without requiring or **relying solely on testimony** from the victim. The responsibility for arresting and prosecuting batterers must be shifted from the victim to the criminal justice system.

All law enforcement agencies should stress that the quality of the police response to a domestic violence incident will have a profound effect on all subsequent phases of the case.

As the first step in the criminal justice system's response to domestic violence, an improper, insensitive, or incomplete effort on the part of the police will almost certainly have a negative effect on the outcome of the case. A domestic violence victim's initial view of the criminal justice system's ability to aggressively pursue domestic violence complaints, including the extent of the victim's subsequent cooperation, may well rest with the competence and professionalism displayed by the responding officers.

Law enforcement agencies should be culturally competent and reflect the diversity of population they serve and protect.

should be considered in both training and recruitment of volunteers.] **Special attention to how cultural diversity issues affect the dynamics of domestic violence in particular cases should be considered in training, and efforts should be made to recruit volunteers who reflect the community.** CIT's are equally viable when organized at a single city/municipality or regional level. Where CIT's are not available, an organized advocacy center should be utilized as a referral

Basic protocols for obtaining and recording evidence should be developed and established by the County Prosecutor for both the initial law enforcement investigation as well as follow-up investigations. Sufficient quantities of investigative tools, including but not limited to cameras and tape recorders should be made available with existent resources.

Law enforcement officers must be encouraged to conduct thorough investigations in all domestic violence cases, whether indictable crimes or disorderly persons offenses. An alarming number of police investigations in domestic violence cases consist solely of victim statements. In cases where victims are subsequently intimidated or coerced into recanting their statements, little or no compelling evidence of the offense remains. Evidence based prosecution techniques must be encouraged. These techniques should include photographing of visible injuries and property damage, written or audio taped statements of victims and witnesses, obtaining medical and ambulance reports, copying 911 tapes, and other pro-active investigative techniques that shift the burden of providing proof of the incident from the victim to law enforcement. Special attention should be given to citing or even quoting, excited utterances or spontaneous statements. Strategies should then be explored to provide the means to photograph crime scenes and victim's injuries where applicable. Agencies could further explore the means to take audio taped or videotaped statements from victims at the time of the complaint.

A 1999 study in a large US city revealed that photographs were available in only 15% of domestic violence cases, "911" tapes in only 2%, and medical records in only 2% of cases. Yet, where these pieces of critical evidence were present, they were responsible for increased penalties to batterers.² In generating incident reports, law enforcement officers must adopt the same investigate standards that are common in cases of serious crimes such as robbery, assault, sexual assault. Acts of domestic violence transcend the underlying statutory offense. A full and complete incident offense report accompanied by sketches, photographic evidence of the crime scene and the victim's injuries, medical reports, "911" tapes and other applicable items will not only support the victim's testimony, but will also provide prosecutors with a viable case in those many instances when the victim recants or fails to appear to testify.

Officers should always carefully assess who is the perpetrator and who is the victim in domestic violence incidents where both parties are injured or when both parties accuse the other of domestic violence, as per N.J.S.A. 2C:25-21(a) & (b).

² Allen, Belknap, Graham, Hartman, Lippen, & Southerland. "Predicting Court Outcomes in Intimate Partner Violence Cases: Preliminary Findings." Domestic violence Report. (Vol.5, No. 1) October/November, 1999. pp. 1, 2, 9 & 10.

such a mandatory “yes/no” field that must be answered before the operator can proceed in issuing a CDR 1 or 2. This mechanism should automatically add a suffix to the statute charged in order that all domestic violence arrests and convictions may be distinguished from non-domestic violence offenses. All arrests, convictions, downgrades, and “conditional dismissal” type dispositions should be tracked by this process.

The AG should develop comprehensive documentation and reporting guidelines for the *Prevention of Domestic Violence Act*. The Attorney General should also institute a routine system of review in every law enforcement agency of all domestic violence [police] response documentation and reports to ensure quality control of training and implementation [of the *Prevention of Domestic Violence Act*].

In addition to quality control issues, this procedure would be invaluable in identifying the vast procedural disparities that exist from county to county. Such disparities have a discouraging effect upon domestic violence victims that live and work in separate counties and experience these procedural disparities. Once identified, County Prosecutors would have an opportunity to reduce these disparities.

community response to domestic violence and work towards the amelioration of this problem.

Clear written protocols and guidelines for prosecution of domestic violence cases should be adopted by county prosecutors. (Should the AG have role in these?) These policies should apply to all domestic violence prosecutions whether disorderly persons offenses or indictable crimes, and regardless of whether venue is in the Superior or Municipal Court.

Policies should provide for an aggressive policy of *evidence-based prosecution* with specific guidelines for determining whether there is sufficient evidence to go forward in a prosecution regardless of the victim's appearance in court or participation as a witness. The victim's ability to appear in court and testify completely as to the facts of a domestic violence offense should be vigorously protected so that cases that cannot go forward without the victim's full participation may proceed. **(The meaning of this sentence is not clear. Please rewrite to clarify)** [All such guidelines should require consideration of the safety of the victim first and be designed to achieve defendant accountability and to reduce societal tolerance for domestic violence.] **redundant**

All such policies should restrict and discourage the use of such dispositions as "sixty, ninety or one-hundred and eighty day holds", conditional dismissals, deferred prosecutions, downgrades to ordinance violations and adjournments in contemplation of dismissals. These types of dispositions do not hold offenders accountable, are generally implemented without any monitoring of conditions or requirement of compliance with conditions, and do not identify first offenders. As a result the opportunity for deterrence through arrest and increasingly severe sanctions for repeat offenders is lost. The prosecutor should advocate with the courts for short adjournment dates in all domestic violence matters.

[The requirement of the Attorney General's Standard Operating Procedure for Domestic Violence responses,] The *Prevention of Domestic Violence Act* requires that officers sign the complaint in all mandatory arrest cases (N.J.S.A. 2C:25-21). County Prosecutors should monitor and strictly enforce this provision.

Requiring victims to sign complaints in mandatory arrest cases is not consistent with the mandatory arrest provisions of New Jersey law. **It is also incompatible with a prosecution policy that strives to take the responsibility for holding batterers accountable away from the victim.**

Basic protocols for obtaining and recording evidence should be developed and established (by whom?) for both the initial law enforcement response and follow up investigation. (Is this a police recommendation?)

Uniform initial and follow-up investigation protocols should include minimum requirements necessary to promote *evidence-based prosecution* of domestic violence criminal offenses. The protocols should require visible injury and property damage photographs, written or audio taped statements of victims and witnesses, medical and ambulance reports,

independent investigation. Defendants [often] **may** file complaints as retaliation against the victim for seeking police assistance. Another motivation for the defensive filing of cross complaints in domestic violence cases is to create a constitutional right to remain silent (in the victim) where none exists, simply by creating a legal pleading in which *the victim* is named as the defendant.

New Jersey statutes and court rules are designed to protect against the improper filing of domestic violence cross-complaints. The provisions of the *Prevention of Domestic Violence Act* specifically prohibit the arrest or charging of victims of domestic violence for injuries inflicted while the victim is acting in self-defense (N.J.S.A. 2C:25-21(c)) 3. New Jersey Court Rules require that an arrest warrant or summons based on a citizen's complaint may issue only after a finding by the municipal court judge or court staff that there is probable cause that the offense was committed (R. 3: 3-1).

Regardless of these provisions, present practices **and customs** routinely allow the issuance of summons or warrant complaints simply upon request **of civilians**. Far too often these requests are made by domestic violence defendants charged as the result of a police response. The probable cause analysis required by the *Prevention of Domestic Violence Act* and the Court Rules before either a summons or warrant complaint issues is effectively short circuited when citizen's criminal complaints cause the automatic issuance of process in the form of a warrant or summons. Less judicial scrutiny is often applied when a summons is issued rather than a warrant because the arrest of the person charged is not contemplated. However, the issuance of any legally inappropriate process against a battered partner will have a negative effect. The victim facing official, albeit baseless charges, will be more fearful of the defendant and the system and reluctant to testify.

All proposed criminal code complaints arising under the *Prevention of Domestic Violence Act* should be reviewed **the prosecutor** to ensure that there is probable cause for their issuance. The charging decision is a prosecution function. Prosecutors involved in screening and charging are responsible to thoroughly evaluate the facts and circumstances of each case prior to making the charging decision. The Prosecution Standards of the American Bar Association set forth the basic premise that "the decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor." Standard 3-3.4. The standards specifically address the issuance of citizen complaints and call for the establishment of procedures whereby all citizen complaints be presented", for prior approval to the prosecutor and the prosecutor's recommendation thereon . . . communicated to the judicial officer." Standard 3-3.4. . When there is neither probable cause nor likelihood of conviction charges may be dismissed. Comments to Standard 3-3.4¹

In State v. Ward 303 NJ Super. 47 (App. Div. 1997) the court explicitly recognized that the authority of a prosecutor to dismiss charges which are not supported by evidence is clear and extends to disorderly persons complaints issued on behalf of civilian complainants.

Present practices should be reviewed and revised (**by whom?**) so that there is conformity at every charging level, whether indictable or disorderly, with *the Prevention of*

¹ See Generally, ABA Standards for Criminal Justice Prosecution Function and Defense Function, Third Edition, 1993.

violence unit (where office/community resources allow for such specialization) or to specialize in cases as part of a larger case load.

(The following needs to be put in narrative form. Also Bill has suggested we include a recognition that the prosecutor has authority over assignments and responsibility for all cases i.e., he/she can't just be concerned with domestic violence)

- Factors that should be considered **(for what?)** include the individual's legal experience and ability, understanding of dynamics of domestic violence, demonstrated sensitivity to victims and desire to work in the unit.
- Prosecutors who receive regular training regarding domestic violence will be more effective in achieving the goals of domestic violence prosecutions: protecting victim safety, holding offender's accountable and reducing societal tolerance for family violence.
- Specialized training must include the causes of domestic violence, power and control issues, the cycle of violence theories, prevention, safety planning, the effect of family violence on children, [cultural diversity,] domestic violence and immigration, the impact of alcohol and drug abuse, evidence law and the interstate enforcement of domestic violence orders. **This specialized training should also include how cultural diversity issues affect domestic violence and how cases involving non-English speaking victims will be handled.**
- Prosecutors who specialize in domestic violence matters develop experience that improves the responses, policies and protocols of their offices.

Prosecutors who self-select domestic violence as an area of specialization are more likely to quickly absorb the information and develop the sensitivity necessary to effectively prosecute these cases. The time will come when the prosecution of a domestic violence offense is relatively routine work for a prosecutor's office. Until that time, the delicate work of balancing victim safety with effective evidence based prosecution of offenders will require specialized interest and aptitudes.

County prosecutors (prosecutors or AG?) should adopt clear written protocols and guidelines for plea agreements in domestic violence cases. The policies should apply to all domestic violence prosecutions whether disorderly or indictable and regardless of whether the case is heard in the Municipal or Superior Court. The goals of victim safety, defendant accountability and reducing societal tolerance for domestic violence should be the foundation of such protocols and guidelines.

The guidelines should include standards that require all reasonable efforts to obtain victim input regarding **guilty pleas and** sentencing. Conditional dismissals, holds in contemplation of dismissal, and similar devices should be strongly discouraged. Reductions of charges to municipal ordinance violations should never occur. The preemption provision of N.J.S.A. 2C:1-5 (d) explicitly prohibit this practice. The statute provides that ". . .the local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with or preempted by any provision of this code or with any policy of the state expressed by this code."

adjournment dates, structured pretrial conditions, frequent victim communication and the confidentiality of addresses and phone numbers. (**Not here**)

To the extent the legally possible, the addresses and telephone numbers of victims should be held confidential. When necessary, protective orders should be sought in court. (**Here?**)

Prosecutor's offices should provide victims with notice of all motion and pretrial conference dates as well as the outcome of each proceeding. (**Not here**)

Distinct labeling of domestic violence prosecution files as such will provide a constant reminder of the specialized nature of each case.

Regardless of whether the case loses its viability during [this] any stage in the proceeding, [prosecutors office staff] the prosecution team should continue to be prepared to assist victims with safety planning issues.

[The strength of the uncorroborated prosecution case, dependent on the victim's participation to proceed, may rapidly change during any stage in the proceeding if a victim will not testify on behalf of the state.] **Cases uncorroborated with evidence are dependent on the victim's testimony. A victim's willingness to testify on behalf of the state can change rapidly during any stage of the proceeding.** Victim contact and services should not abruptly end at this [stage] time. Victims should clearly be informed that both the prosecutor's office and courthouse doors remain open to future complaints and that safety planning services continue to be available.

Prosecutor's offices should continue to rely primarily on domestic violence advocacy and service programs as a primary referral resource for addressing the safety related concerns of domestic violence victims. In order to accomplish this level of cooperation on an ongoing basis, close working relationships must be established and maintained between the county prosecutors office, both through the assistant prosecutors, victim-witness staff and local domestic violence advocacy and shelter agencies.

The prosecutor should work with probation, the courts and [community] correction officials to develop alternatives to straight incarceration which would result in a loss of employment by the defendant. [on even a short-term basis.] These alternatives will be particularly useful in those cases where defendant does provide meaningful financial support to the victim and/or dependant children.

Often a victim and victim's family face great financial hardship if the prosecution proceeds and the defendant is imprisoned. The development of a wide range of sanctions designed to contribute to offender accountability is sound policy. Knowing that a defendant may be sentenced to a work release or an electronic monitoring program may secure a financially dependent victim's willingness to testify as needed. **It is important to exercise care to avoid assumptions based on racial or ethnic stereotyping when making decisions regarding alternatives to straight incarceration.**

Prosecutors' offices should consider the appropriate use of the testimony of qualified domestic violence experts in court.

COURTS

Court intervention in an abusive relationship can often assist in breaking the cycle of violence. Positive judicial treatment can be an important factor in enabling battered women to use the legal system to leave the abusers.¹ A judiciary knowledgeable and sensitized to domestic violence and its dynamics can send a strong message that these cases are serious violations of the law and are not mere squabbles or disturbances.² A judiciary untrained in the complexities and nuances of domestic violence **and cultural factors that can effect the case** can unintentionally “revictimize” a victim and allow an abuser to be vindicated. As a result, the victim **may** feel the court system cannot provide any assistance and often returns to the abusive situation, believing the court will not hold the abuser accountable for his or her actions.

Since the various forms of domestic violence cases can be heard in Municipal Court, and in the Criminal and Family Division Parts of Superior Court, the recommendations set forth below should apply to all domestic violence cases regardless of the court in which they are handled. For instance, some procedures may currently only be done in the Superior Court, Criminal Part but should be done in Family and Municipal Court since domestic violence cases are heard in these courts as well. The court at each level should be provided with the same information and assistance so that domestic violence cases can be handled in accordance with the same standards.

Victim Services

The courts should establish secure, separate waiting areas for victims and their children.

Defendants often use the courthouse setting to intimidate and harass a victim into dropping restraining orders and charges when they have access to victims while waiting to appear in court. By providing a separate and secure waiting area victims are not exposed to potential retaliation and intimidation by a defendant.

Consequently, procedures should be developed for the intervention, investigation and arrest by sheriff's officers and others responsible for courthouse security when the defendant interacts unlawfully with a victim.

Courthouse childcare centers should be established.

These centers can facilitate a victim's appearance in court for both civil and criminal proceedings especially since many victims do not have the financial resources or available persons to provide childcare. These centers can also be used for the safe exchange of

¹ American Prosecutors Research Institute, Domestic violence, Prosecutors Take the Lead, p. 30 (1997)

² *Id.* at p.30.

- The fear victims have of retaliatory violence especially since most victims have previously experienced it.
- Education on the religious and cultural dictates and practices that strongly pressure women to remain with abusive partners and often blame the victims for causing the abuse.
- **Education on how batterers use their knowledge of the victim's culture, religion, sexual orientation, disabilities and personal values to perpetrate abuse.**

The training must also include education on the shame, guilt and humiliation victims have about the abuse often resulting in a reluctance to report abusive behavior. This type of education will enable judges to accurately assess the allegations of abuse and the abuser's justifications in the appropriate context of the dynamics of a domestic violence situation. Judges must become aware that a victim who is reluctant to testify may be doing so as a necessary survival tactic and not out of disinterest.

Judicial training should include familiarization with [the methods of prosecuting cases without a victim or with a reluctant victim.] evidence-based prosecution.

Many victims are reluctant to testify or do not testify about the incident fully out of fear of retaliation. The irony is that a successful prosecution with the court holding the abuser accountable may result in a safer environment for the victim. Consequently, prosecution may only be possible through the use of admissible hearsay such as excited utterances, 911 tapes, and other evidence admissible through Evidence Rule 404b. Judicial training should review these areas to ensure the court does not quickly reject these types of evidence without careful consideration.

Pretrial Release

Any court issuing a warrant charging a domestic violence offense should routinely consider imposing conditions of release and set forth the specific conditions of defendant's release.

When a defendant charged with a crime or offense involving domestic violence is released from custody before trial on bail or personal recognizance, the court authorizing the release may as condition of release issue an order that prohibits the defendant from having any contact with the victim, the victim's friends, relatives or co-workers; that restrains the defendant from the victim's residence, place of employment or school; or from harassing or stalking the victim or victim's relatives in any way. (N.J.S.A. 2C:25-26) The judge can also prohibit the defendant from possessing a firearm or weapon [enumerated in the law] and can order the search for and seizure of weapons at any location where the judge has reasonable cause to believe the weapon is located.

Guidelines should be developed by the Administrative Office of the Courts and the Attorney General for the establishment and enforcement of conditions of pretrial release whether on bail or personal recognizance. The guidelines should address the release conditions in all venues - Superior Court Family and Criminal Divisions and the Municipal Courts. The judge should require a bail/pretrial release investigation prior to setting conditions.

**the NJ Constitution and the Attorney General's standard on victim notification.
(Need cite)**

These procedures include the mandatory filing of the completed Victim Notification Form with every jail commitment and issuance of a domestic violence criminal complaint. The forms should routinely be re-filed whenever a defendant is transferred to any other institution. Consideration and resources should be given to developing a statewide-computerized notification system such as VINE (Victim Information and Notification Everyday).

Sentencing

Detailed information should be provided to the court so that the judge can tailor a sentence to the specific circumstances of a particular domestic violence case.

Presentence reports should be utilized to provide information to the court for sentence. Probation officers conducting presentence investigations on domestic violence cases should be trained in the dynamics of domestic violence. They should have full access to all relevant information about the defendants. This includes all information about restraining orders, the history of domestic violence, violations of restraining orders, prior criminal history of any kind, and present criminal justice system involvement. Access to all court and criminal justice automated systems should be provided to all officers investigating domestic violence cases.

When the court is going to sentence the defendant without a presentence report, prosecutor's should provide detailed information to the judge regarding the defendant's prior criminal history, the history of domestic violence, and the nature of the offenses. Prosecutors should also utilize victim impact statements or ask the judge to allow the victim to address the court as to the effect the crime has had on the victim.

Sentences should address the accountability and monitoring of offenders as well as meet the safety concerns of the victim.

When a defendant is sentenced to a term of probation, [in lieu of incarceration] the judge should set forth and explain the specific conditions of the sentence on the record. Specific conditions of probation the judge should consider are:

- No contact with the victim.
- Substance abuse evaluations and the completion of any recommendations.
- Batterer Intervention Programs (that meet the standards set forth below).
- Random urinalysis.
- Electronic monitoring.
- Psychiatric/psychological evaluations and the completion of any recommendations.
- Suspended jail sentences.
- Restitution for damage to property or for medical expenses incurred as a result of the incident.

Although the Legislature directed that domestic violence cases would be treated seriously, in actual practice defendants are routinely arrested pursuant to the mandatory arrest section of the Act (N.J.S.A. 2C:25-21) and released on their own recognizance with the charges often put on a summons. This is done despite the fact that the defendants have already evidenced disregard for court orders by violating a restraining order and may have additionally committed violent acts in the context of a domestic violence relationship. By releasing a defendant ROR and/or putting the charges on a summons, the mandatory arrest provision of the law is severely compromised. The crimes and offenses that already appear in the list of high impact cases are there because they require the serious attention of the judiciary and criminal justice system. By adding domestic violence offenses requiring mandatory arrest to the list of those charges that must be placed on a complaint-warrant, the intent of the *Prevention of Domestic Violence Act* is promoted and these cases will receive the serious attention that they need.

violence cases within their existing budgets. With the unification of probation on the state budget in 1995, no specific appropriation was made.

The review of the supervision policy should determine the effectiveness of the policy, whether amendments or additions are required, the extent to which the policy has been implemented in the 21 probation divisions, and what is needed to fully implement the policy across the state.

Special Conditions of Probation

The Conference of Chief Probation Officers should develop and recommend to the Supreme Court for adoption a set of uniform *Special Conditions of Probation for Domestic Violence Cases*.

The Special Conditions should reflect the special needs and demands of domestic violence cases. The Special Conditions should accommodate the various civil reliefs that may be embodied in the Temporary or Final Domestic Violence Order. **(Do we want to list these?)** Once adopted, the Special Conditions should be used in all courts (the Criminal and Family Divisions of the Superior Court, and the Municipal Courts) where defendants are sentenced for domestic violence offenses. **(Should we refer back to Court section where special conditions are listed?)**

The *Special Conditions of Probation for Domestic Violence Cases* should require a referral to an approved Batterer's Intervention Program (BIP) for an assessment to determine the offender's suitability for participation in the program.

This requirement will help to ensure that the offender is appropriate for intervention. BIP resources are scarce and should be used wisely. Inappropriate participants not only waste limited resources, they can be disruptive in the program and have a negative impact on other participants.

A copy of the *Special Conditions of Probation for Domestic Violence Cases* should be provided to the victim, along with a copy of the Standard Conditions of Probation.

This information will help the victim understand the probationer's obligations and restrictions while on probation, as well as the requirements of probation process and the role of the probation officer.

If the offender is deemed appropriate, they should be mandated by the court to attend and successfully complete the BIP.

The authority of the court should be utilized to compel probationers to participate in the intervention program. Experience with other offender treatment programs suggests that court mandated attendance results in better compliance with the program and improved outcomes.

Failure to comply with the conditions of probation will result in the filing of a violation of probation and return of the case to court.

Domestic violence cases should be given top priority in scheduling and hearings, ensuring that the case is brought before the judge as soon as possible. Failure to provide timely and effective enforcement undermines the integrity of the court order and may put the victim at greater risk.

The County Prosecutors should provide experienced assistant prosecutors to handle the prosecution of Violations of Probation and contempt of court charges in domestic violence cases. (See N.J.S.A. 2A:158-4.)

Statewide practice in this area varies among counties. It is always preferable to have an Assistant Prosecutor in court to represent the State on Violation of Probation charges. In the event that the probationer enters not-guilty pleas and there is a hearing without a prosecutor, the Probation Officer will have to testify as to the facts of the case and this is difficult to do when the officer is presenting (prosecuting) the case as well.

Subsequent acts of domestic violence committed by probationers should result in the filing of Violation of Probation charges

The Act provides for filing of contempt court charges as the sanction for violation of restraining order (N.J.S.A. 2C:29-9.b.). Since the defendant is also on probation for violating the restraining order, the probation officer may also file a violation of probation. Under the provisions of N.J.S.A. 2C:45-3.b., the judge, upon finding the probationer guilty of the violation, may impose any sentence authorized for the original offense.

When the violation of probation also constitutes a violation of the restraining order, the probationer should also be charged with contempt under N.J.S.A. 2C:29-9.b., and the prosecutor should prosecute both charges. Second and subsequent contempt convictions for non-indictable offenses carry a mandatory sentence of not less than 30 days.

Statistics

The Probation Services Division of the AOC should publish statewide statistics on the supervision of probationers sentenced for domestic violence matters.

The Superintendent of the New Jersey State Police is required to report annually on the nature and extent of domestic violence offenses (N.J.S.A. 2C:25-24.c.). A similar report on the supervision of probationers would be helpful in assessing the effectiveness of probation for this population.

Such a report should include the number of cases sentenced or referred to probation, the classification level, staffing levels, compliance with conditions of probation, and the outcome of the term of supervision. This report should be published annually. This data will help to demonstrate the scope and demands of the supervision workload, resources available and the effectiveness of supervision. Such data should help to clearly demonstrate the need for additional resources.

BATTERER'S INTERVENTION PROGRAMS

NJ domestic violence programs began developing Batterers Intervention Programs (BIPs) in the early 1980s when battered women's adomestic violenceecates concluded that domestic violence should be addressed through direct interventions with batterers, as well as through victim services. Today, as in the past, the majority of BIPs in NJ are operated from within the battered women's programs, although several others are operated by outside agencies that work in conjunction with the local battered women's program. In 1999, 15 New Jersey Coalition for Battered Women (NJCBW) member programs provided BIP services to 3,881 batterers, 89% of whom were court ordered to attend.¹ Additional batterers attended programs outside of the NJCBW and are not recorded in this data.

Before the battered women's movement developed a comprehensive analysis of the causes of partner violence, most interventions for domestic violence operated on the assumption that such violence was connected with a perpetrator's deep-rooted psychological problems and with a victim's "need" to be abused. After working with thousands of perpetrators and victims, the domestic violence community has recognized battering not as a private, personal or family problem, but as one manifestation [the worldwide imbalance of power between men and women, whites and people of color, heterosexuals and homosexuals, the rich and the poor, for example.] **of male violence against women which occurs within intimate relationships. Domestic violence occurs in the context of an imbalance of power in a relationship, whereby the batterer controls the victim through a variety of abusive tactics. This analysis of domestic violence has largely shaped intervention strategies for batterers, although many approaches different have been used.**

Although BIPs in New Jersey are not currently mandated to use a specific model of intervention with batterers, NJCBW member programs generally share similar goals and approaches. The three major goals are:

- To protect victims and their children.
- To hold batterers accountable for their violent behavior
- To empower batterers to make nonviolent choices.

Programs use the peer group model while some also incorporate other interventions such as individual counseling. [or anger management.] Programs incorporate educational materials about power and control tactics such as isolation, sexual abuse, intimidation and male privilege. Program facilitators are not only required to possess considerable clinical skill, but also a comprehensive understanding of the dynamics of domestic violence, as well as credible experience with victims and perpetrators.

To date, research findings as to the efficacy of the various models of BIPs are limited and inconclusive², although completion of a BIP program appears to be correlated with less recidivism than with non-completion.³

¹ NJ Coalition for Battered Women Annual Report 1999.

² Gondolf, E. (1997) Batterer programs: What we know and need to know. Journal of Interpersonal Violence, 12, 83-98.

that victims do not relax their safety precautions or think that the violent behavior will disappear simply because the abuser is in a BIP.

The courts should only use BIPs that meet at least minimal, nationally recognized standards. The NJ Coalition for Battered Women and/or local battered women's programs should be consulted regarding the qualifications of existent BIPs.

Domestic violence is a special and unique field. In spite of this, there is no specific domestic violence training or experience required by the mental health or medical fields. However, many psychiatrists, psychologists and therapists assume they are qualified to work with victims and perpetrators of domestic violence based on their general clinical study and experience. Unfortunately, a lack of study in this specialty can result in the inadvertent exacerbation of the problem on the part of the helper. Therefore, it is critical that the courts work with qualified BIPs.

Based on a national review of legislated BIP standards and standards otherwise officially adopted by jurisdictions, a consensus regarding minimal standards of a qualified BIP emerge:

- 1) Program staff that have extensive education and experience in the specialty field for domestic violence;
- 2) A program that meets weekly for at least 26 weeks;
- 3) A group format for working with batterers;
- 4) A policy that requires a close working relationship with the local battered women's program and where possible, the batterer's partners;
- 5) Victim safety as a stated purpose of the program;
- 6) Automatic reporting to the court or probation upon learning of additional incidents of domestic violence.

Additionally, the program should strive to offer culturally appropriate services and have a staff that reflects the diversity of clients.

The NJCBW and member programs are staffed with people credentialed in domestic violence, i.e., people who have acquired a NJ Domestic Violence Specialist credential. Member programs also have been working with batterers for the past 20 years. This expertise is a valuable resource for the court in determining which BIP's are qualified.

[The NJ Coalition for Battered women and its member programs are knowledgeable regarding the qualifications of existent programs and could be consulted for this information.]

Batterer accountability should include close monitoring by probation or parole officers of mandated attendance at BIPs and credible consequences for non-attendance and imposition of real consequences.

NEXT STEPS

Since the Task Force first began meeting in 1996, there have been a number of significant steps taken in New Jersey to move towards more effective prosecution in domestic violence cases.

The concept of pro-prosecution as defined in this report was introduced into the domestic violence section of the *NJ Prosecutor's Manual* in 199 . Information on pro-prosecution strategies has been provided to Assistant Prosecutors assigned to domestic violence cases at their annual *DV Symposium*. The need for thorough investigation and evidence collection at the scene of domestic violence incidents has been incorporated into domestic violence training for police officers. **(Need date and accuracy of this info from Bill Z.)** The Division of Criminal Justice developed a curriculum for training of Municipal Court Prosecutors on the unique characteristics of domestic violence and how to effectively prosecute these cases. Many counties have, for the first time, provided such training to their municipalities.

Perhaps the most encouraging development was the funding and creation of three Domestic Violence Units in County Prosecutors Offices chosen for their interest, training and experience with applying pro-prosecution strategies to domestic violence cases. These were funded with Violence Against Women Act (VAWA) STOP grant funds and are currently in their second year of operation.

Additionally, Crisis Intervention Teams, which contribute greatly to an effective and sensitive police response, have flourished in New Jersey with nearly every county having at least one team and some counties having 15 or more. A significant portion of VAWA funding has also been devoted to this effort.

These are all excellent measures, however, much remains to be done to ensure a strong and uniform criminal justice response to domestic violence. An improved and more effective response from all components of the system are needed if New Jersey is to meet its responsibility to protect victims and hold batterers to the high standard of accountability implicit in the legislative intent of the *Prevention of Domestic Violence Act*.

To accomplish this, the Task Force strongly encourages state and local leaders to take responsibility for carefully reviewing this report and launching efforts to implement the practices detailed. It is important that those who are in positions of leadership and authority take the lead in implementing these efforts.

The Division of Criminal Justice should continue to award Violence Against Women Act STOP grants that support the operation of Domestic Violence Units within County Prosecutors Offices.

In Federal Fiscal Years 1999 and 2000, New Jersey received over \$3.5 million in Violence Against Women Act STOP grant funds. Twenty-five percent of the funds must be devoted to prosecution of violent crimes against women and 25% to police efforts to combat these crimes. As mentioned above, three Domestic Violence Prosecution Units that stress pro-

There are several local agencies that currently offer cultural diversity and sensitivity training. The Advisory Council on Domestic Violence could assist in identifying agencies in New Jersey and in the region that conduct such training programs.

Law enforcement agencies should establish civilian advisory boards that are broadly representative of the communities they serve to order to establish a partnership with the community so that local priorities, concerns and issues are addressed.

Such advisory boards are an important link with the community and can help identify problem policies and procedures and provide a forum to the community to partner with law enforcement in developing reforms, opening communication and establishing forums that will help build trust between law enforcement and citizens. This is important to victim and community safety. In those places where there is a lack of trust in law enforcement, community members, including victims of domestic violence, often believe that they cannot make the choice to call the police because they fear some harm would befall them or family members. This lack of choice results in fewer calls and, of course, increased violence. Expanding and enhancing communication, building partnerships with the community, will give victims and community members more confidence in law enforcement, resulting in more contact with the police and safer communities.

Victim Notification Forms and other writings to victims or defendants should always be in the native language of the victim.

(This needs some language. Should list variety of forms and whether or not they are offered in Spanish, or at least some more detail. What forms would TF suggest?)

The Advisory Council on Domestic Violence should reconvene it's Pro-Prosecution Task Force in one year for the purpose of assessing progress towards the implementation of the recommendations contained in this report.