

# **DOMESTIC VIOLENCE**

## ***Keeping the Promise***

**Victim Safety**

**and**

**Batterer  
Accountability**

.....  
**Report to the California  
Attorney General from  
the Task Force on Local  
Criminal Justice Response  
to Domestic Violence**

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**June 2005**



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Local Criminal Justice Response  
to Domestic Violence

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**Bill Lockyer, Attorney General**

**June 2005**



# Attorney General's Task Force on Criminal Justice Response to Domestic Violence

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Bill Lockyer, Attorney General

The Honorable Bill Lockyer  
Attorney General, State of California  
1300 I Street, Suite 1700  
Sacramento, CA 95814

Dear Attorney General Lockyer:

In December 2003, you formed a Task Force to examine how local criminal justice systems respond to domestic violence across California. You asked our 26-member Task Force – representing criminal justice agencies, victims, the judiciary, health care, and the Legislature – to focus on four areas: obtaining and enforcing restraining orders, prosecuting misdemeanor domestic violence cases, holding batterers accountable, and law enforcement's response to health practitioner reports of domestic violence. And you cautioned us to expect that local practice would vary significantly across the state.

After considering close to 300 interviews with practitioners, hundreds of documents, and testimony from 69 witnesses at six public hearings throughout the state, we have prepared a report that identifies numerous problematic practices, and offers clear, straightforward recommendations that we believe must be implemented quickly to strengthen the criminal justice response to domestic violence in California. We hereby submit the report to you, entitled *Keeping the Promise: Protecting Victims of Domestic Violence and Holding Batterers Accountable*.

Our report includes disturbing examples of agencies that have failed: to respond to domestic violence victims, to enforce the law, to comply with the law, and to work in necessary collaboration. Yet, we have also seen firsthand how much can be accomplished when there is strong local leadership and cooperation among agencies. Our recommendations provide information on how agencies that work with or within the criminal justice system can respond more strategically – and more effectively – to domestic violence crimes and their victims.

This report should be read as a road map for addressing profound problems in the handling of domestic violence incidents in California. It is a critical report, but a report still filled with hope and optimism for the future – if local communities and state agencies work closely together to implement the recommendations provided.

We are confident that many dedicated public servants in local criminal justice systems and many community-based advocates want a stronger response to this devastating crime. We believe that this report can challenge all of us to redouble our efforts to work in a collaborative and sustained fashion as we strive to make victims safer and hold batterers accountable.

On behalf of the Task Force, thank you for your leadership and for the opportunity to participate in this powerful social change process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Casey Gwinn", with a horizontal line extending from the end.

CASEY GWINN, Chair  
Attorney General's Task Force on  
Criminal Justice Response to  
Domestic Violence

Attorney General Bill Lockyer's  
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RESPONSE TO DOMESTIC VIOLENCE**

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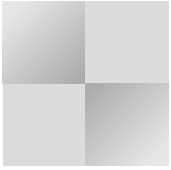
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# *Executive Summary*

## **The Task Force**

Over the past 15 years, California has given new responsibilities and tools to agencies within the local criminal justice systems to address the serious problem of domestic violence. While these agencies, by themselves, cannot satisfactorily reduce the incidence and ill effects of this violence, they must play a large role in any strategy that proposes to do so.

It is time to take stock of their efforts. In December 2003, Attorney General Bill Lockyer convened this 26-member Task Force to learn exactly how these agencies have carried out their new responsibilities, and to what extent they are succeeding. He asked that we examine four substantive areas:

1. Restraining Orders: How are they obtained and enforced?
2. Prosecutors' Offices: How do they handle domestic violence cases, given that most are misdemeanors?
3. Batterer Intervention Programs: How do these programs, together with courts and probation departments, hold batterers accountable?
4. Health Practitioner Reporting: How do law enforcement agencies respond when they receive reports of suspected domestic violence from health practitioners?

These questions proved challenging because the pertinent information was scattered across the numerous autonomous agencies in each county's criminal justice system. Moreover, the policies and practices of these agencies vary widely across and within the state's 58 counties.

As a result, we focused our fact-finding efforts for the most part on 10 counties chosen to achieve diversity in location and urban/rural make-up. Our staff interviewed almost 300 practitioners and experts, and we heard from 69 testifiers at six public hearings across the state.

On this basis, we have prepared our report for the Attorney General, entitled *Keeping The Promise: Protecting Victims of Domestic Violence and Holding Batterers Accountable*. It consists of findings about agency practices – particularly “problematic practices” – that characterize each of the four substantive areas, and recommendations for corrective action, including minimum standards of performance. What follows is a selection of those problematic practices and recommendations.



# **1 Domestic Violence Restraining Orders**

Restraining orders can be a powerful tool to prevent batterers from committing further domestic violence, so long as there is a credible threat that violators will be sanctioned.

Both Criminal and Family Courts have authority to issue these restraining orders:

- Criminal Courts must issue a Criminal Protective Order (CPO) when sentencing a domestic violence defendant to probation (the typical sentence). Such an order either prohibits the offender from having contact with the victim, or requires the offender to have peaceful contact with the victim (often issued if they still live together or share child custody).
- Family Courts must issue a restraining order, in the form of a Temporary Restraining Order or a permanent Order After Hearing, if the victim offers “reasonable proof” of domestic violence. Like a CPO, such an order either prohibits contact or requires peaceful contact.
- All such orders must prohibit firearms possession, and must direct the abuser to surrender any firearms within 24 hours.

Once issued, restraining orders must be recorded in a statewide database maintained by the Department of Justice (DOJ). Law enforcement can consult this database to determine whether a restraining order has been issued and served, its terms and duration, and on that basis arrest violators and seize firearms. It is the responsibility of the Criminal Court to ensure that CPOs are recorded in the database within one business day, either by entering the information itself or, most frequently, designating a law enforcement agency to do so. No agency, however, is statutorily responsible for ensuring that Family Court restraining orders are recorded.

**Problematic Practice:** According to the statewide database, the Criminal Courts in many counties generate few Criminal Protective Orders relative to the size of their population. Seventeen of these courts acknowledged that: 1) they were not imposing CPOs on all required domestic violence defendants, and/or 2) they had no reliable procedure for entering their CPOs into the database.

**Minimum Standard:** As already required by statute, Criminal Courts must impose Criminal Protective Orders when sentencing domestic violence offenders to probation, and must ensure that the orders are recorded in the statewide database.

**Recommendation:** The Department of Justice should continue to monitor and intervene (if necessary) with counties that have low CPO rates, enhance its own capacities to monitor and provide technical assistance, and periodically issue reports on how counties are performing.

**Problematic Practice:** Significant burdens are placed on domestic violence victims who seek Temporary Restraining Orders and permanent Orders After Hearing from the Family Courts. Although the victims must fill out lengthy, not-easily-understood forms that require up to several hours of assistance, free legal help is not available in four of the core counties. Moreover, there appear to be some judges, scattered across the state, who intimidate victims and make it difficult for them to obtain protection.

**Minimum Standard:** Every county must provide free legal assistance for domestic violence victims who want to obtain the protections of Family Court restraining orders.

**Problematic Practice:** Family Courts in most of the core counties require domestic violence victims to deliver copies of their restraining orders to all law enforcement agencies that might have to enforce them – agencies that have jurisdiction where the victim and victim’s children live, work, and attend school. This practice unnecessarily burdens victims because these orders are enforceable once entered into the statewide database. In contrast, victims protected by Criminal Protective Orders are not required to deliver copies to law enforcement.

**Minimum Standard:** The Family Court and law enforcement in each county should relieve domestic violence victims of the unnecessary burden of hand carrying family court restraining orders to the agencies that have enforcement jurisdiction.

**Recommendation:** The Attorney General’s Office should sponsor legislation making Family Courts responsible for ensuring that their domestic violence restraining orders are entered into the statewide database, just as Criminal Courts are responsible for their Criminal Protective Orders. As a result of this recommendation, the Attorney General sponsored SB 720 (Kuehl) this session.

**Problematic Practice:** A batterer cannot be prosecuted for violating a Family Court restraining order unless he or she was previously served with the order. According to the statewide database, however, a significant percentage of the orders issued in almost every county have not been served – ranging between 20 percent and 50 percent in 45 counties. Whether these orders are truly unserved, or erroneously reflected as such in the database, they are highly unlikely to be enforced.

**Recommendation:** The Department of Justice should continue to monitor the number of Family Court domestic violence restraining orders that go unserved according to the statewide database, enhance its own capacities to monitor and to provide technical assistance, and issue periodic reports on how counties are performing.

**Problematic Practice:** We are aware of few criminal justice agencies in the core counties that have a coordinated policy of proactively enforcing firearm prohibitions in Criminal Protective Orders and Family Court domestic violence restraining orders. This lack of enforcement is particularly troubling in light of a recent UCLA finding that nearly two-thirds of domestic violence victims who live in homes where there are guns report that their batterers used a gun to scare, threaten, or harm them.<sup>1</sup>

**Minimum Standard:** Law enforcement and prosecutors in each county should adopt procedures to determine whether batterers subject to Criminal Protective Orders and Family Court restraining orders possess firearms (e.g., by checking the Department of Justice's firearms database), and then seize those weapons and prosecute the batterers.

**Recommendation:** The Attorney General's Office should sponsor legislation that authorizes local law enforcement to advise a domestic violence victim whether, according to the Department of Justice's firearms database, the batterer previously purchased a firearm. This will enable the victim to develop an effective safety plan, and put law enforcement on notice of the potential restraining order violation. As a result of this recommendation, the Attorney General sponsored AB 1288 (Chu) this session.

**Problematic Practice:** The heart of a Family Court domestic violence restraining order is its requirement that the batterer have no contact, or have peaceful contact, with the victim. The premise is that a period of separation or regulated contact will help prevent a recurrence of domestic violence. Law enforcement and prosecutors in the core counties, however, rarely and inconsistently enforce violations of such orders when issued by family court. Ironically, batterers subject to these orders are typically more dangerous than those subject to Criminal Protective Orders.<sup>2</sup>

**Minimum Standard:** Prosecutors and law enforcement in each county should adopt proactive policies to arrest and prosecute batterers who violate Family Court restraining orders. Given scarce resources, such policies could target violators who appear to pose greater safety risks.

## **General Recommendation**

The solution for every problematic practice identified by the Task Force relating to restraining orders requires the close collaboration of multiple agencies in each local criminal justice system. The leaders of these agencies – the Criminal Court and Family Court, District Attorney's Office, City Attorney's Office, Sheriff's Department, Police Departments, Probation Department, community-based victim service and advocacy organizations, and criminal defense bar – should convene on an on-going basis to identify and address these problems through coordinated group action.

## **2 Prosecuting Domestic Violence Misdemeanors**

District Attorneys' Offices prosecute most of their domestic violence cases as misdemeanors, punishable by a jail term of one year or less, rather than as felonies.

**Problematic Practice:** In the District Attorneys' Offices in most of the core counties, the least experienced prosecutors handle the misdemeanor cases. This means that they handle most of the domestic violence cases, even though such cases present some of the most difficult challenges that any prosecutor will face, particularly at trial. For example, victims are often hostile to the prosecution, and recant prior damaging statements about the defendant.

**Minimum Standard:** All prosecutors who handle misdemeanor domestic violence cases should receive training that allows them to evaluate and prosecute these difficult cases effectively.

**Problematic Practice:** In what is a fairly widespread practice, prosecutors enter and judges approve guilty plea agreements with domestic violence misdemeanants that, contrary to the spirit if not the letter of the law, do not require attendance at 52-week batterer intervention programs or three years of probation.

**Minimum Standard:** Courts should not accept plea agreements that allow attendees to avoid what is mandatory: 52-week batterer intervention programs and three-year probationary terms. Prosecutors should neither offer, accept, nor fail to object to, such plea agreements.

**Problematic Practice:** Domestic violence victims who receive support services are more likely to be and feel safe, and thus more likely to cooperate with prosecutors. A majority of the prosecutors' offices in the core counties, however, do not work with community-based victim advocates and agencies that provide such services, preferring instead to work only with their own victim advocates.

**Minimum Standard:** Prosecutors' offices should work with community-based victim advocates and service agencies to address the unique concerns and needs of domestic violence victims.

## **3 Holding Batterers Accountable: Batterer Intervention Programs, Probation Departments, and the Courts**

Batterer intervention programs are at the center of California's criminal justice response to domestic violence. Most convicted batterers are sentenced to probation and required, as part of that sentence, to complete a 52-week program. Even after 15 years of national evaluations, it is impossible to say how effective these programs are.

This is in part because so many participants fail to complete their programs, which in turn suggests that there are no credible sanctions for noncompletion. The Task Force examined this key issue: how do criminal justice agencies in the core counties ensure that batterers complete their programs.

In the mid-1990s, the Legislature gave batterer intervention programs substantial responsibility for probationary supervision of batterers. Programs must periodically apprise the court about a batterer's compliance with program requirements and immediately notify the court if the batterer appears to be out of compliance. It is the court's responsibility to hold an immediate hearing and decide whether to impose sanctions.

**Problematic Practice:** Batterers in the core counties have a dismal record of completing their programs. The estimates of noncompletion offered by probation officers and prosecutors ranged from 30 percent to 50 percent. The only county that tracks this data reported a noncompletion rate of 89 percent. (See General Recommendations, page 7.)

**Problematic Practice:** By law, a batterer intervention program must refer a batterer to court for a hearing if the batterer misses a session without "good cause," or misses a session, regardless of the reason, after three excused absences. All programs surveyed in the core counties excuse more absences – some allow many more absences – than the law permits.

**Minimum Standard:** In each county, the probation department, in collaboration with the prosecutor's office, victim advocacy agencies, batterer intervention programs, and other members of the local domestic violence coordinating council, should develop and enforce a consistent policy regarding legally permissible absences from batterer intervention programs.

**Recommendation:** In each county, the probation department and prosecutor's office, in consultation with the court, should adopt a strategy that imposes specific, immediate, and predictable consequences (including immediate arrest) for absences from batterer intervention programs.

**Problematic Practice:** When batterer intervention programs refer noncompliant batterers to court (usually for unexcused absences), the most common judicial sanction is to re-enroll the offender in another program, numerous times if necessary. Re-enrollment means that there are virtually no consequences for a batterer who does not comply with attendance requirements. The lack of consequences is complete when judges give re-enrolled batterers credit for sessions attended in the previous program, and some judges do precisely that.

**Minimum Standard:** In each county, the court, in consultation with the probation department and the prosecutor's office, should develop a strategy to ensure that multiple re-enrollments do not take place without additional and graduated sanctions.

## **General Recommendations:**

1. There is need for a fundamental assessment of the extent to which convicted batterers are held accountable by batterer intervention programs, the courts, and probation departments. The current approach must be improved. Little data has been collected, however, that would allow such an assessment. The State Auditor, under the Joint Legislative Audit Committee, is in a position to obtain the needed information, and should be requested to do so by members of the legislature.
2. The court and probation department in each county should immediately develop standards and procedures for collecting, measuring, and evaluating batterer intervention program enrollment rates, completion rates, and recidivism rates; the reasons for noncompletion; and judicial responses to noncompliance.

## **4 Law Enforcement's Response To Health Practitioner Reports Of Domestic Violence**

Health practitioners are required by statute to make law enforcement aware of injuries that they reasonably suspect have resulted from domestic violence (or assault or abuse of any type). The practitioners must make two reports: an immediate telephone call, followed within two days by a written report on the standard form for domestic violence developed by the Office of Emergency Services. The report, whether made by telephone or in writing, must include: 1) the name of the injured person, 2) that person's whereabouts, 3) the character and extent of the injuries, and 4) the identity of the alleged perpetrator.

An immediate telephone call affords law enforcement the opportunity to respond promptly to the health-care facility in order to interview the victim before he or she leaves, interview any other witnesses at the facility while their memories are fresh, and interview – and arrest, if warranted – the alleged perpetrator (if present). The written report serves as a back-up source of information if law enforcement does not receive the telephone report, or does not respond to the facility.

California's domestic violence reporting requirement for health practitioners has proven controversial. We did not attempt, however, to decide whether the requirement is a good one. Our focus, instead, was to find out how health practitioners are complying with their reporting obligations, and how law enforcement responds to these reports.

**Problematic Practice:** Health practitioners must make their domestic violence reports to the law enforcement agency that has authority to investigate the possible crime. One-third of the practitioners surveyed, all from large counties with multiple law enforcement agencies, expressed deep frustration at the extensive time it often took to determine which law enforcement agency to call, and the lack of cooperation sometimes exhibited by police dispatchers when asked for assistance.

***Minimum Standard:*** Law enforcement and health practitioners in each county or region should establish a protocol to assist health practitioners identify the correct law enforcement agency for their mandatory reports of domestic violence.

**Problematic Practice:** All health practitioners surveyed acknowledged that they were not using the required Office of Emergency Services form to report domestic violence to law enforcement. A number of law enforcement representatives emphasized that the written reports submitted by health practitioners were frequently not useful, containing incomplete information and vague descriptions of injuries.

***Minimum Standard:*** All health practitioners should use the required reporting form developed by the Office of Emergency Services to report suspected domestic violence to law enforcement.

**Problematic Practice:** Two-thirds of the health practitioners surveyed had serious reservations about the speed with which law enforcement responded to their telephone reports of suspected domestic violence. All law enforcement personnel explained that their policies required a response, but that health practitioners' calls, like all requests for assistance, are prioritized by dispatchers based on the safety of the victim and the extent of the injuries.

**Problematic Practice:** All community-based victim advocacy and service agencies expressed the view that their services for domestic violence victims were significantly under-used in health-care settings.

***Minimum Standard:*** In each county or region, law enforcement, health practitioners, and community-based victim advocacy and service agencies should adopt a procedure to ensure that there is a coordinated response by advocates and service providers to support domestic violence victims in health-care settings.



## **Other Recommendations To Increase The Criminal Justice System's Capacity To Address Domestic Violence**

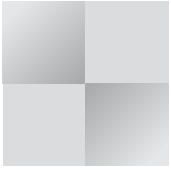
1. **Judicial Leadership:** Redressing most of the problematic practices we have identified requires close collaboration among multiple agencies in each local criminal justice system. The judiciary is perhaps the most significant agency, and yet many judges are reluctant to participate in such efforts out of a desire to avoid an appearance of bias when presiding over domestic violence cases. After consulting with the Administrative Office of the Courts, we have concluded that judges who hear domestic violence cases can and should exercise court and community leadership on the issue.
2. **Domestic Violence Courts:** The Judicial Council should adopt a rule that would delineate model court practices and procedures for dedicated domestic violence criminal courts and specialty calendars.
3. **Co-located Criminal Justice Agencies and Victim Service Agencies:** Many agencies that address domestic violence – law enforcement, prosecutors, and victim advocates and service providers – fail to appreciate that their missions are highly interdependent. The simple tactic of locating personnel from these agencies in shared office space – a tactic already employed by multiple law enforcement agencies who work in task forces – should be implemented, which would allow the personnel to overcome mutual distrust, avoid turf battles, and appreciate their common goals and the virtues of their different approaches.
4. **Domestic Violence Data Collection and Reporting:** The Department of Justice collects little information on the bulk of domestic violence offenses. Robust criminal justice data is absolutely required if criminal justice researchers, practitioners, and policymakers are to get a better handle on this crime.
5. **Resources:** More resources for staff, training, services, technology, and data collection are urgently needed to support the criminal justice response to domestic violence. Simply adding resources, however, will not solve the problem; there must also be an appropriate allocation of new and existing resources.
6. **Court Watch:** One of the most effective ways for communities to hold courts and prosecutors accountable is to place trained observers in the courtroom. This allows for the collection of data, and underscores the importance that the community places on domestic violence cases.



## End Notes

<sup>1</sup> Sorenson, S.B. & Wiebe, D.J. (2004). Weapons in the lives of battered women, *American Journal of Public Health*, 94(8): 1412-1417. This is a UCLA study of more than 400 women staying in emergency shelters for battered women in California. In addition to the findings already mentioned, the study found that 37% of the victims believed that their partner kept a firearm in the home.

<sup>2</sup> Several studies in Massachusetts have shown that men with family court restraining orders have serious criminal histories, often more serious than those arrestees without family court order histories. See Cochran, D. et al. (1998). From chaos to clarity in understanding domestic violence, *Domestic Violence Report*, 3(5); Cochran, D. (1995). *The Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts*. Boston, MA: Office of the Commissioner of Probation; Buzawa, E. et al., (1999). *Response to Domestic Violence in a Pro-Active Court Setting*. Rockville, MD: National Institute of Justice; Buzawa, E. et al. (1998). The response to domestic violence in a model court: Some initial findings and implications, *Behavioral Sciences and the Law*,



# *Chapter 1*

## **Introduction**

### **The Domestic Violence Problem**

In recent years, criminal justice and public health professionals, together with policymakers and community leaders, have increasingly recognized that domestic violence is a serious criminal justice and public health problem. Although women and men are at risk for all types of violent victimization, their risk for assault, injury, and death at the hands of an intimate partner is of special concern. Intimate partners may include current or former spouses, current or former dating partners, and same sex partners. National studies show that 85 percent of reported cases of victimization by intimate partners were against women.<sup>1</sup> Intimate partners perpetrate about 21 percent of all violent crimes against women.<sup>2</sup> A recent report estimates that women in the U.S. sustain two million injuries per year as the result of violent assaults by their intimates.<sup>3</sup> Homicide is the most serious consequence of violence. The rate of female-victim intimate partner homicide declined dramatically in the 1990s, along with other forms of violent crime, but the number of these homicides is still unacceptably high.<sup>4</sup> Young women (aged 16 to 34) are at highest risk for domestic violence. This is of special concern because women in this age group are the most likely to have young children at home. The health consequences of physical and psychological domestic violence can be significant and long lasting, for both victims and their children.<sup>5</sup>

The magnitude of the problem in California reflects the national picture. A study by the California Department of Health Services of women's health issues found that nearly six percent of women, or about 620,000 women per year, experienced violence or physical abuse by their intimate partners.<sup>6</sup> Women living in households where children were present experienced domestic violence at much higher rates than women living in households without children: domestic violence occurred in more than 436,000 households per year in which children were present, potentially exposing approximately 916,000 children to violence in the home every year.<sup>7</sup>

California's criminal justice statistics are equally alarming. In 2003, there were 48,854 arrests for domestic violence; 80 percent of those arrested were men.<sup>8</sup> Also in 2003, there were 194,288 telephone calls for police assistance in a domestic violence incident; 106,731 of these involved

a weapon.<sup>9</sup> From 1992 to 1999 there was an annual average of 169 female victim intimate partner homicides, and an annual average of 163 intimate partner-caused violent injury hospitalizations among women.<sup>10</sup>

## **Addressing the Problem**

Over the past 15 years, California has accelerated its efforts to address the problem. The state has passed numerous laws, adopted a multitude of policies, and initiated numerous programs designed to:

1. Ensure that domestic violence victims survive.
2. Bring offenders to justice, and hold them accountable for their actions.
3. Better address the needs of victims and their children.
4. Prevent domestic violence.

Many of these laws have given new responsibilities and tools to agencies within the criminal justice system. While these agencies, by themselves, cannot satisfactorily reduce the incidence and ill effects of domestic violence, they must play a large role in any serious, strategic effort to do so.

It is time to take stock of these efforts. Exactly how are these agencies carrying out their responsibilities? And to what extent are they succeeding? These are difficult questions to answer because the necessary information is not readily available or easily obtained. Indeed, it is scattered across the numerous autonomous agencies that comprise each county's criminal justice system, as well as other agencies that address domestic violence. These agencies include, in each county, the sheriff's department, the police departments, the district attorney's office (and sometimes a city attorney's office), the criminal and family courts, the probation and parole departments, community-based victim advocates and service providers, batterer intervention programs, and medical mandatory reporters (e.g., hospital emergency departments). Further, the policies and practices of these agencies vary widely across and within the state's 58 counties.

## **The Attorney General's Task Force**

In December 2003, California Attorney General Bill Lockyer convened this Task Force to study the response of local criminal justice agencies to domestic violence. Our first and fundamental charge was to put together a picture of exactly what these agencies are doing. Second, the Task Force would assess their efforts.

The Attorney General asked the Task Force to examine four substantive areas:

1. **Restraining Orders:** How are domestic violence restraining orders obtained and enforced?
2. **Prosecutors' Offices:** How do prosecutors' offices handle domestic violence cases, given that most are misdemeanors?

3. **Batterer Intervention Programs:** How do batterer intervention programs, with courts and probation departments, hold batterers accountable?
4. **Health Practitioner Reporting:** How does law enforcement respond to mandated reports of domestic violence from health practitioners?

The Attorney General selected 26 individuals to serve on this Task Force representing the breadth and diversity of the agencies that address domestic violence through the criminal justice system: county and city prosecutors, judges, legislators, local law enforcement, probation officers, public defenders, public health officials, researchers, state agencies, and victim advocacy and service organizations.

### **Task Force Procedure**

The Task Force focused its fact-finding efforts on 10 counties – referred to as the “core counties” – and chosen to achieve diversity in location and urban/rural make-up. These core counties include Humboldt, Orange, Placer, Sacramento, San Bernardino, San Diego, San Joaquin, Santa Clara, Solano, and Tulare. We also considered other counties to broaden and deepen our understanding of the issues. The number of counties considered varied by issue. Most noteworthy, we were able to collect data on all 58 counties regarding restraining orders because of availability of data from the statewide database on domestic violence restraining orders.

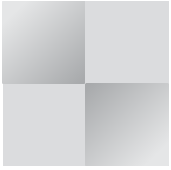
We obtained information in two ways. First, the Attorney General’s Office, which served as staff for the Task Force, conducted numerous key informant interviews primarily in the core counties. Second, we held six full-day public hearings throughout the state – in Fresno, Los Angeles, Oakland, Redding, Sacramento, and San Diego – to hear testimony from practitioners in the core counties and adjacent counties.

Based on the information collected, we made findings about agency practices – particularly “problematic practices” – that characterized each of the four substantive areas in the core counties. We also made three types of recommendations for corrective action. First, we recommended “minimum standards of performance” – the rock bottom practices necessary for victim safety and offender accountability. Second, we made more general recommendations. Third, we made broader recommendations that extended beyond particular agencies or substantive areas. When pertinent, we also identified “promising practices” that particular agencies were undertaking.

### **End Notes**

<sup>1</sup> Tjaden, P., Thoennes, N. (2000). *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*. Washington, D.C.: U.S. Department of Justice.

- <sup>2</sup> Rennison, C.M., Welchans, S. (2000). *Intimate Partner Violence*. Washington, D.C.: U.S. Department of Justice.
- <sup>3</sup> Tjaden, P., Thoennes, N. (2000). *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*. Washington, D.C.: U.S. Department of Justice.
- <sup>4</sup> Rennison, C.M. (2001). *Criminal Victimization 2000*. Washington, D.C.: U.S. Department of Justice.
- <sup>5</sup> Coker, A., Smith P., Bethia, L., King, M., McKeown, R.E. (2000). Physical health consequences of physical and psychological intimate partner violence, *Archives of Family Medicine*. 9(5):451-7.
- <sup>6</sup> Lund, L. (2003). *Violence Against Women in California, 1992-99*. Sacramento: Epidemiology and Prevention for Injury Control Branch, California Department of Health Services.
- <sup>7</sup> Ibid.
- <sup>8</sup> California Department of Justice, Criminal Justice Statistics Center. (no date). *Review of Domestic Violence Statistics*. This report can be accessed at <http://caag.state.ca.us/cjsc/publications/misc/dvsr/rpt.pdf>.
- <sup>9</sup> Ibid.
- <sup>10</sup> Lund, L. 2003. *Violence Against Women in California, 1992-99*. Sacramento: Epidemiology and Prevention for Injury Control Branch, California Department of Health Services.



## *Chapter 2*

### **Obtaining and Enforcing Domestic Violence Restraining Orders**

The findings below summarize what the Task Force learned about obtaining and enforcing domestic violence restraining orders in the 10 core counties, with some findings encompassing all 58 counties. These findings are based on five sources of information. The first source is interviews conducted by Task Force staff with 73 practitioners in the core counties: nine judges or court staff, 10 county prosecutors, 17 victim advocates and 37 law enforcement officers. Second, the Task Force obtained data on all 58 counties from the Department of Justice's (DOJ) Domestic Violence Restraining Order System (DVROS) on several topics, including rates of recorded restraining orders by county, rates of restraining orders served by county, and numbers of restraining orders recorded as having no firearms restriction by county. Two DOJ experts on DVROS helped explain this data. Third, DOJ communicated with courts and law enforcement agencies in numerous counties to seek explanations for troubling data in DVROS. Fourth, we received testimony at six regional hearings from eight witnesses (seven previously interviewed) who work in the core counties: four victim advocates, three law enforcement officers and one court staff. Finally, we received testimony from 17 witnesses (none previously interviewed) who work in other counties: 13 victim advocates, three law enforcement officers and one judge. In sum, we obtained information from 91 individuals: 10 judges or court staff, 10 county prosecutors, 31 victim advocates and 40 law enforcement officers in the core counties and eleven additional counties.

### **Background**

#### **Why We Have Restraining Orders**

The overriding purpose of California's domestic violence restraining order laws is to prevent batterers from committing additional domestic violence. This is done in three ways:

1. Prohibiting all contact, or certain types of contact, between the batterers and their victims;
2. Ordering batterers to relinquish firearms and not obtain new ones; and
3. Prosecuting batterers who do not comply with the above restrictions.

Restraining orders can afford some protection. Recent studies have shown that such orders are associated with decreased likelihood of subsequent physical and non-physical domestic violence.<sup>1</sup>

### **Prohibiting Contact**

Criminal and Family Courts may prohibit all personal contact between victims and abusers. The rationale for these “no contact” or “stay away” orders is that “ensuring a period of separation” will help “prevent... a recurrence of domestic violence....”<sup>2</sup>

Since strict separation may be counter-productive in certain circumstances, the courts instead may issue “peaceful contact” orders. These orders prohibit certain types of problematic contact, such as “contact... with intent to annoy, harass, threaten, or commit acts of violence,”<sup>3</sup> or making “annoying telephone calls... or disturbing the peace of mind” of the victim.<sup>4</sup>

### **Disarming the Abuser and Preventing Future Firearm Purchases**

When issuing domestic violence restraining orders, Criminal and Family Courts are required to prohibit batterers from owning, purchasing, possessing, or receiving firearms, and must order those who do possess firearms to relinquish them to law enforcement or sell them to a licensed firearms dealer.<sup>5</sup>

Relinquishment must take place no later than 24 hours after issuance of the order, if the batterer was present at the hearing, or 24 hours after service of the order on the batterer if the batterer was not in court.<sup>6</sup> Finally, once a restraining order is entered into DOJ’s statewide Domestic Violence Restraining Order System the restrained party will not legally be able to purchase a firearm because he or she will fail the mandatory background check performed by DOJ’s Division of Firearms.

The goal is to prevent batterers from using firearms to threaten, injure, or kill domestic violence victims, their children, themselves, and law enforcement personnel.

### **Enforcement and Deterrence**

If prohibited contact occurs, the abuser may be prosecuted for violating the court order and sent to jail. Penal Code § 836(c)(1) explicitly states that a police officer responding to a call alleging a violation of a Criminal or Family Court domestic violence protective order “shall” arrest the batterer, even if the officer did not witness the alleged violation. The threat of punishment is intended to deter abusers, both those subject to an order and batterers in general, from engaging in prohibited contact, thereby decreasing the risk of new domestic violence.

If the batterer does not surrender all firearms in his or her possession, law enforcement may seize them and, as mentioned above, the batterer shall be arrested and may be punished for violating the court order. Here

again, the threat of punishment is designed to motivate batterers to relinquish their weapons and decrease the risk of new and aggravated domestic violence.

In both of these cases, deterrence works best if the threat of punishment is real and credible.

## **Obtaining Criminal Protective Orders**

Criminal Courts can issue Criminal Protective Orders (CPOs) in two circumstances: during prosecution, and as a condition of probation.

### **During Prosecution**

The court can issue a protective order (no contact or peaceful contact) “upon a good cause belief that harm to, or intimidation... of a victim has occurred or is reasonably likely to occur....”<sup>7</sup> The court may issue this order at any time during the prosecution, beginning with the initial arraignment.<sup>8</sup> While the court is not required to impose such an order, it “shall consider issuing [such order]... on its own motion...” whenever a “defendant is charged with a crime of domestic violence....”<sup>9</sup> When the court does issue a restraining order, it must provide a copy to the victim, defendant, law enforcement, and the prosecutor.<sup>10</sup> If the court does make such an order, it must also prohibit firearm possession and direct that all firearms be surrendered.

### **As a Condition of Probation**

When a defendant is sentenced to probation for a domestic violence-related crime, the court must issue, at a minimum, a peaceful contact restraining order, and may issue a no contact restraining order.<sup>11</sup> The order ends when the probationary sentence ends, a minimum of three years.<sup>12</sup> And the court must advise the victim in writing about the restraining order.<sup>13</sup>

## **Obtaining Family Court Domestic Violence Restraining Orders**

Family Courts can impose three types of domestic violence restraining orders: Emergency Protective Orders, Temporary Restraining Orders, and Orders After Hearing.

### **Emergency Protective Orders**

An Emergency Protective Order (EPO), in the form of a no contact or peaceful contact order, can be issued at any hour of the day or night when a police officer, responding to a domestic violence scene, demonstrates to a judge (by telephone) that “there is an immediate and present danger of domestic violence, based on the person’s allegation of a recent incident of abuse or threat of abuse....”<sup>14</sup> The order expires five court days or seven calendar days after its issuance (whichever is shorter), but does not become enforceable until the officer informs the



restrained party of the order.<sup>15</sup> The law enforcement officer must make a reasonable effort to inform the restrained party, and must give a copy of the order to the protected party.<sup>16</sup>

### **Temporary Restraining Orders**

The Family Court may issue a Temporary Restraining Order (TRO), requiring no contact or peaceful contact, to protect any person who submits a written affidavit demonstrating “reasonable proof of a past act or acts” of domestic violence.<sup>17</sup> The court must make its decision on the day that the request is filed, or on the next business day if the request is filed too late in the day.<sup>18</sup> The court is authorized to rule “ex parte”: that is, without giving the alleged abuser the opportunity to contest the application.<sup>19</sup> The court must schedule a full hearing to take place within 20 days (the duration of the order);<sup>20</sup> the order and notice of hearing must be served on the restrained party to become enforceable.

### **Orders After Hearing**

After the full hearing, referred to above, the Family Court may issue a permanent restraining order, termed an Order After Hearing (OAH). It can last up to three years, and can be renewed.<sup>21</sup> If the restrained party appears at the hearing, he or she is considered to have been served with the court’s order.<sup>22</sup> If the restrained party does not appear at the hearing (despite having been notified), the order is deemed served if: 1) the OAH is identical to the TRO (except for the order’s duration), and 2) a copy of the OAH is mailed to the restrained party at the last address known to the court.<sup>23</sup> When the OAH is not identical to the TRO, the OAH does not become enforceable until it is personally served on the restrained party.

### **Informing Law Enforcement About Restraining Orders**

Law enforcement cannot enforce a Criminal or Family Court restraining order unless it can determine, at the time of an alleged violation, that:

1. An order was issued and is still in effect;
2. The order was served on the violator; and
3. The order prohibits the alleged misconduct.

Law enforcement may make these determinations by consulting a statewide computer database called the Domestic Violence Restraining Order System (DVROS), created and maintained by the Department of Justice (DOJ) since 1991.

If DVROS does not show that there is an enforceable restraining order – even though in fact there is one – law enforcement is highly unlikely to enforce the order, and the victim will be left without a remedy and at increased risk. In such circumstances, the batterer will be able to purchase firearms from a licensed firearms dealer because DOJ’s background check, which includes a search of DVROS, will find no restraining order.

## Responsibility for Putting Information Into DVROS

To ensure that DVROS has complete, accurate, and up-to-date information, the Criminal Courts are required to make sure that the contents of each Criminal Protective Order (and other relevant information, such as the name of the protected party, whether the order was served, and the existence of a firearms prohibition) are entered into DVROS within “one business day” of the order’s issuance.<sup>24</sup> In discharging this obligation, courts themselves can input the information directly into DVROS or designate a local law enforcement agency to do so.<sup>25</sup> The law treats Family Court restraining orders very differently, leaving it to each county to determine what agency or agencies (if any) will be responsible.<sup>26</sup> (Such orders must be entered “immediately” into DVROS, though that term is not defined.<sup>27</sup>)

## Mechanics of Putting Information Into DVROS

Each county is required to develop a procedure to transmit domestic violence restraining order information to DVROS through the California Law Enforcement Telecommunications System (CLETS).<sup>28</sup> CLETS allows all law enforcement agencies, DOJ, the courts, prosecutors, probation, and certain other local and state agencies to communicate in a secure fashion in order to access DOJ databases.

Whatever procedure is adopted, when a court issues a domestic violence restraining order, it must do so on forms issued by the Judicial Council of California, CR-160 (CPO) or DV-110 (TRO) or DV-130 (OAH), and then someone must convey that order to someone who will enter the information into DVROS.<sup>29</sup> To date, the courts in only four counties have decided to enter restraining order information directly into DVROS. As a result, local law enforcement agencies, virtually all of whom have CLETS terminals and access to DVROS, have the lion’s share of inputting the information into DVROS. This means that the courts and local law enforcement, as well as prosecutors and probation, must cooperate if restraining order information is to make its way into DVROS.

## Penalties For Violating Domestic Violence Restraining Orders

### Criminal Protective Orders

1. A District Attorney or City Attorney may charge a defendant (who is being prosecuted for, or has been convicted of, domestic violence) with the misdemeanor of violating a CPO. The alleged violator has the right to counsel and a jury trial and, if convicted, may be jailed for up to one year.<sup>30</sup>
2. If a defendant, who is being prosecuted for domestic violence, violates a CPO while free on bail, the court may increase the defendant’s bail.
3. If a defendant, who has been convicted of domestic violence, violates a CPO imposed as part of a probationary sentence, he or she may be charged with violating probation. At the probation revocation

.....  
*It’s not written,  
but it’s pretty  
much known that  
nonviolent violations  
of restraining  
orders...takes six  
to seven reports  
of those violations  
before there’s a  
prosecution.*

Advocate Manager,  
Oakland Hearing

.....

hearing, the defendant has the right to counsel, but not to a jury trial; and unlike most criminal proceedings, the prosecution must prove its case by a “preponderance of the evidence,” a much lower standard than “beyond a reasonable doubt.” If the court finds that the defendant violated the CPO, it may sentence the defendant to jail.

### **Family Court Restraining Orders**

1. A District Attorney or City Attorney may charge a batterer who is subject to a Family Court restraining order with the misdemeanor of violating that order.<sup>31</sup> The batterer has the right to counsel and a jury trial. If convicted, the batterer may be jailed for up to one year.
2. A domestic violence victim who has obtained a Family Court restraining order may ask the court to find the batterer guilty of criminal contempt for violating that order.<sup>32</sup> The batterer has the right to counsel, but not to a jury trial so long as the potential jail sentence cannot exceed six months. If the court finds that the batterer violated the order, it may impose a sentence of up to five days in jail for each violation. The court may also order the batterer to pay the attorney fees and costs incurred by the victim in initiating the contempt proceeding.

### **What The Laws Do Not Require**

The Legislature has established the framework for a statewide domestic violence restraining order system, but has left it for each county to determine the all-important details: how each of the numerous mandates will be carried out and what role each agency will play in the process. Each county must determine, for example:

1. Who will make sure that a domestic violence victim understands that a Criminal Protective Order has been issued?
2. When a Criminal or Family Court issues a restraining order, how will the provision that prohibits firearm possession be enforced and which agencies will make it happen?
3. When a Family Court issues a restraining order, who will see to it that the order is entered into DVROS, and who will enter it?
4. When a Family Court issues a restraining order, who will take responsibility for determining the best means of serving the order upon the batterer?

In the Problematic Practices on the following pages, we discuss how California’s counties have addressed, or not addressed, these and other questions.

# Problematic Practices, Minimum Standards of Performance, and Recommendations for Action

The Task Force found 13 problematic practices related to the obtaining and enforcing of domestic violence restraining orders. They are set forth below. Following each problematic practice, we set forth (when applicable) the minimum standard of performance that we believe the criminal justice system must meet, and specific recommendations for corrective action. Finally, we set forth a general recommendation for collaborative action by all agencies within the criminal justice system.

## 1. Criminal Courts Are Not Meeting Legal Requirements

**Summary:** The Criminal Courts in at least 17 counties have not complied with the statutory mandates that they: 1) issue Criminal Protective Orders (CPOs) whenever sentencing domestic violence offenders to probation, and 2) ensure that those orders are entered into the Domestic Violence Restraining Order System (DVROS).

There appear to be three reasons for noncompliance:

- Some courts did not understand that CPOs were required when domestic violence offenders were sentenced to probation;
- Most courts failed to understand their statutorily required leadership role in ensuring the entry of CPOs into DVROS; and
- In some counties, a lack of cooperation between the courts and other criminal justice agencies hindered CPO data entry into DVROS.

After DOJ intervened with these courts, a majority appears to have taken some action to increase the number of CPOs listed in DVROS.

**CPOs In DVROS:** DVROS can set out, by county, the total number of CPOs that have been entered into DVROS and are in effect as of a certain date. One of our first steps was to obtain for each county the total number of orders in effect as of September 24, 2003 (the date of the query). In order to compare the output of each county regardless of the size of its population, we converted the number of CPOs into the rate per 1,000 county residents. Table 1 sets out the number and rate of CPOs for each county.

There was a wide disparity in rates. Among the 34 “large” counties<sup>33</sup> (populations of 100,000 or more), the rates varied from 9.4 in San Joaquin to zero in three counties. The 23 “small” counties (with populations less than 100,000) showed an even greater variation, ranging from 15.68 in Siskiyou to zero in four counties. While we expected to see variation among counties, Table 1 strongly implies that the courts in the counties with extremely low rates (i.e., close to zero) were not complying with the laws requiring the issuance of CPOs and their entry into DVROS. Table 1, however, does not prove noncompliance, for if a county were to have few domestic violence convictions, its courts could lawfully issue few CPOs.

**Comparing Orders to Domestic Violence Convictions:** To examine this possibility, we determined for each county the number of domestic violence convictions that should have resulted in CPOs (i.e., convictions where the offenders were sentenced to probation). This information is also displayed in Table 1. We then compared the number of these convictions to the number of CPOs that were in fact entered into DVROS.<sup>34</sup> If the number of such convictions exceeded the number of CPOs listed in DVROS, then it would be fair to conclude that the courts in that county had failed to comply with their obligations by not issuing CPOs in all required cases, and/or by not entering information into DVROS when they did issue CPOs.<sup>35</sup>

Table 1 shows that 13 of the 16 lowest-rate large counties had fewer CPOs than domestic violence convictions. Indeed, the 10 with the lowest rates had substantially more convictions than CPOs. For example, Table 1 indicates that Riverside County should have a minimum of 2,906 CPOs in the system, but only 130 appear as entered into DVROS. In contrast, most of the large counties with higher CPO rates had many, many more CPOs than convictions. The same pattern holds true for the small counties: the 10 lowest-rate counties had many fewer CPOs than domestic violence convictions, and the 10 highest-rate counties had many more CPOs than convictions. In sum, the courts in at least 23 counties:

- did not issue CPOs as part of every probationary sentence for a domestic violence conviction; and/or
- did not enter into DVROS those probationary CPOs that they did issue.

**Letters to Courts in Lowest CPO-Rate Counties:** To determine the precise problem in these 23 counties, and to bring them into compliance with the law, DOJ asked the 10 large counties with the lowest CPO rates (ranging from 0.39 to zero) and 7 of the worst-performing small counties (rates ranging from 1.23 to zero) why they had entered so few CPOs into DVROS, and how they planned to improve in the future.

In response, the courts in six large counties and six small counties explained that they had always issued mandatory CPOs, but had never adopted a procedure to have those orders entered into DVROS. All claimed that they would now use the statutorily required Judicial Council form CR-160, work with others (usually the District Attorney) to help complete the form, and have the information on it entered into DVROS. In two of these counties, however, the Task Force learned that there were serious disputes among court personnel, the District Attorney's Office, and law enforcement about their respective roles in getting the orders into DVROS.

The court in one small county stated that it had been unaware of the requirement to issue CPOs when sentencing domestic violence offenders to probation, but would now do so.

Finally, the courts in four large counties advanced both types of explanations:

- that they had not adopted a procedure to have all CPOs entered into DVROS; and

Table 1

**Criminal Protective Orders (CPO) in effect as of September 24, 2003  
as listed in the Domestic Violence Restraining Order System (DVROS)**

| County<br>with population | CPO listed in DVROS |                | Expected number of CPO<br>based on number of DV<br>convictions requiring CPO |
|---------------------------|---------------------|----------------|------------------------------------------------------------------------------|
|                           | Number              | Rate per 1,000 |                                                                              |
| <b>100,000 or more</b>    |                     |                |                                                                              |
| San Joaquin               | 4,299               | 9.40           | 1,217                                                                        |
| Yolo                      | 1,243               | 9.32           | 306                                                                          |
| Santa Cruz                | 1,927               | 9.15           | 159                                                                          |
| Alameda                   | 8,833               | 7.50           | 1,016                                                                        |
| San Luis Obispo           | 1,415               | 6.81           | 179                                                                          |
| Santa Clara               | 8,850               | 6.19           | 1,668                                                                        |
| Los Angeles               | 46,414              | 6.09           | 6,645                                                                        |
| Monterey                  | 1,721               | 5.47           | 819                                                                          |
| San Mateo                 | 3,182               | 5.37           | 237                                                                          |
| Marin                     | 1,001               | 5.07           | 75                                                                           |
| Orange                    | 10,723              | 4.82           | 1,866                                                                        |
| El Dorado                 | 609                 | 4.46           | 186                                                                          |
| Placer                    | 809                 | 3.99           | 264                                                                          |
| Sonoma                    | 1,174               | 3.16           | 438                                                                          |
| Contra Costa              | 2,308               | 3.11           | 423                                                                          |
| Butte                     | 490                 | 3.03           | 236                                                                          |
| Santa Barbara             | 944                 | 2.93           | 471                                                                          |
| Merced                    | 394                 | 2.36           | 321                                                                          |
| Fresno                    | 1,453               | 2.32           | 2,256                                                                        |
| Kern                      | 1,141               | 2.15           | 1,806                                                                        |
| Sacramento                | 1,837               | 1.91           | 1,290                                                                        |
| Humboldt                  | 168                 | 1.65           | 204                                                                          |
| San Diego                 | 3,352               | 1.44           | 788                                                                          |
| Shasta                    | 200                 | 1.43           | 179                                                                          |
| <b>Tulare</b>             | <b>114</b>          | <b>0.39</b>    | <b>851</b>                                                                   |
| <b>Ventura</b>            | <b>216</b>          | <b>0.36</b>    | <b>435</b>                                                                   |
| <b>San Bernardino</b>     | <b>251</b>          | <b>0.18</b>    | <b>1,841</b>                                                                 |
| <b>Riverside</b>          | <b>130</b>          | <b>0.11</b>    | <b>2,906</b>                                                                 |
| <b>Stanislaus</b>         | <b>26</b>           | <b>0.07</b>    | <b>797</b>                                                                   |
| <b>Madera</b>             | <b>5</b>            | <b>0.05</b>    | <b>195</b>                                                                   |
| <b>Solano</b>             | <b>8</b>            | <b>0.02</b>    | <b>423</b>                                                                   |
| <b>Imperial</b>           | <b>0</b>            | <b>0.00</b>    | <b>138</b>                                                                   |
| <b>Kings</b>              | <b>0</b>            | <b>0.00</b>    | <b>201</b>                                                                   |
| <b>Napa</b>               | <b>0</b>            | <b>0.00</b>    | <b>174</b>                                                                   |
| <b>Total</b>              | <b>105,237</b>      | <b>—</b>       | <b>31,010</b>                                                                |
| <b>Rate</b>               | <b>—</b>            | <b>4.05</b>    | <b>—</b>                                                                     |

| County<br>with population | CPO listed in DVROS |                | Expected number of CPO<br>based on number of DV<br>convictions requiring CPO |
|---------------------------|---------------------|----------------|------------------------------------------------------------------------------|
|                           | Number              | Rate per 1,000 |                                                                              |
| <b>less than 100,000</b>  |                     |                |                                                                              |
| Siskiyou                  | 545                 | 15.68          | 86                                                                           |
| Mendocino                 | 1,026               | 14.28          | 45                                                                           |
| Glenn                     | 288                 | 12.52          | 48                                                                           |
| Tuolumne                  | 463                 | 10.29          | 29                                                                           |
| Plumas                    | 119                 | 7.45           | 29                                                                           |
| Mariposa                  | 91                  | 6.94           | 18                                                                           |
| Inyo                      | 80                  | 5.91           | 15                                                                           |
| Lake                      | 241                 | 5.25           | 111                                                                          |
| Calaveras                 | 171                 | 5.12           | 36                                                                           |
| Colusa                    | 83                  | 4.88           | 26                                                                           |
| Del Norte                 | 110                 | 4.39           | 51                                                                           |
| Sierra                    | 8                   | 2.94           | 5                                                                            |
| Amador                    | 44                  | 1.64           | 39                                                                           |
| <b>Trinity</b>            | <b>13</b>           | <b>1.23</b>    | <b>32</b>                                                                    |
| San Benito                | 27                  | 0.65           | 48                                                                           |
| <b>Mono</b>               | <b>4</b>            | <b>0.43</b>    | <b>15</b>                                                                    |
| <b>Sutter</b>             | <b>2</b>            | <b>0.03</b>    | <b>195</b>                                                                   |
| <b>Tehama</b>             | <b>1</b>            | <b>0.02</b>    | <b>29</b>                                                                    |
| <b>Nevada</b>             | <b>1</b>            | <b>0.01</b>    | <b>65</b>                                                                    |
| Alpine                    | 0                   | 0.00           | 5                                                                            |
| <b>Lassen</b>             | <b>0</b>            | <b>0.00</b>    | <b>33</b>                                                                    |
| <b>Modoc</b>              | <b>0</b>            | <b>0.00</b>    | <b>6</b>                                                                     |
| Yuba                      | 0                   | 0.00           | 108                                                                          |
| <b>Total</b>              | <b>3,317</b>        | <b>—</b>       | <b>1,074</b>                                                                 |
| <b>Rate</b>               | <b>—</b>            | <b>4.72</b>    | <b>—</b>                                                                     |

Notes:

- 1) The Attorney General's Office has contacted the counties shown in bold about their low CPO rates.
- 2) San Francisco is not included in this table because it entered all CPOs into DVROS, regardless of whether they were related to domestic violence. Since October 2004, San Francisco Police Department re-examined and improved the way it enters CPOs in DVROS.
- 3) Domestic violence convictions include only convictions for violating Penal Code section 273.5 where the sentence included probation.



- that they did not impose a CPO in all required circumstances (e.g., if a Family Court restraining order were already in place, if the victim objected, or if the domestic violence was not extreme).

They too promised to comply with the law.

**Follow-up Thirteen Months Later:** To track the performance of these problematic counties, Table 2 presents the number of CPOs in DVROS and the CPO rate as of October 18, 2004 –13 months after the date used in Table 1. All but one of the 10 lowest-performing large counties significantly increased the number of CPOs in DVROS since being contacted by DOJ. While this is encouraging, it should be noted that:

- These counties started at such a low level that it should have been easy to improve;
- With all of their improvement, they still rank lowest among the large counties; and
- Only three have now achieved a rate above 1.0.

Table 2 also shows that the seven small counties contacted by DOJ had not materially increased the number of CPOs, despite their statements that they would implement new procedures. In fairness, DOJ did not contact them until early August 2004, and thus it is possible, given the relatively small number of domestic violence-related convictions in their counties, that those courts have not yet had sufficient time to see the fruits of their new procedures.

Because 100 percent of the counties investigated have acknowledged their failure to issue mandatory CPOs and/or to enter those orders in DVROS, we believe that many of the other counties with low CPO rates have significant room for improvement.

This belief is reinforced by our experience with San Diego. In early August 2004, DOJ asked the San Diego Presiding Judge to explain the county's low CPO rate (Table 1: 1.44), because it had been reported to DOJ that San Diego was not entering all CPOs into DVROS. One month later, the San Diego court provided a detailed response acknowledging that numerous problems had been discovered and that solutions were being implemented. Table 2 reflects the resulting significant increase in CPOs – there were 4,787 CPOs in DVROS as of October 18, 2004, an increase of almost 50 percent from September 2003.

### ***Minimum Standard***

As already required by law, the Criminal Courts must impose Criminal Protective Orders on all domestic violence offenders sentenced to probation. Further, as already required by law, the Criminal Courts must ensure that all Criminal Protective Orders, whether imposed during prosecution or sentencing, are entered into the Domestic Violence Restraining Order System within one business day.

Table 2

**Criminal Protective Orders (CPO) in effect as of October 18, 2004  
as listed in the Domestic Violence Restraining Order System (DVROS)**

| County<br>with population | CPO listed in DVROS |                | Increase or decrease<br>of CPO since 9-23-03 |
|---------------------------|---------------------|----------------|----------------------------------------------|
|                           | Number              | Rate per 1,000 | Number                                       |
| <b>100,000 or more</b>    |                     |                |                                              |
| Yolo                      | 1,433               | 10.55          | 190                                          |
| San Joaquin               | 4,753               | 10.13          | 454                                          |
| Santa Cruz                | 1,944               | 9.05           | 17                                           |
| Alameda                   | 10,303              | 8.60           | 1,470                                        |
| San Luis Obispo           | 1,789               | 8.39           | 374                                          |
| Orange                    | 15,205              | 6.73           | 4,482                                        |
| Placer                    | 1,387               | 6.62           | 578                                          |
| Santa Clara               | 9,576               | 6.57           | 726                                          |
| San Mateo                 | 3,868               | 6.44           | 686                                          |
| El Dorado                 | 908                 | 6.43           | 299                                          |
| Marin                     | 1,230               | 6.20           | 229                                          |
| Los Angeles               | 45,050              | 5.84           | -1,364                                       |
| Merced                    | 985                 | 5.75           | 591                                          |
| Monterey                  | 1,786               | 5.55           | 65                                           |
| Butte                     | 702                 | 4.22           | 212                                          |
| Fresno                    | 2,508               | 3.92           | 1,055                                        |
| Santa Barbara             | 1,243               | 3.79           | 299                                          |
| Contra Costa              | 2,684               | 3.57           | 376                                          |
| Sonoma                    | 1,239               | 3.27           | 65                                           |
| Kern                      | 1,206               | 2.21           | 65                                           |
| San Diego                 | 4,787               | 2.02           | 1,435                                        |
| Humboldt                  | 200                 | 1.95           | 32                                           |
| Shasta                    | 251                 | 1.76           | 51                                           |
| Sacramento                | 1,688               | 1.72           | -149                                         |
| <b>Tulare</b>             | <b>451</b>          | <b>1.56</b>    | <b>337</b>                                   |
| <b>Solano</b>             | <b>512</b>          | <b>1.53</b>    | <b>504</b>                                   |
| <b>San Bernardino</b>     | <b>1,668</b>        | <b>1.18</b>    | <b>1,417</b>                                 |
| <b>Madera</b>             | <b>95</b>           | <b>0.91</b>    | <b>90</b>                                    |
| <b>Napa</b>               | <b>87</b>           | <b>0.86</b>    | <b>87</b>                                    |
| <b>Ventura</b>            | <b>469</b>          | <b>0.78</b>    | <b>253</b>                                   |
| <b>Riverside</b>          | <b>392</b>          | <b>0.31</b>    | <b>262</b>                                   |
| <b>Stanislaus</b>         | <b>72</b>           | <b>0.19</b>    | <b>46</b>                                    |
| <b>Imperial</b>           | <b>24</b>           | <b>0.18</b>    | <b>24</b>                                    |
| <b>Kings</b>              | <b>5</b>            | <b>0.05</b>    | <b>5</b>                                     |
| <b>Total</b>              | <b>120,500</b>      | <b>—</b>       | <b>15,263</b>                                |
| <b>Rate</b>               | <b>—</b>            | <b>4.55</b>    | <b>—</b>                                     |

| County<br>with population | CPO listed in DVROS |                | Increase or decrease<br>of CPO since 9-23-03 |
|---------------------------|---------------------|----------------|----------------------------------------------|
|                           | Number              | Rate per 1,000 | Number                                       |
| <b>less than 100,000</b>  |                     |                |                                              |
| Mendocino                 | 1,261               | 17.27          | 235                                          |
| Siskiyou                  | 569                 | 16.28          | 24                                           |
| Tuolumne                  | 537                 | 11.66          | 74                                           |
| Glenn                     | 265                 | 11.15          | -23                                          |
| Inyo                      | 151                 | 11.12          | 71                                           |
| Mariposa                  | 147                 | 10.94          | 56                                           |
| Calaveras                 | 304                 | 8.85           | 133                                          |
| Lake                      | 419                 | 8.83           | 178                                          |
| Plumas                    | 102                 | 6.34           | -17                                          |
| Sierra                    | 16                  | 5.88           | 8                                            |
| Del Norte                 | 147                 | 5.75           | 37                                           |
| Colusa                    | 96                  | 5.39           | 13                                           |
| Amador                    | 132                 | 4.86           | 88                                           |
| San Benito                | 63                  | 1.47           | 36                                           |
| Yuba                      | 62                  | 1.24           | 62                                           |
| <b>Trinity</b>            | <b>4</b>            | <b>0.38</b>    | <b>-9</b>                                    |
| <b>Mono</b>               | <b>1</b>            | <b>0.11</b>    | <b>-3</b>                                    |
| <b>Sutter</b>             | <b>3</b>            | <b>0.05</b>    | <b>1</b>                                     |
| <b>Nevada</b>             | <b>2</b>            | <b>0.03</b>    | <b>1</b>                                     |
| <b>Tehama</b>             | <b>1</b>            | <b>0.02</b>    | <b>0</b>                                     |
| Alpine                    | 0                   | 0.00           | 0                                            |
| <b>Lassen</b>             | <b>0</b>            | <b>0.00</b>    | <b>0</b>                                     |
| <b>Modoc</b>              | <b>0</b>            | <b>0.00</b>    | <b>0</b>                                     |
| <b>Total</b>              | <b>4,282</b>        | <b>—</b>       | <b>965</b>                                   |
| <b>Rate</b>               | <b>—</b>            | <b>5.96</b>    | <b>—</b>                                     |

## Notes:

- 1) The Attorney General's Office has contacted the counties shown in bold about their low CPO rates.
- 2) San Francisco is not included in this table because it entered all CPOs into DVROS, regardless of whether they were related to domestic violence. Since October 2004, San Francisco Police Department re-examined and improved the way it enters CPOs in DVROS.



### ***Recommendations***

1. The Department of Justice (DOJ) should continue to monitor and intervene with the 17 counties that we found to be out of compliance with the requirements for issuing Criminal Protective Orders (CPOs) and entering them into the Domestic Violence Restraining Order System (DVROS). DOJ should also expand that monitoring and intervention to other counties with low CPO rates. To accomplish these tasks, DOJ should enhance its capacity to both monitor DVROS and provide technical assistance to local criminal justice system personnel. DOJ should periodically issue public reports (at least annually) on its monitoring and intervention activities.
2. The Attorney General's Office should sponsor legislation amending Penal Code § 136.2(g) to make clear that courts have the authority to issue CPOs that prohibit contact regardless of whether the defendant intends to annoy, harass, threaten, or commit acts of violence. (Penal Code § 1203.097(a)(2) authorizes courts to prohibit contact in this manner when sentencing domestic violence offenders to probation, as does Family Code § 6320 with respect to domestic violence protective orders.) Pursuant to this recommendation, the Attorney General's Office has sponsored such legislation this session, SB 720 (Kuehl).

## **2. Unserved and Unrecorded Criminal Protective Orders**

A defendant cannot be arrested or convicted for violating a Criminal Protective Order (CPO) unless he or she was present in court when the order was issued or otherwise notified of the order. According to the Domestic Violence Restraining Order System (DVROS), however, in many counties there are a significant number of defendants who appear not to have been served with the CPOs issued against them. See Table 3. In Los Angeles County, for example, 5.09 percent of all CPOs in DVROS (2,338) are listed as unserved. Whether these CPOs are truly unserved, or erroneously reflected as such in DVROS, they are highly unlikely to be enforced.

### ***Recommendation***

The Department of Justice should: 1) continue to monitor the number of unserved Criminal Protective Orders in the Domestic Violence Restraining Order System, 2) enhance its capacity to monitor and to provide technical assistance to local criminal justice system personnel, and 3) periodically issue public reports (at least annually).

## **3. Victims Are Usually Not Notified When Criminal Protective Orders Are Terminated**

Current law does not require that domestic violence victims be notified when a Criminal Protective Order (CPO) is terminated by court action before it is scheduled to end. This leaves the victim believing that protection is being provided by a CPO in force, when it is not.

**Table 3**

**Criminal Protective Orders (CPO) listed as Served and Unserved in the Domestic Violence Restraining Order System (DVROS) as of March 5, 2004**

| County with population | CPO listed in DVROS |              |                | Percent listed in DVROS |
|------------------------|---------------------|--------------|----------------|-------------------------|
| 100,000 or more        | As served           | As unserved  | Total          | As unserved             |
| Stanislaus             | 23                  | 0            | 23             | 0.00%                   |
| Solano                 | 7                   | 0            | 7              | 0.00%                   |
| Madera                 | 7                   | 0            | 7              | 0.00%                   |
| Kings                  | 1                   | 0            | 1              | 0.00%                   |
| Santa Clara            | 9,087               | 33           | 9,120          | 0.36%                   |
| Sonoma                 | 1,246               | 8            | 1,254          | 0.64%                   |
| Orange                 | 12,552              | 159          | 12,711         | 1.25%                   |
| Monterey               | 1,772               | 23           | 1,795          | 1.28%                   |
| Sacramento             | 1,748               | 32           | 1,780          | 1.80%                   |
| Yolo                   | 1,295               | 24           | 1,319          | 1.82%                   |
| San Mateo              | 3,432               | 68           | 3,500          | 1.94%                   |
| Shasta                 | 200                 | 4            | 204            | 1.96%                   |
| San Joaquin            | 4,455               | 122          | 4,577          | 2.67%                   |
| Fresno                 | 1,726               | 50           | 1,776          | 2.82%                   |
| Riverside              | 145                 | 5            | 150            | 3.33%                   |
| San Bernardino         | 697                 | 25           | 722            | 3.46%                   |
| Alameda                | 9,229               | 334          | 9,563          | 3.49%                   |
| Marin                  | 1,046               | 44           | 1,090          | 4.04%                   |
| Santa Cruz             | 1,800               | 84           | 1,884          | 4.46%                   |
| Merced                 | 679                 | 32           | 711            | 4.50%                   |
| Tulare                 | 161                 | 8            | 169            | 4.73%                   |
| Kern                   | 1,076               | 55           | 1,131          | 4.86%                   |
| Los Angeles            | 43,577              | 2,338        | 45,915         | 5.09%                   |
| San Luis Obispo        | 1,553               | 92           | 1,645          | 5.59%                   |
| Butte                  | 493                 | 31           | 524            | 5.92%                   |
| San Diego              | 3,492               | 234          | 3,726          | 6.28%                   |
| El Dorado              | 669                 | 65           | 734            | 8.86%                   |
| Contra Costa           | 2,245               | 236          | 2,481          | 9.51%                   |
| Santa Barbara          | 925                 | 115          | 1,040          | 11.06%                  |
| Placer                 | 923                 | 119          | 1,042          | 11.42%                  |
| Ventura                | 236                 | 32           | 268            | 11.94%                  |
| Humboldt               | 156                 | 27           | 183            | 14.75%                  |
| Napa                   | 0                   | 0            | 0              | -                       |
| Imperial               | 0                   | 0            | 0              | -                       |
| <b>Total</b>           | <b>106,653</b>      | <b>4,399</b> | <b>111,052</b> | <b>3.96%</b>            |

| County with population | CPO listed in DVROS |             |              | Percent listed in DVROS |
|------------------------|---------------------|-------------|--------------|-------------------------|
| less than 100,000      | As served           | As unserved | Total        | As unserved             |
| Amador                 | 74                  | 0           | 74           | 0.00%                   |
| Colusa                 | 88                  | 0           | 88           | 0.00%                   |
| Mono                   | 2                   | 0           | 2            | 0.00%                   |
| Nevada                 | 1                   | 0           | 1            | 0.00%                   |
| Plumas                 | 115                 | 0           | 115          | 0.00%                   |
| San Benito             | 36                  | 0           | 36           | 0.00%                   |
| Sierra                 | 11                  | 0           | 11           | 0.00%                   |
| Sutter                 | 3                   | 0           | 3            | 0.00%                   |
| Trinity                | 6                   | 0           | 6            | 0.00%                   |
| Siskiyou               | 552                 | 2           | 554          | 0.36%                   |
| Tuolumne               | 434                 | 4           | 438          | 0.91%                   |
| Calaveras              | 240                 | 6           | 246          | 2.44%                   |
| Glenn                  | 266                 | 8           | 274          | 2.92%                   |
| Mendocino              | 1,094               | 38          | 1,132        | 3.36%                   |
| Mariposa               | 113                 | 5           | 118          | 4.24%                   |
| Inyo                   | 99                  | 9           | 108          | 8.33%                   |
| Yuba                   | 11                  | 1           | 12           | 8.33%                   |
| Lake                   | 262                 | 26          | 288          | 9.03%                   |
| Del Norte              | 118                 | 12          | 130          | 9.23%                   |
| Alpine                 | 0                   | 0           | 0            | -                       |
| Lassen                 | 0                   | 0           | 0            | -                       |
| Modoc                  | 0                   | 0           | 0            | -                       |
| Tehama                 | 0                   | 0           | 0            | -                       |
| <b>Total</b>           | <b>3,525</b>        | <b>111</b>  | <b>3,636</b> | <b>3.05%</b>            |

Note:

- 1) San Francisco is not included in this table because it entered all CPOs into DVROS, regardless of whether they were related to domestic violence. Since October 2004, San Francisco Police Department re-examined and improved the way it enters CPOs in DVROS.

### Restraining Orders

#### Long Beach's Domestic Violence Court

Superior Court Judge Deborah Andrews in Long Beach has a dedicated domestic violence court. In 1998, Judge Andrews initiated a Protective Order Committee to which 30 stakeholders are invited, including Judges, Commissioners and Superior Court administrators from both Long Beach and San Pedro courts, the District Attorney, the Long Beach City Attorney, the Public Defender, the Los Angeles Sheriff's Department, the Long Beach Police Department, the Probation Department, Legal Aid, domestic violence victim advocates from Long Beach and San Pedro, and Records Division personnel in the Long Beach Police Department, the Sheriff's Department and the Los Angeles Police Department. They meet approximately every eight weeks. They have discussed a variety of topics including:

- What the courts expect to see in an application for a Family Court restraining order;
- How best to transmit Temporary Restraining Orders to the various police departments;
- What is being done about weapons relinquishment;
- How to avoid conflicting Family and Criminal Court orders regarding allowable contact with the victim and children;
- Discussion of Judicial Council forms; and
- What details are necessary for orders to be considered enforceable.

This promising practice has resulted in better communication among all the regional stakeholders, better entry of all types of orders into the California Department of Justice's Domestic Violence Restraining Order System, and especially, improved communication between Family and Criminal Courts.

For more information, contact Judge Andrews at [dandrews@lasuperiorcourt.org](mailto:dandrews@lasuperiorcourt.org).

#### **Recommendation**

The Attorney General's Office, District Attorneys' Offices, and prosecuting City Attorneys' Offices should collaboratively create a process to notify victims when a Criminal Protective Order is terminated by court action before it is scheduled to end, so that victims have adequate time to seek Family Court restraining orders or other services such as safety planning.

#### **4. Emergency Protective Orders Are Underused**

A victim of domestic violence can seek an Emergency Protective Order (EPO), at any time of day or night, from a police officer who responds to a call for assistance. If the officer demonstrates to a judge (by telephone), pursuant to Family Code § 6250(a), that

*a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse,*

the judge, through the officer, can issue an order on the spot that prohibits firearm possession and requires no contact or peaceful contact. Though of short duration (five to seven days), this order can provide some temporary protection, and serve as "proof" of abuse if the victim later applies for a Temporary Restraining Order (TRO) and Order After Hearing (OAH). It is important to realize that a victim may need an EPO

(and TRO and OAH) even if the abuser is arrested. If the abuser is released on bail, as happens frequently, the criminal justice system can impose no restriction on the abuser until the first arraignment, which may not take place for many weeks.

Despite the importance of EPOs, they are infrequently issued in most counties. Table 4 displays the number of EPOs entered into DVROS that were issued in each county between October 1, 2003 and September 30, 2004, and then converts that number into the rate per 1,000 residents. While there is some variation among the large counties (ranging from 5.15 in Fresno to 0.05 in San Bernardino) and the small counties (ranging from 3.19 in Mendocino to 0.08 in Yuba), Table 4's most significant message is that 19 of the 35 large counties (including five of our core counties - Humboldt, Sacramento, San Bernardino, San Diego and Tulare) and 13 of the 23 small counties have rates less than 1.0.

This picture of underuse is consistent with both the interviews in core counties and the testimony presented to the Task Force. Victim advocates in five of the 10 core counties reported that EPOs were rarely issued, and advocates in three others reported that the use of EPOs varied significantly depending on the local law enforcement agency involved. In addition, a number of testifiers spoke about law enforcement agencies that have, or appear to have, a policy of discouraging victims from requesting EPOs. Fresno County, with the highest rate of 5.15, is a notable exception to this picture, in part because the Superior Court there has adopted a Standing Order that allows law enforcement to issue an EPO for the court, without having to contact the court, if the victim reports an act of domestic violence, has a visible injury, and the officer believes there is an immediate and present danger to the victim. If these criteria are not met and the victim requests an EPO, a judge is called and the request is made.

### ***Minimum Standard***

Law enforcement in each county should adopt policies that strongly encourage officers to request Emergency Protective Orders (EPO); and the Superior Court in each county should adopt policies and procedures that maximize the accessibility and availability of EPOs.

### ***Recommendations***

1. The Department of Justice should: 1) continue to monitor the number of Emergency Protective Orders in the Domestic Violence Restraining Order System, 2) enhance its capacity to do so and to provide technical assistance to local criminal justice system personnel, and 3) periodically issue public reports (at least annually).
2. Legislation should be sponsored to significantly shorten the time between arrest and arraignment in domestic violence cases. When defendants are released on bail shortly after arrest – as most are – the prosecution typically takes numerous weeks (sometimes up to 12 weeks) before filing criminal charges.

Table 4

**Emergency Protective Orders (EPO) in the Domestic Violence Restraining Order  
System (DVROS) from October 1, 2003 to September 30, 2004**

| County<br>with population | EPO entered in DVROS |                |
|---------------------------|----------------------|----------------|
| 100,000 or more           | Number               | Rate per 1,000 |
| Fresno                    | 3,293                | 5.15           |
| San Joaquin               | 2,177                | 4.64           |
| Merced                    | 485                  | 2.83           |
| Sonoma                    | 887                  | 2.34           |
| San Francisco             | 1,406                | 2.27           |
| Solano                    | 758                  | 2.26           |
| Stanislaus                | 839                  | 2.22           |
| Santa Barbara             | 614                  | 1.87           |
| Marin                     | 351                  | 1.77           |
| Santa Cruz                | 372                  | 1.73           |
| Orange                    | 3,824                | 1.69           |
| Madera                    | 140                  | 1.34           |
| San Luis Obispo           | 270                  | 1.27           |
| Placer                    | 255                  | 1.22           |
| Santa Clara               | 1,709                | 1.17           |
| Yolo                      | 136                  | 1.00           |
| Tulare                    | 286                  | 0.96           |
| San Mateo                 | 534                  | 0.89           |
| Humboldt                  | 91                   | 0.89           |
| Alameda                   | 1,008                | 0.84           |
| El Dorado                 | 116                  | 0.82           |
| Kern                      | 375                  | 0.69           |
| Contra Costa              | 493                  | 0.66           |
| Los Angeles               | 3,982                | 0.52           |
| Napa                      | 51                   | 0.50           |
| Ventura                   | 241                  | 0.40           |
| Imperial                  | 34                   | 0.26           |
| Kings                     | 26                   | 0.25           |
| Riverside                 | 312                  | 0.24           |
| Sacramento                | 147                  | 0.15           |
| Butte                     | 23                   | 0.14           |
| Shasta                    | 19                   | 0.13           |
| Monterey                  | 28                   | 0.09           |
| San Diego                 | 136                  | 0.06           |
| San Bernardino            | 65                   | 0.05           |
| <b>Total</b>              | <b>25,483</b>        | <b>—</b>       |
| <b>Rate</b>               | <b>—</b>             | <b>0.94</b>    |

| County<br>with population | EPO entered in DVROS |                |
|---------------------------|----------------------|----------------|
| less than 100,000         | Number               | Rate per 1,000 |
| Mendocino                 | 233                  | 3.19           |
| Calaveras                 | 89                   | 2.59           |
| Glenn                     | 54                   | 2.27           |
| Mono                      | 19                   | 2.03           |
| Sierra                    | 5                    | 1.84           |
| Amador                    | 47                   | 1.73           |
| Inyo                      | 18                   | 1.32           |
| Lake                      | 62                   | 1.31           |
| Mariposa                  | 16                   | 1.19           |
| Tuolumne                  | 54                   | 1.17           |
| San Benito                | 40                   | 0.93           |
| Alpine                    | 1                    | 0.91           |
| Nevada                    | 59                   | 0.75           |
| Modoc                     | 5                    | 0.63           |
| Tehama                    | 25                   | 0.57           |
| Del Norte                 | 14                   | 0.55           |
| Plumas                    | 7                    | 0.44           |
| Colusa                    | 7                    | 0.39           |
| Lassen                    | 8                    | 0.26           |
| Trinity                   | 2                    | 0.19           |
| Sutter                    | 6                    | 0.09           |
| Siskiyou                  | 3                    | 0.09           |
| Yuba                      | 4                    | 0.08           |
| <b>Total</b>              | <b>778</b>           | <b>—</b>       |
| <b>Rate</b>               | <b>—</b>             | <b>1.08</b>    |

This substantial delay can embolden defendants to commit additional crimes and put victims at increased risk without the possible protection of a Criminal Protective Order (CPO). (A CPO cannot be issued until a defendant's first court appearance, which occurs only after charges have been filed.) Shortening the time period between arrest and filing charges should help deter future violence.

## **5. The Numbers and Rates of Orders After Hearing Can Be Improved**

Table 5 depicts by county the number of Orders After Hearing (OAH) listed in DVROS that were in effect as of September 24, 2003, and then converts that number into the rate per 1,000 residents. As with previous tables, the rate varies significantly by county: from 5.68 (Placer) to 1.81 (Marin) among the large counties, and from 9.57 (Modoc) to 0.76 (Colusa) among the small. Several factors may contribute to the OAH rate, including:

- how difficult it is for a victim to request a TRO (which a victim must do in order to seek an OAH) and the OAH itself. This will vary, depending on such factors as 1) the legal assistance available to help the victim fill out the numerous forms and navigate the court system, 2) the court's accessibility (e.g., distance from victim, and available transportation), and 3) the judge's attitude (see Problematic Practice 6);
- whether the victim is required to hand-carry the TRO and OAH to one or more local law enforcement agencies (see Problematic Practice 7); and
- how difficult it is to have the notice of the OAH hearing served on the batterer (see Problematic Practice 8).

While we have not conducted a specific inquiry into the reasons for any particular county's OAH rate, we have no doubt that the counties with the lowest rates have significant room for improvement.

### ***Recommendation***

The Department of Justice should 1) continue to monitor the number of Orders After Hearing in the Domestic Violence Restraining Order System, 2) enhance its capacity to do so and to provide technical assistance to local criminal justice system personnel, and 3) periodically issue public reports (at least annually).

## **6. Significant Burdens Are Placed On Victims Seeking Family Court Restraining Orders**

Obtaining a Temporary Restraining Order (TRO), and ultimately making that temporary order permanent with an Order after Hearing (OAH), is not an easy process. The victim must fill out forms, which, though recently revised and simplified by the Judicial Council, are lengthy and not always easily understood. One critical form requires a description of the abuse (Form DV 101). If there are divorce, child custody, and

Table 5

**Family Court Domestic Violence Restraining Orders After Hearing (OAH) in effect as of September 24, 2003 as listed in the Domestic Violence Restraining Order System (DVROS)**

| County<br>with population | OAH listed in DVROS |                |
|---------------------------|---------------------|----------------|
|                           | Number              | Rate per 1,000 |
| <b>100,000 or more</b>    |                     |                |
| Placer                    | 1,150               | 5.68           |
| Merced                    | 807                 | 4.83           |
| Stanislaus                | 1,487               | 4.05           |
| Riverside                 | 4,853               | 3.92           |
| Humboldt                  | 378                 | 3.70           |
| Contra Costa              | 2,715               | 3.66           |
| Butte                     | 591                 | 3.66           |
| San Diego                 | 8,490               | 3.65           |
| Sacramento                | 3,193               | 3.31           |
| Solano                    | 1,077               | 3.28           |
| Sonoma                    | 1,161               | 3.13           |
| Shasta                    | 434                 | 3.10           |
| Imperial                  | 380                 | 3.04           |
| San Francisco             | 1,859               | 3.01           |
| San Joaquin               | 1,363               | 2.98           |
| Tulare                    | 864                 | 2.97           |
| Kings                     | 295                 | 2.91           |
| Yolo                      | 387                 | 2.90           |
| El Dorado                 | 396                 | 2.90           |
| Napa                      | 288                 | 2.89           |
| Fresno                    | 1,761               | 2.81           |
| San Bernardino            | 3,810               | 2.76           |
| Kern                      | 1,386               | 2.61           |
| Santa Cruz                | 531                 | 2.52           |
| Madera                    | 252                 | 2.50           |
| Orange                    | 5,352               | 2.41           |
| Los Angeles               | 18,080              | 2.37           |
| Santa Barbara             | 753                 | 2.34           |
| San Luis Obispo           | 478                 | 2.30           |
| Ventura                   | 1,322               | 2.22           |
| San Mateo                 | 1,255               | 2.12           |
| Monterey                  | 658                 | 2.09           |
| Santa Clara               | 2,971               | 2.08           |
| Alameda                   | 2,415               | 2.05           |
| Marin                     | 357                 | 1.81           |
| <b>Total</b>              | <b>73,549</b>       | <b>—</b>       |
| <b>Rate</b>               | <b>—</b>            | <b>2.77</b>    |

| County<br>with population | OAH listed in DVROS |                |
|---------------------------|---------------------|----------------|
|                           | Number              | Rate per 1,000 |
| <b>less than 100,000</b>  |                     |                |
| Modoc                     | 76                  | 9.57           |
| Lake                      | 356                 | 7.75           |
| Siskiyou                  | 257                 | 7.40           |
| Trinity                   | 64                  | 6.08           |
| Inyo                      | 81                  | 5.98           |
| Mendocino                 | 391                 | 5.44           |
| Sierra                    | 14                  | 5.14           |
| Sutter                    | 298                 | 4.61           |
| Plumas                    | 73                  | 4.57           |
| Glenn                     | 101                 | 4.39           |
| Del Norte                 | 107                 | 4.27           |
| Calaveras                 | 136                 | 4.07           |
| Mono                      | 31                  | 3.37           |
| Yuba                      | 164                 | 3.33           |
| Nevada                    | 252                 | 3.28           |
| Lassen                    | 89                  | 2.92           |
| Alpine                    | 3                   | 2.80           |
| Tehama                    | 116                 | 2.69           |
| Mariposa                  | 34                  | 2.59           |
| Amador                    | 61                  | 2.27           |
| San Benito                | 93                  | 2.24           |
| Tuolumne                  | 60                  | 1.33           |
| Colusa                    | 13                  | 0.76           |
| <b>Total</b>              | <b>2,870</b>        | <b>—</b>       |
| <b>Rate</b>               | <b>—</b>            | <b>4.08</b>    |



child visitation matters to be considered along with the restraining order (and there often are), the number of forms increases and the help needed multiplies.

Interviews in the core counties revealed how weighty this burden could be. Advocates in all 10 counties discussed the difficulty of the process in general, which usually required providing several hours of one-on-one paperwork assistance to victims. These burdens were confirmed in testimony at the hearings. Free legal assistance is not available in four of the 10 core counties.

Moreover, there appears to be a small number of judges, scattered across the state, who engage in practices that make it difficult for victims to obtain Family Court restraining orders. Examples of such practices include: 1) refusing to issue TROs if the victim did not call the police to report the abuse, 2) refusing to take up child support and custody issues as part of the process, 3) requiring that victims seeking TROs have experienced a recent emergency, and 4) modifying a no-contact request to allow contact, and crossing out the firearms prohibition.

### ***Minimum Standard***

Every county must provide free legal assistance for domestic violence victims who want to obtain the protections of Temporary Restraining Orders and Orders After Hearing from Family Court.

## **7. Unnecessary Burdens Are Placed On Victims After They Obtain Family Court Restraining Orders**

Traditionally, most counties required victims who obtained a Temporary Restraining Order (TRO) and an Order After Hearing (OAH) to carry the orders from the courthouse to a law enforcement agency for entry in the Domestic Violence Restraining Order System (DVROS). This practice now appears to be diminishing in frequency. In nine of the 10 core counties, court personnel, law enforcement, and others cooperate so that the order is entered into DVROS with little or no help from the victim.

The same cannot be said for another practice: that of requiring the victim to carry a copy of the TRO and OAH to all of the law enforcement agencies that might have to enforce the order. These include agencies that have jurisdiction where the victim lives and works, and where the victim's children attend school and are cared for. In seven of the 10 core counties, victims are expressly advised by the court, court personnel, family law facilitators, and/or advocates that they must deliver the orders to the pertinent law enforcement agencies. The eight police departments contacted in these counties stated that they expected the victim to drop off a copy of the order. These departments did state, however, that they would enforce an undelivered order if 1) the order were in DVROS, and 2) the law enforcement agency that had entered the information into DVROS (usually the Sheriff's Department) could confirm the accuracy of the information. These departments' second choice is in fact the preferred practice



contemplated by the legislation that created DVROS. Family Code § 6381(b) & (c) provides that “data contained in the Domestic Violence Restraining Order System shall be deemed to be original, self-authenticating, documentary evidence of the court orders” which as such are enforceable. Before making an arrest on the basis of data in DVROS, moreover, it is DOJ policy that law enforcement confirm the accuracy of that data with the agency that originally put it into the system. (That is why agencies that enter information into DVROS must maintain a 24/7 capability to “confirm” that information.)

Thus, requiring the victim to deliver a copy of a TRO or OAH is unnecessary for enforcement and creates an unnecessary burden on the victim. Significantly, victims protected by CPOs are **not** required to deliver those orders to any law enforcement agency. The Sheriffs’ Departments in three core counties recognize that this practice has outlived its usefulness. They expressly reject the need for victim-delivered copies, insisting that an order’s presence in DVROS provides an adequate basis for enforcement. Within those three counties, moreover, the four police departments contacted by the Task Force agreed that an order’s entry in DVROS was sufficient.

Unfortunately, the outmoded practice of hand-delivery by the victim was approved as recently as the previous set of Judicial Council forms (revised January 1, 2001) and these forms continue to be used even though more recent forms (effective January 1, 2003) have superseded them. Even the newest forms (e.g. DV-530), while not containing boilerplate language ordering victim-delivery, nevertheless advise victims to “[m]ake sure your local police have a copy [of the order] too. Ask them to enter it into CLETS....” Some court and law enforcement personnel understandably interpret this advisory as implicitly requiring the domestic violence victims to hand-deliver restraining orders to local law enforcement.

### ***Minimum Standard***

The court and law enforcement in each county should adopt a protocol that relieves domestic violence victims of the burden of hand carrying Family Court restraining orders from the issuing court: 1) to the agency that will enter them into the Domestic Violence Restraining Order System, and 2) to the agencies that have enforcement jurisdiction.

### ***Recommendation***

The Attorney General’s Office should sponsor legislation that amends Family Code § 6380(a) so that Family Courts would be responsible for entering their domestic violence restraining orders into the Domestic Violence Restraining Order System (DVROS), just as the Criminal Courts are responsible for entering Criminal Protective Orders into DVROS. As it currently stands, no entity is responsible for Family Court orders. Pursuant to this recommendation, the Attorney General’s Office has sponsored such legislation this session, SB 720 (Kuehl).

## 8. Family Court Restraining Orders: Unserved and Unrecorded

A batterer cannot be arrested or convicted for violating a Family Court restraining order unless he or she was present in court when the order was issued or otherwise notified of the order. According to the Domestic Violence Restraining Order System (DVROS), however, there are a significant number of batterers in many counties who have not been served with the Order After Hearing (OAH) issued against them. See Table 6. Among the large counties, Riverside has the highest percentage of OAH listed as unserved (43.4%), followed by Butte (40.1%); those with the lowest percentages were Monterey (13.5%) followed by Madera (15.2%). Among the small counties, Siskiyou has more orders listed as unserved than served – 52 percent. Other small counties also have high percentages of unserved OAH, including Sierra (46.2%), Mono (42.9%) and Yuba (39.9%). Whether these orders are truly unserved, or erroneously reflected as such in DVROS, they are highly unlikely to be enforced.

Service of TROs is not included in this table because the orders remain in the system for three weeks only. Still, concerns about the service of TROs were apparent in core county interviews and at many regional hearings. There was testimony that in one county, service was so slow that approximately 30 percent of hearings for permanent orders had to be re-scheduled for lack of service.

### ***Recommendation***

The Department of Justice should 1) continue to monitor the number of Orders After Hearing that have been entered into the Domestic Violence Restraining Order System as unserved, 2) enhance its capacity to do so and to provide technical assistance to local criminal justice system personnel, and 3) periodically issue public reports (at least annually).

## 9. Firearm Prohibitions: Unissued and Unrecorded

In May 2004, DOJ requested DVROS data on the number of OAH and CPOs without firearm prohibitions. The results were quite surprising, given that all OAH and CPOs **must** contain firearm prohibitions. As with other data found in DVROS, it was not possible to conclude whether the courts in these counties had failed to include firearm restrictions in their orders, or whether the recording agency, usually law enforcement, had entered the data incorrectly into DVROS. Further investigation of county practices was required.

Tables 7 (OAH) and 8 (CPO) display the results by county for orders effective as of May 11, 2004. For OAH (see Table 7), San Francisco had the highest percentage of orders with no firearm prohibitions (16.5%) among large counties, followed by Kern (16.1%) and Santa Barbara (14.3%). Among small counties, Mono had the highest percentage of orders without restrictions (52.4%), followed by Lake (33%) and Colusa (26.7%).

Table 6

**Family Court Domestic Violence Restraining Orders After Hearing (OAH) listed as Served and Unserved in Domestic Violence Restraining Order System (DVROS) as of March 5, 2004**

| County<br>with population | OAH in DVROS     |                    |               |                               |
|---------------------------|------------------|--------------------|---------------|-------------------------------|
|                           | Listed as served | Listed as unserved | Total         | Percent listed<br>as unserved |
| <b>100,000 or more</b>    |                  |                    |               |                               |
| Monterey                  | 601              | 94                 | 695           | 13.5%                         |
| Madera                    | 207              | 37                 | 244           | 15.2%                         |
| Merced                    | 686              | 142                | 828           | 17.1%                         |
| Marin                     | 295              | 62                 | 357           | 17.4%                         |
| Ventura                   | 1,037            | 228                | 1,265         | 18.0%                         |
| Sonoma                    | 870              | 217                | 1,087         | 20.0%                         |
| Santa Clara               | 2,359            | 595                | 2,954         | 20.1%                         |
| San Mateo                 | 875              | 240                | 1,115         | 21.5%                         |
| Imperial                  | 274              | 77                 | 351           | 21.9%                         |
| Humboldt                  | 276              | 79                 | 355           | 22.3%                         |
| Tulare                    | 751              | 229                | 980           | 23.4%                         |
| Shasta                    | 356              | 110                | 466           | 23.6%                         |
| San Luis Obispo           | 343              | 108                | 451           | 23.9%                         |
| Solano                    | 767              | 269                | 1,036         | 26.0%                         |
| Placer                    | 808              | 285                | 1,093         | 26.1%                         |
| Kern                      | 1,019            | 364                | 1,383         | 26.3%                         |
| Sacramento                | 2,351            | 861                | 3,212         | 26.8%                         |
| Stanislaus                | 1,114            | 408                | 1,522         | 26.8%                         |
| Santa Barbara             | 542              | 200                | 742           | 27.0%                         |
| El Dorado                 | 282              | 107                | 389           | 27.5%                         |
| Alameda                   | 1,717            | 658                | 2,375         | 27.7%                         |
| San Diego                 | 6,084            | 2,352              | 8,436         | 27.9%                         |
| San Francisco             | 1,332            | 525                | 1,857         | 28.3%                         |
| Fresno                    | 1,293            | 517                | 1,810         | 28.6%                         |
| Orange                    | 3,678            | 1,558              | 5,236         | 29.8%                         |
| Kings                     | 174              | 77                 | 251           | 30.7%                         |
| Santa Cruz                | 354              | 179                | 533           | 33.6%                         |
| Los Angeles               | 12,166           | 6,335              | 18,501        | 34.2%                         |
| San Bernardino            | 2,494            | 1,340              | 3,834         | 35.0%                         |
| San Joaquin               | 871              | 483                | 1,354         | 35.7%                         |
| Napa                      | 177              | 107                | 284           | 37.7%                         |
| Contra Costa              | 1,683            | 1,056              | 2,739         | 38.6%                         |
| Yolo                      | 216              | 137                | 353           | 38.8%                         |
| Butte                     | 356              | 238                | 594           | 40.1%                         |
| Riverside                 | 2,810            | 2,155              | 4,965         | 43.4%                         |
| <b>Total</b>              | <b>51,218</b>    | <b>22,429</b>      | <b>73,647</b> | <b>30.5%</b>                  |

| County<br>with population | OAH in DVROS     |                    |              |                               |
|---------------------------|------------------|--------------------|--------------|-------------------------------|
|                           | Listed as served | Listed as unserved | Total        | Percent listed<br>as unserved |
| <b>less than 100,000</b>  |                  |                    |              |                               |
| Alpine                    | 4                | 0                  | 4            | 0.0%                          |
| Tehama                    | 118              | 4                  | 122          | 3.3%                          |
| Amador                    | 52               | 4                  | 56           | 7.1%                          |
| Inyo                      | 74               | 9                  | 83           | 10.8%                         |
| Mendocino                 | 332              | 63                 | 395          | 15.9%                         |
| Tuolumne                  | 45               | 9                  | 54           | 16.7%                         |
| Modoc                     | 62               | 14                 | 76           | 18.4%                         |
| San Benito                | 74               | 17                 | 91           | 18.7%                         |
| Plumas                    | 54               | 15                 | 69           | 21.7%                         |
| Nevada                    | 199              | 56                 | 255          | 22.0%                         |
| Lassen                    | 63               | 18                 | 81           | 22.2%                         |
| Lake                      | 279              | 85                 | 364          | 23.4%                         |
| Colusa                    | 9                | 3                  | 12           | 25.0%                         |
| Glenn                     | 71               | 24                 | 95           | 25.3%                         |
| Mariposa                  | 32               | 12                 | 44           | 27.3%                         |
| Trinity                   | 49               | 20                 | 69           | 29.0%                         |
| Calaveras                 | 88               | 38                 | 126          | 30.2%                         |
| Del Norte                 | 69               | 33                 | 102          | 32.4%                         |
| Sutter                    | 197              | 101                | 298          | 33.9%                         |
| Yuba                      | 92               | 61                 | 153          | 39.9%                         |
| Mono                      | 12               | 9                  | 21           | 42.9%                         |
| Sierra                    | 7                | 6                  | 13           | 46.2%                         |
| Siskiyou                  | 135              | 146                | 281          | 52.0%                         |
| <b>Total</b>              | <b>2,117</b>     | <b>747</b>         | <b>2,864</b> | <b>26.1%</b>                  |

For CPOs (see Table 8), Madera had the highest percentage of orders with no prohibitions (42.9%) among large counties, followed by Butte (36.1%) and Alameda (20.3%). Among small counties, San Benito had the highest percentage of orders without restrictions (45.2%), followed by Tuolumne (24.2%) and Mariposa (15.7%).

In early August 2004, DOJ sent letters to the 274 agencies (mostly law enforcement) that had entered these prohibition-less orders into DVROS. The letters asked the agencies to explain why this had occurred, modify the data if warranted, and fax copies of orders where judges had crossed out firearm prohibitions. Of the 151 agencies that responded, the most common explanations were:

- Judges had crossed off firearm prohibitions from the Judicial Council's orders. We confirmed the existence of this practice in interviews in two counties and from testimony at a regional hearing about judges in three counties;
- Restraining orders without firearm prohibitions, that were unrelated to domestic violence, had been entered incorrectly into DVROS under the OAH category;
- The agencies that entered CPOs into DVROS sometimes misinterpreted the form (CR-160). The form contains two checkboxes, one of which is to be used to indicate whether the batterer had 24 or 48 hours to relinquish firearms. If neither box was checked, however, the agency sometimes misinterpreted the lack of a check mark to mean that the order carried no firearm prohibition; and
- The agencies that entered orders into DVROS had been trained to enter Elder and Dependent Adult Abuse orders into DVROS as OAH. Prior to July 2004, these orders had no firearm prohibitions.

Two months after DOJ sent its letters to the 274 agencies, we again examined the firearm prohibitions in DVROS to determine if the recording agencies had changed their practices or corrected erroneously entered data. Tables 7 and 8 reflect that a substantial decrease in the number and percentage of orders without firearms prohibitions had occurred.

For OAH (see Table 7), the percent of orders without prohibitions in the large counties dropped significantly, from 5.3 percent to 2.6 percent. The same was true for the small counties, where the percent of such orders fell from 11.5 percent to 4.5 percent. Consistent with these totals, Table 7 also reflects that many individual counties reduced their previously high percentages. Among large counties, Kern lowered its percentage from 16.1 percent to 1.4 percent, and Santa Barbara lowered its percentage from 14.3 percent to zero. The percentage in San Francisco, on the other hand, increased from 16.5 percent to 19.4 percent. Since October 2004, San Francisco Police Department has re-examined and significantly improved the entry of firearms prohibition into DVROS. Among small counties, Mono lowered its percentage from 52.4 percent to 9.1 percent, Lake from 33.0 percent to 20.1 percent, and Colusa from 26.7 percent to 12.5 percent.

Table 7

**Orders After Hearing (OAH) without Firearms Prohibition as listed in Domestic Violence  
Restraining Order System (DVROS) as of May 11, 2004 and October 18, 2004**

| County<br>with population | OAH 5/11/04   |                              |             | OAH 10/18/04  |                              |             |
|---------------------------|---------------|------------------------------|-------------|---------------|------------------------------|-------------|
|                           | Total         | Without firearms prohibition |             | Total         | Without firearms prohibition |             |
|                           |               | Number                       | Percent     |               | Number                       | Percent     |
| <b>100,000 or more</b>    |               |                              |             |               |                              |             |
| San Francisco             | 1,853         | 305                          | 16.5%       | 1,729         | 335                          | 19.4%       |
| Madera                    | 230           | 29                           | 12.6%       | 236           | 20                           | 8.5%        |
| Los Angeles               | 18,600        | 1,331                        | 7.2%        | 18,284        | 878                          | 4.8%        |
| San Mateo                 | 1,111         | 96                           | 8.6%        | 1,056         | 44                           | 4.2%        |
| Ventura                   | 1,245         | 77                           | 6.2%        | 1,172         | 48                           | 4.1%        |
| Butte                     | 621           | 36                           | 5.8%        | 608           | 24                           | 3.9%        |
| San Bernardino            | 3,919         | 272                          | 6.9%        | 3,995         | 139                          | 3.5%        |
| Santa Clara               | 2,962         | 63                           | 2.1%        | 2,924         | 100                          | 3.4%        |
| Humboldt                  | 343           | 41                           | 12.0%       | 304           | 10                           | 3.3%        |
| Imperial                  | 334           | 38                           | 11.4%       | 332           | 8                            | 2.4%        |
| Yolo                      | 383           | 18                           | 4.7%        | 373           | 8                            | 2.1%        |
| Orange                    | 5,217         | 151                          | 2.9%        | 5,126         | 105                          | 2.0%        |
| Alameda                   | 2,377         | 147                          | 6.2%        | 2,459         | 45                           | 1.8%        |
| Merced                    | 853           | 68                           | 8.0%        | 875           | 15                           | 1.7%        |
| Shasta                    | 478           | 13                           | 2.7%        | 500           | 8                            | 1.6%        |
| Riverside                 | 4,981         | 149                          | 3.0%        | 5,060         | 74                           | 1.5%        |
| Kern                      | 1,386         | 223                          | 16.1%       | 1,361         | 19                           | 1.4%        |
| Sacramento                | 3,233         | 56                           | 1.7%        | 3,178         | 43                           | 1.4%        |
| San Joaquin               | 1,343         | 40                           | 3.0%        | 1,291         | 15                           | 1.2%        |
| Monterey                  | 707           | 16                           | 2.3%        | 705           | 8                            | 1.1%        |
| San Luis Obispo           | 459           | 26                           | 5.7%        | 525           | 5                            | 1.0%        |
| Napa                      | 292           | 13                           | 4.5%        | 323           | 3                            | 0.9%        |
| Marin                     | 357           | 13                           | 3.6%        | 355           | 3                            | 0.8%        |
| Fresno                    | 1,827         | 118                          | 6.5%        | 1,923         | 15                           | 0.8%        |
| San Diego                 | 8,387         | 200                          | 2.4%        | 8,161         | 57                           | 0.7%        |
| Santa Cruz                | 569           | 30                           | 5.3%        | 582           | 4                            | 0.7%        |
| Tulare                    | 1,012         | 73                           | 7.2%        | 1,006         | 6                            | 0.6%        |
| Solano                    | 1,057         | 24                           | 2.3%        | 1,030         | 4                            | 0.4%        |
| Stanislaus                | 1,510         | 25                           | 1.7%        | 1,490         | 3                            | 0.2%        |
| Sonoma                    | 1,063         | 3                            | 0.3%        | 1,024         | 2                            | 0.2%        |
| Placer                    | 1,086         | 57                           | 5.2%        | 1,052         | 2                            | 0.2%        |
| Contra Costa              | 2,750         | 4                            | 0.1%        | 2,825         | 4                            | 0.1%        |
| Santa Barbara             | 722           | 103                          | 14.3%       | 6,992         | 2                            | 0.0%        |
| El Dorado                 | 385           | 17                           | 4.4%        | 384           | 0                            | 0.0%        |
| Kings                     | 229           | 7                            | 3.1%        | 158           | 0                            | 0.0%        |
| <b>Total</b>              | <b>73,881</b> | <b>3,882</b>                 | <b>5.3%</b> | <b>79,398</b> | <b>2,056</b>                 | <b>2.6%</b> |

| County<br>with population | OAH 5/11/04  |                              |              | OAH 10/18/04 |                              |             |
|---------------------------|--------------|------------------------------|--------------|--------------|------------------------------|-------------|
|                           | Total        | Without firearms prohibition |              | Total        | Without firearms prohibition |             |
|                           |              | Number                       | Percent      |              | Number                       | Percent     |
| <b>less than 100,000</b>  |              |                              |              |              |                              |             |
| Lake                      | 364          | 120                          | 33.0%        | 339          | 68                           | 20.1%       |
| Modoc                     | 77           | 16                           | 20.8%        | 74           | 13                           | 17.6%       |
| Colusa                    | 15           | 4                            | 26.7%        | 16           | 2                            | 12.5%       |
| Plumas                    | 64           | 9                            | 14.1%        | 80           | 8                            | 10.0%       |
| San Benito                | 89           | 9                            | 10.1%        | 87           | 8                            | 9.2%        |
| Mono                      | 21           | 11                           | 52.4%        | 22           | 2                            | 9.1%        |
| Mariposa                  | 46           | 3                            | 6.5%         | 52           | 3                            | 5.8%        |
| Tehama                    | 128          | 6                            | 4.7%         | 131          | 7                            | 5.3%        |
| Nevada                    | 263          | 14                           | 5.3%         | 255          | 10                           | 3.9%        |
| Lassen                    | 86           | 19                           | 22.1%        | 81           | 2                            | 2.5%        |
| Siskiyou                  | 273          | 29                           | 10.6%        | 280          | 5                            | 1.8%        |
| Del Norte                 | 92           | 17                           | 18.5%        | 84           | 1                            | 1.2%        |
| Calaveras                 | 122          | 7                            | 5.7%         | 111          | 1                            | 0.9%        |
| Mendocino                 | 400          | 13                           | 3.3%         | 435          | 1                            | 0.2%        |
| Alpine                    | 4            | 0                            | 0.0%         | 2            | 0                            | 0.0%        |
| Amador                    | 59           | 0                            | 0.0%         | 60           | 0                            | 0.0%        |
| Glenn                     | 97           | 10                           | 10.3%        | 93           | 0                            | 0.0%        |
| Inyo                      | 81           | 1                            | 1.2%         | 68           | 0                            | 0.0%        |
| Sierra                    | 14           | 1                            | 7.1%         | 13           | 0                            | 0.0%        |
| Sutter                    | 310          | 5                            | 1.6%         | 322          | 0                            | 0.0%        |
| Trinity                   | 73           | 5                            | 6.8%         | 81           | 0                            | 0.0%        |
| Tuolumne                  | 62           | 2                            | 3.2%         | 67           | 0                            | 0.0%        |
| Yuba                      | 166          | 32                           | 19.3%        | 164          | 0                            | 0.0%        |
| <b>Total</b>              | <b>2,906</b> | <b>333</b>                   | <b>11.5%</b> | <b>2,917</b> | <b>131</b>                   | <b>4.5%</b> |

Note:

Since October 2004, San Francisco Police Department has re-examined and significantly improved the entry of firearms prohibition into DVROS.

For CPOs (see Table 8), the percent of orders without prohibitions in the large counties dropped to from 3.8 percent to 1.4 percent. The same was true for the small counties, where the percent dropped from 9.9 percent to 2.0 percent. Many individual counties substantially reduced their previously high percentages. Among the large counties, Madera lowered its percentage from 42.9 percent to 12.6 percent, Butte from 36.1 percent to 23.5 percent, and Alameda from 20.3 percent to 3.8 percent. Among the small counties, Tuolumne lowered its percentage from 24.2 percent to 0.9 percent, and Mariposa from 15.7 percent to 9.5 percent. The percentage in San Benito, on the other hand, increased from 45.2 percent to 55.6 percent.

### ***Recommendations***

1. The Department of Justice should 1) continue to monitor the number of Criminal Protective Orders and Orders After Hearing that have been entered into the Domestic Violence Restraining Order System (DVROS) without firearm prohibitions, and intervene with those counties that are not issuing those prohibitions and/or not entering them into DVROS, 2) enhance its capacity to monitor and intervene, and to provide technical assistance to local criminal justice system personnel, and 3) periodically issue public reports (at least annually).
2. The Judicial Council and the Department of Justice should alter the following current Judicial Council restraining order forms:
  - a. CR-160 form, used to issue Criminal Protective Orders (CPO), should be modified to eliminate the two checkboxes that allow a judge to indicate whether a defendant has 24 or 48 hours to relinquish his or her firearms.
  - b. The CR-160 form, in its current version, contains non-mutually exclusive checkbox categories for the type of order. The form does not clearly ask whether the order is related to a domestic violence case. Often these checkboxes are not even used, probably due to the confusion about which box to mark. Thus it is left to those entering data to determine whether the order is domestic violence related, and record those data in the Domestic Violence Restraining Order System (DVROS.) We recommend the development of two CPO forms: one for domestic violence-related cases and one for all other criminal cases. In addition to ensuring the data in DVROS reflect actual cases, it will make it easier to track orders where firearm prohibitions are crossed off.
  - c. DV-100 form, used by domestic violence victims to request Temporary Restraining Orders and Orders After Hearing from Family Court, should be modified to include a question asking the victim to describe the number, types, and locations of firearms (if any) owned or used by the batterer. This information could be used by law enforcement to enforce firearm prohibitions.
  - d. DV-110 form, used by Family Courts to issue Temporary Restraining Orders, should be modified to exclude the checkbox by the language on firearm prohibitions, as those prohibitions are mandatory.



Table 8

**Criminal Protective Orders (CPO) without Firearms Prohibition as listed in Domestic Violence  
Restraining Order System (DVROS) as of May 11, 2004 and October 18, 2004**

| County<br>with population<br>100,000 or more | CPO 5/11/04    |                              |             | CPO 10/18/04   |                              |             |
|----------------------------------------------|----------------|------------------------------|-------------|----------------|------------------------------|-------------|
|                                              | Total          | Without firearms prohibition |             | Total          | Without firearms prohibition |             |
|                                              |                | Number                       | Percent     |                | Number                       | Percent     |
| Butte                                        | 568            | 205                          | 36.1%       | 702            | 165                          | 23.5%       |
| Madera                                       | 7              | 3                            | 42.9%       | 95             | 12                           | 12.6%       |
| Yolo                                         | 1,363          | 108                          | 7.9%        | 1,433          | 100                          | 7.0%        |
| Ventura                                      | 285            | 45                           | 15.8%       | 469            | 24                           | 5.1%        |
| Alameda                                      | 9,813          | 1,988                        | 20.3%       | 10,303         | 387                          | 3.8%        |
| Riverside                                    | 155            | 5                            | 3.2%        | 392            | 12                           | 3.1%        |
| Stanislaus                                   | 15             | 2                            | 13.3%       | 72             | 2                            | 2.8%        |
| Tulare                                       | 192            | 31                           | 16.1%       | 451            | 10                           | 2.2%        |
| Los Angeles                                  | 45,270         | 1,117                        | 2.5%        | 45,050         | 678                          | 1.5%        |
| San Bernardino                               | 984            | 35                           | 3.6%        | 1,668          | 21                           | 1.3%        |
| Merced                                       | 790            | 85                           | 10.8%       | 985            | 12                           | 1.2%        |
| Monterey                                     | 1,855          | 62                           | 3.3%        | 1,786          | 18                           | 1.0%        |
| Humboldt                                     | 189            | 16                           | 8.5%        | 200            | 2                            | 1.0%        |
| Santa Clara                                  | 9,275          | 70                           | 0.8%        | 9,576          | 87                           | 0.9%        |
| Sonoma                                       | 1,301          | 44                           | 3.4%        | 1,239          | 11                           | 0.9%        |
| El Dorado                                    | 781            | 53                           | 6.8%        | 908            | 8                            | 0.9%        |
| Kern                                         | 1,136          | 11                           | 1.0%        | 1,206          | 8                            | 0.7%        |
| Solano                                       | 112            | 9                            | 8.0%        | 512            | 3                            | 0.6%        |
| Santa Barbara                                | 1,098          | 22                           | 2.0%        | 1,243          | 6                            | 0.5%        |
| San Luis Obispo                              | 1,710          | 122                          | 7.1%        | 1,789          | 8                            | 0.4%        |
| San Mateo                                    | 3,650          | 51                           | 1.4%        | 3,868          | 17                           | 0.4%        |
| San Joaquin                                  | 4,635          | 43                           | 0.9%        | 4,753          | 13                           | 0.3%        |
| Fresno                                       | 1,994          | 26                           | 1.3%        | 2,508          | 5                            | 0.2%        |
| Contra Costa                                 | 2,549          | 6                            | 0.2%        | 2,684          | 5                            | 0.2%        |
| Marin                                        | 1,149          | 10                           | 0.9%        | 1,231          | 2                            | 0.2%        |
| San Diego                                    | 3,984          | 119                          | 3.0%        | 4,787          | 7                            | 0.1%        |
| Placer                                       | 1,172          | 29                           | 2.5%        | 1,387          | 2                            | 0.1%        |
| Sacramento                                   | 1,746          | 4                            | 0.2%        | 1,688          | 1                            | 0.1%        |
| Santa Cruz                                   | 1,916          | 12                           | 0.6%        | 1,944          | 1                            | 0.1%        |
| Orange                                       | 13,462         | 13                           | 0.1%        | 15,205         | 4                            | 0.0%        |
| Imperial                                     | 0              | 0                            | -           | 24             | 0                            | 0.0%        |
| Kings                                        | 2              | 0                            | 0.0%        | 5              | 0                            | 0.0%        |
| Napa                                         | 4              | 0                            | 0.0%        | 87             | 0                            | 0.0%        |
| Shasta                                       | 216            | 0                            | 0.0%        | 251            | 0                            | 0.0%        |
| <b>Total</b>                                 | <b>113,378</b> | <b>4,346</b>                 | <b>3.8%</b> | <b>120,501</b> | <b>1,631</b>                 | <b>1.4%</b> |

| County<br>with population<br>less than 100,000 | CPO 5/11/04  |                              |             | CPO 10/18/04 |                              |             |
|------------------------------------------------|--------------|------------------------------|-------------|--------------|------------------------------|-------------|
|                                                | Total        | Without firearms prohibition |             | Total        | Without firearms prohibition |             |
|                                                |              | Number                       | Percent     |              | Number                       | Percent     |
| San Benito                                     | 42           | 19                           | 45.2%       | 63           | 35                           | 55.6%       |
| Mariposa                                       | 127          | 20                           | 15.7%       | 147          | 14                           | 9.5%        |
| Colusa                                         | 95           | 14                           | 14.7%       | 96           | 8                            | 8.3%        |
| Sierra                                         | 10           | 1                            | 10.0%       | 16           | 1                            | 6.3%        |
| Yuba                                           | 33           | 3                            | 9.1%        | 62           | 3                            | 4.8%        |
| Plumas                                         | 115          | 3                            | 2.6%        | 102          | 3                            | 2.9%        |
| Amador                                         | 87           | 10                           | 11.5%       | 132          | 2                            | 1.5%        |
| Lake                                           | 315          | 38                           | 12.1%       | 419          | 6                            | 1.4%        |
| Tuolumne                                       | 455          | 110                          | 24.2%       | 537          | 5                            | 0.9%        |
| Glenn                                          | 276          | 15                           | 5.4%        | 265          | 2                            | 0.8%        |
| Siskiyou                                       | 557          | 48                           | 8.6%        | 569          | 4                            | 0.7%        |
| Mendocino                                      | 1,160        | 64                           | 5.5%        | 1,261        | 3                            | 0.2%        |
| Calaveras                                      | 254          | 8                            | 3.1%        | 304          | 0                            | 0.0%        |
| Del Norte                                      | 128          | 16                           | 12.5%       | 147          | 0                            | 0.0%        |
| Inyo                                           | 114          | 5                            | 4.4%        | 151          | 0                            | 0.0%        |
| Mono                                           | 1            | 0                            | 0.0%        | 1            | 0                            | 0.0%        |
| Nevada                                         | 1            | 0                            | 0.0%        | 2            | 0                            | 0.0%        |
| Sutter                                         | 3            | 0                            | 0.0%        | 3            | 0                            | 0.0%        |
| Tehama                                         | 1            | 0                            | 0.0%        | 1            | 0                            | 0.0%        |
| Trinity                                        | 5            | 0                            | 0.0%        | 4            | 0                            | 0.0%        |
| Alpine                                         | 0            | 0                            | -           | 0            | 0                            | -           |
| Lassen                                         | 0            | 0                            | -           | 0            | 0                            | -           |
| Modoc                                          | 0            | 0                            | -           | 0            | 0                            | -           |
| <b>Total</b>                                   | <b>3,779</b> | <b>374</b>                   | <b>9.9%</b> | <b>4,282</b> | <b>86</b>                    | <b>2.0%</b> |

Note:

- 1) San Francisco is not included in this table because it entered all CPOs into DVROS, regardless of whether they are related to domestic violence. Since October 2004, San Francisco Police Department re-examined and improved the way it enters CPOs in DVROS.

## 10. A Legal Loophole Allows Many Charged with Domestic Violence Offenses To Keep Their Firearms

If a Criminal Court exercises its discretion to order that an individual charged with domestic violence must have no contact or peaceful contact with the alleged victim, that order – without exception – must also direct the defendant to relinquish any firearms.<sup>36</sup> If a Criminal Court does not enter such an order, however, the court has no independent basis to issue a firearm prohibition.

This presents a grave problem. Research consistently points to the heightened dangers that domestic violence victims face when firearms are present – batterers commonly use guns against their victims. According to a recent UCLA study, when a gun is kept in a domestic violence home, **nearly two-thirds** of the surveyed victims reported that the batterer used that gun to scare, threaten, or harm her.<sup>37</sup> (Perhaps it is not surprising that so many domestic violence victims do not want to cooperate with law enforcement when their batterers are prosecuted.) Moreover, domestic violence is more likely to escalate to homicide when there are firearms in the home: domestic violence assaults with firearms are 12 times more likely to result in death than domestic violence assaults without firearms.<sup>38</sup>

Our witnesses and interviewees left no doubt that judges frequently decline to issue no contact or peaceful contact orders. Whatever the reasons for this practice – the victim objects, the victim and defendant live together or have children, or there is no prosecutor present to request an order (see Prosecution Problematic Practice 2) – courts should have the authority to order relinquishment of firearms. But they do not under current law.

### **Recommendations**

1. The Attorney General should sponsor legislation that would require courts to prohibit those charged with domestic violence offenses from possessing or obtaining firearms. Pursuant to this recommendation, the Attorney General's Office has sponsored such legislation this session, AB 1288 (Chu).
2. If this legislation is enacted, the Judicial Council and the Department of Justice should modify the CR-160 form to require arraignment courts to issue a Criminal Protective Order (CPO) prohibiting firearm possession, regardless of whether a CPO is also issued restricting contact.

## 11. Firearm Prohibitions Are Rarely Enforced

All domestic violence restraining orders – issued by Criminal or Family Courts – are supposed to prohibit a batterer from owning, purchasing, possessing, or receiving firearms; as Tables 7 and 8 demonstrate, most orders do. These orders direct the batterer to get rid of any firearms that he or she possesses or controls within 24 hours after learning of the order, either by surrendering them to local law enforcement or selling

.....  
*This [when a  
restraining order is  
issued] is the most  
dangerous time [for  
victims]. And we  
ought to be doing  
something about it.  
We ought to be going  
after those guns.*

Lieutenant,  
San Diego Hearing  
.....



them to a licensed gun dealer. Finally, these orders direct the batterer to file a receipt with the court within 72 hours of learning about the order, demonstrating that relinquishment has taken place.

The objective of these firearms prohibitions is to prevent batterers from using firearms to threaten, injure, or kill domestic violence victims, as well as their children, themselves, and law enforcement personnel. According to the UCLA study mentioned above, however, such firearm use is a common occurrence: when a gun is kept in a domestic violence home, **nearly two-thirds** of the surveyed victims reported that the batterer used that gun to scare, threaten, or harm her.<sup>39</sup> Moreover, domestic violence is more likely to escalate to homicide when there are firearms in the home: domestic violence assaults with firearms are 12 times more likely to result in death than domestic violence assaults without firearms.<sup>40</sup>

Despite the heightened dangers that domestic violence victims face when there are firearms in the home, we are aware of few criminal justice agencies in the core counties that have a coordinated policy of proactively enforcing firearm prohibitions in Criminal Protective Orders. We are unaware of any agencies in the core counties that have such a policy when it comes to firearm prohibitions in Family Court domestic violence restraining orders.

On a brighter note, we can report that batterers subject to Criminal Protective Orders and Family Court restraining orders are failing DOJ's mandatory background check when they attempt to purchase firearms from licensed dealers: in 2002 and 2003, DOJ denied 451 attempted purchases due to restraining orders. DOJ also denied 768 attempted purchases by convicted domestic violence offenders during that same period.

### ***Minimum Standard***

Law enforcement and prosecutors in each county should adopt procedures to determine whether batterers subject to Criminal Protective Orders and Family Court restraining orders possess firearms (e.g., by checking with DOJ's firearm database), and then seize those weapons and prosecute the batterers.

For example: law enforcement, before serving a Family Court Order After Hearing (which must contain a firearms prohibition), should determine whether there is reason to believe that the batterer possesses a firearm (for law enforcement's own protection, as well as the victim's safety), and then seize any firearms when making service. Another example: when defendants with criminal domestic violence charges request the court to modify bail or grant release without bail, the court can agree to the request providing that the defendant agrees that he or she is subject to a firearm prohibition and that law enforcement can search for and seize firearms.

DOJ Firearms Division should provide technical assistance to local agencies.

## Promising Practice

### Enforcing Firearms Prohibitions in Criminal Protective Orders

#### Orange County's Domestic Violence Court

The Orange County Domestic Violence Court subjects all defendants at initial arraignment to a Criminal Protective Order (which automatically prohibits firearms possession), and orally advises them to report to the Department of Justice (DOJ) Firearms Division within 24 hours of the hearing (or 24 hours after release from custody) in order to surrender any firearms. The court also gives the defendants a written advisory that states: 1) the defendant should report to DOJ by calling the listed phone number; 2) the defendant should leave a voicemail message identifying all firearms (in the manner specified on the form); 3) a Special Agent will contact the defendant with final instructions; and 4) the agent will compare the firearms that the defendant identified over the telephone with the data in DOJ's Automated Firearms System.

After four weeks of operation (period ending April 30, 2005), the court has ordered 100 defendants to call DOJ. Of these, 21 have not yet done so because they are still in custody, and 13 others have failed to call. Three defendants surrendered weapons voluntarily, and a fourth was arrested for possession of weapons in violation of the Criminal Protective Order. These four defendants surrendered, in total, four handguns, two shotguns, three rifles, and one grenade launcher.

For more information contact DOJ Firearms Division Assistant Director Dale Ferranto at Dale.Ferranto@doj.ca.gov, or Special Agent Supervisor Cris Abad at Cris.Abad@doj.ca.gov.

#### ***Recommendation***

The Attorney General's Office should sponsor legislation that allows local law enforcement to advise a domestic violence victim whether DOJ's firearm database indicates that the batterer possesses a firearm. Pursuant to this recommendation, the Attorney General's Office has sponsored such legislation this session, AB 1288 (Chu).

#### **12. Minimal Enforcement and Prosecution of Family Court "No Contact" and "Peaceful Contact" Orders**

The heart of a domestic violence restraining order is its requirement that the batterer either have no contact or have peaceful contact with the victim, not simply that the batterer not commit additional crimes (for which a restraining order would be superfluous). The reason for these orders, as explained above, is that a period of separation or of regulated contact will help "prevent... a recurrence of domestic violence...."<sup>41</sup> These orders will have limited impact, however, if violations are rarely punished. That is why the Legislature directed law enforcement to arrest all such violators.<sup>42</sup>

Unfortunately, we found broad agreement among victim advocates, law enforcement, and court personnel in the 10 core counties and numerous other counties, through interviews and testimony at all six regional hearings, that enforcement and prosecution of these types of violations were the exception, not the rule. In testimony, we heard that law enforcement seemed to require a "magic number" of violations before they would respond or consider taking action: in one county, it was seven

violations, in another it was five pursuant to District Attorney policy, and in another the District Attorney will not prosecute these violations at all.

Law enforcement and prosecutors advanced a number of reasons to explain their extreme reluctance to prosecute these violations:

- the proof of the violation is often difficult (e.g., when the only witnesses are the batterer and victim);
- the proof of the batterer's intent to violate the order is often not clear (e.g., a batterer, prohibited from coming within 100 feet of the victim's home, approaches to within 50 feet);
- the case will not appeal to a jury or judge when the violations are truly technical (e.g., as above, the batterer comes too close to the victim's home);
- the victim sometimes appears to have invited the violation (e.g., the victim invites the batterer over to the home, resulting in the batterer's violation of the order);
- law enforcement does not have useful guidelines to interpret prohibitions on non-peaceful contact; and
- there is a lack of resources to invest in these difficult-to-win non-violent cases, given that existing resources are already taxed by the domestic violence cases with physical injuries.

While any of these reasons might have merit in any given case, the result appears to be that few violations are prosecuted. We do not feel that this general lack of prosecution is justified by these reasons. A general failure to enforce and prosecute is at odds with the purpose of the restraining order system. Moreover, the resulting lack of enforcement and prosecution has negative and dangerous unintended consequences. For the victim, there is a loss of faith in the system and reluctance to report new violations, even as these violations grow in seriousness. For the batterer, there is a sense of empowerment to commit new violations and more violent crimes. Finally, there are studies that show that batterers who are subject to Family Court restraining orders typically have more serious criminal histories than batterers convicted in the criminal courts without a Family Court order history.<sup>43</sup>

We note that there is an alternative basis to enforce violations of Family Court restraining orders – a criminal contempt action brought under Code of Civil Procedure § 1218 by a “party” (i.e., the victim who obtained the Family Court order) against the alleged violator (i.e., the batterer). This section allows up to five days in jail for every incident. Of course, the victim usually will not have an attorney (though he or she can recover reasonable attorney fees, if the batterer has funds), while an attorney will be appointed to defend the batterer. Moreover, there is no statutory authorization, as there must be, for a District or City Attorney to prosecute under § 1218.<sup>44</sup> As a result, these actions are rarely, if ever, brought. There is also a serious question as to whether a private party – as opposed to a public prosecutor – could legally prosecute a criminal contempt action under any circumstance.<sup>45</sup>

### ***Minimum Standard***

Prosecutors and law enforcement in each county should adopt proactive policies and procedures to arrest and prosecute batterers who violate Family Court restraining orders. The goal of the policy should be the deterrence of more serious domestic violence, rather than waiting until violations escalate to violence. Such a policy, for example, could target those violators who appear to pose greater safety risks in light of their criminal histories, firearm ownership, earlier restraining orders, and previous complaints of abuse made against them. What is key to remember is that batterers subject to Family Court orders may be more dangerous than those who have been charged under the Penal Code. Victim safety requires that law enforcement and prosecutors broaden their strategic view to include abusers both within the Criminal and the Family Court systems.

### ***Recommendation***

The Attorney General's Office should sponsor legislation that allows a District Attorney or City Attorney to bring criminal contempt actions under Code of Civil Procedure § 1218. Such actions may proceed to trial without a jury (so long as the sentence cannot exceed six months), making it easier and more likely that Family Court protective orders will be enforced. Pursuant to this recommendation, the Attorney General's Office has sponsored such legislation this session, SB 720 (Kuehl).

## **13. Issues of Culture and Interpretation**

Many non-English-speaking victims are immigrants to California, and are often reluctant to call the police. In addition to their cultural aversion to involving outsiders in family matters, prior negative experiences with the police and the justice systems in their countries of origin often result in serious reluctance to involve the authorities in this country.<sup>46</sup> Testifiers at regional hearings confirmed this reluctance. Further, whether they are here legally or not, it is likely they will perceive an increased risk of involving law enforcement because they fear deportation. To complicate matters, their fear of deportation is tied to their fear of losing custody of their children.<sup>47</sup>

This cultural backdrop makes it even harder for domestic violence victims who are not English speakers to feel confident about calling and confiding in law enforcement. Although most counties have interpretation services available, interviews with advocates and law enforcement in some of the ten core counties revealed that needing interpretation services in any language besides Spanish slowed the process down considerably. As a result, according to testimony, police sometimes use batterers or children as interpreters if their English is better, as it often tends to be. Allowing the batterer to interpret for the victim, of course, is fraught with danger, carrying the possibility that the victim will be the one arrested. Finally, when police give out information on restraining orders and shelter programs to victims, the information is usually not available in Asian languages. (See General Recommendation, page 46.)

## **General Recommendation: Inter-Agency Collaboration**

The mitigation and elimination of every problematic practice identified by the Task Force in connection with restraining orders, require the close collaboration of multiple agencies in each local criminal justice system. Each problem is a function of local rules, resources, priorities, and personalities, and so requires for its solution a local collaborative approach.

Hence, the Task Force recommends that the leaders of the agencies that comprise each local criminal justice system – Criminal Court and Family Court judges, court personnel, the District Attorney's Office, the City Attorney's Office (if applicable), the Sheriff's Department, the Police Departments, the Probation Department, community-based victim service and advocacy organizations, and defense attorneys – convene on an on-going basis to identify and address these problems through coordinated group action. This could include, given the particular county:

- why the Domestic Violence Restraining Order System (DVROS) reflects low Criminal Protective Order (CPO) rates (see Problematic Practice 1);
- why Emergency Protective Orders (EPOs) are underused (see Problematic Practice 4);
- why DVROS reflects low Order After Hearing (OAH) rates (see Problematic Practice 5);
- how legal services could better assist victims obtain Family Court restraining orders (see Problematic Practice 6);
- why victims are obligated to carry Family Court orders to law enforcement agencies that have jurisdiction where they and their children live, work, and go to school (see Problematic Practice 7);
- why DVROS reflects large numbers of unserved CPOs (see Finding 2), and Temporary Restraining Orders (TROs) and OAH (see Problematic Practice 8);
- why DVROS reflects significant percentages of CPOs and OAH that do not have firearm prohibitions (see Problematic Practice 9);
- why firearm prohibitions issued by Criminal and Family Courts are rarely enforced (see Problematic Practice 11);
- why there is minimal enforcement of Family Court "no contact" and "peaceful contact" restraining orders (see Problematic Practice 12); and
- how non-English-speaking victims could be better served by law enforcement, the prosecution, and the courts (see Problematic Practice 13).

It may not be appropriate, of course, for all agencies to be involved in the consideration of every problem; enforcement issues, for example, would have to be considered by collaboratives that did not include the courts.

## End Notes

<sup>1</sup> See Holt, V.L. et al. (2002). Civil protection orders and risk of subsequent police-reported violence, *Journal of the American Medical Association*, 288(5): 89-94, and Holt, V.L. et al. (2003). Do protection orders affect the likelihood of future partner violence and injury? *American Journal of Preventive Medicine*, 24(1): 16-21.

<sup>2</sup> Family Code § 6300.

<sup>3</sup> Penal Code § 136.2(g).

<sup>4</sup> Family Code § 6320.

<sup>5</sup> Penal Code § 133.2(h); Family Code § 6389(a) & (c).

<sup>6</sup> Penal Code § 136.2(h); Family Code § 6389(c). The 24-hour rule came into effect on January 1, 2005. Previously, batterers were given 48 hours to relinquish their firearms.

<sup>7</sup> Penal Code § 136.2.

<sup>8</sup> Penal Code § 136.2.

<sup>9</sup> Penal Code § 136.2(i)(1).

<sup>10</sup> Penal Code § 136.2(i)(1) ("to [a]ll interested parties").

<sup>11</sup> Penal Code § 1203.097(a)(2).

<sup>12</sup> Penal Code § 1203.097(a)(1).

<sup>13</sup> Penal Code § 1203.097(a)(3).

<sup>14</sup> Family Code §§ 6250(a) & 6252.

<sup>15</sup> Family Code § 6256.

<sup>16</sup> Family Code § 6271.

<sup>17</sup> Family Code §§ 6300 & 6320.

<sup>18</sup> Family Code § 6326.

<sup>19</sup> Family Code § 6300.

<sup>20</sup> Family Code §§ 6327 & 242.

<sup>21</sup> Family Code § 6345(a).

<sup>22</sup> Family Code § 6384(a).

<sup>23</sup> Family Code § 6384(a).

<sup>24</sup> Family Code § 6380(a).

<sup>25</sup> Family Code § 6380(a)(1) & (2).

<sup>26</sup> Family Code § 6380(b).

<sup>27</sup> Family Code § 6380(b).

<sup>28</sup> Family Code § 6380(a).

<sup>29</sup> Penal Code § 136.2(g); Family Code § 6380(i).

<sup>30</sup> Penal Code § 166(c)(1).

<sup>31</sup> Penal Code § 273.6(a).

<sup>32</sup> Civil Procedure Code § 1218.

<sup>33</sup> San Francisco is not included in the large county category because it enters all CPOs into DVROS, regardless of whether they are related to domestic violence.

<sup>34</sup> Two types of domestic violence CPOs are entered into DVROS: those mandatorily issued as part of a probationary sentence, and those issued, within a court's discretion, during the prosecution of a case. While it would have been preferable to compare the number of CPO-generating convictions to the number of CPOs in DVROS that had in fact been generated by convictions ("apples to apples"), DOJ's data system required us to use all CPOs in DVROS. Using all CPOs, of course, increased the likelihood that the courts in a county would appear to be in compliance with the law.

<sup>35</sup> Limitations in DOJ's data system caused us to understate the number of domestic violence convictions: we counted only convictions under Penal Code § 273.5 – the most common, but not the only, charge for domestic violence. Understating the number of convictions, of course, increased the likelihood that the courts in a county would appear to be in compliance with the law.

<sup>36</sup> Penal Code § 136.2(h).

<sup>37</sup> Sorenson, S.B. & Wiebe, D.J. (2004). Weapons in the lives of battered women, *American Journal of Public Health*, 94(8): 1412-1417. This is a UCLA study of more than 400 women staying in emergency shelters for battered women in California. In addition to the findings already mentioned, the study found that 37% of the victims believed that their partner kept a firearm in the home.

<sup>38</sup> Saltzman, L. et al. (1992). Weapon involvement and injury outcomes in family and intimate assaults, *Journal of the American Medical Association*, 267(22): 3042-3047.

<sup>39</sup> Sorenson, S.B. & Wiebe, D.J. (2004) Weapons in the lives of battered women, *American Journal of Public Health*. 94(8): 1412-1417.

<sup>40</sup> Saltzman, L. et al. (1992). Weapon involvement and injury outcomes in family and intimate assaults, *Journal of the American Medical Association*, 267(22): 3042-3047.



<sup>41</sup> Family Code § 6300.

<sup>42</sup> Penal Code § 836(c)(1).

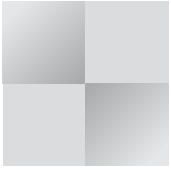
<sup>43</sup> Several studies in Massachusetts have shown that men with family court restraining orders have serious criminal histories, often more serious than those arrestees without family court order histories. See Cochran, D. et al. (1998). From chaos to clarity in understanding domestic violence, *Domestic Violence Report*, 3(5); Cochran, D. (1995). *The Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts*. Boston, MA: Office of the Commissioner of Probation; Buzawa, E. et al., (1999). *Response to Domestic Violence in a Pro-Active Court Setting*. Rockville, MD: National Institute of Justice; Buzawa, E. et al. (1998). The response to domestic violence in a model court: Some initial findings and implications, *Behavioral Sciences and the Law*, Vol 16: 185-206.

<sup>44</sup> See Safer v. Superior Court (1975) 15 Cal.3d 230, 236-42; Mitchell v. Superior Court (1989) 49 Cal.3d 1230, 1251-53.

<sup>45</sup> See Young v. United States, 481 U.S. 787, 107 S.Ct. 2124 (1987) (in criminal contempt action for allegedly violating patent infringement injunction, district court appointed as special prosecutor the attorney for party who obtained injunction; Supreme Court, exercising supervisory power, reversed, holding that such a private prosecutor must be as disinterested as a public prosecutor since the public interest is implicated in a criminal contempt prosecution).

<sup>46</sup> See Davis, R.C. et al. (2001). Access to justice for immigrants victimized by crime: The perspectives of police and prosecutors, *Criminal Justice Policy Review*, Vol.12: 183-196.

<sup>47</sup> See Raj, A. & Silverman, J. (2002). Violence Against immigrant women: The roles of culture, context and legal immigrant status on intimate partner violence, *Violence Against Women*, Vol.8: 367-398.



# *Chapter 3*

## **Prosecuting Domestic Violence Misdemeanors**

The findings below summarize what the Task Force learned about the prosecution of domestic violence cases in the 10 core counties. This includes prosecutions by the 10 District Attorneys' Offices, as well as the two City Attorneys' Offices in the core counties (San Diego and Anaheim) that prosecute domestic violence cases (misdemeanors only). Since most domestic violence cases are prosecuted as misdemeanors, we broadened our study beyond the core counties to include seven additional City Attorneys' Offices that handle criminal cases (Burbank, Hermosa Beach, Long Beach, Pasadena, Redondo Beach, Santa Monica, and Torrance).

These findings are based on four sources of information. First, Task Force staff interviewed 53 practitioners who work in the core counties and the nine City Attorneys' Offices: 13 county prosecutors, 12 city prosecutors, 11 law enforcement officers, seven community-based victim advocates, seven victim/witness specialists and three domestic violence coordinators (employed by a District Attorney's Office or a County Office of Violence Prevention). Second, Task Force staff interviewed 11 practitioners who do not work in the core counties: four county prosecutors, one prosecutor from the Los Angeles City Attorney's Office, one attorney with the California District Attorneys Association (CDAA), four community-based victim advocates, and one domestic violence coordinator. Third, we received testimony at the six regional hearings from five witnesses (all previously interviewed) who work in the core counties: two county prosecutors, two community-based advocates, and one domestic violence coordinator. Finally, we received testimony from 10 witnesses (one of whom was previously interviewed) who work in other counties: two county prosecutors, one city prosecutor, three law enforcement officers, three community-based victim advocates, and one victim/witness specialist.

In sum, we obtained information from 74 individuals: 19 county prosecutors, 14 city prosecutors, one CDAA attorney, 14 law enforcement officers, 14 community-based victim advocates, eight victim/witness specialists, and four domestic violence coordinators.



## **Background**

### **Process for Prosecuting Domestic Violence Misdemeanors**

In a majority of the core counties (six of 10), particularly the larger counties, most people arrested for domestic violence are initially charged by law enforcement with a felony.<sup>1</sup> In the remaining counties, the initial charge varies, depending on the law enforcement agency, between felony and misdemeanor.<sup>2</sup> The principal difference between a felony and misdemeanor is that felonies can be sentenced by a prison term in excess of one year, while misdemeanors can be sentenced by a jail term not to exceed one year.

Even though law enforcement initially arrests most domestic violence offenders for felony violations, the prosecutors – who decide what formal charges to bring – file 70% to 90% of all their domestic violence cases as misdemeanors.

District Attorneys are responsible for filing and prosecuting all cases (felonies and misdemeanors) in their counties, unless the alleged crime occurred in one of 10 cities (Anaheim, Burbank, Hermosa Beach, Long Beach, Los Angeles, Pasadena, Redondo Beach, San Diego, Santa Monica, and Torrance). In those cities, it is the City Attorney who charges and prosecutes misdemeanors committed within the city – if the District Attorney declines to prosecute them as felonies.

After a county or city prosecutor files charges, the defendant makes his or her first court appearance at what is called the “arraignment.” At that hearing, the judge advises the defendant of the charge, assigns an attorney if the defendant is indigent, gives the defendant the opportunity to plead guilty or not guilty, and schedules a date for a pretrial or settlement hearing. The judge can also issue a Criminal Protective Order; indeed, Penal Code § 136.2(i)(1) requires that a court consider issuing such an order on its own motion if the defendant is charged with domestic violence.

### **Problematic Practices, Minimum Standards of Performance, and Recommendations for Action**

The Task Force found seven problematic practices related to the misdemeanor prosecution of domestic violence. They are set forth below. Following each problematic practice, we set forth (when applicable) the minimum standard of performance that we believe the criminal justice system must meet, and specific recommendations for corrective action.

#### **1. Inexperienced Prosecutors Handle Most Domestic Violence Cases**

District Attorneys’ Offices assign their least experienced prosecutors to handle misdemeanor cases, which are typically easier to prosecute than felonies. Unfortunately, most District Attorneys in the core counties

(seven of 10) include domestic violence misdemeanors in these attorneys' caseloads, even though such cases present some of the most difficult challenges that any prosecutor will face, particularly at trial:

- The victims often have an injury that is minor or not easily seen;
- The victims are often hostile to the prosecution, recant prior statements about the defendant, and testify for the defense;
- First responders generally do not tape record victims' initial statements (made at the scene). They also generally do not photograph injuries with digital cameras, which capture much more life-like images than those produced by Polaroid cameras;
- Some judges express hostility to the prosecution of misdemeanor domestic violence cases; and
- Juries, many judges, and inexperienced prosecutors may not understand the counter-intuitive dynamics of domestic violence (e.g., why victims recant but may want the prosecution to succeed, why victims return to their batterers).

In contrast, the remaining three District Attorneys' Offices assign these misdemeanors to specialized Domestic Violence Units, whose attorneys are more experienced. Likewise, the nine City Attorneys' Offices surveyed almost always assign experienced prosecutors to their misdemeanor domestic violence cases.

#### **Minimum Standards**

1. All prosecutors who handle misdemeanor domestic violence cases should receive training that will allow them to evaluate and prosecute these difficult cases effectively.
2. Responsibility for deciding whether to charge misdemeanor domestic violence cases should be given only to seasoned prosecutors who have extensive knowledge about domestic violence.

#### **Recommendations**

1. Even in these difficult economic times, we believe that there are ample opportunities for quality training:
  - A. The California District Attorneys Association (CDAA) provides a one-week family violence conference annually, which includes a track on domestic violence prosecution.
  - B. Less formal, but invaluable, is the creation of mentor relationships matching veteran prosecutors with those less experienced.
  - C. Technology has made it possible to access a variety of Internet listserves that make it easier to connect with others doing similar work. Two examples of excellent listserves are CDAA's Violence Against Women Act listserve and Communities Against Violence Network.
2. The Attorney General, in conjunction with the California District Attorneys Association, should create a specialized unit to prosecute domestic violence cases in jurisdictions with inadequate

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***I think overall our system discounts misdemeanors. Misdemeanor prosecutions by felony prosecuting agencies very often are dealt with as "baby crimes" by inexperienced prosecutors who are given these cases with very little oversight.***

Prosecutor,  
Los Angeles Hearing

.....

resources or with documented histories of failure to handle domestic violence cases adequately.

3. Prosecutors' offices should have specialized deputies or teams of deputies who prosecute domestic violence misdemeanors, in vertical format (i.e., one attorney handles cases from filing to sentencing) if practical.

## **2. Arraignment, Plea, and Sentencing Without Prosecutors in Attendance**

District Attorneys' Offices in five of the 10 core counties do not always assign prosecutors to attend misdemeanor arraignments. Four of these offices stated that this was due solely to staff shortages. The fifth office was untroubled by this practice (at least with respect to domestic violence cases), explaining that all domestic violence arraignments were handled by experienced domestic violence judges.

In contrast, the other five District Attorneys' Offices and all nine City Attorneys' Offices always assign attorneys to cover the arraignment calendars. Representatives of these offices suggested a number of compelling reasons for this practice:

- The prosecutor's presence signifies to the defendant and the court that the office takes the allegations very seriously;
- The prosecutor can seek a criminal protective order and firearms prohibition;
- The prosecutor can seek an increase in the bail amount;
- The prosecutor may have information about the defendant's background, unavailable to the court, that bears on the protective order or the adequacy of bail; and
- In the event that a defendant pleads guilty and is immediately sentenced, the prosecutor can attempt to ensure that the judge possesses, and considers, all pertinent information about the defendant (e.g., prior criminal record, prior restraining orders), and that the judge imposes a legal sentence (if domestic violence misdemeanants are sentenced to probation, it must last for three years and require attendance at a 52-week batterer intervention program).

In fact, in two counties, it is a regular practice for misdemeanor defendants to plead guilty at arraignment and receive an immediate sentence, all without the presence – or benefit – of a prosecutor. In one county, this practice was accepted because the judges who hear misdemeanor arraignments also run the county's Domestic Violence courts. In this case, the judges then have before them the police report, rap sheet, Emergency Protective Order and other restraining orders, and the Pre-Trial Services report. A guilty plea and sentence at arraignment become particularly problematic, however, when the arraignment judge has little experience in the area of domestic violence, and has only the criminal complaint and rap sheet to consult.

### **Minimum Standards**

1. Prosecutors with knowledge of domestic violence should attend all misdemeanor arraignments.
2. Misdemeanor courts should not take guilty pleas and sentence defendants charged with domestic violence unless a prosecutor is present.

### **3. Sentences At Variance With the Law**

In what is a fairly widespread practice, prosecutors enter and judges approve guilty plea agreements with domestic violence misdemeanants that, contrary to Penal Code § 1203.097, do not require attendance at 52-week batterer intervention programs or three years of probation. Most District Attorneys' Offices (eight of 10 in the core counties) and City Attorneys' Offices (seven of nine surveyed) acknowledge that this practice goes on, and one City Attorney's Office stated that the courts approve these agreements over their objection.

These agreements attempt to avoid the requirements of § 1203.097 by having the defendants plead guilty to "non-domestic violence" crimes, such as assault or trespass. The agreements, however, still violate the spirit, if not the letter, of the law. Section 1203.097(a)(1) & (6) provides in part that if

*a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include...[a] minimum period of probation of 36 months...[and] successful completion of a batterer's program...for a period not less than one year.*

Thus, regardless of whether the crime is a "domestic violence" crime, the defendant must undergo three years of probation and the batterer's program if the **victim** of the crime is one of the people listed in Family Code § 6211 (e.g., spouse, former spouse, cohabitant, former cohabitant, person with a dating or engagement relationship).<sup>3</sup>

While it is difficult to obtain statistics about this practice, a District Attorney's Office in one of the core counties revealed that for all domestic violence cases disposed of by guilty plea during the first six months of 2004:

- 42% of the defendants received zero to two years probation, rather than three years; and
- Only 53% of the defendants were required to attend 52-week programs, while 12% were ordered to attend 10-12 weeks of anger management or counseling, and 34% were not required to attend any program whatsoever.

Equally shocking, a domestic violence court judge estimated that 40% of the batterers placed on probation in the judge's county were not required to attend batterer intervention programs.

.....  
*A prosecutor told me that if he insisted on a 52-week program as part of the plea, that no one would enter into pleas, and asked me what I expected him to do. I suggested simply that he follow the law. And by doing so he would send a message to the defense that the best deal they could expect included this condition.*

Chairperson, Domestic Violence Coordinating Council,  
Redding Hearing  
.....

We understand that prosecutors and judges often believe that the evidence in a particular case is so weak that a guilty plea in exchange for a several-week anger management course is preferable to no plea at all. Nevertheless, California law is very clear: 52-week batterer intervention programs and three years of probation constitute the minimally acceptable sentencing standard.

#### ***Minimum Standards***

1. Courts should not accept plea agreements that allow batterers to avoid what is mandatory: 52-week batterer intervention programs and three-year probationary terms.
2. Prosecutors should neither offer, accept, nor fail to object to, plea agreements that allow batterers to avoid mandatory 52-week batterer intervention programs and mandatory three-year probationary terms.

#### **4. Inadequate Investigations**

When law enforcement refers a domestic violence case to the prosecution for criminal filing, the referral often consists only of the first responder's report. The quality of that report is critical to whether the prosecutor will charge the case, ask for further investigation, or reject the case. Its quality depends on numerous factors, including the first responder's training and experience, the review process within the law enforcement agency, the clarity of the prosecution's expectations of what is needed, and the extent to which the prosecution and law enforcement communicate freely and respectfully.

More than half of the District Attorneys' Offices in the core counties (six of 10) and two City Attorneys' Offices explained that there was great variation in the quality of reports submitted – from inadequate to excellent – depending on which law enforcement agency did the investigation. Three of these District Attorneys' Offices stated that they will reject a case, rather than request further investigation, if the initial report is inadequate and comes from an agency generally thought to do inadequate investigations.

In contrast, the remaining four District Attorneys' Offices and almost all of the City Attorneys' Offices (seven of nine) stated that the law enforcement reports of investigation were generally good, that they did refer cases back for further investigation when necessary, and that they had good relations with law enforcement.

#### ***Minimum Standards***

1. Prosecutors' offices should work with their local law enforcement counterparts to develop basic guidelines on what is needed to charge domestic violence cases.
2. When communication and trust break down between law enforcement and the prosecution – to the extent that prosecutors prefer to reject a case rather than request further investigation leadership on both sides must aggressively repair the breach.

### Misdemeanor Prosecution

#### San Joaquin County District Attorney's Office Database

The San Joaquin County District Attorney's Family Crimes Unit uses a database as a tool to assist in tracking and prosecuting domestic violence cases. The database contains 14 years of data related to a suspect's domestic violence history, which assists attorneys in making determinations about whether to charge and at what level. The database contains information from every crime report that is referred to the District Attorney's Office. Seven law enforcement jurisdictions submit reports. The database contains information about whether children were in the home at the time of the incident, and personal information about the suspect and the victim, such as their names, dates of birth, addresses, social security numbers, driver's license numbers, phone numbers and physical descriptions. If the suspect is ultimately charged with a domestic violence offense, the disposition information is also entered.

For more information contact Family Crimes Unit Coordinator Suzanne Schultz at [suzanne.schultz@sjcda.org](mailto:suzanne.schultz@sjcda.org).

#### ***Recommendation***

Prosecutors and law enforcement usually lack the types of information they need to make investigative, charging, and prosecutive decisions about domestic violence suspects and offenders. These agencies should develop and maintain databases to track all contacts between domestic violence suspects/offenders and the criminal justice system. Such contacts could include field interviews, restraining orders, calls for service, arrests, filings, and dispositions.

#### **5. Unintended Consequences of Not Filing Charges**

When a prosecutor decides not to file domestic violence charges – for whatever reason – an actual victim is likely to suffer serious unintended consequences. A case rejection may:

- increase the victim's lack of hope;
- encourage the perpetrator to believe that he or she will never be held accountable;
- place the victim at greater risk of additional domestic violence; and
- undermine the victim's efforts to protect the children.

Yet many prosecutors' offices do not follow up with these victims, who are still in need of advocacy services and resources. If prosecutors would link up these victims with community-based victim advocates, it would help offset some of these negative consequences. (See Minimum Standard after related Problematic Practice 6.)

#### **6. Underutilization of Community-Based Victim Advocates**

Victim advocates working for community-based advocacy and social service agencies provide support and safety services to victims of domestic violence. Many of these advocates believe – and we agree –



that victims who receive such services are more likely to be and feel safe and secure, and thus more likely to “risk” cooperation with prosecutors. According to some advocates, however, prosecutors infrequently work with them.

Consistent with that claim, we found that a majority of District Attorneys’ Offices in the core counties (six of 10) and the surveyed City Attorneys’ Offices (five of nine) do **not** work with community-based advocates, preferring to work exclusively with their own criminal justice system advocates. On the other hand, four District Attorneys’ Offices and four City Attorneys’ Offices have chosen to work with both types of advocates in a coordinated fashion, on the theory that a comprehensive approach to victim assistance will accomplish more for the victims, and indirectly increase the likelihood that the victims will cooperate with the prosecution. While these offices concede that the difference in orientation between community-based advocates and prosecutors (i.e., advocating for the victim versus holding the batterer accountable) can lead to misunderstandings and mistrust, they have found that their mutual commitment to victim safety has enabled them to work together successfully.

### ***Minimum Standard***

In light of Problematic Practice 6 – that many prosecutors’ offices do not work with community-based victim advocates – and Problematic Practice 5 – that many prosecutors’ offices do not assist domestic violence victims if charges are not filed – we recommend as a minimum standard that all prosecutors’ offices work with community-based victim advocates to address the concerns and needs of 1) victims whose cases are being prosecuted, and 2) victims whose cases prosecutors have decided not to file.

## **7. Troubling Alternative to Prosecution**

The City Attorney’s Office of a major city attempts to intervene informally with alleged batterers and victims when it decides not to file criminal charges. That city’s police department annually refers thousands of domestic violence incidents to the City Attorney’s Office. That City Attorney’s Office criminally charges approximately one-third of the referrals, rejects another one-third, and sends the final one-third – which is also rejected – to its “Office Hearing Program.” There does not appear to be a clear standard for determining how a rejected case is selected for the Office Hearing Program.

Once in the program, one of the Office’s trained Hearing Officers sends a letter to the alleged batterer and victim to appear at the City Attorney’s Office for a hearing, usually at separate times. The letter’s command, of course, is unenforceable, and a large number of the recipients of these letters, perhaps understanding that, do not appear. Those who do show up are provided, according to the City Attorney’s Office, with “education, admonishments and referrals for services (including both battered

women's shelters and batterer treatment programs) which otherwise would not occur." In addition to this one major city, we are aware of only one other city that has such a program.

Task Force members and witnesses at a regional hearing expressed the concern that such a process may tempt prosecutors to refer weak but chargeable cases to the Hearing Program. Task Force members also felt that a prosecutor's office should not intervene in a case that it is not prepared to charge. Finally, there was the pragmatic worry that the program could cause more harm than good, by reinforcing the view commonly held by batterers and victims that the criminal justice system is toothless and that the victim will find no protection there.

### **End Notes**

<sup>1</sup> Penal Code § 273.5.

<sup>2</sup> Penal Code §§ 273.5 & 243e.

<sup>3</sup> See e.g., People v. Brown (2001) 96 Cal.App.4th Supp. 1 (52-week program was properly imposed on defendant who pleaded guilty to vandalizing his spouse's car after an argument).





## *Chapter 4*

### **Holding Batterers Accountable Through Batterer Intervention Programs, the Courts and Probation Departments**

The findings below summarize what the Task Force learned about how batterers in the 10 core counties are held accountable through batterer intervention programs. These findings are based on four sources of information. First, 80 practitioners in the core counties filled out surveys and/or were interviewed by Task Force staff: 10 judges, eight court administrative staff, 19 probation officers, seven county and city prosecutors, eight victim advocates, 28 employees/directors of batterer intervention programs. Second, 27 practitioners in 12 other counties were interviewed and/or filled out surveys: four judges, eight probation officers, two county prosecutors, nine victim advocates and four employees/directors of batterer intervention programs. Third, we received testimony at the six regional hearings from five witnesses (all previously interviewed): two judges, two probation officers and one victim advocate. Finally, we received testimony from 13 practitioners (seven previously interviewed) who work outside the core counties: three judges, three probation officers, one county prosecutor, two victim advocates and four employees/directors of batterer intervention programs. In sum, we obtained information from 120 individuals: 16 judges, eight court administrative staff, 28 probation officers, nine prosecutors, 17 victim advocates, and 35 batterer intervention program employees in the core counties and 12 additional counties.

### **Background**

#### **Overview of Legislation**

In 1979, the Legislature enacted a diversion option for individuals charged with domestic violence misdemeanors. The statute authorized judges to “divert” those defendants from criminal prosecution to what were then called “treatment” programs. If a defendant successfully completed the program, the arrest would be wiped off the books. If not, prosecution could be reinstated.<sup>1</sup>

Ten years later, California’s Auditor General concluded, in his study of five counties,<sup>2</sup> that diversion of batterers suffered from serious flaws:

**Inadequate supervision:** County probation departments did not regularly contact the batterers on diversion. In 54 percent of the cases

there was no evidence of contact for at least four months. As a result, the probation departments were unaware that 39 percent of the batterers were not attending the required treatment programs, and thus could not bring those instances of noncompliance to the courts' attention for possible sanctions. As the Auditor General noted, "the effectiveness of diversion depends upon... a credible threat of reinstating criminal charges."<sup>3</sup>

**Ineligible for diversion:** Although batterers charged with felonies were not eligible for diversion, 27 percent of the diverted batterers (in four of the five counties) had been charged with felonies.<sup>4</sup>

**Inadequate regulation of intervention programs:** County probation departments did not always require that batterers attend programs designed to treat violent behavior, as required by the diversion statute. Nearly one-half of the programs were not batterer programs, and 26 percent of the batterers attended programs that did not address violent behavior.<sup>5</sup> Some of the programs required batterers to attend only a few counseling sessions.<sup>6</sup>

These flaws directly undermined the Legislature's effort to enhance victim safety and batterer accountability.

In the mid-1990s, the Legislature modified the criminal justice approach to batterers, creating the legal framework that is with us today:<sup>7</sup>

**Diversion Eliminated:** While the Legislature retained batterer intervention programs as the centerpiece of the criminal justice response to domestic violence, it eliminated diversion. According to the Legislature, "Diversion programs... are inadequate to address domestic violence as a serious crime."<sup>8</sup> Instead, the Legislature linked batterer intervention programs to probation: batterers who were convicted of domestic violence offenses and sentenced to probation would have to attend and complete such programs.<sup>9</sup>

**Programs Responsible for Probationary Supervision:** Batterer intervention programs would have primary responsibility for monitoring batterers and bringing their noncompliant behavior to the attention of the courts and probation departments.

**52-Week Minimum:** Batterer intervention programs would now consist of two-hour weekly sessions over 52 consecutive weeks.<sup>10</sup>

**Strict Attendance Requirements:** A number of enhanced probationary requirements were put in place to ensure that these batterers attended and completed their program.<sup>11</sup>

**Program Standards:** Programmatic and administrative standards were established for batterer intervention programs. County probation departments were given the sole responsibility to implement those standards.<sup>12</sup>

## Probationary Supervision of Batterers

### Traditional Supervision of Misdemeanants

Before discussing these legislative changes, one must first understand how probationary supervision of misdemeanants works as a general matter in California:

**Court-Supervised Probation:** Most misdemeanants are sentenced to probation, and most of these are placed on “court-supervised” or “informal” probation. Misdemeanants on this form of probation are not supervised by the county probation department. Neither, however, are they supervised by the court, for virtually all criminal courts lack the capacity to contact or monitor offenders. Instead, such offenders come to the court’s attention only when they have committed another crime while on probation or miss a scheduled hearing. In these cases, the court can revoke probation and impose more stringent sanctions.

**Formal Probation:** Alternatively, offenders (usually felons) can be placed on “formal” probation. This typically means that county probation officers will have some sort of contact with the offender (ranging from infrequent to intensive) depending on the nature of the crime, the offender’s criminal history, the probation department’s resources, and the number of probationers it must supervise. Misdemeanant offenders who receive “formal” probation “are likely to be placed on banked caseloads where they receive little or no supervision....”<sup>13</sup>

### New Approach to Supervise Batterers

Recognizing that most domestic violence defendants are convicted of misdemeanors<sup>14</sup> and receive little attention from probation departments or the courts, the Legislature shifted the primary responsibility for supervision to batterer intervention programs. Under this approach, these programs, which are required to have interaction with their batterers for two hours each week over a 52-week period, must apprise the court periodically about the batterer’s compliance with program and other requirements, and notify the court immediately if the batterer appears to be out of compliance.

The Legislature also imposed obligations on the courts. They are to hold priority hearings when notified of batterer noncompliance and impose sanctions if the allegations are proven. Through the imposition of timely and suitable sanctions, the courts could increase the likelihood that batterers would successfully complete their programs. Without a credible threat of expeditious judicial sanctions (i.e., specific and general deterrence), batterer intervention programs would have to rely on the good intentions of the batterers – not anyone’s best plan for reducing domestic violence.

Set forth below is a summary of the specific requirements that the Legislature imposed on batterer intervention programs and the courts to achieve program compliance. These requirements govern regardless

### Batterer Accountability

#### Santa Clara County's Batterer Intervention Committee

The Santa Clara County Batterers Intervention Committee, a subcommittee of the Santa Clara Domestic Violence Council, has been in existence since the 1991 creation of the Council. This group is comprised of representatives from a variety of agencies including the Superior Court, Domestic Violence Court, District Attorney's Office, Public Defender's Office, Probation, Corrections, Family Court Services, Pre-Trial Services, Drug and Alcohol Services, Parole, Department of Children and Family Services, mental health providers, batterer intervention programs, and victim service providers.

The goal of the Committee's monthly meetings is to maintain a focus on offender accountability. This is accomplished by providing a confidential setting for members to discuss challenges with offenders who have been sentenced to mandated 52-week batterer intervention programs. Members examine the system to: 1) identify the agencies involved, 2) identify the challenges, and 3) determine how the participating agencies can address those challenges. As a collaborative effort, the Committee is committed to seeing that offenders follow the law by receiving the full benefit of batterer intervention programs.

For more information contact Program Director Victoria Colligan at [vcolligan@fcservices.org](mailto:vcolligan@fcservices.org).

of whether the sentencing court places a convicted batterer on court-supervised probation – which happens to the vast majority of misdemeanor batterers in six of the core counties – or formal probation – which happens to most misdemeanor batterers in the other four counties.

1. The court, when imposing probation, must order the batterer to attend all sessions of the batterer intervention program, keep all program appointments, and pay the program fees based upon ability to pay.<sup>15</sup>
2. Within 30 days of sentencing, the defendant must enroll in the program and file proof of enrollment with the court.<sup>16</sup> The program is likewise expected to file proof of the defendant's enrollment with the court (and the probation department if there is formal probation).<sup>17</sup>
3. Each batterer intervention program must establish a "sliding fee scale" and charge the batterer according to ability to pay. An "indigent" batterer must pay a "nominal" fee, unless the court determines that even a nominal fee exceeds the batterer's ability to pay.<sup>18</sup>
4. The program must send a "progress report" to the court (or the probation department if there is formal probation) at least every three months.<sup>19</sup> The report should inform the court about the defendant's attendance, fee payment history, and compliance with the program.
5. When the batterer completes the program, the program shall submit to the court (and probation department if there is formal probation) a final evaluation of the batterer's progress, and recommend successful or unsuccessful termination or continuation in the program.<sup>20</sup>

6. If at any time the batterer appears to be violating the Criminal Protective Order (which is imposed on all domestic violence probationers), committing new violence, failing to comply with program requirements, performing unsatisfactorily in the program, or not benefiting from the program, the batterer intervention program shall immediately advise the court and the prosecutor (and the probation department if there is formal probation).<sup>21</sup>
7. The court shall expeditiously hold a hearing. If it finds that any of these allegations are true, "the court shall terminate the [batterer's]... participation in the program and shall proceed with further sentencing."<sup>22</sup>
8. Finally, the terms of probation "shall not be lifted" until all reasonable fees due the program have been paid in full. If the batterer lacks the ability to make payment due to changed circumstances, however, the court may reduce or waive the fees.<sup>23</sup>

The probation departments in the four formal probation counties appear to have minimal contact with most misdemeanor batterers, ranging from one in-person contact per month in three counties, to one contact by mail per month in the fourth county.

### **Regulating Batterer Intervention Programs**

The legislation's major impact on county probation departments was its mandate that they ensure that the batterer intervention programs in their jurisdiction comply with the numerous standards set forth in the legislation. Those standards include the following programmatic requirements:

- that the programs use "[s]trategies to hold the defendant accountable for the violence in a relationship";
- that "the defendant participate in ongoing same-gender group sessions";
- that "[e]ducational programming... examine... at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others"; and
- that there be no couple or family counseling.<sup>24</sup>

There are also administrative standards:

- that there be "[a]n initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse";
- that "the defendant attend group sessions free of chemical influence"; and
- that "[p]rogram staff..., to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law and procedures of the legal system."<sup>25</sup>

The statute left it up to each county probation department to design and implement an approval and renewal process for batterer programs,

and gave the probation department the “sole authority” to approve a program.<sup>26</sup>

Significantly, the Legislature also included a standard that conditioned a program’s receiving probation department approval upon there being “[a]dequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program....”<sup>27</sup>

### Focus of Task Force’s Fact Finding

A recent report from the National Institute of Justice (NIJ) concluded that “it is impossible to say how effective” batterer intervention programs are. Referring to numerous evaluation studies over the last 15 years and to recent studies using experimental designs, NIJ found that “methodological problems” undermined the results of even well-designed studies.<sup>28</sup> These methodological problems vary, but certainly include recruitment and retention of participants.

It is not surprising that these scientific studies have had difficulty finding programs with high rates of participant completion, for numerous other studies report that as many as 50 percent or more of the abusers ordered to batterer intervention programs never enroll or fail to complete them.<sup>29</sup> While few studies have been conducted in California, one study found that 62 percent of offenders had either not enrolled or had not completed the program.<sup>30</sup> That problem, as noted above, was also found by the Auditor General in his study 15 years ago.

The significance of this high non-completion rate cannot be overstated. As long as the number of individuals failing to complete programs is so high, the use of batterer intervention programs as part of a “graduated range of sanctions that use the coercive power of the criminal justice system to hold abusers accountable for their criminal actions,” is critically flawed.<sup>31</sup> More to the point, batterers who do not complete their programs are more likely to re-abuse their victims.<sup>32</sup> For these reasons, the Task Force examined how, and how well, batterer intervention programs, the courts, and probation departments in the 10 core counties work to ensure that batterers enroll in and successfully complete their programs.

## Problematic Practices, Minimum Standards of Performance, and Recommendations for Action

The Task Force found six problematic practices related to holding batterers accountable; they are set forth below. Following each problematic practice, we set forth (when applicable) the minimum standard of performance we believe the criminal justice system must meet, and specific recommendations for corrective action. We conclude

.....  
*...one of my  
interests is to  
make sure that  
we actually  
study programs,  
batterers’  
programs, because  
the reality is that  
we do not know if  
programs work.*

Batterer Intervention  
Program Executive  
Director,  
Oakland Hearing

.....



with two general recommendations for collecting data about batterers, batterer intervention programs, and the courts.

## 1. Sentences Inconsistent With The Law

What follows is also set forth as Problematic Practice 3 in Prosecuting Domestic Violence Misdemeanors:

In what is a fairly widespread practice, prosecutors enter and judges approve guilty plea agreements with domestic violence misdemeanants that, contrary to Penal Code § 1203.097, do not require attendance at 52-week batterer intervention programs or three years of probation. Most District Attorneys' Offices (eight of ten in the core counties) and City Attorneys' Offices (seven of nine surveyed) acknowledge that this practice goes on, and one City Attorney's Office stated that the courts approve these agreements over their objection.

These agreements attempt to avoid the requirements of § 1203.097 by having the defendants plead guilty to "non-domestic violence" crimes, such as assault or trespass. The agreements, however, still violate the spirit, if not the letter, of the law. Section 1203.097(a)(1) & (6) provides in part that if

*a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include...[a] minimum period of probation of 36 months...[and] successful completion of a batterer's program...for a period not less than one year.*

Thus, regardless of whether the crime is a "domestic violence" crime, the defendant must undergo three years of probation and the batterer's program if the **victim** of the crime is one of the people listed in Family Code § 6211 (e.g., spouse, former spouse, cohabitant, former cohabitant, person with a dating or engagement relationship).<sup>33</sup>

While it is difficult to obtain statistics about this practice, a District Attorney's Office in one of the core counties revealed that for all domestic violence cases disposed of by guilty plea during the first six months of 2004:

- 42 percent of the defendants received zero to two years probation, rather than three years; and
- Only 53 percent of the defendants were required to attend 52-week programs, while 12 percent were ordered to attend 10-12 weeks of anger management or counseling, and 34 percent were not required to attend any program whatsoever.

Equally shocking, a domestic violence court judge estimated that 40 percent of the batterers placed on probation in the judge's county were not required to attend batterer intervention programs.

We understand that prosecutors and judges often believe that the evidence in a particular case is so weak that a guilty plea in exchange for



a several-week anger management course is preferable to no plea at all. Nevertheless, California law is very clear: 52-week batterer intervention programs and three years of probation constitute the minimally acceptable sentencing standard.

### ***Minimum Standards***

1. Courts should not accept plea agreements that allow batterers to avoid what is mandatory: 52-week batterer intervention programs and three-year probationary terms.
2. Prosecutors should neither offer, accept, nor fail to object to, plea agreements that allow batterers to avoid mandatory 52-week batterer intervention programs and mandatory three-year probationary terms.

## **2. Failure to Complete Programs**

Studies have consistently documented that a substantial proportion of offenders typically fail to attend or complete programs as ordered. While this is disturbing in and of itself, studies also indicate that non-completers are more likely to re-abuse their victims.<sup>34</sup>

We are aware of very few probation departments, prosecutors' offices, or courts that have data collection systems that allow for estimates of

## **Promising Practice**

### **Batterer Accountability**

#### **Shasta County's Domestic Violence Accountability Project**

The Domestic Violence Accountability Project in Shasta County was created in June 1999 to ensure that those on probation for domestic violence offenses complied with their conditions of probation, especially completion of batterer programs. The courts, the District Attorney's Office, law enforcement, and the Probation Department formed a collaborative, after a grant to the Probation Department to monitor misdemeanors was not renewed, in order to continue the monitoring and insist on "instant accountability" for probationers.

Before this Project, the Probation Department requested bench warrants when probationers violated probation in any way. It could take months from the time the violation occurred, to the time a bench warrant was issued, to when the individual was finally arrested and returned to court. With the advent of this project, the Probation Department sent law enforcement a weekly list of those who failed to attend probation orientation or the batterer intervention program. Law enforcement's goal was to contact or arrest these probationers within 48 hours. When arrested, they were held in custody, or if the jail was crowded they were released and given a date, within a week of the arrest, to appear in court.

According to a June 2001 report by the Shasta County District Attorney's Office, this Project resulted in decreases in failures to report to probation, to attend probation orientation, to sign up for the batterer program, and to complete the program. In the first year, the total number of violations decreased 25 percent, and in the second year, 57 percent. Funding cuts in the District Attorney's Office caused the Project to be terminated.

For more information, contact District Attorney Gerald Benito at [gbenito@co.shasta.ca.us](mailto:gbenito@co.shasta.ca.us).

non-completion. Of the 10 core counties, only one had such a system (in the probation department) and we believe that this is rare. Thus, when considering the following estimates of non-completion, bear in mind that these estimates are based not on actual records or studies, but on the training and experience of the person making the estimate.<sup>35</sup> Probation departments or prosecutors' offices in the 10 core counties were asked to provide such estimates. Most reported their best sense of how offenders were doing. Four of 10 probation departments, however, believed that they could not provide meaningful estimates of non-completion.

The estimates that were given reveal how poorly programs, probation departments, and the courts are able to retain and graduate offenders from intervention programs:

- Probation departments in two counties reported non-completion rates of approximately 30-40 percent.
- A city attorney's office reported that approximately 35 percent of offenders in that jurisdiction do not complete the program.
- A probation department in one county and a prosecutor's office in another county reported non-completion rates of around 50 percent.
- In the final county, the probation department reported that 89 percent of offenders do not complete the program. This is the only county that has a database that tracks offenders in programs, and thus the only county with actual data.

Finally, we note that in three of the six counties that did provide estimates, including the county with the 89 percent non-completion rate, most of the batterers are on formal probation supervision. It is not clear to us what additional value, if any, probation supervision at current levels contributes to program completion.

### ***Recommendations***

1. The Administrative Office of the Courts, in collaboration with the Attorney General's Office, should create a Judicial Council form that would be used in every court in California to record benchmarks of progress, noncompliance, terminations, and completions.
2. The Attorney General should communicate directly with the Administrative Office of the Courts as that office develops its new Criminal Case Management System. This system should include designated fields to capture the following data: convictions, court-ordered program attendance, enrollment, progress, terminations and the reasons for such, completions, and consequences imposed for failure to comply with court orders.

### **3. Personal Court Appearance Frequently Not Required**

The statute requires that batterers "shall file proof of enrollment in a batterer's program with the court within 30 days of conviction."<sup>36</sup> This provision leaves it to the court's discretion as to how a batterer files that proof: in a personal appearance before the judge, through an attorney,

or with court staff. Requiring a personal appearance would allow the judge to monitor the batterer more closely, a virtue in a system designed to hold batterers accountable.

- In the four formal probation supervision counties, most of the courts have directed that the batterers submit their proof of enrollment to the probation department and not the court.
- In two counties, batterers file proof of enrollment with court staff.
- In the remaining four counties, the domestic violence courts require that the batterers personally file their proof of enrollment with the judge. In one of these counties, all domestic violence cases are assigned to the domestic violence courts. In the other three counties, domestic violence cases are assigned to numerous other courts as well. In two of these counties, the non-domestic violence courts do not require a personal appearance; in the third county, the practice of the numerous non-domestic violence courts varies widely.

We also note that programs are required to submit tri-monthly progress reports to the court and probation department (if the batterers are on formal probation) regarding attendance, fee payment, and compliance with the program.<sup>37</sup> While this statutory provision does not require the batterer to appear in court when these reports are submitted, a court that required such an appearance would be in a position to discuss the report with the batterer. Such monitoring would increase the likelihood that the batterer would complete the program. We found, however, that few courts have adopted such a practice.

#### 4. Programs Allow Absences Beyond Statutory Maximum

Penal Code § 1203.097(a)(6) unambiguously provides that batterers on probation “shall” attend 52 consecutive weekly sessions at a batterer intervention program, and must complete the program within 18 months. There are two exceptions. First, the program may grant “an excused absence for good cause... for no more than three individual sessions during the entire program....” This means that if the batterer misses one session that the program does not find to be justified by “good cause,” or misses a fourth session after three prior absences found to have been for good cause, the program must refer the batterer to the court for a hearing. Under the second exception, the court may modify the “requirement... of consecutive attendance” for “good cause.”

Twenty-one programs in nine of the 10 core counties reported that non-attendance was a primary reason for non-compliance. Moreover, all 28 programs surveyed in the ten counties appear to have policies or practices that, to varying degrees, excuse more absences than the law permits.

- In four counties, 11 of the 12 interviewed programs reported that they allow three absences regardless of good cause before referring the batterer to court. This practice, of course, does not strictly comply with the statute. (In one of these counties, two of the programs stated that this was a new practice, instituted only when the probation

.....  
*There is a pronounced lack of consistency within counties and throughout the state in handling noncompliant domestic violence perpetrators.*

Probation Officer,  
San Diego Hearing

.....

department learned that programs had been “terminating” batterers after three absences and then re-enrolling them, without notifying the probation department or the court.) The 12th program admitted that it was using a system of “excused” absences to supplement the three absences allowed by the probation department.

- In two counties, the five interviewed programs reported that they allow three absences regardless of good cause, and are willing to excuse a fourth absence if the reason is serious and unforeseen (e.g., car accident, court appearance).
- In the seventh county, one program does not allow unexcused absences, but does allow for two excused absences in the first 26 weeks, two in the last 26 weeks, and even more excused absences if justified by a doctor’s note. A second program allows for more than three excused absences if the batterer provides a doctor’s note. The third program allows four excused absences.
- In the eighth county, two programs allow up to six excused absences, and a third allows unlimited excused absences. These programs explained that they had many migrant workers in their classes, whose schedules required them to be gone for long periods.
- In the ninth county, the three interviewed programs excuse up to eight absences before reporting the offender to the probation department. These programs explained that migrant workers and truck drivers populated their classes.
- In the tenth county, one program allows three absences. After that, the batterer can “buy” one additional absence by agreeing to take and pay for 10 additional sessions. (In the past, this program had allowed batterers who used all three absences to restart the clock – with three new allowable absences.) A second program advises a batterer after two consecutive absences that it intends to notify the District Attorney’s Office of the absences unless the batterer explains the absences in writing before the next session; most explanations pass muster. Perhaps the key here is that the batterer must pay for missed sessions. One program representative justified this approach by stating:

*We don’t have any black and white rules [about absences] because life is not black and white. I’m not thumbing my nose at the Penal Code. We’d have unhappy DAs and judges if I took it [the Penal Code] seriously.*

Both providers thought the Penal Code’s rules on absences were excessively harsh given that many people in their county work in the lumber and fishing industries and must travel to make a living.

### ***Minimum Standard***

Probation departments, in collaboration with prosecutors, victim advocacy agencies, batterer intervention programs, and other members of local coordinating councils, should develop and enforce a consistent policy regarding legally permissible absences from batterer intervention programs. The law clearly states that

### Batterer Accountability

#### Riverside County's Domestic Violence Court

Superior Court Judge Becky L. Dugan in Riverside, while she presided over a domestic violence court, adopted guidelines for batterers who were referred to court for failing to comply with the requirements of their batterer intervention program, especially missing program sessions. At the hearing on the first referral, she advised the batterer that a second referral would result in 15 days in jail or two weeks of picking up trash along the freeway. If there was a second referral, the judge fulfilled her promise. At the third referral, the judge imposed 15 to 30 days in jail. At the fourth referral, the judge revoked probation and imposed extended custody.

For more information, contact Judge Dugan at: [becky.dugan@riversidecourts.ca.gov](mailto:becky.dugan@riversidecourts.ca.gov).

any absence without good cause requires a court referral, as does any absence after three absences for good cause.<sup>38</sup> All probation departments should consistently enforce current state law.

#### ***Recommendation***

The court, probation department, and city and county prosecutors in each county should adopt a strategy that puts batterers on personal notice of the specific consequences of absences from their batterer intervention programs (including immediate arrest). In addition, any unexcused absence should be followed up with the issuance of an arrest warrant, immediate arrest and return to court.

### **5. Few Sanctions for Non-Payment of Fees**

The criminal justice system has always struggled to compel defendants without attachable assets to pay money, because 1) judges do not like to use the criminal law's principal tool – incarceration – for this purpose, 2) so many criminal defendants have little money to begin with, and 3) it is not easy to determine what a probationer can afford (as one judicial witness testified).

This struggle certainly plays out between batterer intervention programs, which cannot operate without fees, and the batterers who enroll in them. The governing law reflects, but does not satisfactorily resolve, this struggle:

- When sentencing a batterer to a program, the “payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay.”<sup>39</sup>
- Programs must “develop and utilize a sliding fee scale that recognizes both the defendant’s ability to pay and the necessity of programs to meet overhead expenses.”<sup>40</sup>
- “An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee.”<sup>41</sup>

- Even if the court earlier determined that a defendant had the ability to pay, the court may reduce or waive the fee if it finds that the defendant no longer has the ability due to “changed circumstances.”<sup>42</sup>
- Recognizing that the programs need paying clients, however, the statute directs the probation department “to apportion these referrals [of indigent defendants] evenly among the approved programs.”<sup>43</sup> (But probation departments are not statutorily part of the referral process when court-supervised probation is given, as it usually is.)
- Finally, the program “shall immediately report any... failure to comply with the program requirements,” which includes non-payment of fees; if “the court finds that the defendant... has not complied with a condition of probation... the court shall terminate the defendant’s participation in the program and shall proceed with further sentencing.”<sup>44</sup> To do so, the court will have to determine that the defendant had the ability to pay.

All 28 programs interviewed in the 10 core counties reported that the majority of batterers qualified to pay at the lowest end of the sliding fee scale. And 21 of these programs reported that collecting payment was a primary problem. Two counties had sliding fee schedules that started at \$0 because the probation department’s reading of the Penal Code was that indigents must be served. In these counties, the sliding scale was set either by the court or the probation department, rather than the program itself. Providers in three other counties had sliding fee scales that were set by probation, although the scale did not start at \$0. The lower end of the sliding fee scale in these and other counties ranged from \$5 to \$25 per session, with programs in four counties reporting that they would take some pro-bono cases.

The programs disclosed various strategies that they employed (or believed that others used) to address the problem of indigent offenders, including turning them away and charging them. Providers in all counties reported that when batterers were terminated for reasons other than non-payment of fees, it nevertheless meant that the programs were almost always still owed money. Despite all of these difficulties, most programs reported that they rarely sought to terminate based on non-payment. However, five programs in two counties said that they would terminate for non-payment of fees.

## **6. Non-Attendance Often Results In Re-Enrollment Without Sanctions**

When a batterer intervention program believes that a batterer has failed to comply with program requirements (or another term of probation), it is supposed to immediately notify the court or prosecutor (if the batterer is on court-supervised probation), or the probation department (if on formal probation).<sup>45</sup> The court is then supposed to hold a priority hearing to determine whether there has been a violation. If the court finds that the program’s allegations are true, “the court shall terminate



the [batterer's]... participation in the program and shall proceed with further sentencing."<sup>46</sup>

Programs and probation departments in all 10 counties reported that the most common sanction applied by the courts was to re-enroll the offender in a program, and to do so numerous times if necessary. When the probation departments or prosecutors' offices in the core counties were queried, five counties estimated that batterers were likely to be re-enrolled as many as three times, and four estimated that they were likely to be re-enrolled three or more times. (One of the core counties was unable to provide an estimate.) It should be noted that providers and probation alike reported that the number of re-enrollments varied by the type of violation. Those offenders who commit new crimes or violate restraining orders are more likely to be given a harsher sanction that would frequently include jail time. Still, because most offenders are terminated for having too many absences, re-enrollment is by far the most common result.

Re-enrollment, particularly multiple re-enrollments, means that there are virtually no consequences for a batterer who does not comply with a program's attendance rules. Without a credible threat of sanctions, there can be little accountability. As one program representative put it:

*I have one guy in my program with 17 absences. He's been failed out four times. He brags about the fact that there are no consequences before and after group. It makes it very hard for me to do my job.*

The lack of consequences is complete when judges give re-enrolled batterers credit for sessions attended in the previous program. According to numerous programs surveyed in nine counties, some judges do precisely that. When this happens, there are no consequences whatsoever for missing sessions.

Re-enrollment leads to a third problem, from the programs' point of view. In the 10 core counties, re-enrollments are effectuated through the same mechanism used for first-time enrollments: it is left to the batterer to select a program from a list of certified programs.<sup>47</sup> This allows a batterer to engage in "program hopping." Programs in all the core counties said that batterers often program-hop in an effort to escape debts owed the original program. In five of these counties, the programs have organized and are refusing to admit batterers who owe fees to previous providers. In another two counties, the courts will not allow offenders to graduate until all their fees are paid.

### ***Minimum Standard***

In each county the court, in consultation with the probation department, should develop an approach to ensure that multiple re-enrollments do not take place without additional and graduated sanctions (e.g., jail time).



## General Recommendations

1. As this chapter makes abundantly clear, there is need for a fundamental assessment of the extent to which convicted batterers are held accountable by batterer intervention programs, the courts, and probation departments – the current approach must be improved, or substantially modified. As the chapter also makes clear, however, little data has been systematically collected that would allow such an assessment. The State Auditor, fortunately, is in a position to obtain the needed information, just as the State Auditor General did in his study of the batterer diversion law in 1989. Accordingly, the Task Force recommends that the Attorney General request members of the Legislature to ask that the Joint Legislative Audit Committee, through the State Auditor, conduct such a study pursuant to Government Code § 10520. Further, the Task Force is of the view that any in-depth study of batterer intervention programs must answer the following questions:
  - At what rates do batterers enroll in and complete batterer intervention programs? What are the rates of absenteeism and other noncompliant behaviors?
  - What types of allegations of noncompliance do batterer intervention programs refer to the courts (or probation departments), and at what rates?
  - How do the courts respond to these allegations (e.g., re-referrals, credit for prior sessions attended, jail or other punishment)?
  - Who determines the sliding fee scales, and how do they compare within and across counties? To what extent do the courts, or probation departments, inquire into batterers' financial resources?
  - What are batterer intervention programs' policies regarding absences and non-payment of fees?
  - To what extent do probation departments perform oversight respecting batterer intervention programs?
2. The court and probation department in each county should immediately develop standards and procedures for collecting, measuring, and evaluating batterer program enrollment rates, completion rates, recidivism rates, the reasons for non-completion, and judicial responses to noncompliance. The data should be computerized to allow adequate analysis.

## End Notes

<sup>1</sup> Auditor General of California (1990). *The Administration of the State's Domestic Violence Diversion Program Could Be Improved*. Sacramento, CA: Report to the California Legislature, January.

<sup>2</sup> The counties studied were Glenn, Los Angeles, Sacramento, San Diego, and San Francisco.

<sup>3</sup> Auditor General of California (1990). *The Administration of the State's Domestic Violence Diversion Program Could Be Improved*. Sacramento, CA: Report to the California Legislature, January, pgs.16, 18.

<sup>4</sup> Auditor General of California (1990). *The Administration of the State's Domestic Violence Diversion Program Could Be Improved*. Sacramento, CA: Report to the California Legislature, January, pg. 28.

<sup>5</sup> Auditor General of California (1990). *The Administration of the State's Domestic Violence Diversion Program Could Be Improved*. Sacramento, CA: Report to the California Legislature, January, pg. 22.

<sup>6</sup> Auditor General of California (1990). *The Administration of the State's Domestic Violence Diversion Program Could Be Improved*. Sacramento, CA: Report to the California Legislature, January, pg. 21.

<sup>7</sup> AB 93, 226 (Burton) (1994); SB 169 (Hayden) (1995).

<sup>8</sup> SB 169, section 1(a) (Hayden) (1995).

<sup>9</sup> Family Courts that impose domestic violence restraining orders may also require that batterers attend intervention programs (Family Code §6343(a)). (Penal Code § 1203.097(a)(1) & (6)).

<sup>10</sup> Penal Code § 1203.097(a)(6)

<sup>11</sup> Penal Code § 1203.097(a), (b) & (c)

<sup>12</sup> Penal Code § 1203.097(c)

<sup>13</sup> Probation Services Task Force (2003). *Final Report*. Administrative Office of the Courts and California State Association of Counties: June 2003, pg.48.

<sup>14</sup> SB 169, section 1(d) (Hayden) (1995). See also Task Force Background Findings on Prosecuting Domestic Violence Misdemeanors.

<sup>15</sup> Penal Code § 1203.097(a)(7)(A)(i)

<sup>16</sup> Penal Code § 1203.097(a)(10)(B)

<sup>17</sup> Penal Code § 1203.097(c)(1)(O)(i)

<sup>18</sup> Penal Code § 1203.097(c)(1)(P)

<sup>19</sup> Penal Code § 1203.097(a)(6) & (c)(1)(O)(ii))

<sup>20</sup> Penal Code § 1203.097(c)(1)(O)(iii)

<sup>21</sup> Penal Code § 1203.097(a)(10)(B), (a)(12) & (c)(3)(C)

<sup>22</sup> Penal Code § 1203.097(a)(12)

<sup>23</sup> Penal Code § 1203.097(a)(7)(A)(ii).

<sup>24</sup> Penal Code § 1203.097(c)(1)(A), (B), (F), & (G).

<sup>25</sup> Penal Code § 1203.097(c)(1)(C), (E), & (I).

<sup>26</sup> The Task Force did not have sufficient time to study probation departments' monitoring of programs. (Penal Code § 1203.097(c) & (c)(5)).

<sup>27</sup> Penal Code § 1203.097(c)(3)(C).

<sup>28</sup> Hart, S. V. (2003). *Batterer Intervention Programs: Where Do We Go From Here?* Bethesda, MD: National Institute of Justice.

<sup>29</sup> Hart, S. V. (2003). *Batterer Intervention Programs: Where Do We Go From Here?* Bethesda, MD: National Institute of Justice. This is a report on two experimentally designed studies of batterer intervention programs, one in Brooklyn, NY, and the other in Broward County, Florida. The Brooklyn program had a 73% non-completion rate for a 26-week program and 33% for an 8-week program; the Broward County program had a 43% non-completion rate.

<sup>30</sup> McAllister, J. (2003). *Holding Batterers Accountable: A Study of Court, Probation and Batterer Intervention Programs in San Francisco*, Unpublished report for San Francisco Superior Court.

<sup>31</sup> Klein, A.R. (2003). Spotlight Article: Diane Stuart responds to readers' concerns and questions, *Domestic Violence Prevention*, November, pg.6.

<sup>32</sup> Klein, A.R. (2004). The Criminal Justice Response to Domestic Violence. Belmont CA: Wadsworth/Thompson Learning; Gondolf, E. (1998). Do batterer programs work? A 15-month follow-up of multi-site evaluation, *Domestic Violence Report*, 3 (5): 65-80; and Babcock, J. & Steiner, R. (1999). The relationship between treatment, incarceration and recidivism of battering: A program evaluation of Seattle's Coordinated Community Response to Domestic Violence, *Journal of Family Psychology*, 1: 46-59.

<sup>33</sup> See e.g., People v. Brown (2001) 96 Cal.App.4th Supp. 1 (52-week program was properly imposed on defendant who pleaded guilty to vandalizing his spouse's car after an argument).

<sup>34</sup> See section in Background on Focus of Task Force's Fact Finding.

<sup>35</sup> An additional difficulty in estimating non-completion rates results from the common practice of terminated offenders re-enrolling in programs. See Problematic Practice 6.

<sup>36</sup> Penal Code § 1203.097(a)(10)(B).

<sup>37</sup> Penal Code § 1203.097(a)(6) & (c)(1)(O)(ii).

<sup>38</sup> Penal Code § 1203.097(a)(6).

<sup>39</sup> Penal Code § 1203.097(c)(1)(P); see also Penal Code § 1203.097(a)(7)(A)(i).

<sup>40</sup> Penal Code § 1203.097(c)(1)(P).

<sup>41</sup> Penal Code § 1203.097(c)(1)(P).

<sup>42</sup> Penal Code § 1203.097(a)(7)(A)(ii).

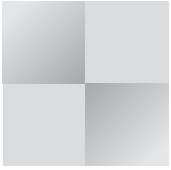
<sup>43</sup> Penal Code § 1203.097(c)(4).

<sup>44</sup> Penal Code § 1203.097(a)(10)(B) & (a)(12).

<sup>45</sup> Penal Code § 12083.097(a)(10)(b), (a)(12) & (c)(3)(C).

<sup>46</sup> Penal Code § 1203.097(a)(12).

<sup>47</sup> The only exception to this in the 10 core counties is found in several small courts in two counties, where there is only one provider in the surrounding geographic areas.



# *Chapter 5*

## **Law Enforcement's Response To Health Practitioners' Reports Of Domestic Violence**

The findings below summarize what the Task Force learned about health practitioners' mandatory reports of domestic violence made to law enforcement, and law enforcement's response to those reports, in the ten core counties and in Los Angeles and Fresno counties. These findings are based on four sources of information. First, Task Force staff interviewed 47 practitioners who work in the core counties: 18 law enforcement officials, 17 health practitioners and 12 advocates. Second, staff interviewed 10 practitioners who work outside the core counties: two law enforcement officials and eight advocates. Third, we received testimony at the six regional hearings from 10 witnesses (five previously interviewed) who work in the core counties: four law enforcement officials and six health practitioners. Finally, we received testimony from five witnesses (one previously interviewed) who work outside the core counties: two law enforcement and three health practitioners. In sum, we obtained information from 65 individuals: 25 law enforcement personnel, 19 health practitioners from hospitals and clinics, and 21 advocates. Each core county was represented by at least one health practitioner, one law enforcement official, and one advocate.

### **Background**

Since 1953, health practitioners have been required to make law enforcement aware of injuries that have resulted from assault or abuse of any type. The purpose of this requirement is to ensure that law enforcement has the information necessary to investigate the crime and arrest the individual responsible.

Under the current mandatory reporting law, enacted by the Legislature in 1993:

Any health practitioner... who... provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is... suffering from any wound or other physical injury [that is] inflicted... by means of a firearm... [or] is the result of assaultive or abusive conduct shall immediately make a report to law enforcement.<sup>1</sup>

Such conduct includes any of 23 criminal offenses, including violations of Penal Code § 273.5 – domestic violence.<sup>2</sup>

The statute in fact requires that the health practitioner make two reports. First, a “report by telephone shall be made immediately or as soon as practically possible.”<sup>3</sup> Second, a “written report shall be prepared... [and] sent to a local law enforcement agency within two working days....”<sup>4</sup> The statute was amended in 2002 to require that health practitioners use a “standard form” adopted by the Office of Emergency Services, or a “form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form.”<sup>5</sup>

An immediate telephone call affords law enforcement the opportunity to respond promptly to the health facility, in order to:

- interview the victim before he or she leaves;
- interview any other witnesses at the facility (e.g., health practitioners) while their memories are fresh; and
- interview – and arrest, if warranted – the alleged perpetrator (if present).

The written report serves as a back-up source of information if law enforcement does not receive the telephone report. It also records the information for law enforcement, which is particularly important if law enforcement cannot, or does not, respond to the telephone report. Finally, the written report documents the health practitioner’s compliance with the law.

The report – whether made by telephone or in writing – must include: 1) the name of the injured person, 2) that person’s whereabouts, 3) the character and extent of the injuries, and 4) the identity of the alleged perpetrator.<sup>6</sup> If the injuries are suspected to have resulted from domestic violence, the statute also “recommends” that the injured person’s medical records – not the written report – include a map showing the location of the injuries and bruises, and any comments by the injured person about past domestic violence or the suspected perpetrator.<sup>7</sup> To encourage health practitioners to make these reports, the statute immunizes them from civil and criminal liability if they do so, and makes it a misdemeanor if they fail to do so.<sup>8</sup>

Requiring health practitioners to report suspected domestic violence – just as they are required to report all other assaultive and abusive conduct – has proven controversial. This debate has given rise to three questions or concerns about the wisdom of mandatory reporting. The first is whether patients whose injuries are suspected to have resulted from domestic violence have better medical outcomes when health practitioners report their suspicions to law enforcement. The second is whether mandatory reporting (without first obtaining the patient’s

consent) undermines the suspected victim’s already weak sense of autonomy, to her or his ultimate detriment. The third is whether a policy that excluded domestic violence from the law’s otherwise broad mandatory reporting requirements would reinforce or reinvigorate the view that such conduct is a private or family matter and not a serious crime.

We recognize that we are not in a position to resolve these important, complex, empirical and value-laden issues. Our focus, instead, has been to find out how health practitioners are complying with their obligations to report domestic violence, and how law enforcement is responding to these reports.

## **Problematic Practices, Minimum Standards of Performance, and Recommendations for Action**

The Task Force found six problematic practices related to law enforcement’s response to health practitioners’ mandated reports of domestic violence. They are set forth below. Following each problematic practice, we set forth (when applicable) the minimum standard of performance that we believe the criminal justice system must meet, and specific recommendations for corrective action. Finally, we set forth a general recommendation for collaborative action by all concerned agencies.

### **1. Health Practitioners’ Difficulty Determining Where to Report**

Health practitioners must make their domestic violence reports to the law enforcement agency that has authority to investigate the possible crime. This means that the practitioner must, first, know the approximate location of the crime, and, second, be able to determine which law enforcement agency has jurisdiction at that location. The longer it takes a health practitioner to obtain this information, the less time there will be for law enforcement to respond in a timely manner and for the health practitioner to treat other patients.

Of the 13 health practitioners who addressed this issue, four expressed deep frustration at the extensive time it often took to determine which law enforcement agency to call, and the lack of cooperation sometimes exhibited by police dispatchers when asked for assistance. All four are from large counties with multiple law enforcement agencies. The problem is even more complicated for two of these health practitioners, who advised that their hospitals serve several counties.

The other nine health practitioners advised that they did not have difficulty identifying the appropriate law enforcement agency.

.....  
*I want to point out  
to you that our first  
and biggest problem  
with reporting  
domestic violence is  
figuring out which  
law enforcement  
agency to call.*

Emergency Room  
Physician,  
San Diego Hearing

.....

Three explained that when they did have problems, police dispatchers helped determine the correct agency, two stated that their counties were small and had few law enforcement agencies, and four advised that they had protocols that enabled quick determination.

### ***Minimum Standard***

Each county or region should establish a protocol, and supporting mechanism if necessary, to assist health practitioners identify the correct law enforcement agency for their mandatory reports of domestic violence. One possibility might be a single phone number for health practitioners in a county or region to call.

## **2. Failure to File Written Reports**

Seventeen law enforcement representatives addressed the issue of whether they received telephonic and written reports of domestic violence as required by statute. All concurred that, as far as they knew, health practitioners consistently made timely telephone reports. Eight of them maintained, however, that they often did **not** receive written reports; nine stated, on the other hand, that generally they did receive written reports.

The 17 health practitioners who addressed this issue had a different view. Not only did all state that they telephonically reported domestic violence, but virtually all also stated that they followed up with written reports as well. The two exceptions admitted either that they never submitted a written report, or that they sent a written report only when law enforcement did not respond to the telephone report.

## **3. Written Reports Use Different Formats and Lack Useful Information**

The statute requires that written reports be submitted on the standard form developed by the Office of Emergency Services (OES-920) or a comparable form adopted by another state agency. To our knowledge, there are no other state reporting forms for domestic violence. A standardized form, of course, if designed well and filled out completely and accurately, will consistently give law enforcement the basic information needed to begin an investigation.

Of the 16 law enforcement representatives who discussed the usefulness of the written reports, six expressed the view that different health practitioners used different forms. One law enforcement official from a large county testified that she had recently called three hospitals to obtain copies of the forms they used to report suspected domestic violence: one had no form that would have been suitable for reporting domestic violence, and so used child abuse and sexual assault forms instead; the second used a sexual assault form; and the third used a violent injury report form.



The 15 health practitioners who discussed the forms agreed with law enforcement about the variety used. Six stated that they used forms specifically developed by their hospitals. Three explained that they used forms developed, respectively, by a health care network, a domestic violence council, and the county. Six others stated that they used a variety of other non-state forms. It is not surprising that these health practitioners use so many types of forms, inasmuch as the Office of Emergency Services' standard form was only recently adopted (December 2003) and distributed to the field (March 2004).<sup>9</sup>

Beyond the issue of standardized forms, six law enforcement representatives emphasized that the written reports submitted by health practitioners, for the most part, did little to help law enforcement investigate the domestic violence crimes being reported. Among the complaints: the reports lacked necessary information, they had minimal information, different forms used different words to describe the same injuries, injuries were described vaguely, and the forms were often filled out illegibly and incompletely. One officer testified that the reports often lacked enough information even to prepare a police report. He recently received a report, for example, with only the victim's name and year of birth – no address or phone number, no name of perpetrator, and no description of injury. Perhaps most astounding was the testimony of one health practitioner, who reported that her facility, due to staffing shortages, has the patient complete the form (including a description of his or her own injuries), which the doctor then reviews and signs.

***Minimum Standard***

All health practitioners should use the required standard reporting form – Suspicious Injury Report (OES-920) – to report suspected domestic violence to law enforcement.

**4. Delays in Law Enforcement Response To Health Practitioner Telephonic Reports**

Four health practitioners expressed the view that law enforcement typically responds quickly to their telephonic reports of suspected domestic violence. The other 10 who addressed this question had serious reservations about the speed with which law enforcement responded to their calls. Most troubling were the estimates of two health practitioners that law enforcement did not respond at all 50 percent to 80 percent of the time. Eight others explained that the response time was inconsistent (within and among departments), often not immediate, and sometimes sufficiently delayed that the patient had left the hospital. Three of these eight noted comments that police dispatchers had made to them when they called to request law enforcement response: there were no officers available; the victim should come to the police department; and an officer would respond only if the victim were admitted to the hospital.

All 20 of the law enforcement personnel who spoke to this issue explained that health practitioners' calls, like all emergency calls, are

.....  
*When I get a  
medical mandated  
report where I've  
got a victim's name,  
partial date of  
birth, I have no  
address, I don't  
have a phone  
number, I don't  
know who the  
perpetrator is, and  
I don't know where  
it occurred – I'm  
kind of at a loss.*

Sergeant,  
San Diego Hearing  
.....

screened and prioritized by dispatchers based on the safety of the victim (e.g., whether the alleged perpetrator is present) and the extent of the injuries. All stated that their policies required a response, subject to prioritization, and one law enforcement representative testified that officers who responded more than 20 minutes after a call were required to explain why in a memo.

## **5. Community-Based Victim Advocates Not Used In Health-Care Settings**

Representatives of 12 community-based victim advocacy and service agencies in the ten core counties expressed the view that their services were under-used for victims in health-care settings. One advocate reported that health practitioners never use her agency because there is a lack of awareness about the services that can be provided. Another advocate reported that her agency is “absolutely not being used” to its potential by law enforcement or health care providers, and suggested that federal restrictions on disclosing confidential victim information (Health Information Privacy Protection Act) may be a major reason. Other reasons suggested by advocates include:

- health practitioners not screening for, or identifying, domestic violence;
- patients not disclosing that they are domestic violence victims, or refusing to speak with advocates when offered the opportunity;
- the presence of on-site social workers;
- health practitioners lacking time to make referrals; and
- health practitioners failing to recognize the seriousness of domestic violence.

### ***Minimum Standard***

Each county or region should adopt a procedure to ensure that there is a coordinated response by community-based victim advocates and service providers to support domestic violence victims in health care settings.

## **6. Uncertain Impact Of Mandatory Reporting On Health Outcomes**

Three health practitioners expressed concerns that there have been no scientific studies assessing the impact of reporting on patients’ health and safety. In related fashion, four health practitioners explained that it would help them if law enforcement provided feedback about the consequences of reporting for their patients.

### ***Recommendation***

The Department of Health Services and the Department of Justice should sponsor pilot studies in several communities to examine the impact of mandatory reports of suspected domestic violence on health and safety outcomes.

### Law Enforcement Response to Mandated Medical Reports

#### Kaiser Hospital's Family Violence Prevention Program

This program is a comprehensive systems model for reducing family violence that is in place in most Kaiser facilities in northern California. The model includes several integrated elements: educating medical staff on how to screen, intervene, document and report domestic violence to law enforcement; providing a supportive environment for victims in which they feel safe to reveal violence; offering victims referrals to other Kaiser and community professionals; and coordinating all systems in the community, including law enforcement, to ensure that victims are identified and supported.

For more information, contact Dr. Brigid McCaw at: [brigid.mccaw@kp.org](mailto:brigid.mccaw@kp.org).

### General Recommendation

Hospitals and clinics should form collaboratives with local law enforcement agencies, community-based victim advocacy and service agencies, and victim/witness agencies to address the various problems that arise in the course of reporting, and responding to reports of, suspected domestic violence. Those problems include:

- health practitioners not knowing the correct law enforcement agency to receive their mandatory reports of suspected domestic violence (see Problematic Practice 1);
- health practitioners not using the standardized reporting form for domestic violence, OES-920 (see Problematic Practice 3);
- health practitioners' failure to include required and useful information in written reports (see Problematic Practice 3);
- law enforcement's inconsistent response times after receiving telephonic reports of suspected domestic violence (see Problematic Practice 4);
- underutilization of community-based victim advocacy and service agencies (see Problematic Practice 5); and
- health practitioners' desire for feedback about the consequences of their reports (see Problematic Practice 6).

#### End Notes

<sup>1</sup> Penal Code § 11160(a).

<sup>2</sup> Penal Code § 11160(d)(18).

<sup>3</sup> Penal Code § 11160(b)(1).

<sup>4</sup> Penal Code § 11160(b)(2).

<sup>5</sup> Penal Code § 11160(b)(2). The standard form – "Suspicious Injury Report" (OES-920) – was adopted by the Office of Emergency Services (OES) in December 2003 for the reporting of all injuries except physical child abuse, dependent adult/elder abuse, sexual assault of an adult, and sexual assault of a child. Other state forms (listed in the instructions for OES-920), should be used to report these crimes. See Suspicious Injury Report OES-920 and instructions, included in this report.

<sup>6</sup> Penal Code § 11160(b)(4).

<sup>7</sup> Penal Code § 11161(b).

<sup>8</sup> Penal Code §§ 11161.9 & 11162.

<sup>9</sup> The Task Force notes that OES has also adopted several Forensic Medical Examination Forms for specific types of victimization, including one for domestic violence (OES-502). None of them is suitable for making a mandatory report of domestic violence.

**SUSPICIOUS INJURY REPORT**

OES-920 (12/03)



STATE OF CALIFORNIA

**INFORMATION DISCLOSURE**

This form is for law enforcement use only and is confidential in accordance with Section 11163.2 of the Penal Code. This form shall not be disclosed except by local law enforcement agencies to those involved in the investigation of the report or the enforcement of a criminal law implicated by this report. In no case shall the person identified as a suspect be allowed access to the injured person's whereabouts. The person making this report shall not be required to disclose his/her identity to their employer (PC 11160).

**Part A: PATIENT WITH SUSPICIOUS INJURY**

|                                                                                                                      |               |                                                                                                                                                         |                                 |
|----------------------------------------------------------------------------------------------------------------------|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| 1. PATIENT'S NAME (Last, First, Middle)                                                                              | 2. BIRTH DATE | 3. GENDER<br><input type="checkbox"/> M <input type="checkbox"/> F                                                                                      | 4. SAFE PHONE NUMBER<br>(     ) |
| 5. PATIENT'S RESIDING ADDRESS (Number and Street / Apt – <b>NO P.O. Box</b> )                                        |               | City                                                                                                                                                    | State    Zip                    |
| 6. PATIENT SPEAKS ENGLISH<br><input type="checkbox"/> Y <input type="checkbox"/> N – Identify language spoken: _____ |               | 7. DATE AND TIME OF INJURY<br>Date:                      Time: <input type="checkbox"/> am <input type="checkbox"/> pm <input type="checkbox"/> Unknown |                                 |
| 8. LOCATION / ADDRESS WHERE INJURY OCCURRED, IF AVAILABLE – Check here if unknown: <input type="checkbox"/>          |               |                                                                                                                                                         |                                 |

|                                                                                                                                                                                                     |                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| 9. PATIENT'S COMMENTS ABOUT THE INCIDENT – Include any identifying information about the person the patient alleges caused the injury and the names of any persons who may know about the incident. | <input type="checkbox"/> ADDITIONAL PAGES ATTACHED |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|

|                                                                                                               |                                     |
|---------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 10. NAME OF SUSPECT – If identified by the patient                                                            | 11. RELATIONSHIP TO PATIENT, IF ANY |
| 12. SUSPICIOUS INJURY DESCRIPTION – Include a brief description of physical findings and the final diagnosis. |                                     |
| <input type="checkbox"/> ADDITIONAL PAGES ATTACHED                                                            |                                     |

**Part B: REQUIRED – AGENCIES RECEIVING PHONE AND WRITTEN REPORTS**

|                                                                            |               |                                                                                                                        |  |
|----------------------------------------------------------------------------|---------------|------------------------------------------------------------------------------------------------------------------------|--|
| 13. LAW ENFORCEMENT AGENCY NOTIFIED BY PHONE (Mandated by PC 11160)        |               | 14. DATE AND TIME REPORTED<br>Date:                      Time: <input type="checkbox"/> am <input type="checkbox"/> pm |  |
| 15. NAME OF PERSON RECEIVING PHONE REPORT (First and Last)                 | 16. JOB TITLE | 17. PHONE NUMBER<br>(     )                                                                                            |  |
| 18. LAW ENFORCEMENT AGENCY RECEIVING WRITTEN REPORT (Mandated by PC 11160) |               | 19. AGENCY INCIDENT NUMBER                                                                                             |  |

**Part C: PERSON FILING REPORT**

|                                                  |  |                             |              |
|--------------------------------------------------|--|-----------------------------|--------------|
| 20. EMPLOYER'S NAME                              |  | 21. PHONE NUMBER<br>(     ) |              |
| 22. EMPLOYER'S ADDRESS (Number and Street)       |  | City                        | State    Zip |
| 23. NAME OF HEALTH PRACTITIONER (First and Last) |  | 24. JOB TITLE               |              |
| 25. HEALTH PRACTITIONER'S SIGNATURE:             |  | 26. DATE SIGNED:            |              |



### Instructions To The Health Practitioner

Penal Code Section 11160 *mandates* the following regarding suspicious injuries:

- Internal procedures established to facilitate reporting and apprise supervisors and administrators of reports shall be consistent with the reporting requirements of PC Section 11160. The internal procedures shall not require any employee who must make a report to disclose his or her identity to the employer.
- Report suspicious injuries to your local law enforcement agency by telephone **immediately**, or as soon as practically possible.
- Submit the required completed written report to your local law enforcement agency *within two working days of discovering a suspicious injury*, whether or not:
  - The person has expired;
  - The injury was a factor contributing to the person's death; or
  - Evidence of the conduct of the perpetrator is discovered during an autopsy.
- Use this standard form or a form, developed and adopted by another state agency, that otherwise fulfills the requirements of this form, (see "Exceptions to using this form" below).
- Two or more health practitioners with knowledge of a suspicious injury may mutually select a team member to make the telephone report and one written report signed by the selected team member. A team member who knows that the selected team member has not made the telephone call or submitted the written report shall make the report(s).
- No supervisor or administrator shall impede or inhibit the required reporting duties, and no person making a report pursuant to this section shall be subject to any sanction for making the report.

### Exceptions To Using This Form

Other state reporting mandates pre-empt the use of this form to report suspicious injuries, as follows:

| Incident                      | Form                   | Source of Form                                                                                                                                                            |
|-------------------------------|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Physical Child Abuse          | SS 8572                | Call California Department of Justice at (916) 227-3285.                                                                                                                  |
| Dependent Adult / Elder Abuse | SOC 341                | Online: <a href="http://www.dss.cahwnet.gov/pdf/SOC341.pdf">http://www.dss.cahwnet.gov/pdf/SOC341.pdf</a><br>or contact your local County Adult Protective Services Dept. |
| Sexual Assault – Adult*       | OCJP 923*              | Online: <a href="http://www.oes.ca.gov">www.oes.ca.gov</a> under Plans and Publications<br>or call OES at (916) 324-9100.                                                 |
| Sexual Assault – Child*       | OCJP 925*<br>OCJP 930* |                                                                                                                                                                           |

\*Use these forms to conduct a forensic examination of the victim. Otherwise, use this Suspicious Injury Report form.

### Definitions

**Health Practitioner** – Provides medical services to a patient for a physical condition that he/she reasonably suspects is a suspicious injury as listed below, and is employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department.

**Suspicious Injury** – Includes any wound or other physical injury that either was:

- Inflicted by the injured person's own act or by another where the injury is by means of a firearm, OR
- Is suspected to be the result of *assaultive or abusive conduct* inflicted upon the injured person.

**Injury** – Shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

**Assaultive / Abusive Conduct** – includes committing, or an attempt to commit, any of the following Penal Code violations:

- Abuse of spouse or cohabitant
- Aggravated mayhem
- Administering controlled substances or anesthetic to aid in the commission of a felony
- Assault with a stun gun or taser
- Assault with a deadly weapon, firearm, assault weapon or machine gun, or by means likely to produce great bodily injury
- Assault with intent to commit mayhem, rape, sodomy, or oral copulation
- Battery
- Child abuse or endangerment (including Statutory Rape)
- Elder abuse
- Incest
- Lewd and lascivious acts with a child
- Murder
- Manslaughter
- Mayhem
- Oral copulation
- Procuring any female to have sex with another man
- Rape
- Sexual battery
- Sexual penetration
- Sodomy
- Spousal rape
- Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure
- Torture





## *Chapter 6*

### **Other Recommendations To Increase The Criminal Justice System's Capacity To Address Domestic Violence**

In addition to the recommendations that we have offered in the chapters on restraining orders, prosecuting misdemeanors, batterer intervention programs, and mandatory reporting, we would like to make six recommendations that can boost the capacity of the criminal justice system to address domestic violence generally:

#### **1. Judicial Leadership**

To redress most of the problematic practices we have identified, there must be close collaboration among multiple agencies in each local criminal justice system. In most of those collaborative efforts, perhaps the most significant agency – certainly a necessary agency – is the judiciary.

We are aware, however, that many judges are reluctant to participate in interagency groups that consider domestic violence issues, in order to avoid an appearance of bias when presiding over cases involving allegations of abuse. After consulting with the Administrative Office of the Courts, we have concluded that, consistent with due process and the Code of Judicial Ethics, judges who hear cases involving allegations of domestic violence can and should exercise court and community leadership. In particular, each judge should:

- support compliance with mandatory procedures and the development of promising practices;
- identify and resolve issues of access to justice for the parties (see Standards of Judicial Administration Section 39, relating to all judges);
- encourage and participate in the development and maintenance of permanent programs of interagency cooperation and coordination among the court and various public and private agencies that serve victims, perpetrators, and their children (see Standards of Judicial Administration, Section 24, relating to juvenile court judges); and
- participate as appropriate in local domestic violence coordinating councils and similar collaborative efforts, provided that:
  - the judge's activities and the main purpose of the council concerns enhancement of court practice and procedures,
  - the council's activities do not include those that would be ethically precluded for judges, such as lobbying or fund raising, and
  - each council's membership is inclusive of all parties and interests.

## System Capacity

### **The Orange County Superior Court's Domestic Violence Court**

The Orange County Superior Court's Domestic Violence Court has as its primary goal to eradicate the cycle of violence and the pervasive damage to the family structure, and in particular, the negative effects of domestic violence on the children. The family, not just the abused and the abuser, are evaluated to see what kinds of services can be provided for them. Services for this court are supplied primarily by county agencies from existing programs and resources that were brought together and coordinated for the purpose of forming an interdisciplinary supervision team.

For more information, contact Domestic Violence Program Coordinator Leslie Howard at: lhoward@occourts.org.

### **2. Domestic Violence Courts**

The Judicial Council should adopt a rule that would delineate model court practices and procedures for dedicated domestic violence criminal courts and specialty calendars.<sup>1</sup> The various models would constitute best practices, taking geographic variation and county culture into account. Such courts, regardless of model, would be in the best position to:

- increase victim (adult and child) safety;
- assist victims (adults and children);
- increase batterers' accountability;
- improve case management; and
- use resources more efficiently.

### **3. Co-located Criminal Justice and Victim Service Agencies**

It is increasingly common for law enforcement agencies, when working closely together to achieve a particular overriding objective (e.g., suppression of drug trafficking), to take the extra step of co-locating – i.e., locating their personnel in shared office space for sustained time periods. Such a simple tactic has proven to be a most effective means of overcoming mutual distrust, avoiding turf battles, and replacing ignorance of others' mission and methods with understanding. Such a tactic has allowed participating agencies to achieve close and effective partnerships.

In the domestic violence field, co-location of criminal justice and victim service agencies should be implemented. It would yield a significant payoff, both in terms of increased batterer accountability and victim safety and well-being. As the Task Force found, many agencies – law enforcement, prosecutors, and victim advocates – fail to appreciate that their missions are highly interdependent. When criminal justice agencies quickly link up domestic violence victims with organizations that provide a broad range of services, the victims are more likely to experience positive health and safety outcomes. When that occurs, we found, victims are more likely to assist criminal justice agencies bring batterers to justice.

.....  
***I believe the court has to be in a leadership role in the issues that pertain to the criminal justice system. Domestic violence is one of the largest areas of criminal law we deal with. To say we are going to stand back and not get involved is an outrage. We have to take a leadership role.***

Judge,  
Sacramento Hearing

.....



Co-location of criminal justice and victim service agencies would immeasurably advance batterer accountability and victim health and safety. It is time for all working in the domestic violence field to adopt this paradigm.

#### **4. Domestic Violence Data Collection And Reporting**

The Department of Justice (DOJ) is responsible for collecting criminal justice data from local law enforcement, prosecutors, and the courts. Currently, DOJ collects the following narrow band of domestic-violence-specific information: 1) domestic violence calls for police assistance; 2) arrest, prosecution, and disposition data for violations of Penal Code § 273.5 (the most common, but not the only, domestic violence offense); and 3) for intimate partner homicides, arrest, prosecution, and disposition data, relationship of victim and offender, and contributing circumstances. Otherwise, DOJ collects little information on the bulk of domestic violence offenses.

Robust criminal justice data on domestic violence is absolutely required if criminologists are to get a better handle on domestic violence. DOJ should develop a web-based system through which local agencies report on a monthly basis. The reports should include:

- The number of domestic violence incidents reported in their jurisdiction;
- Key event information, including:
  - crime data;
  - age, race, and gender of the victim;
  - relationship of the victim to the offender;
  - any contributing circumstances;
  - presence of weapons, particularly firearms;
  - weapons seized from the abuser;
  - arrest information;
  - filing and prosecution information;
  - issuance of restraining orders, if any;
  - whether a batterer intervention program was ordered;
  - disposition of the case;
- Follow-up data on whether the abuser satisfactorily completed probation and a batterer intervention program.

#### **5. Resources**

Collectively, our findings demonstrate that there are insufficient resources to support the criminal justice response to domestic violence. Those affected include batterer intervention programs, community-based victim advocates and service agencies, courts, law enforcement, probation, prosecutors, system-based victim advocates, and violence prevention programs. More resources for staff, training, services, technology, and data collection are urgently needed, and leadership is required to advocate effectively for such resources.

### System Capacity

#### The San Diego Family Justice Center

The San Diego Family Justice Center opened in October 2002 as a new and innovative approach to serving victims of domestic violence and their children. The Center brought together victim advocates, police officers, prosecutors, probation officers, civil attorneys, counselors, doctors and others in one location. Those housed at the center provide a variety of services including legal assistance with restraining orders, victim assistance with counseling and safety planning, medical examinations, chaplain assistance, transportation assistance, general civil legal assistance, and children's services. On average, the center serves over 500 clients and responds to 3,000 phone calls per month.

Preliminary program evaluation results show increased peer support, increased safety, reduced fear and frustration, reduced recanting, and increased numbers of victims receiving services. Focus groups comprised of clients have praised the model.

This center has become a model for a federal initiative that is providing \$20 million to help 15 other communities launch similar centers. Some fundamental guiding principles are:

- On-site co-located services;
- Victim safety and confidentiality;
- Prohibitions against offenders on-site;
- Specialized training of staff; and
- Community support and commitment.

For more information, contact Director Gael Strack at: [gstrack@sandiego.gov](mailto:gstrack@sandiego.gov).

Simply adding resources, however, will not solve the problems we have identified. There also needs to be an appropriate allocation of resources – both new and existing – as the various practitioners make a determined effort to prioritize among domestic-violence-related issues and work together to ensure victim safety and batterer accountability.

#### 6. Court Watch

One of the most effective ways for communities to hold courts and prosecutors accountable is to undertake a court watch program. Court watches use volunteers who sit in the courtroom, carefully observe court proceedings, and record and report on court actions. Effective court watch volunteers use a checklist or follow specific guidelines. Court watch programs serve two important purposes:

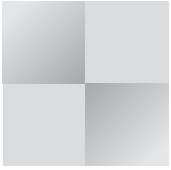
First, the presence of trained, organized observers in the courtroom reminds judges and prosecutors of the importance that the community places on how cases are handled.

Second, court watches are invaluable for problem analysis because they provide an empirical base – statistics, not just complaints or anecdotes – that can be used to convince judges, legislators, and others of the need for change (or that there is no need for change).

Court watches, however, are difficult to implement. They require a large corps of volunteers who can attend hearings every day over a specific time period. These volunteers must be trained to interpret the arcane language used in courts. Finally, a court watch works best if its objectives and methods are explained to the presiding judge and chief prosecutor, and a respectful relationship with them is created.

#### **End Note**

<sup>1</sup> MacLeod, D. & Weber, J.F. (2000). Domestic Violence Courts: A Descriptive Study. San Francisco, CA: Judicial Council of California.



# *Chapter 7*

## **Summary of Minimum Standards and Recommendations**

### **Obtaining and Enforcing Restraining Orders (Chapter 2)**

1. Criminal Courts must impose Criminal Protective Orders, and require completion of 52-week batterer intervention programs, when sentencing batterers to probation.
2. All Criminal Protective Orders must prohibit firearm possession.
3. Task Force-sponsored AB 1288 (Chu), if enacted, will authorize the courts to prohibit firearm possession without having to order that the batterer and victim have no contact or peaceful contact. Prosecutors should move for firearm prohibitions at arraignment in all domestic violence cases.
4. Criminal Courts must ensure that Criminal Protective Orders are entered into the Domestic Violence Restraining Order System within one business day.
5. Family Courts must ensure that domestic violence restraining orders are entered into the Domestic Violence Restraining Order System within one day, if Task Force-sponsored SB 720 (Kuehl) is enacted.
6. Law enforcement should seek Emergency Protective Orders whenever called to domestic violence scenes.
7. Courts should maximize the availability of Emergency Protective Orders.
8. Counties should provide free legal assistance for domestic violence victims who want to obtain Temporary Restraining Orders and Orders After Hearing from Family Courts.
9. Family Courts and law enforcement should stop requiring domestic violence victims to carry restraining orders to the agency that will enter the orders into the Domestic Violence Restraining Order System.
10. Family Courts and law enforcement should stop requiring domestic violence victims to carry restraining orders to all law enforcement agencies that may have to enforce the order.
11. Law enforcement and prosecutors should determine if batterers who are subject to Criminal Protective Orders and Family Court restraining orders, possess firearms. If so, they should seize the weapons and arrest and prosecute the batterers.

12. Task Force-sponsored AB 1288 (Chu), if enacted, will authorize law enforcement to notify domestic violence victims when their batterers possess a firearm according to state databases. Law enforcement should aggressively notify those victims if there is a firearm, so that the victims can protect themselves and their families.
13. Law enforcement and prosecutors should adopt proactive policies and procedures to arrest and prosecute batterers who violate Family Court restraining orders. The policies should target those violators who pose the greatest safety risks.
14. Task Force-sponsored SB 720 (Kuehl), if enacted, will authorize prosecutors to enforce violations of Family Court restraining orders more easily through non-jury trials. Prosecutors should take advantage of this tool.
15. The Attorney General's Office should continue to monitor, by county, Criminal Protective Orders and Family Court restraining orders in the Domestic Violence Restraining Order System. The Attorney General's Office should periodically publish its findings, and provide technical assistance to local agencies.
16. The many problem practices identified by the Task Force can be mitigated or eliminated only through the close collaboration of multiple agencies. The leaders of the local agencies must convene on a regular basis to identify and address these problems.

### **Prosecuting Domestic Violence Misdemeanors (Chapter 3)**

1. All prosecutors who handle misdemeanor domestic violence cases should receive specialized training.
2. All prosecutors who decide whether to charge misdemeanor domestic violence cases should be seasoned prosecutors who have extensive knowledge about domestic violence.
3. Prosecutors' offices should have specialized deputies or teams of deputies who prosecute domestic violence misdemeanors, in vertical format if possible.
4. A prosecutor with knowledge of domestic violence should always attend misdemeanor arraignments.
5. Misdemeanor courts should not take guilty pleas and sentence defendants charged with domestic violence unless a prosecutor is present.
6. Courts should not accept plea agreements that allow batterers to avoid what is mandatory: 52-week batterer intervention programs and three-year probationary terms.
7. Prosecutors should neither offer, accept, nor fail to object to plea agreements that allow batterers to avoid mandatory 52-week batterer intervention programs and mandatory three-year probationary terms.

8. Prosecutors' offices should work with their law enforcement counterparts to develop guidelines on what is needed to charge domestic violence cases.
9. When communication and trust break down between law enforcement and the prosecution – to the extent that prosecutors prefer to reject a case rather than request further investigation – leadership on both sides must aggressively repair the breach.
10. Prosecutors and law enforcement should develop and maintain databases to track all contacts between domestic violence suspects/offenders and the criminal justice system.
11. Prosecutors' offices should work with community-based victim advocates to address the concerns and needs of victims whose cases are being prosecuted and victims whose cases prosecutors have decided not to file.
12. The Attorney General, in conjunction with the California District Attorneys Association, should create a specialized unit to prosecute domestic violence cases in jurisdictions with inadequate resources or with documented histories of failure to handle domestic violence cases adequately.

#### **Holding Batterers Accountable (Chapter 4)**

1. The State Auditor should conduct an in-depth study on the practices and effectiveness of batterer intervention programs, probation departments, and the courts. Without such a study, the state is in no position to decide what corrective actions should be taken – and substantial actions are needed.
2. Courts and probation departments in each county should develop procedures for measuring and evaluating batterers' program enrollment rates, completion rates, recidivism rates, reasons for non-completion, and judicial responses to noncompliance.
3. Probation departments and other agencies should develop and enforce a consistent policy regarding legally permissible absences from batterer intervention programs.
4. Courts, probation departments, and prosecutors in each county should adopt a strategy that puts batterers on personal notice of the specific consequences of absences from programs, and follows up any unexcused absence with immediate arrest and sanctions.
5. The Administrative Office of the Courts should develop a form that would be used in every Criminal Court to record the benchmarks of a batterer's performance on probation while in a batterer intervention program: progress, noncompliance, terminations, sanctions, and completions.
6. The Administrative Office of the Courts should incorporate, within its new statewide Criminal Case Management System, fields that capture all pertinent data on batterers on probation.

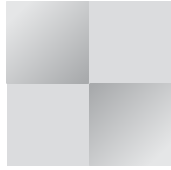
## **Response to Health Practitioners' Reports of Domestic Violence** (Chapter 5)

1. Health practitioners should report suspected domestic violence to law enforcement on the Office of Emergency Services form 920 (OES-920).
2. Law enforcement, hospitals, and health clinics in each county or region should collaboratively develop a protocol by which health practitioners can easily identify the law enforcement agency to receive their reports of domestic violence.
3. Hospitals and clinics should form collaboratives with law enforcement, community-based victim advocacy and service agencies, and victim/witness agencies to address the multiple problems that arise in the course of reporting, and responding to reports of, suspected domestic violence. These collaboratives should ensure that there is a coordinated response by victim advocates and service providers to victims in health-care settings.
4. The Department of Health Services and the Department of Justice should sponsor pilot studies in several communities to examine the impact of mandatory reports of suspected domestic violence on health and safety outcomes.

## **Enhancing System's Capacity** (Chapter 6)

1. Criminal justice agencies cannot collaborate effectively without judicial leadership. Courts are obligated to exercise such leadership, and can do so without violating ethical requirements.
2. Domestic violence courts should be studied and expanded, as they hold great promise for addressing the many and complex problems of domestic violence.
3. Cities and counties should consider co-locating their domestic violence-related criminal justice agencies and victim service agencies.
4. Criminal justice policy toward domestic violence requires much more, and more sophisticated, data.
5. Criminal justice agencies and victim-related organizations require additional resources to address domestic violence accurately.
6. Communities should consider implementing court watch programs when criminal justice agencies appear to be pursuing policies inconsistent with the law.





# Appendix

## Member Biographies

### **Casey Gwinn, former City Attorney** ***City of San Diego***

#### **Task Force Chair**

Casey Gwinn serves as the Director of Victim Services for the San Diego County District Attorney's Office and as the National Director for the President's Family Justice Center Initiative. He has been recognized by *The American Lawyer* magazine as one of the top 45 public lawyers in America.

Mr. Gwinn served for eight years as the elected City Attorney of San Diego. Prior to entering elected office, he founded the City Attorney's Child Abuse and Domestic Violence Unit, leading the unit from 1986 to 1996. In 1993, the National Council of Juvenile and Family Court Judges recognized the unit as the nation's model Domestic Violence Prosecution Unit. In 2002, in partnership with the San Diego Police Chief, Mr. Gwinn led the effort to open the nationally acclaimed San Diego Family Justice Center. The Center offers a coordinated approach - "one stop shopping" - for services for victims of domestic violence, child abuse, elder abuse, and sexual assault.

Mr. Gwinn serves on the U.S. Department of Justice National Advisory Council on Domestic Violence. He also served on the U.S. Department of Defense Task Force on Family Violence. He has authored many articles on domestic violence and is writing a book on San Diego's 20-year journey to a comprehensive, coordinated community response to help hurting and violent families. Mr. Gwinn is the recipient of many leadership and community awards including the Stephen L. Lewis Lecturer of Merit Award from the National College of District Attorneys and the Women's International Living Legacy Award. He is a graduate of Stanford University and the University of California, Los Angeles, School of Law.

(Listed in alphabetical order)

### **Ellyne Bell, Executive Director** ***California Alliance Against Domestic Violence (CAADV)***

Ellyne Bell has worked for the last two years as the Executive Director of CAADV. Prior to this position, she was the Executive Director of the Brewster Center Domestic Violence Services in Tucson, Arizona. Ms. Bell has an undergraduate degree in sociology and anthropology and a graduate degree in religion from Lutheran Theological Seminary in Gettysburg, Pennsylvania. She is a licensed social worker and has worked as a private therapist and a clinical program director for a Catholic Social Services agency. She has worked on foster children's issues, psycho-social evaluations for abused children, and the assignment of in-home caseworkers for families in crisis.

**Linda Berger, Executive Director**  
***Statewide California Coalition for Battered Women (SCCBW)***

In October 1998, Linda Berger was appointed Executive Director of the SCCBW. The Coalition includes California agencies and advocates working with victims regarding issues of relationship violence. In this capacity she serves to direct and further the Coalition's goals of providing training and technical assistance on a broad range of prevention and intervention strategies for domestic violence service providers. Assistance is also provided to other professionals who have contact with victims of domestic violence and their children. These include individuals from the criminal and civil justice system, children's protective services, public social services, medical services, child abuse services, sexual assault services, the ministry and others. Ms. Berger also directs SCCBW's policy and legislative advocacy project which helps insure the appropriateness of policy and legislation affecting victims of domestic violence and their children.

Ms. Berger advocates for social and economic justice on behalf of victims of domestic violence and the needs of victim service providers through a variety of means in local, regional and national venues. She was a founding member of the Corporate Citizens Initiative that advocated for awareness and services for domestic violence issues in the workplace. Ms. Berger is currently a member of numerous advisory groups and committees. Prior to joining SCCBW, Ms. Berger served as Executive Director of Women Shelter of Long Beach, Administrator of the Center for Human Rights and Constitutional Law in Los Angeles and Administrator of the Western Governmental Research Association in Long Beach.

**Armando Cervantes, Chief Adult Probation Officer**  
***County of San Francisco***

Armando Cervantes is Chief of the San Francisco Adult Probation Department. He assumed this position in August of 1997, after serving nearly four years as Chief Probation Officer in Mendocino County and more than 30 years in various assignments in several California counties. As Chief, he manages a staff of 129 and a budget of nearly \$9 million. He is responsible for planning, directing and setting policy for the department. He oversees the preparation of pre-sentence investigation reports, supervises and enforces court-ordered conditions for 11,000 probationers, collects restitution and fines from probationers, and operates a drug diversion program.

Chief Cervantes has been a long-standing supporter of domestic violence programs. He served as the Victim Witness Coordinator for Shasta County and he volunteered with the Women's Refuge. As Chief in Mendocino County, he successfully expanded the Domestic Violence Unit to deal with the increase of clients coming through the system. In San Francisco, his management team has been successful in enhancing the Domestic Violence Unit by obtaining six new positions for the department. Chief Cervantes holds a Master's Degree in Public Administration.

**Leonard Edwards, Superior Court Judge**  
***County of Santa Clara***

Judge Leonard Edwards has been a judge of the Superior Court of Santa Clara County for more than 23 years. He has specialized in Juvenile and Family Court. He is now in his tenth year as Supervising Judge of the Juvenile Dependency Court. Judge Edwards also has served on the California Judicial Council. He is the immediate past president of the National Council of Juvenile and Family Court Judges and he was the founder and first president of the Juvenile Court Judges of California. Judge Edwards is the cofounder and immediate past president of the Santa Clara Domestic Violence Council. He has taught at the University of Santa Clara Law School, Stanford University Law School and the California Judicial College. Judge Edwards and his wife coauthored the book, "Child Abuse and the Legal System."

**Joelle Gomez, Executive Director**  
***Women's Center of San Joaquin County***

Joelle Gomez has been Executive Director of the Women's Center of San Joaquin County since 1997. From 1992 to 1995 she served as the Development Director of the Women's Center, raising more than \$1 million from both private and public resources, enabling the Center to maintain and grow critical services to victims of domestic violence and sexual assault. Ms. Gomez is a member of the San Joaquin County Domestic Violence Task Force, the San Joaquin County Death Review Team, and participates on the Northern California Youth Authority Citizens Advisory Committee. In April of 1998, Ms. Gomez received recognition from the California Attorney General's Office for her exemplary service to the Attorney General's Family Violence Prevention Program.

In 2002, Ms. Gomez received the "Amiga of the Year" Award from El Concilio and the "Woman of Distinction" Award from the University of the Pacific. Ms. Gomez is a graduate of the University of San Francisco and attended Oxford University in England.

**Sheila Halfon, Executive Director**  
***Haven House, Inc.***

Sheila Halfon has been active in the nonprofit sector for more than twenty years. She is currently Executive Director of Haven House, Inc., an emergency shelter for battered women and their children. She joined Haven House in 1989 after serving as Executive Director of the Los Angeles Suicide Prevention Center.

Haven House has pioneered several programs in nearly forty years of existence. Ms. Halfon has been active in advising newer shelters as well as other national domestic violence programs. She is a member of the Los Angeles Domestic Violence Council. She has served on advisory committees for the California Governor's Office and for Children's Institute International.

**Pamela Iles, Superior Court Judge**  
***County of Orange***

Judge Iles is a distinguished and innovative jurist who has devoted her professional life of more than 25 years to the prevention of domestic violence and child abuse. She began her legal career as a public defender, then moved to the Orange County District Attorney's Office in order to prosecute child abuse and sex crimes against juveniles. As a Deputy District Attorney, she developed the vertical prosecution unit that today serves victims of sexual assault and child abuse. She was appointed to the Municipal Court bench in 1993 and elevated to the Superior Court in 1998. In the South Orange County Superior Court, Judge Iles handles all the domestic violence cases. She has established a vertical probation system, which means that offenders return to her if they violate their probation. Judge Iles has served as South Superior Court's Supervising Judge and has received numerous awards from children's organizations and victims' groups.

**Hannah-Beth Jackson, State Assembly Member**  
***35th District***

Hannah-Beth Jackson was elected to the California State Assembly in 1998 and represents portions of Santa Barbara and Ventura Counties. Jackson graduated from Scripps College in Claremont, California with a joint major in government and sociology. She received her law degree from Boston University Law School and returned to California to work as a Deputy District Attorney for Santa Barbara County. She eventually started a civil and family law practice in Santa Barbara and Ventura.

As a prosecutor and a family law attorney, Jackson has advocated for justice for women, children and victims of crime for more than twenty-four years. She has

fought for victims of domestic violence and provided pro bono legal counsel to rape victims at the Santa Barbara Rape Crisis Center. She helped establish the Santa Barbara Shelter Services for Women and Women Against Gun Violence. She is also a founding member and past president of Santa Barbara Women's Political Committee.

Assembly Member Jackson serves as the Chair of the Legislative Women's Caucus. She is an advocate for improving public education, improving access to health care, protecting the environment, and protecting the rights of consumers. She has authored a number of significant bills on issues including education, health care, environmental protection, financial privacy, crime victims, domestic violence, childcare and protecting the rights of consumers. More than fifty pieces of legislation authored by Jackson have been signed into law. These measures include the provision of emergency grant funding for domestic violence victims to relocate, domestic violence and dating violence prevention education in schools, and the Violence Against Women Act civil remedy.

**Alex Kelter, M.D., Chief  
Epidemiology and Prevention for Injury Control (EPIC) Branch,  
California Department of Health Services**

Dr. Kelter has earned a B.A., M.D. and Preventive Medicine Residency from the University of Arizona. He is certified by the American Board of Preventive Medicine. Before coming to California in 1982, he worked at the U.S. Centers for Disease Control and Prevention (CDC). In 1981, he participated in the first agency-wide investigation into the outbreak of illnesses now identified as AIDS. Between 1982 and 1989, Dr. Kelter led various programs and studies involving environmental and occupational disease epidemiology and the health effects of toxic substances. Since 1989, he has been learning and teaching how to apply these traditional public health methods to the prevention of injuries and violence.

Dr. Kelter has been Chief of the EPIC Branch since 1989. In the last fourteen years, the Branch has:

- developed a Strategic Plan for Injury Prevention in California;
- developed a Strategic Plan for Disability Prevention in California;
- granted more than \$5 million to local programs for injury and violence prevention;
- pursued exploratory methods of measuring the amount of family violence in California (with a focus on child abuse and intimate partner violence);
- coordinated statewide efforts to improve child safety in automobiles, on bicycles and in swimming pools; and
- published first-ever reports on various aspects of fatal and hospitalized injuries in California.

**Sheila James Kuehl, State Senator  
23rd District**

Sheila James Kuehl was elected to the State Senate in 2000 after serving for six years in the State Assembly. During the 1997-98 legislative session, she was the first woman in California history to be named Speaker pro Tempore of the Assembly. She is also the first openly gay or lesbian to be elected to the California Legislature. A former pioneering civil rights attorney and law professor, Ms. Kuehl represents the 23rd Senate District in Los Angeles County. She is the chair of the Senate Natural Resources and Wildlife Committee and sits on the Budget, Health, Judiciary, and Labor committees, among others. Ms. Kuehl chairs the Select Committee on School Safety and is Chair of the Select Committee on Health Care for All Californians. Ms. Kuehl is also a member of the Committee to Investigate Price Manipulation of the Wholesale Energy Market.

In her eight years in the State Legislature, Senator Kuehl has authored 109 bills that have been signed into law, including legislation to establish paid family leave and legislation to further protect domestic violence victims and their children. She was selected to address the 1996 Democratic National Convention on the issue of family violence and the 2000 Democratic National Convention on the issue of diversity. Prior to her election to the Legislature, Senator Kuehl drafted more than 40 pieces of legislation relating to children, families, women, and domestic violence. She was a law professor at Loyola University, the University of California, Los Angeles, and the University of Southern California Law Schools.

Senator Kuehl graduated from Harvard Law School in 1978. In her youth, she was known for her portrayal of the irrepressible Zelda Gilroy in the television series, "The Many Loves of Dobie Gillis."

**Susan E. Manheimer, Chief of Police**  
***City of San Mateo***

Susan Manheimer was appointed as Chief of Police for the City of San Mateo in May 2000. She commands the 171-member department with an annual budget of \$21 million, serving approximately 95,000 residents and a broad range of businesses. Chief Manheimer is the fourth female police chief in the State of California, and the first in the history of San Mateo County. She came to San Mateo after serving 17 years with the San Francisco Police Department.

Two of Chief Manheimer's key areas of emphasis are: (1) Working closely with the community on enhancing the quality of life for all residents, and (2) Implementing new initiatives with technology and resource development within the department. She opened the first downtown Community Policing Office and several Police Activities League Community Drop-In Centers.

Chief Manheimer received her Bachelor of Arts Degree in Business Management and her Master's Degree in Educational Leadership. She is also a graduate of the POST Command College. She currently serves on the Board of Directors of the California Police Chiefs Association, the University of San Francisco Law Enforcement Leadership Institute, and the San Mateo County Juvenile Needs Assessment Team.

**Karen McGagin, Executive Officer**  
***Victims Compensation and Government Claims Board***

Karen McGagin was appointed Executive Officer, Victims Compensation and Government Claims Board by the Governor in May 2004. She previously served as the deputy executive director of the Office of Public School Construction (OPSC). Prior to her tenure at the OPSC, she served as deputy director of the Interagency Support Division at the Department of General Services. Ms. McGagin also served as chief deputy registrar of the Contractors State License Board in the Department of Consumer Affairs. She was liaison and principal contact for the Department of Consumer Affairs and the regulatory boards. Ms. McGagin received a Bachelor of Arts degree in government from California State University, Sacramento.

**Kenneth J. O'Brien, Executive Director**  
***Commission on Peace Officer Standards and Training***

Kenneth J. O'Brien has dedicated his professional life to serving the people of California in law enforcement and public safety. Mr. O'Brien served 31 years with the San Diego Police Department. He has held several appointed positions with State agencies including the California Youth Authority and the Youth and Adult Corrections Agency. He was appointed Executive Director of the Commission on Peace Officer Standards and Training in 1997. Mr. O'Brien has completed the Federal Bureau of Investigation National Academy in Quantico, Virginia, and the



Management Institute at the University of California, San Diego. He is active in community affairs and he has authored several law enforcement resource manuals.

**Thomas J. Orloff, District Attorney**  
***County of Alameda***

Tom Orloff was elected District Attorney of Alameda County, without opposition, in June 1994. In June 1998 and in June 2002, again without opposition, he was elected to new four-year terms. Since becoming District Attorney, Mr. Orloff has established numerous units including the Domestic Violence Unit, Stalking Unit, Real Estate Fraud Unit, Elder Abuse Unit and Gang Violence Unit. He has strengthened the Welfare Fraud Unit and the Sexual Assault Unit.

Mr. Orloff is past President of the California District Attorneys Association, as well as a recent member of the Board of Directors of the National District Attorneys Association. Mr. Orloff has served as Director of the Alameda County Bar Association and is presently a member of the Board of Directors of the "One Hundred Club" which provides financial support to the survivors of Alameda County peace officers and firefighters who are killed in the line of duty.

Mr. Orloff received his Juris Doctorate from the University of California School of Law, Boalt Hall.

**Camerino Sanchez, Chief of Police**  
***City of Santa Barbara***

Camerino Sanchez was appointed to the position of Chief of Police for the City of Santa Barbara in November 2000. Prior to this appointment, he served as Chief of Police for the Cities of San Rafael and Hollister. He also served with the Los Angeles Police Department. Chief Sanchez holds a Bachelor of Arts Degree in Public Administration and a Master's Degree in Human Resources and Organizational Development. Chief Sanchez is currently the Vice President of the California Police Chiefs Association. He has also served with the Hispanic American Police Command Officers Association, the International Association of Chiefs of Police, and the Cal-Chiefs Executive Board. He is the recipient of numerous community service and association awards.

**Jack Scheidegger, Assistant Chief**  
***Criminal Justice Statistics Center, California Department of Justice***

Mr. Scheidegger is Assistant Chief of the Criminal Justice Center. He has more than 35 years of management experience in criminal justice. Past positions with the Department of Justice include the following: Director, Bureau of Medi-Cal Fraud and Elder Abuse; Chief, Bureau of Forensic Services; and Chief, Bureau of Criminal Identification and Information. For the past six years, Mr. Scheidegger has also managed a consortium of seven western states and six federal agencies dealing in criminal justice identification and information.

**Paul L. Seave, Special Assistant Attorney General**  
***Director, Crime and Violence Prevention Center, Attorney General's Office***

In February 2001, California Attorney General Bill Lockyer appointed Paul Seave Special Assistant Attorney General and Director of the Crime and Violence Prevention Center. Mr. Seave directs a staff of 40 people who work in nearly a dozen priority areas including domestic violence, children exposed to violence, and elder abuse, to help local communities throughout the State reduce and prevent crime and violence. Prior to this appointment, Mr. Seave served 16 years as a federal prosecutor, spending the last four years as the U.S. Attorney for the Eastern District of California. During his tenure as U.S. Attorney, Mr. Seave served as Co-Chair of the Greater Sacramento Area Hate Crimes Task Force,

Chairperson of the Executive Committee of the Central Valley High Intensity Drug Trafficking Area, which took a regional approach to combating the manufacture of methamphetamine, and he founded Project HELP: Sacramento Mobilizing Against Substance Abuse. He has emerged as an advocate for prevention programs that work.

Mr. Seave received his Bachelor's Degree in History from Princeton University, and his law degree *cum laude* from the University of Pennsylvania Law School.

**Lynda Smallenberger, Executive Director**  
***Kene Me-Wu Family Healing Center, Inc.***

Lynda Smallenberger has worked with the Kene Me-Wu Family Healing Center, Inc. (KMWFHC) of the Tuolumne Rancheria since 1999. She has served as Executive Director of the Center since 2000. KMWFHC works with American Indian families regarding domestic violence, sexual assault and substance abuse by providing advocacy, counseling and referrals. Native American child issues, including the Indian Child Welfare Act (ICWA), are also part of the agency responsibility. KMWFHC provides services to eight tribes in the four county areas of Amador, Calaveras, Tuolumne and Mariposa. Ms. Smallenberger personally provides counsel to Native American women in domestic violence situations and facilitates talking and healing circles in the four county regions. She serves on three countywide Domestic Violence Councils and has recently initiated a Native American girls teen dating violence prevention group.

**Anastacia L. Snyder, Executive Director**  
***Catalyst Domestic Violence Services***

As Executive Director of the Catalyst Domestic Violence Services in Butte County, Anastacia Snyder is responsible for the management of the agency's operation including shelter-based emergency services, four outreach sites, counseling and legal services, and community education and prevention programs. Previously, Ms. Snyder served as the Education and Prevention Services Program Director for Catalyst where she was responsible for the development and implementation of a comprehensive education and prevention program. She has designed a training curriculum around medical-mandated reporting issues, the effects of domestic violence in the workplace, the effects of domestic violence on children, and teen dating violence prevention.

Ms. Snyder became active in working in the domestic violence movement when she joined the Butte/Glenn Counties Family Violence Prevention Council in 1994. She currently participates on the Butte County Child Abuse Prevention Council and the Children's Services Coordinating Council. Additionally, Ms. Snyder is an active member in the Domestic Violence Association of Rural Northern California, a collaborative of directors of domestic violence programs north of Sacramento.

**Susan B. Sorenson, Ph.D., Professor**  
***University of California, Los Angeles, School of Public Health***

Susan B. Sorenson, Ph.D., is a professor at the UCLA School of Public Health. Dr. Sorenson has published widely in the epidemiology and prevention of violence, especially violence against women. A primary focus of her work is how gender, ethnicity, and nativity are related to risk of violence. Since 1986, she has taught the first violence prevention course in a School of Public Health in the nation - a graduate course on family and sexual violence. In addition to her academic work, Dr. Sorenson serves on the board of directors and advisory boards of local community-based organizations, state government agencies, and university injury prevention centers. She also was a member of the National Academy of Science's Panel on Research on Violence Against Women, a consultant to UNICEF's May



2000 report on Domestic Violence Against Women and Girls, and a member of the advisory panel for the 2001 U.S. Surgeon General's Report on Youth Violence.

**Robert G. Splawn, M.D., MPH, FACEP, Medical Director**  
***California Hospital Medical Center***

Dr. Robert Splawn is Medical Director for California Hospital Medical Center Emergency Services. Dr. Splawn oversees the care of more than 4,000 patients monthly, making the center one of the busiest emergency departments in Los Angeles. Dr. Splawn is founder and medical director of both the Sexual Abuse Response Team (SART) and the Domestic Assault Response Team (DART), two highly innovative programs that provide victims of domestic violence and sexual assault with comprehensive medical, social and law enforcement services immediately and compassionately.

Committed to serving the community, Dr. Splawn is Vice-Chair and Commissioner for Emergency Medical Services for the County of Los Angeles and chairs the Data Advisory Committee. He also serves on the Steering Committee of the Los Angeles County Sexual Assault Coordinating Council and chairs the Policy Committee. Additionally, Dr. Splawn serves as an advisory board member for Los Angeles Commission on Assaults Against Women and the California Forensic Science Institute.

Dr. Splawn has received numerous awards and commendations including recognition in the Congressional Record. He received an undergraduate degree from the University of California, Los Angeles and his medical degree from Boston University School of Medicine. He also earned a Master's Degree in Health Policy and Management from the Harvard School of Public Health.

**Kavitha Sreeharsha, Staff Attorney**  
***Asian Pacific Islander Legal Outreach, San Francisco***

Ms. Sreeharsha practices primarily in the areas of immigration and family law with an emphasis in serving API immigrant domestic violence and human trafficking survivors. API Legal Outreach has for 28 years worked to provide equal justice and equal access to the legal system for the API community. Her advocacy efforts include chairing the Bay Area VAWA Taskforce, co-chairing the San Francisco Domestic Violence Consortium, participating in the Bay Area Anti-Trafficking Taskforce, the Justice and Courage project of the City of San Francisco, the California Alliance Against Domestic Violence, and Bay Area Immigrant Rights Coalition.

Ms. Sreeharsha is also active as a community organizer and in volunteer efforts. She serves as the President of the Board of Narika, which provides a help-line and support services to South Asian domestic violence survivors as well as community outreach to address domestic violence in the South Asian community. In addition, she helped found the Alliance of South Asians Taking Action (ASATA), a South Asian community-organizing group. Ms. Sreeharsha has also served on the board of the South Asian Bar Association. Ms. Sreeharsha received her J.D. from Hastings College of the Law and her B.A. from U.C. Berkeley.

**William C. Vickrey, Administrative Director**  
***Administrative Office of the Courts***  
***Judicial Council of California***

William C. Vickrey is the Administrative Director of the Judicial Council of California's Administrative Office of the Courts. Mr. Vickrey directs the operation of services to California's judicial system in the areas of finance, education, human resources, government relations, legislative advocacy, information systems, trial and appellate court services, council and legal services, security, and administrative

support. As Administrative Director of the Courts, he also serves as Secretary to the Judicial Council and the Commission on Judicial Appointments.

Since his appointment in 1992, Mr. Vickrey has been responsible for many improvements in the state judicial system, from the institution of a long-range planning process for state courts and implementation of a statewide budgeting system to the initiation of court technology projects and coordination of trial court resources. Prior to this assignment, Mr. Vickrey was the State Court Administrator for the Utah Administrative Office of the Courts (1985-1992); the Executive Director for the Utah Department of Corrections (1983-1985); and the Director for the Utah State Division of Youth Corrections (1980-1983).

Mr. Vickrey was the President of the Conference of State Court Administrators in 1998-99. He was also a 1999 recipient of the Judicial Council's Distinguished Service Awards. He is coauthor of *The Utah Court of Appeals: Blueprint for Judicial Reform*, Utah Bar Journal, and *Managing Transition in a Youth Corrections System*, University of Chicago Press.

**Les Weidman, Sheriff**  
***County of Stanislaus***

Les Weidman started his law enforcement career in 1969 at the age of 21. He rose through the ranks from jailer to captain before running for the Office of Sheriff of Stanislaus County in 1990. He is currently serving in his fourth term. Sheriff Weidman holds a Bachelor of Arts degree from the University of San Francisco, and a POST Executive Certificate. He is a graduate of the Federal Bureau of Investigation National Academy. Sheriff Weidman served as President of the California State Sheriffs' Association and he is Chairman of the Central Valley High Intensity Drug Trafficking Area (HIDTA) covering nine counties. In 2002, he was appointed by the Governor to the Executive Advisory Group for the California Anti-Terrorism Information Center.

**Gary Windom, Public Defender**  
***County of Riverside***

Since 1999, Gary Windom has served as the Public Defender for the County of Riverside. Previously, he was Senior Deputy Public Defender for the County of Ventura. Mr. Windom is experienced in high profile, complex criminal litigation. He was Professor of Law at the Ventura College of Law. Prior to this, he was in private practice in both Wisconsin and California.

Mr. Windom has a Juris Doctorate from Marquette University School of Law and a Bachelor's Degree in Political Science from the University of California, Santa Barbara. Mr. Windom has numerous affiliations and awards including: President, California Public Defenders Association; Co-Chair, Youth Mentoring Collaborative of Ventura County; Chair, Black American Political Association of California-Ventura County; and Ventura County Criminal Defense Attorney of the Year.

# Regional Hearing Testifiers

## SAN DIEGO

January 21, 2004

**Steve Allen**, Director of Legal Services  
Center for Community Solutions, San Diego

***Focus: Enforcement of restraining orders***

**Jim Barker**, Lieutenant  
San Diego Police Department, San Diego

***Focus: Restraining orders and weapon confiscation***

**Sherri Quadri**, Family Law Facilitator  
San Bernardino Family Court, San Bernardino

***Focus: Difficulties for litigants in obtaining restraining orders***

**George McClane**, MD, Emergency Room Physician  
Sharp Grossmont Hospital, San Diego and Medical Director,  
Family Justice Center, Forensic Medical Unit, San Diego

***Focus: Health care practitioner perspectives on mandatory reporting to law enforcement***

**Kathleen Dully**, MD, Emergency Room Physician  
Balboa Naval Hospital, San Diego

***Focus: Health care practitioner perspectives on mandatory reporting to law enforcement***

**Dan Plein**, Sergeant  
San Diego Police Department, San Diego

***Focus: Law enforcement response to mandatory reports by health care practitioners***

**Susan Finlay**, Judge  
San Diego Domestic Violence Court, San Diego

***Focus: The court and batterer accountability***

**Eric Raley**, Deputy Probation Officer  
San Bernardino County Probation Department, San Bernardino

***Focus: Probation and batterer intervention programs***

**Lyle Huffman**, Senior Probation Officer  
Riverside County Probation Department, Riverside

***Focus: Batterer assessment and accountability***

**Jo Marie Escobar**, Assistant District Attorney  
Orange County District Attorney's Office, Santa Ana

**Focus:** *Overview of misdemeanor domestic violence prosecutions*

**Katie Ray**, Domestic Violence Advocate  
South Bay Community Services, Chula Vista

**Focus:** *Domestic violence misdemeanor prosecutions and advocate response*

## **OAKLAND**

February 18, 2004

**Anita Wilson**, Domestic Violence Legal Advocate  
Community Solutions, Morgan Hill

**Focus:** *Problems with issuing and enforcing protective orders in southern Santa Clara County and San Benito County*

**Patricia Bennett**, Advocate Manager  
Next Door Solutions to Domestic Violence, San Jose

**Focus:** *Problems with enforcement of protective orders in San Jose*

**Gloria Diaz**, Senior Master Social Worker  
Vacaville Police Department

**Focus:** *Difficulties with recording criminal protective orders, and ways in which the City of Vacaville can improve the system*

**Brigid McCaw**, MD, Emergency Department  
Kaiser Medical Center, Vallejo

**Focus:** *What works - what doesn't: law enforcement response to mandatory reports from the emergency department*

**Reginald Garcia**, Lieutenant  
Vallejo Police Department

**Focus:** *Comments from the frontline: law enforcement practice in response to mandatory reports from health care practitioners*

**Violet Barton-Bermudez**, MPA, Program Manager  
Family Violence Prevention  
Kaiser Permanente Northern California, Oakland

**Focus:** *Mandatory reporting: collaboration and partnership between health care and law enforcement*

**Harold Kahn**, Judge  
San Francisco Superior Court

**Focus:** *Batterer accountability from a judicial perspective*

**Antonio Ramirez**, Executive Director  
CECEVIM and POCovi Batterer Intervention Program

**Focus:** *Batterer accountability from a batterer intervention program perspective*

**Mary Wierenga**, Probation Supervisor  
Contra Costa County Probation Department

**Focus:** *Batterer accountability from a probation perspective*

**Denise Caramagno**, Victim Services Advocate  
San Francisco District Attorney's Office

**Focus:** *An advocate's experience in working with misdemeanor domestic violence cases*

**Joe McFadden**, Inspector  
San Francisco Police Department

**Focus:** *Law enforcement perspective on prosecuting misdemeanor domestic violence cases*

**Rolanda Pierre Dixon**, Deputy District Attorney  
Santa Clara County

**Focus:** *Misdemeanor domestic violence prosecutions in Santa Clara County*

## **LOS ANGELES**

June 2, 2004

**Alana Bowman**, Deputy City Attorney  
Special Assistant for Domestic Violence Policy,  
Los Angeles City Attorney's Office

**Focus:** *Misdemeanor prosecutions of domestic violence cases from a prosecutor perspective*

**Laurie Taylor**, Detective  
Domestic Violence Unit  
Los Angeles Police Department

**Focus:** *Misdemeanor prosecutions of domestic violence cases from a law enforcement perspective*

**Janice Witteried**, Supervisor  
Mobile Advocacy Trauma Team  
Antelope Valley Domestic Violence Council, Lancaster

**Focus:** *Misdemeanor prosecutions of domestic violence cases from an advocate perspective*

**Alyce LaViolette**, Co-Chair  
California Association of Batterer Intervention Programs  
***Focus: Batterer intervention programs and batterer accountability***

**Sheila Hazlett**, Interim Director  
Los Angeles County Domestic Violence Council  
***Focus: Victim advocate perspective on batterer accountability***

**Bonnie Patton**, Deputy Probation Officer II  
Domestic Violence Unit  
Los Angeles County Probation Department  
***Focus: Batterer accountability from a probation perspective***

**Deborah B. Andrews**, Judge  
Long Beach Domestic Violence Court  
Los Angeles County Superior Court  
***Focus: Domestic violence court and batterer accountability***

**Joann Lee**, Directing Attorney  
Legal Aid Foundation of Los Angeles  
***Focus: Restraining order issues for the Asian and Pacific Islander community***

**Gail Pincus**, Executive Director  
Domestic Abuse Center, Los Angeles  
***Focus: Gun prohibition issues and criminal protective order problems in Los Angeles County***

**Steven Nielsen**, Lieutenant  
Gun/Threat Management/Hate Crimes Unit  
Los Angeles Police Department  
***Focus: Gun relinquishment, confiscation and storage issues***

**Patricia Andreani**, Directing Attorney  
Domestic Violence Project  
Los Angeles County Bar Association  
***Focus: Issues with bench officers not granting custody, law enforcement response variation by precinct, court follow-up with firearms relinquishment***

**Mary Morahan**, MSW, LCSW  
Community Mental Health Center, Los Angeles  
***Focus: Mandatory reporting from an advocate perspective***

**Bernice Abram**, Sergeant  
Los Angeles County Sheriff's Department, Monterey Park  
***Focus: Mandatory reporting from a law enforcement perspective***

**Deirdre Anglin, MD, MPH**

Associate Professor of Emergency Medicine  
University of Southern California

***Focus: Mandatory reporting from a health care perspective***

## **FRESNO**

August 31, 2004

**David Gottlieb, Commissioner**

Fresno County Superior Court

***Focus: Batterer intervention and accountability from a judicial perspective***

**Alberto Palma, Deputy Probation Officer III**

Madera County Probation Department

***Focus: Batterer intervention and accountability from a probation perspective***

**Karen Cooper, Executive Director**

Family Services Agency of Tulare County and

Member, California State Domestic Violence Advisory Committee

***Focus: Batterer intervention and accountability from an advocate perspective***

**John Zrofsky, Chief**

Shafter Police Department

Kern County

***Focus: Misdemeanor prosecution of domestic violence cases from a law enforcement perspective***

**Barbara Vivian, Program Manager**

Madera County Community Action Agency

***Focus: Misdemeanor prosecution of domestic violence cases from an advocate perspective***

**Barbara Dotta, Deputy District Attorney**

Fresno County District Attorney's Office

***Focus: Misdemeanor prosecution of domestic violence cases from a prosecutor perspective***

**Thomas Mahoney, MD, MPH**

Sequoia Community Health Centers, Fresno

***Focus: Mandatory reporting from a health care perspective***



**Diane Smith**, Emergency Services Dispatcher Trainer  
Communications Bureau  
Fresno Police Department

***Focus: Mandatory reporting from a law enforcement perspective***

**Michael Agnew**, Detective  
Fresno Police Department

***Focus: Emergency protective orders***

**Irene Zupko**, Legal Services Coordinator  
Marjaree Mason Center, Fresno

***Focus: Temporary restraining orders and orders after hearing issues in Fresno County***

**Jan Sublett**, Executive Director  
Alliance Against Family Violence and Sexual Assault  
Bakersfield, Kern County

***Focus: Restraining order issues in Kern County***

## **REDDING**

October 6, 2004

**Tim Pappas**, Assistant District Attorney  
Siskiyou County District Attorney's Office  
Siskiyou County

***Focus: Issues in prosecuting misdemeanor domestic violence cases***

**Paula Arrowsmith-Jones**, Chairperson  
Domestic Violence Coordinating Council  
Humboldt County

***Focus: Misdemeanor prosecution from an advocate perspective***

**David Douglas**, Chief  
Eureka Police Department  
Humboldt County

***Focus: Mandatory reporting from a law enforcement perspective***

**Tammy White**, Public Health Nurse III  
Maternal and Child/Adolescent Health Director  
Plumas County Public Health Agency

***Focus: Mandatory reporting from a health care perspective***

**Steve Trenholme**, Public Defender  
Butte County

***Focus: Collaboration in domestic violence courts***

**John Sebold**, Director

Plumas County Mental Health Agency

***Focus: Obstacles in providing mandated batterer programs in rural areas***

**Jerry Benito**, District Attorney

Shasta County

***Focus: Monitoring misdemeanor offenders through the District Attorney's Office when there is no domestic violence court***

**Dennis Kessinger**, Legal Assistance Coordinator

Shasta County Women's Refuge

***Focus: Difficulty in serving orders to offenders in state custody; lack of judicial education on domestic violence dynamics; and the gap between issuance of order and entry into DVROS***

**Mike Maloney**, Captain

Chico Police Department

Butte County

***Focus: Restraining order issues in Butte County, including emergency protective orders and mutual conflicting orders***

**Alsah Bundi**, Intervention Program Services Director

Human Response Network, Weaverville

Trinity County

***Focus: Law enforcement service and response problems with restraining orders and criminal protective order issues in Trinity County***

## **SACRAMENTO**

October 28, 2004

**Connie Mitchell**, MD

University of California, Davis Medical Center

***Focus: Mandatory reporting from a health care perspective***

**Brian Whigam**, Sergeant

Placer County Sheriff's Department

***Focus: Mandatory reporting from a law enforcement perspective***

**Kristina Thompson**, Supervising Probation Officer

Domestic Violence Unit

Sacramento County Probation Department

***Focus: Batterer accountability from a probation perspective***

**Ken Stefan**, Director

El Dorado County Women's Center

***Focus: Batterer accountability from an advocate perspective***

**Anthony Lucaccini**, Judge  
San Joaquin County Domestic Violence Court  
***Focus: Batterer accountability from a judicial perspective***

**Scott Berry**, Chief  
Truckee Police Department  
***Focus: Misdemeanor prosecutions in Nevada County***

**Coral Boganes**, Executive Director  
Nevada County Domestic Violence Sexual Assault Coalition  
***Focus: Misdemeanor prosecutions in Nevada County***

**Caryn Willet**, Domestic Violence Coordinator  
San Joaquin County District Attorney's Office  
***Focus: Accountability of misdemeanor prosecutions***

**Jeanine Werner**, Legal Projects Director  
Casa de Esperanza, Yuba City, Sutter County  
***Focus: Restraining order issues in Sutter County***

**Patsie Fletcher**, Victim Witness Program Coordinator  
Placer County District Attorney's Office  
***Focus: Restraining order issues in Placer County***

**Leslie Brown**, Lieutenant  
Sacramento County Sheriff's Department  
***Focus: Restraining order issues in Sacramento County***

## Special Recognition

The Attorney General's Crime and Violence Prevention Center recognizes and acknowledges the individuals who represented members of the Task Force at the hearings and meetings.

Judge Sharon Chatman  
representing  
Superior Court Judge Leonard Edwards  
County of Santa Clara

Janice Rocco and Kayte Fisher  
representing  
Former State Assembly Member  
Hannah-Beth Jackson  
35<sup>th</sup> District

Tam Ma  
representing  
State Senator Sheila Kuehl  
23<sup>rd</sup> District

Lt. Barbara Hammerman  
representing  
Chief of Police Susan Manheimer  
City of San Mateo

Pamela Schneider  
representing  
Executive Officer Karen McGagin  
Victims Compensation and Government Claims Board

Jan Bullard and Tamara Evans  
representing  
Executive Director Ken O'Brien  
Commission on Peace Officer Standards  
and Training

Captain Bob Lowry  
representing  
Chief of Police Camerino Sanchez  
City of Santa Barbara

Tamara Abrams and Bobbie Welling  
representing  
Administrative Director William Vickrey  
Administrative Office of the Courts  
Judicial Council of California

Former Assistant Sheriff Myron Larson (Retired)  
representing  
Sheriff Les Weidman  
County of Stanislaus

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|                     |                                                 |
|---------------------|-------------------------------------------------|
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| Sandra Gaarder      | Crime Prevention Specialist                     |
| Daphne Hom          | Crime Prevention Specialist                     |
| Amanda Noble, Ph.D. | Research Program Specialist                     |
| Arlene Shea         | Crime Prevention Specialist                     |

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