

LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

On August 6, 1998, Heather Schenk was murdered by her estranged husband, David Schenk, who broke into Heather's home and shot her once in the head before killing himself. Heather had called the Los Angeles County Sheriff's Lost Hills Station numerous times in the weeks prior to her murder due to violence and threats by David, but he was never arrested. One week before the murder, David held Heather down, pointed a gun to her head and threatened to kill her and himself. Despite the severe assault and threats by David, deputies responding to the incident escorted David from the home and advised him to stay away from Heather, but did not arrest him.¹

On November 3, 2000, Julia Dennison was beaten to death by her husband of 20 years, William Dennison, in front of their 12-year old daughter. The day before the murder, San Diego County Sheriff's deputies were called to the couple's home after William threatened Julia, claiming that he was Jesus Christ and that she was the devil, and pushed their 17-year old daughter into a glass table when she tried to intervene. Deputies who responded to the incident refused to take William into custody because they concluded that, since he was not hearing voices or threatening to kill himself or others, he did not meet the standard to be committed to a county mental health facility.²

On November 20, 2001, Lucille Houston's body was found in her car, wrapped in a tarp, about a mile away from her Oakland home. She had been shot twice by her estranged husband, Raymond Houston. Lucille filed for a divorce from Raymond six months earlier. After filing for divorce, Lucille went to the police twice to report domestic violence by Raymond, but he was never arrested.³

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Law enforcement officers are the “gatekeepers” of the criminal justice system for domestic violence victims and their abusers.⁴ Because law enforcement agencies have primary responsibility for enforcing criminal domestic violence laws, law enforcement officers are often the first to intervene in domestic violence, and are the first contact that a victim or perpetrator has with the criminal justice system.⁵ In fact, California law enforcement agencies come into contact with more domestic violence victims and batterers than any other government agency or service provider in the state.⁶

How an officer responds to domestic violence, therefore, sets the tone for how prosecutors, judges and other members of the criminal justice system respond to a domestic violence case as it makes its way through the system. If an officer thoroughly investigates and documents a domestic violence incident, for example, prosecutors will have the information they need to successfully pursue criminal charges against an alleged abuser.⁷ An inadequate investigation, on the other hand, means that criminal justice intervention is likely to end with the officer’s initial contact. Moreover, inappropriate or uninformed responses by law enforcement can lead to irreversible and harmful errors in judgement, such as the wrongful arrest of the victim of domestic violence.⁸

Law enforcement response also sets the tone for how the parties involved in a domestic violence situation respond to the criminal justice system. If law enforcement dispatchers and officers are insensitive to victims, or trivialize their complaints, victims are less likely to cooperate with any subsequent investigation or prosecution of domestic violence.⁹ They are also less likely to turn to the criminal justice system for protection from a violent partner in the future.¹⁰ In fact, officers can provide critical information and guidance to victims when responding to a domestic violence incident that can strongly influence whether victims will successfully access services for abuse.¹¹ Such information includes information about criminal justice processes, available legal protections and resources, such as protective orders, victim compensation and community services for domestic violence.

For the batterer, effective law enforcement intervention sends a clear message that abuse is a public offense for which he will be held criminally accountable.¹² Indeed, beyond the individual victim and batterer, law enforcement response impacts whether the surrounding community, as a whole, views domestic violence as a serious crime. Consistent and effective responses by law enforcement boost public confidence that complaints of domestic violence will be treated as seriously as other types of violent crime. Increased public confidence encourages community members and victim service providers to look to law enforcement as a “partner,” rather than as an adversary, in domestic violence response and prevention.

Law Enforcement and Domestic Violence Homicide Prevention

Given the critical role that law enforcement plays in responding to domestic violence, effective law enforcement intervention can seriously reduce a victim’s risk of being murdered by her intimate partner. However, despite thirty years of criminal justice reforms, California law enforcement agencies continue to experience serious challenges in identifying and implementing effective responses to domestic violence.

In our survey of 100 domestic violence femicides in California, the victim and/or perpetrator of the murder had prior contact with law enforcement for domestic violence in 56 percent of the cases where there was a prior history of abuse in the relationship. The victim and/or perpetrator had repeated contacts with law enforcement for domestic violence in over 20 percent of the cases. Even more astonishing, in approximately 1 out of every 4 cases with a history of abuse, law enforcement was the only agency to have any contact with the victim or perpetrator prior to the murder. How law enforcement responds to domestic violence, therefore, has an impact on a victim’s risk of intimate partner murder. Indeed, this response may be the only opportunity for intervening in domestic violence before it escalates into murder.

In our 100-Case Survey, law enforcement was the only agency to have prior contact with the victim or perpetrator of the intimate murder in approximately 1 out of every 4 cases with a history of abuse.

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Improving the overall effectiveness of law enforcement in preventing domestic violence homicide starts with an examination of the various obstacles that law enforcement agencies face when addressing domestic violence in their communities. One significant obstacle is the sheer number and diversity of law enforcement agencies in California. There are over 500 different state and local law enforcement agencies in the state.¹³ These agencies employ over 115,000 officers.¹⁴ In fact, California has the largest number of full-time law enforcement personnel in the country.¹⁵

Within each county, therefore, there may be over a dozen different law enforcement agencies, each with its own policies and protocols for responding to domestic violence. In Los Angeles County, for instance, there are over 75 different law enforcement agencies with a total of over 22,000 officers.¹⁶ The Los Angeles Police Department, alone, oversees more than 9,000 officers and is the third largest local police department in the country.¹⁷

The sheer multitude of agencies within a particular county or locality makes it difficult to establish uniform and systemic changes for improving law enforcement response to domestic violence in the community. In addition, the large number of officers makes it difficult for law enforcement leaders to implement, and hold officers accountable for enforcing, departmental policies for addressing domestic violence. As a result, law enforcement response to domestic violence within a given community can vary from agency to agency, as well as officer to officer, with problematic responses even arising within agencies that have a proven track record of effectively responding to domestic violence.

Another significant obstacle is the reluctance of many victims to report domestic violence to law enforcement. It is estimated that only half of all domestic violence incidents are ever reported to law enforcement.¹⁸ A common reason given by victims for not calling the police is that they believe the police will not do anything to address the situation.¹⁹ This reaction reflects the mistrust that

many victims feel toward law enforcement when seeking protection from abuse. It also reflects a perceived failure on the part of law enforcement to aggressively and consistently enforce criminal laws against batterers. In fact, studies show that domestic violence victims are more likely to call law enforcement when they perceive that their complaints will be taken seriously and that officers will be supportive and understanding of their situation.²⁰ A continuing challenge for law enforcement, therefore, is achieving a comprehensive response to domestic violence that holds batterers criminally accountable for abuse while, at the same time, is responsive and sensitive to the needs and safety of domestic violence victims.

A third obstacle is the attitudes and frustrations of law enforcement officers, themselves, when it comes to responding to domestic violence. Despite high levels of underreporting among victims, law enforcement officers spend a significant portion of their time responding to domestic violence incidents. California law enforcement officers receive an average of 194,834 domestic violence-related calls for assistance,²¹ and make an average of 52,623 arrests for domestic violence, each year.²²

Officers who regularly intervene in domestic violence experience frustrations that influence how they respond to these incidents. Some officers become frustrated by having to intervene in the same domestic violence situation again and again because the victim returns home or refuses to cooperate with the investigation and prosecution of her abuser.²³ Other officers become frustrated when they thoroughly investigate and document a domestic violence incident, only to have charges against the abuser dropped or dramatically reduced by prosecutors.²⁴ Such experiences can cause officers who are otherwise committed to providing an effective response to domestic violence, to view “domestic violence intervention” as a futile endeavor.

Some officers, on the other hand, simply do not consider domestic violence to be a serious offense²⁵ and feel that their time would be better spent

responding to crimes such as car chases and robberies.²⁶ Moreover, officers sometimes harbor harmful misconceptions about domestic violence that affect their application and interpretation of the law when dealing with victims and perpetrators of abuse.²⁷ An officer who is unfamiliar with the dynamics of domestic violence, for example, may blame a victim for staying in the abusive relationship and view her behavior as an indication that she does not want or need protection from her abuser. Consequently, the officer may refrain from issuing an Emergency Protective Order (“EPO”)²⁸ to the victim or directing her to domestic violence services and resources.

Officer attitudes also affect law enforcement’s relationships with other agencies and individuals that respond to domestic violence. For instance, although law enforcement officers and victim advocates share the dual goals of batterer accountability and victim safety, they often find themselves at odds with each other on a daily basis when addressing domestic violence cases. Advocates’ efforts to protect the rights and safety of their clients may be perceived by officers as being hypercritical of law enforcement approaches and practices.²⁹ Such perceptions can cause officers to be defensive and antagonistic when dealing with victims and their advocates. This tension can impede valuable partnerships and information sharing between law enforcement and advocates aimed at achieving the best possible outcome in each case.

A final obstacle for law enforcement is the complexity of domestic violence cases. A domestic violence incident can involve anything from a push or a slap to the severe beating and torture of a victim who has suffered years of abuse by the perpetrator. For some perpetrators, the mere fear and embarrassment caused by law enforcement intervention is sufficient to deter future incidents of violence. For other perpetrators, arrest, prosecution and significant jail time are the only ways to deter future violence.

The needs and circumstances of domestic violence victims are equally complex. An officer experienced in responding to violence against female

victims in heterosexual relationships, may engage in totally inappropriate or even dangerous responses when faced with a transgendered victim, or a female victim in a same-sex relationship. As California is one of the most culturally and demographically diverse states in the nation, law enforcement officers must have the training and flexibility needed to properly assess and respond to each domestic violence situation in a way that best meets the needs and safety of each victim. In addition, law enforcement leaders must be constantly aware of how different approaches to domestic violence are either meeting, or failing to meet, the needs of the communities that they serve.

“Law enforcement response” is just one factor in how effectively the criminal justice system as a whole operates to reduce the incidence of domestic violence and domestic violence homicide in our communities. However, as the “gatekeepers” of our criminal justice system, law enforcement’s response to domestic violence is often the most critical element of criminal justice intervention. While law enforcement agencies across the state continue to struggle with this issue, much progress has been made toward shifting law enforcement attitudes about domestic violence and providing officers with the training and tools they need to effectively respond to domestic violence cases.

HOW FAR HAVE WE COME?

Law enforcement’s response to domestic violence has changed dramatically over the past thirty years. Until the 1970s, most law enforcement officers viewed domestic violence calls as “social work,” rather than real “police work,” and believed that intervention and arrest in such cases constituted an unjustified and unneeded intrusion into a couple’s private family life or a personal dispute.³⁰ Moreover, legal limitations, such as warrant requirements for misdemeanor arrests, made it difficult for officers to take appropriate action to address domestic violence, even when they felt it was necessary to do so.³¹

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Starting in the 1980s, however, major reforms were made in California to change law enforcement attitudes toward domestic violence and ensure that law enforcement officers respond to such violence as serious criminal conduct. The first, and most significant, of these reforms was the passage of the Law Enforcement Response to Domestic Violence Act in 1984 (“LERDVA”).³² The LERDVA established a criminal definition of “domestic violence,” required basic training on domestic violence for law enforcement officers, and imposed specific duties on law enforcement agencies and officers that respond to domestic violence complaints.³³

In enacting these provisions, the California Legislature stated its intent as follows:

“The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that that official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated”

To this end, provisions of the LERDVA and subsequent reforms aimed at improving law enforcement response to domestic violence have generally focused on the following areas: (1) providing training to law enforcement personnel; (2) expanding and, in some cases, mandating law enforcement’s duties and protocols for responding to domestic violence; and (3) promoting collaborations between law enforcement and other criminal justice and community agencies that respond to domestic violence.

Officer Training on Domestic Violence

One of the primary reforms created by the LERDVA was the establishment of statewide, uniform training on domestic violence for law enforcement officers. Since 1986, California law enforcement officers³⁴ have been required to complete basic minimum training on domestic violence and handling domestic violence complaints.³⁵ This training was, and continues to be, developed and implemented by the Commission on Peace Officer Standards and Training ("POST"), the agency responsible for setting minimum training standards for California law enforcement personnel. The LERDVA requires that POST develop its domestic violence training in consultation with community and professional organizations that have expertise on these issues and that, whenever appropriate, such training be conducted by domestic violence experts and service providers.³⁶

In addition, the LERDVA sets forth specific areas of instruction that must be included in law enforcement training on domestic violence. The required content of training has been expanded over the years to include the following topics:

- Nature and extent of domestic violence;
- Signs of domestic violence;
- Provisions of the LERDVA;
- Available legal rights and remedies for domestic violence victims;
- Available services for domestic violence victims and batterers;
- The application of criminal laws in domestic violence situations;
- Legal duties imposed on officers to make arrests and offer protection and assistance in domestic violence cases;

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California law does not require that supervisory and high-ranking law enforcement officers receive continuing education on domestic violence.

- Use of arrest by private individuals in domestic violence situations;
- Documentation, report writing and evidence collection in domestic violence cases;
- Tenancy issues and domestic violence;
- Impact of law enforcement intervention in domestic violence on children;
- Verification and enforcement of protective orders;
- Cite and release policies; and
- Providing emergency assistance to victims and helping them pursue criminal justice options.

Currently, law enforcement officers must complete eight hours of domestic violence training covering the above subjects as part of their basic entry-level course requirement.^{37, 38} Moreover, since 1995, officers below the rank of supervisor who normally respond to domestic violence calls are required to complete two hours of instruction on domestic violence every two years.³⁹ This continuing training must cover recent changes in domestic violence law, as well as recent changes to POST guidelines for law enforcement response to domestic violence.⁴⁰

There is no requirement that other types of officers, including supervisory and high-ranking officers, receive continuing education on domestic violence. However, the LERDVA encourages departments to include periodic updates and training on domestic violence as part of their advanced officer training programs.⁴¹ In fact, in 1997, POST received federal funding under the Violence Against Women Act ("VAWA") to develop specialized training courses on domestic violence for law enforcement officers and public safety dispatchers.⁴² These courses are available at no cost to departments and are certified to satisfy both mandatory domestic violence and advanced officer continuing education requirements.⁴³

Domestic violence organizations and victim advocates also offer important training opportunities and resources for law enforcement. Victim advocates and service providers are sometimes invited by local police departments and law enforcement agencies to conduct domestic violence trainings for officers as part of their regular training or daily roll call briefing. Moreover, the federally-recognized state domestic violence coalition, the California Partnership to End Domestic Violence, has established training programs that offer regular instruction and updates for community and criminal justice professionals who work in the domestic violence field.⁴⁴ These trainings are open to law enforcement and cover information that is useful to officers who respond to domestic violence, including legal updates and strategies for servicing and conducting outreach to under-served communities.

In total, a significant amount of federal, state and local resources have been, and continue to be, dedicated to providing law enforcement officers with the training they need they need to more effectively respond to domestic violence.

Expanded and Mandatory Duties of Law Enforcement in Responding to Domestic Violence

In addition to establishing training requirements, the LERDVA and subsequent reforms encourage or require law enforcement agencies and officers to take certain actions to prevent and respond to domestic violence.

AGENCY RESPONSE

The way that law enforcement agencies prioritize and approach domestic violence sets the tone for how individual officers respond to these crimes and whether the public will perceive law enforcement as a source of protection

Every law enforcement agency in California is required to adopt and implement written policies and protocols governing officer and dispatcher response to domestic violence.

from abuse. Accordingly, legislative reforms have imposed basic duties and responsibilities on law enforcement agencies in the area of domestic violence.

Development of Written Policies and Protocols for Responding to Domestic Violence

The LERDVA mandated that, by 1986, every law enforcement agency in the state adopt and implement written policies and protocols governing officer response to domestic violence.⁴⁵ These policies must reflect the fact that domestic violence is criminal conduct that should be treated as seriously as other violent crime and include standards for officers in taking reports, making arrests, enforcing restraining orders and providing information and assistance to victims of domestic violence.⁴⁶ By 1991, law enforcement agencies were also required to have written policies governing dispatcher response to domestic violence which require that dispatchers treat calls involving actual, threatened or imminent domestic violence, or the violation of a domestic violence protective order, as high priority calls.⁴⁷

Data Collection and Record Keeping

Since 1986, the LERDVA has also required that law enforcement agencies adopt and implement certain data collection and record keeping procedures for domestic violence. First, law enforcement agencies are required to maintain complete and accurate records of all criminal and civil domestic violence protective orders issued within their jurisdiction.^{48, 49} Agencies must use this information, as well as information contained in California's Domestic Violence Restraining Order Registry,⁵⁰ to advise officers responding to the scene of a domestic violence incident of the existence and terms of any active protective orders against parties involved in domestic violence.⁵¹

Second, law enforcement agencies must record all domestic violence-related calls for assistance that they receive and document whether these calls involve weapons.⁵² Agencies are required to report this information to the California Department of Justice (CADOJ) on a monthly basis. Although agencies are not required to document the type of weapon used in the incident, all agencies record this information as well and include it in their monthly reports to the CADOJ.⁵³ The CADOJ compiles the information that it receives from each agency and issues annual reports on the number of domestic violence-related calls for assistance received by California law enforcement agencies, the number of cases involving weapons, and the types of weapons used.⁵⁴

Third, law enforcement agencies are required to use incident report forms that allow officers to identify, on the face of the report, whether an incident involves domestic violence.⁵⁵ Agencies must ensure that all domestic violence incident reports (1) identify the incident as a “domestic violence” incident; (2) indicate whether the officers responding to the call observed that the allegedly abusive party was under the influence of alcohol or drugs;⁵⁶ (3) indicate whether any law enforcement agency previously responded to domestic violence between the same parties at the same residence;⁵⁷ and (4) indicate whether officers made any inquiry as to the presence of a weapon and, if so, whether a weapon was found as a result of this inquiry.⁵⁸

Finally, agencies are required to issue a written incident report for every call that they respond to that involves domestic violence.⁵⁹ Moreover, if requested by the victim or, if the victim is deceased, by the victim’s representative, agencies must provide a free copy of the domestic violence incident report to the victim or victim’s representative within two days of the request (or within five days if there is good cause for why the report is not available within two days).⁶⁰

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Domestic Violence Units

While not required by law, many law enforcement agencies have also established specialized units within their departments dedicated to responding to and investigating domestic violence. These units are typically made up of officers who have extensive training on domestic violence issues, including training on how to properly investigate and collect evidence in such cases.

Notification of Victims When Offenders Are Released From County Jail

State law requires that county sheriffs' offices and certain municipal police departments designate a local telephone number that victims and witnesses can call to get information about a criminal defendant's bail status or scheduled release date from a county jail.⁶¹ To this end, many agencies have established automated, computer-based telephone systems that will actually alert a victim or witness if a criminal defendant is transferred to another facility or released.

Commonly referred to as VINE (Victim Information and Notification Everyday) systems, victims are generally required to register with the local program where the criminal defendant is jailed before they can access information about the custody of the defendant. Once registered, not only can they access information about the defendant's custodial status, they can also ask to be notified about any changes to this status, including being notified about the defendant's release.

Whether a victim can receive "advance" notice of a defendant's release depends on the parameters of the local notification program. Some systems will notify the victim days in advance of a scheduled release, as well as at the time of release.⁶² Other systems will only notify the victim at the time of release.⁶³ State law does not specify a certain time period in which advance notice must be provided to victims pursuant to a county's notification system.

OFFICER RESPONSE

As law enforcement officers work on the frontlines of preventing and intervening in domestic violence, the LERDVA and subsequent reforms also impose specific duties on law enforcement officers who respond to domestic violence complaints.

Dispatching Officers to the Scene of a Domestic Violence Incident

As mentioned above, all law enforcement agencies are required to have written policies in place to guide dispatcher response to 911 domestic violence calls. These policies must make clear that calls involving actual or imminent domestic violence, or the violation of a domestic violence protective order, should be treated as high priority calls by dispatchers.⁶⁴ Moreover, dispatchers are not required to verify the validity of a restraining order before dispatching officers or otherwise responding to a request for assistance.⁶⁵

While state law does not set any minimum standards for dispatcher response, model policies concerning law enforcement response to domestic violence have include the following guidelines:⁶⁶

- Officers should be dispatched to the scene of every reported domestic violence incident;
- Two officers should be dispatched to the scene of a domestic violence incident whenever possible;
- Dispatchers should obtain relevant information about the incident, including inquiring into whether the caller is the victim or a witness, the offender is still present at the scene, weapons were involved, children are present at the scene, there is a history of domestic violence between the parties, the offender is under the influence of drugs or alcohol or is on probation or parole, and the victim currently has a restraining order;

Law enforcement agency policies must make clear that calls involving actual or imminent domestic violence, or the violation of a domestic violence protective order, should be treated as high priority calls by dispatchers.

- Dispatchers should stay on the line with the caller as long as possible and immediately update responding officers of any new information relating to the incident;
- Dispatchers should not ask the victim if she is willing to press charges or otherwise suggest that the victim is responsible for deciding what action will be taken to address the incident; and
- Victims should be advised to take steps to ensure their immediate safety, such as waiting for responding officers at a friend's house.

Providing Information and Assistance to Victims at the Scene of a Domestic Violence Incident

An officer's conduct at a domestic violence scene, including the manner in which the officer responds to and communicates with a victim of abuse, greatly influences the future safety of that victim and her willingness to pursue legal and community services for domestic violence. Consequently, state law requires officers to take certain actions to provide information and assistance to victims when responding to domestic violence. These actions include the following:

- WRITTEN NOTICE TO VICTIMS

Officers must furnish written notice to victims of the following information at the scene of a domestic violence incident: (1) notice that the abusive party may be released at any time after being arrested, detained or otherwise restrained by law enforcement; (2) information about local shelter and community resources and how to contact them; (3) information about victim compensation programs and how to contact them; (4) notice of the victim's right to request that the district attorney file a criminal complaint regarding the incident; (5) notice of the victim's right to seek a restraining order against the abusive party; and (6) notice of the victim's right to file a civil lawsuit for damages suffered as a result of the abuse.⁶⁷

- VICTIMS OF DOMESTIC VIOLENCE CARD

With regard to specified crimes including misdemeanor or felony domestic violence, spousal rape and sodomy, officers must provide victims with a “Victims of Domestic Violence Card” that includes the following information: (1) names and phone numbers of local hotlines, domestic violence shelters and rape counseling centers; (2) notice of the procedures that a victim must follow after a sexual assault; (3) a statement that sexual assault by a spouse or a person who is known to the victim is a crime; and (4) a statement that domestic violence or assault by a spouse or person who is known to the victim is a crime.⁶⁸

- EMERGENCY ASSISTANCE

Officers must provide emergency assistance to victims of domestic violence when needed. This includes (1) ensuring that victims receive medical care; (2) providing transportation for victims to shelters or hospitals; (3) providing “standbys” for victims who need to safely leave or remove property from a residence.⁶⁹ While not required by state law, model law enforcement policies recommend that officers also advise victims of the availability EPOs and ask if the victim would like to request one.⁷⁰

- ASSISTANCE WITH CRIMINAL OPTIONS

Officers are required to assist victims in pursuing criminal action against their abuser. This includes providing victims with their incident report number and directing them to appropriate investigating or prosecution units.⁷¹

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Law enforcement officers have a duty to conduct a basic investigation into the nature and circumstances of a complaint when responding to a domestic violence call.

Investigating and Documenting Domestic Violence

State law requires that officers complete an incident report whenever they respond to a call involving domestic violence.⁷² State law requires that these incident reports document, at a minimum, whether the incident involves domestic violence,⁷³ the abusive party was under the influence of alcohol or drugs;⁷⁴ law enforcement previously responded to domestic violence between the same parties,⁷⁵ and weapons were present at the scene.

These two requirements imply a duty on the part of officers to conduct a basic investigation into the nature and circumstances of a complaint when responding to a domestic violence call. State law does not set forth minimum standards for officers in conducting such investigations or documenting relevant information in their incident reports other than that which is listed above. However, model policies concerning law enforcement response to domestic violence have included the following guidelines for officers in investigating and completing reports in domestic violence cases:⁷⁶

- Officers should conduct a thorough investigation of the complaint and submit reports of all incidents of domestic violence and all crimes related to domestic violence;
- Upon arriving at the scene, officers should take steps to ensure the safety of all parties, including determining whether there are any weapons at the scene, confiscating any weapons used in the incident, and providing aid to injured parties;
- Victims, offenders and witnesses should be interviewed separately, with the victim's interview taking place outside of the presence of the offender;
- If the victim speaks a language other than English, officers should arrange for translation services;
- Officers should document and/or photograph evidence of the victim's and offender's physical condition, demeanor, relative sizes, and symptoms of drug or alcohol use;

- Both the victim and offender should be asked if they are in pain even if they have not suffered any visible injuries, and the victim should be asked if he/she has been forced to have sex;
- In cases where there is evidence of mutual combat, officers should try to determine who was the “dominant aggressor,” including determining whether certain wounds were inflicted in self-defense;
- Officers should confirm whether any restraining orders exist between the parties and, if an order has not yet been served, notify the restrained party of the order and/or serve the order on the party if a copy is available; and
- Officers should contact the victim within 72 hours of the incident to see whether further assistance is needed.

State law requires law enforcement officers to provide one free copy of a domestic violence incident report face sheet(s) and domestic violence incident report to the victim or the victim’s representative, if the victim is deceased.⁷⁷ The face sheet(s) must be provided to the victim or victim’s representative within 48 hours of their request, or within 5 working days if there is good cause for why the face sheet(s) is not available.⁷⁸ The incident report must be provided to the victim or victim’s representative within 5 working days of their request, or within 10 working days if there is good cause for why the incident report is not available.⁷⁹

Making Arrests

If the investigation of a domestic violence incident gives rise to probable cause to believe that domestic violence has occurred, officers are encouraged and, in some cases, required to arrest perpetrators of domestic violence. While domestic violence arrests have become a common practice for law enforcement officers,⁸⁰ the use of arrest as a means for intervening in domestic violence and providing for the safety of victims is a fairly recent phenomenon.

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NATIONAL MOVEMENT TOWARD MANDATING ARRESTS

In the early 1980s, the primary intervention methods used by law enforcement officers who responded to domestic violence were mediation and/or imposing a “cooling off” period by ordering one party to temporarily leave the scene of the incident.⁸¹ Abusers were rarely arrested for domestic violence.⁸² In fact, some departments explicitly advised their officers to avoid arrest in domestic violence situations based on the belief that arrest only served to aggravate the parties’ dispute or create unnecessary safety risks for responding officers.⁸³

By the late 1980s, however, a significant shift occurred among law enforcement agencies across the country toward using arrest as a primary method of domestic violence prevention and intervention. This shift has been primarily attributed to a 1984 study called the Minneapolis Domestic Violence Experiment (“Minneapolis Experiment”). The study was conducted in reaction to the intense debate among policymakers during this time about how law enforcement should respond to domestic violence.⁸⁴ This debate was the result of more than a decade of efforts by victim advocates, academics and practitioners to foster public awareness about the need for formal criminal justice sanctions for domestic violence, including the need to increase law enforcement’s use of arrest as a deterrence for such violence.⁸⁵

The Minneapolis Experiment examined the deterrent effect of arrest, as compared to other law enforcement approaches to domestic violence, by randomly requiring one of three responses (arrest, separation or mediation) from officers in the Minneapolis Police Department when they were called out on complaints of misdemeanor domestic violence.⁸⁶ Researchers conducted follow-up interviews with victims and reviewed police records to determine rates of recidivism in each response group within a 6-month period. The study found that arrest resulted in a 50 percent decrease in subsequent domestic violence offenses against the same victim.⁸⁷

The impact of this new evidence of the deterrent effect of arrest was heightened by the fact that, only a few months after the findings from the Minneapolis Experiment were released, law enforcement agencies were also put on notice that they could face civil liability for failing to take effective actions, such as making arrests, in response to domestic violence complaints.

In October 1984, a federal district court in Connecticut issued a landmark decision in *Thurman v. Torrington*.⁸⁸ Tracey Thurman was beaten and stabbed by her estranged husband, Charles Thurman. For eight months prior to the stabbing, Tracey filed numerous complaints with the Torrington Police Department about violence, stalking and threats by Charles which were ignored or trivialized by officers. Tracey, who survived the attack but was left paralyzed from her injuries, filed a lawsuit against the City of Torrington claiming that the city's police officers violated her constitutional rights by failing to respond to her complaints of domestic violence, including repeatedly refusing to arrest her husband after he threatened her life.⁸⁹

Although the city sought to have the case dismissed, the district court upheld Tracey's claims. In doing so, the court found that the police have an affirmative duty to protect the safety of people in the community and that this included a duty to protect the safety of women who are threatened or assaulted in intimate relationships.⁹⁰ The court found that the failure of police to meet this duty by taking reasonable measures to protect domestic violence victims, or by refusing to provide the same level of protection to such victims as they would victims of non-domestic threats and assaults, constitutes a violation of the United States Constitution's 14th Amendment equal protection rights.⁹¹ Tracey Thurman succeeded in proving her case and a jury awarded her \$2.3 million in damages.⁹²

Although the *Thurman* case was not the first lawsuit brought against a law enforcement agency for inadequate or harmful responses to domestic violence victims, it was a seminal case. Previous cases against the Oakland

Police Department and New York City Police Department had been successful in forcing these agencies to institute policies for responding to domestic violence.⁹³ However, *Thurman* was the first case to result in the imposition of significant financial penalties against a law enforcement agency for its failure to adequately respond to domestic violence.⁹⁴ As such, its precedent caused fear of similar lawsuits to spread among law enforcement agencies across the country.⁹⁵

The Minneapolis Experiment and the *Thurman* decision served as catalysts for major local, state and federal reforms in this area. As of 1984, only 10 percent of police departments in large U.S. cities had written policies in place for responding to domestic violence.⁹⁶ By the early 1990s, 93 percent of large police departments (more than 100 officers) and 77 percent of sheriffs' departments had such policies.⁹⁷ The institution of domestic violence arrest policies across the nation was a dramatic departure from the historical failure of law enforcement to make arrests in response to domestic violence.

As part of these general response policies, law enforcement agencies, municipalities and some states began adopting mandatory or pro-arrest policies for domestic violence.⁹⁸ "Mandatory arrest" policies require law enforcement to make an arrest when an officer has probable cause to believe that domestic violence has occurred, regardless of the victim's wishes. "Pro-arrest" policies (also referred to as "preferred" or "presumptive" arrest policies), a more flexible alternative to mandatory arrest policies, encourage arrest, or create a presumption in favor of arrest, when an officer has probable cause to believe that domestic violence has occurred, regardless of the victim's wishes.

Local efforts to institute mandatory and pro-arrest policies received a major boost in 1994 with the passage of the Violence Against Women Act ("VAWA"). VAWA provided for, among other things, grants to states and local governments for the implementation of mandatory or pro-arrest policies among

local police departments.⁹⁹ In order to be eligible to receive this funding, the state or local government applying for the grant had to certify that it had mandatory or pro-arrest laws/policies in place for domestic violence and violations of domestic violence restraining orders.¹⁰⁰ They also had to demonstrate that their policies and practices discouraged dual arrests of the victim and perpetrator of abuse and prohibited the issuance of mutual restraining orders for domestic violence, except in limited circumstances.¹⁰¹

VAWA's eligibility requirements helped foster widespread reforms. As of 2002, 23 states had laws mandating arrest for domestic violence and 33 states mandated arrest for violations of domestic violence restraining orders.¹⁰² Many states without mandatory arrest laws have opted for more discretionary, but still forceful, pro-arrest laws. In addition, all states have laws authorizing law enforcement officers to make warrantless arrests for misdemeanor acts of domestic violence.^{103, 104}

In the midst of this national movement, however, there were many who questioned the effectiveness of arrest in preventing and reducing domestic violence. The Minneapolis Experiment faced strong criticism due to the fact that it included a small sample of cases (only 314 total cases with 136 cases involving an arrest),¹⁰⁵ the officers who participated in the experiment sometimes exercised their discretion in a way that interfered with the "randomness" and outcomes of the study,¹⁰⁶ and only half of the domestic violence victims participated in all initial and follow-up interviews required by the experiment.^{107,108} Moreover, the study failed to take into account the impact of arrest in light of other factors that may also impact recidivism among domestic violence offenders such as length of jail time served, subsequent prosecution, and diversity in race, socioeconomic background and history of abuse among offenders.¹⁰⁹

The authors of the Minneapolis Experiment recognized some of these shortcomings and cautioned that further studies should be conducted on this

In the midst of the national movement toward mandating arrest, there were many who questioned the effectiveness of arrest in preventing and reducing domestic violence.

The need for mandatory arrest for domestic violence has been the subject of intense debate and division among victim advocates, academics and practitioners.

issue.¹¹⁰ Consequently, the Minneapolis Experiment led to a series of replication studies funded by the National Institute of Justice in Omaha, Nebraska; Charlotte, North Carolina; Milwaukee, Wisconsin; Metro-Dade, Florida; and Colorado Springs, Colorado.¹¹¹

The Omaha, Milwaukee and Charlotte studies found that, while arrest had an initial deterrent effect on offenders, this effect was temporary and arrest ultimately did not deter future assaults more effectively than other methods of law enforcement response.¹¹² The Colorado Springs and Metro-Dade studies found that arrest served a greater deterrent for offenders who were employed, with one study indicating an actual increase in re-offending among unemployed, arrested offenders.¹¹³ While the studies noted some decrease in recidivism among arrested offenders, none of the studies confirmed the dramatic deterrent effect of arrest demonstrated by the Minneapolis Experiment. In fact, the Charlotte study suggested that an offender's prior criminal history may be an even stronger predictor of recidivism among offenders than law enforcement response.¹¹⁴

The collective findings of the replication studies indicate that, while arrest may serve as a deterrent for some offenders, this is not true of all offenders. According to these findings, for example, cities with high rates of unemployment may find mandatory arrest policies to be counterproductive to combating and preventing domestic violence, as well as dangerous to victims and the community.¹¹⁵

The replication findings also indicate that arrest, alone, is not significantly more effective than other law enforcement responses. Indeed, the results of the replication studies demonstrate that arrest is something that cannot be considered in a vacuum. Like the Minneapolis Experiment, these studies were criticized for their failure to take into account the context in which domestic violence and domestic violence arrests occur, as well as the effect of arrest when combined with other criminal justice responses.¹¹⁶ There has yet to be a study that examines the deterrent effect of arrest in light of these aggregate factors.

Even critics of the replication studies agreed, however, that arrest still served a valuable purpose in treating domestic violence as a serious crime and holding batterers accountable, particularly when used as part of a coordinated response by all sectors of the criminal justice system, including criminal courts, prosecution, probation and corrections.¹¹⁷ Nevertheless, the findings from the replication studies called into question whether the rush to enact mandatory and pro-arrest laws following the Minneapolis Experiment was an appropriate solution.

In fact, the need for mandatory arrest for domestic violence has been the subject of intense debate and division among victim advocates, academics and practitioners. Proponents argue that mandatory arrest laws send a powerful message to the batterer and society that domestic violence is, and will be treated as, a serious crime by the state.¹¹⁸ Given law enforcement's long history of apathy and inaction in response to domestic violence, proponents believe that it is necessary to limit officer discretion in such cases to ensure that criminal domestic violence laws are being aggressively enforced and batterers are held accountable for their violent conduct.¹¹⁹

In addition, proponents believe that mandatory arrest laws increase victim safety by stopping immediate violence against the victim and allowing the victim to access community or financial support systems.¹²⁰ They also enable officers to arrest a dangerous offender against the victim's wishes in cases where the victim is afraid to press criminal charges due to coercion or retaliation by the batterer or where she is unable to accurately assess her risk of violence or make sound decisions regarding her safety.¹²¹

Opponents of mandatory arrest, on the other hand, argue that it is unrealistic and sometimes harmful to apply such a one-dimensional response to domestic violence. First, opponents argue that mandatory laws are paternalistic and ultimately disempower victims by usurping their decision making ability and

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minimizing what may be legitimate reasons that victims do not want to have their partners arrested and subjected to criminal prosecution.¹²² Opponents believe, in essence, that mandatory arrest laws simply replace the batterer's exertion of power and control over the victim with that of the State, thereby perpetuating the harmful dynamics and psychological impact of abuse.¹²³

Second, opponents urge that mandatory arrest laws have a disparate and harmful impact on low-income communities and people of color, citing to the fact that a disproportionate number of men and women of color are arrested for domestic violence.¹²⁴ Although such disparities can be attributed to a number of factors, including differences in rates of reporting among different racial and socioeconomic groups,¹²⁵ discriminatory enforcement of arrest laws and police abuses of power with regard to certain racial communities also play a significant role.¹²⁶

Moreover, given the evidence that arrest sometimes increases violence among unemployed and poor perpetrators, some opponents believe that mandatory arrest laws may actually endanger victims in low-income communities.¹²⁷ This is particularly true where arrest is not reinforced with targeted community or criminal justice responses, such as aggressive prosecution policies, and batterers are released after a short period of time only to return home even angrier than before.¹²⁸

Opponents further believe that increased law enforcement intervention in minority families via mandatory arrest laws leads to the increased institutionalization of poor children of color. There is evidence that African-American children in poor and low-income communities are more likely than other children to be taken away from their parents and placed in the child welfare system because of domestic violence or allegations of abuse and neglect.¹²⁹ They also remain in the child welfare system longer than their peers.¹³⁰

Finally, opponents argue that the increased implementation of mandatory and pro-arrest laws does not mean that officers are actually following the law or making appropriate arrests in domestic violence cases. Even under mandatory arrest, officers still retain some discretion in determining whether there is probable cause to believe that domestic violence has occurred. In some cases, this discretion may be exercised against making an arrest even where there is substantial evidence of domestic violence.¹³¹

Indeed, an evaluation of New York's mandatory arrest laws found that officers' understanding of what constitutes "probable cause" to arrest in domestic violence cases may vary significantly among departments within the same state.¹³² The study reviewed approximately 13,000 domestic violence incident reports from eight different departments. The percentage of incidents involving serious physical attacks that were subject to mandatory arrest ranged from 37 percent to 91 percent, with a statewide average of 53 percent.¹³³ The percentage of incidents involving victim injuries that were subject to mandatory arrest ranged from 43 percent to 95 percent, with a statewide average of 64 percent.¹³⁴ Moreover, many assaults resulting in minor injuries (i.e. bruises) were classified as harassment, rather than criminal assault, placing these cases outside the reach of mandatory arrest laws.¹³⁵

Based on these results, the researchers concluded that departments were utilizing divergent standards for assessing whether a particular incident met the criteria for mandatory arrest. Moreover, the study found that, even when these criteria were met, whether an arrest actually occurred depended largely on whether the perpetrator was still present at the scene when the police arrived.¹³⁶

Other studies have found that factors such as an officer's training or experience level, the severity of injury to the victim, the victim's demeanor, the offender's demeanor, and the victim's relationship to the offender also affect an

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Advocates attribute the wrongful arrest of domestic violence victims to law enforcement's failure to properly exercise their discretion in cases where a victim has acted in self-defense to violence inflicted by her batterer.

officer's decision to arrest even in jurisdictions with mandatory or pro-arrest laws. Indeed, the fact that an officer has received training on domestic violence, the victim has suffered significant injuries, the victim is cooperative and not under the influence of drugs or alcohol, the offender is disrespectful or aggressive toward responding officers, and the victim and offender are currently cohabitating have all been correlated with an increased likelihood that a domestic violence offender will be arrested pursuant to mandatory or pro-arrest laws.¹³⁷

Officers also exercise discretion in determining the "perpetrator" of domestic violence. The most notable change that has occurred as a result of the implementation of aggressive arrest policies is a dramatic spike in the number of women arrested for domestic violence.¹³⁸ In fact, in California, the number of women arrested for felony domestic violence more than tripled from 1990 to 2003 (2,855 to 9,529 arrests).¹³⁹ Some attribute this increase to a greater awareness that men can also be the victims of domestic violence.¹⁴⁰ However, many advocates believe that a significant number of female victims have been wrongfully arrested for domestic violence as a result of the implementation of aggressive arrest laws and, thus, the increase is indicative of a dangerous backlash against victims.

Advocates primarily attribute the wrongful arrest of victims to law enforcement's failure to properly exercise their discretion in cases where a victim has acted in self-defense to violence inflicted by her batterer.¹⁴¹ In such cases, officers may arrive at the scene to find that both parties have visible injuries. Advocates are concerned that, rather than taking the time to distinguish between intentional and self-defense wounds, officers will arrest both parties, leaving it to the prosecutor to decide who was at fault. Even worse, officers may arrest the victim if it appears that the injuries inflicted in self-defense against the batterer are more serious than the injuries to the victim. In fact, given evidence that batterers are becoming much more skilled in inflicting non-visible injuries to victims,¹⁴² officers may arrive to find that only one party (i.e. the abuser) has visible injuries. Officers are likely to arrest only the victim in such cases. Although

California, like many other states, has enacted laws discouraging dual arrests and providing guidance to law enforcement on making appropriate domestic violence arrests, the number of women arrested in California for felony domestic violence has actually increased since the enactment of these laws.¹⁴³

Clearly, much remains to be learned about the effectiveness of aggressive arrest policies, particularly with regard to their impact on victims, poor communities and people of color. However, despite the criticisms and controversies surrounding domestic violence arrests and mandatory arrest, in particular, arrest remains the primary method of intervention used by law enforcement in domestic violence cases. It also sends a strong message to the victim, offender and community-at-large that domestic violence will not be tolerated.

CALIFORNIA'S ARREST LAWS

California has both pro-arrest and mandatory arrest laws for domestic violence, depending on the nature of the domestic violence incident.¹⁴⁴ California's pro-arrest law applies to domestic violence offenses generally. Specifically, state law requires that law enforcement agencies adopt written policies that "encourage the arrest of domestic violence offenders if there is probable cause to believe that an offense has been committed."¹⁴⁵

Pursuant to this mandate, some law enforcement agencies have adopted pro-arrest policies only for cases of felony domestic violence and/or cases of misdemeanor domestic violence that occur in an officer's presence,¹⁴⁶ while others have adopted pro-arrest policies for both felony and misdemeanor domestic violence cases generally.¹⁴⁷ Whether an incident will be classified as a felony or misdemeanor typically depends on the severity of injury or threats to the victim and whether weapons were used by the offender.¹⁴⁸ State law also authorizes law enforcement to make a warrantless arrest whenever an officer

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California law requires law enforcement officers to make reasonable efforts to determine the “dominant aggressor” in a domestic violence incident.

has probable cause to believe that felony domestic violence has occurred, regardless of whether the officer personally witnesses the incident.¹⁴⁹ Similarly, law enforcement is authorized to make a warrantless arrest when they have probable cause to believe that misdemeanor domestic violence has occurred regardless of whether the officer personally witnesses the incident, so long as the arrest is made as soon as probable cause arises.¹⁵⁰

California’s mandatory arrest law applies to violations of domestic violence restraining orders. Law enforcement officers are required to make an arrest when they have probable cause to believe that an offender has violated a domestic violence restraining order, regardless of whether the officer has a warrant or the violation occurred in the officer’s presence.¹⁵¹ This includes restraining orders issued by another state, tribe or territory of the United States.¹⁵² If the victim is unable to provide the officer with a copy of the restraining order, the officer is required to confirm whether the restraining order has been registered with state or local authorities immediately following the arrest.¹⁵³

Law enforcement agencies are also required to adopt policies that discourage, but do not prohibit, dual arrests in domestic violence cases.¹⁵⁴ To this end, state law requires law enforcement to make reasonable efforts to determine the “dominant aggressor” in a domestic violence incident.¹⁵⁵ Because law enforcement is mandated to make an arrest when a domestic violence restraining order has been violated, identifying the “dominant aggressor” is particularly important where mutual restraining orders have been issued between the parties involved in a domestic violence incident.¹⁵⁶

State law defines a “dominant aggressor” as “the person determined to be the most significant, rather than the first, aggressor.”¹⁵⁷ California law previously required law enforcement to make reasonable efforts to identify the “primary aggressor” in a domestic violence incident. However, the use of the term “primary aggressor” caused confusion among officers who improperly interpreted this phrase to mean the person who made the first contact with

the other party.¹⁵⁸ Interpreting “primary aggressor” as requiring the arrest of the “initial” aggressor, increased the likelihood that law enforcement would wrongfully arrest domestic violence victims. For example, such an interpretation would require the arrest of a victim who threw an object at her abuser in anger or self-defense, and was then severely beaten by her abuser in retaliation for her conduct. Consequently, in 2000, the term “primary aggressor” was changed to “dominant aggressor” in an effort to clarify the legislative intent behind these provisions.

In determining the “dominant aggressor,” state law requires that officers consider “the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense.”¹⁵⁹ In addition, law enforcement trainings and model law enforcement policies have suggested that officers consider the following factors in identifying the “dominant aggressor”: the parties’ demeanor, the respective size and strength of the parties, the severity of the injuries to each party, whether one party escalated the level of violence involved in the incident, and whether any of the injuries appeared to be defensive, rather than offensive, wounds (e.g., scratches to the upper body or face, or injuries to the palm of the hand).¹⁶⁰

As described above, the fact that California has enacted pro-arrest and mandatory arrest policies for domestic violence does not guarantee that an appropriate arrest will be made in every case. An officer’s decision about whether to make an arrest, and which party to arrest, may be influenced by an officer’s personal biases and frustrations toward domestic violence victims, domestic violence offenders, and domestic violence crimes in general. In order to prevent such biases or misconceptions from interfering with officers’ discretionary arrest decisions, model law enforcement policies also prohibit officers from taking certain factors into consideration when deciding how to

Model law enforcement policies encourage officers to issue an EPO whenever an officer has reason to believe that the order is necessary to protect the victim's safety, regardless of whether the victim asks for an order.

respond to a domestic violence incident. These include whether the victim and offender are living together, the fact that the victim and offender are of the same gender, the fact that the victim has not suffered any visible injuries and any indications that the victim will ultimately not cooperate with the criminal investigation and prosecution of the offender or the arrest will otherwise not lead to a conviction.¹⁶¹

Issuing Emergency Protective Orders

As mentioned above, an important way for law enforcement to protect the immediate safety of a victim of domestic violence is by issuing her an Emergency Protective Order. While people are generally familiar with the concept of a domestic violence restraining order, they are typically not aware of their right to an EPO or the level of protection that such an order can provide. Since EPOs are issued at the scene of a domestic violence incident, whether a victim is able to obtain an EPO depends largely on an officer's willingness and ability to inform victims about these orders. Accordingly, model law enforcement policies encourage officers to advise victims of the availability of EPOs when responding to a domestic violence incident and issue an EPO whenever an officer has reason to believe that the order is necessary to protect the victim's safety, regardless of whether the victim asks for an order.¹⁶²

State law has authorized law enforcement to issue EPOs in domestic violence cases since 1988. An EPO is a temporary protective order that can be issued over the telephone 24 hours a day, 7 days a week, by an "on call" judge if there are reasonable grounds for believing that (1) a victim is in immediate and present danger of domestic violence and (2) an EPO is necessary to prevent the occurrence or reoccurrence of domestic violence against the victim.¹⁶³ EPOs are intended to protect the victim during the time it would take her to go to court and seek a temporary civil domestic violence restraining order. As such, EPOs

are only valid for a period of 5 court days, or 7 calendar days, from the time they are issued, whichever is earlier.¹⁶⁴ In addition to ordering the offender to stay away from and not contact the victim, EPOs can also order the offender to move out of the family home and award temporary custody of the couple's children to the victim.¹⁶⁵

Although EPOs are ultimately issued by an on-call judge, they must be requested by a law enforcement officer.¹⁶⁶ The officer requesting the order must explain to the judge why he/she believes that a particular situation meets the above criteria for the issuance of an EPO. The fact that either the victim or offender has already left the home should not affect the availability of an EPO.¹⁶⁷

If the judge grants the EPO, state law requires that the officer who requested the order (1) serve the order on the offender if he/she can reasonably be located; (2) provide a copy of the order to the victim; (3) file a copy of the order with the court as soon as practicable; and (4) carry a copy of the order with him/her while on duty for the duration of the order.¹⁶⁸ Moreover, state law requires law enforcement officers to use every reasonable means to enforce EPOs.¹⁶⁹

Although EPOs are typically issued by local police officers or county sheriffs' deputies, there are a broad range of other law enforcement officers who are authorized to issue EPOs under state law. These include California Highway Patrol officers, state university, state college and state community college police officers, Department of Parks and Recreation peace officers, housing authority patrol officers, probation officers, parole officers and school district police officers.¹⁷⁰

California law requires law enforcement officers to use every reasonable means to enforce EPOs.

Law enforcement officers are mandated to arrest an offender whom they have probable cause to believe violated the terms of a civil restraining order or criminal protective order.

Enforcing Restraining Orders

Law enforcement officers play a primary role in the enforcement of civil domestic violence restraining orders¹⁷¹ and criminal protective orders.¹⁷² As described above, law enforcement is responsible for maintaining records of all domestic violence-related civil restraining orders and criminal protective orders, including those which have not yet been served on the restrained party, and for verifying the existence and validity of such orders when responding to domestic violence.

Law enforcement officers are also mandated to arrest an offender whom they have probable cause to believe violated the terms of a civil restraining order or criminal protective order. In fact, state law makes each violation of such orders a separate crime that may be prosecuted in addition to any other crimes relating to the offender's conduct that violated the order. Generally, intentional and knowing violations of civil and criminal orders are treated as misdemeanors.¹⁷³ A violation of a civil or criminal order may be treated as a felony if the offender had a prior conviction for a restraining order violation within 7 years of the current conviction and the violation involved a credible threat of violence toward the victim.¹⁷⁴

Law enforcement officers must enforce valid civil restraining orders and criminal protective orders, even in the following circumstances:

- The order was issued in the District of Columbia or another state, tribe, or territory of the United States;¹⁷⁵
- The restrained party was not served with the order, but the order indicates that this party was present at the hearing in which the order was issued;¹⁷⁶
- The protected party allowed the restrained party to move back into the family residence or otherwise solicited contact with the restrained party;¹⁷⁷ and

- The protected party does not have a copy of the order and the officer is able to verify the existence and terms of the order from a search of the statewide domestic violence restraining order registry.

In cases where there are valid, conflicting civil and criminal orders between the parties, an officer is required to enforce the criminal protective order over the civil restraining order.¹⁷⁸ However, effective January 1, 2006, state law will be amended to require that the enforcement of an EPO take precedence over any conflicting civil or criminal restraining orders between the parties if the EPO: (1) protects a party who is already protected by the other order(s); (2) restrains a party who is already restrained by the other order(s); and (3) contains provisions that are more restrictive than the conflicting provisions of the other order(s).¹⁷⁹

If all of these conditions are met, the provisions of the EPO will take precedence over any conflicting provisions of an existing civil and/or criminal order. If no EPO has been issued, then the criminal order still takes precedence over any conflicting civil order.¹⁸⁰ If the conflicting orders are the same type of order (i.e., both are civil orders or both are criminal orders), then the most recently issued order takes precedence over the other.¹⁸¹ If mutual civil restraining orders were issued at the same time, between the same parties, then law enforcement should enforce the order of the person who was not the “primary/dominant aggressor” in the incident.¹⁸²

Removing and Storing Firearms

California law enforcement agencies receive an average of 1,439 domestic violence-related calls for assistance involving firearms each year.¹⁸³ When responding to such calls, an officer’s confiscation and removal of firearms in the possession of a domestic violence offender can mean the difference between life and death for a victim. Indeed, a gun is the weapon

A gun is the weapon that is most commonly used to kill an intimate partner, particularly in cases where the victim is a woman.

that is most commonly used to kill an intimate partner, particularly in cases where the victim is a woman. According to U.S. Department of Justice statistics for 2002, guns were the murder weapon in 58 percent of intimate partner homicides in the U.S. involving female victims, whereas guns were the murder weapon in only 45 percent of cases involving male victims.¹⁸⁴ In our survey of 100 intimate femicides in California, guns were used to kill the victim in 48 percent of the cases.

Officers responding to the scene of a domestic violence incident are required to document in their incident report whether firearms or other deadly weapons were present at the scene.¹⁸⁵ Although they are not required to identify the type of weapon found, officers generally include this information in their written reports.¹⁸⁶

If the domestic violence incident involves a (1) threat to human life or (2) physical assault, officers are required to take temporary custody of any firearms or other deadly weapons found in plain sight or as the result of a lawful search.¹⁸⁷ "Temporary custody" means that law enforcement is required to keep the firearm or deadly weapon for at least 48 hours, but no more than 5 business days, before returning it to the owner/possessor.¹⁸⁸ Law enforcement is not required to return a firearm or deadly weapon to its owner/possessor if the weapon is retained as evidence for criminal prosecution or is determined to be stolen.¹⁸⁹ Moreover, if law enforcement has "reasonable cause" to believe that returning the weapon to its owner/possessor will endanger the victim, an officer can petition the court for a determination of whether the firearm or deadly weapon should be returned.¹⁹⁰

Law enforcement is also authorized to receive and store weapons surrendered by a party who is subject to a domestic violence-related civil restraining order or criminal protective order. State law prohibits parties who are subject to such orders from owning, possessing, purchasing and receiving, or attempting to purchase or receive, a firearm during the period that the order

is in effect.¹⁹¹ Moreover, courts may order the restrained party to relinquish any firearms in their possession within 72 hours of being served with the protective order.^{192, 193} Law enforcement is authorized to receive and store firearms relinquished by restrained parties and may charge the restrained party a storage fee.¹⁹⁴ All relinquished firearms must be returned to the restrained party within 5 days of the date that the order expires, unless the restrained party is otherwise restricted at that time from owning or possessing firearms (e.g., another restraining order has been issued).¹⁹⁵

Despite these restrictions, some domestic violence offenders may not be deterred from owning or possessing firearms even when subject to a civil or criminal protective order. In 2003, the California Department of Justice denied 212 people permits to purchase a firearm because they were subject to a restraining order. Many domestic violence offenders are also able to purchase guns on the street without having to submit to the permit process.

Nevertheless, there is currently no formal system in place for ensuring that restrained parties actually relinquish their firearms in accordance with the terms of a civil or criminal protective order or other court order. While restrained parties are required to file a receipt with the court evidencing their sale or relinquishment of firearms, this requirement does not ensure that non-registered guns are relinquished. Moreover, law enforcement has no legal or statutory duty to take affirmative action, such as searching the restrained party's residence, to ensure that a restrained party does not have any guns in their possession. Rather, these parties are basically held to an "honor system" in complying with firearms restrictions.

Increased Collaboration With Other Agencies

One of the most significant ways that law enforcement has collaborated with other agencies to improve its response to domestic violence is through the establishment of Domestic Violence Response Teams (DVRTs, also known as

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One of the most significant ways that law enforcement has collaborated with other agencies to improve its response to domestic violence is through the establishment of DVRTs.

DARTs). DVRTs typically consist of police investigators and domestic violence advocates/counselors who are available 24 hours a day to respond to domestic violence incidents. Team members may also include other practitioners such as medical professionals, child protective service workers, adult protective service workers, and animal control officers.¹⁹⁶ DVRT members are either called directly to the scene of a domestic violence incident or are called after the responding law enforcement officer or agency determines that their services are needed.

The goal of a DVRT is to provide immediate crisis intervention and counseling for victims at a time when it is likely to be most effective — at the scene of a domestic violence incident. Team advocates also provide information and referrals to victims, as well as follow-up services aimed at providing the victim with the support she needs to address, and possibly end, the cycle of abuse she is experiencing.¹⁹⁷ In addition, DVRT police investigators generally have specialized training and experience in conducting investigations and collecting evidence in domestic violence cases.

DVRTs first surfaced in California in mid-1990s, with the Los Angeles Police Department's Van Nuys Division being one of the first law enforcement agencies in the state to institute a DVRT program.¹⁹⁸ Since then, the number of local DVRTs has grown significantly. Most cities and counties with DVRTs have been able to establish these teams because of federal grants aimed at supporting the development of such teams or increasing inter-agency collaborations in responding to domestic violence.¹⁹⁹

Taken together, California law enforcement agencies have significantly improved the way that they prioritize and respond to domestic violence cases over the past thirty years. Moreover, local agencies in Los Angeles County, San Francisco County, Santa Clara County and San Diego County have instituted model reforms that have served as an impetus for change among law enforcement agencies throughout the country.

WHERE ARE WE NOW?

We conducted interviews throughout the state with law enforcement officers, victim advocates and other professionals who work in the domestic violence field in order to assess current problems and successes associated with law enforcement responses to domestic violence. A total of twenty (20) law enforcement officers from different agencies throughout the state were interviewed. The officers either worked in their agency's domestic violence unit or were primarily responsible for responding to domestic violence calls. A total of ten (10) victim advocates were interviewed about their and their clients' experiences with law enforcement. We also raised the issue of law enforcement response in our Northern and Central California roundtable discussions in which a variety of professionals participated including prosecutors, medical professionals, probation officers, and coroners.²⁰⁰ The following is a summary of the commentary and recommendations gathered from the above interviews and discussions on this issue.

Officer Training on Domestic Violence

Law enforcement perspective:

- **Most officers engaged in some training on domestic violence in addition to their initial academy training on this issue.** Nearly a third of the officers had attended POST's intensive, 40-hour training on responding to and investigating domestic violence cases. The training consists of both practical and classroom instruction and addresses issues such as wound identification, talking to victims, suspects and children, overcoming language barriers, documenting evidence, and lethality assessments. All of the officers who participated in this course felt it was beneficial because it gave officers knowledge and practical

Only a few of the officers surveyed reported receiving ongoing training and education on domestic violence issues.

Officers identified a need for additional training on investigating and collecting evidence in domestic violence cases.

experience in specific response and investigation techniques that might have taken them years to learn on the job.

- **Only a few of the officers, however, reported receiving ongoing training and education on domestic violence issues.** The decision about whether an officer engaged in regular training on domestic violence was both department driven and driven by the personal interests of the individual officer. Officers received education and updates by attending departmental trainings, attending local and national conferences for professionals working in the domestic violence field, and/or reading articles and other literature on new developments relating to domestic violence. Some officers who did not engage in ongoing training or updates noted that their department emphasizes on-the-job training.
- **Officers felt that district attorneys should play a more active role in training law enforcement on how to collect evidence in domestic violence cases.** These officers believed that such training would help improve prosecutors' ability to charge and prosecute domestic violence cases. Some officers reported that they currently receive some form of training from prosecutors on how to collect and preserve evidence in these cases and that this training has been beneficial to them in investigating domestic violence incidents.

Perspectives of advocates and other practitioners:²⁰¹

- **Advocates felt that law enforcement needed additional and ongoing education on domestic violence issues.** Areas of training identified by advocates included the following:

addressing the unique needs of underserved communities such as young people and gay, lesbian, bi-sexual and transgendered communities; general information about obtaining and enforcing civil and criminal protective orders, including EPOs; making appropriate domestic violence arrests; and annual updates on legislative and policy changes affecting criminal justice responses to domestic violence. Advocates cited high officer turnover within agencies as one of the reasons that there is a need for ongoing training and re-training of officers.

- **Advocates reported experiencing strong resistance from law enforcement agencies and officials when offering trainings for local law enforcement agencies on domestic violence issues.** Advocates reported that agencies were less resistant if the training was conducted in conjunction with a law enforcement officer. Advocates who have conducted trainings for officers in the past without a co-presenter from law enforcement reported experiencing hostile and disruptive behavior from officers who attended their trainings. This behavior included making sarcastic remarks about the subject matter and sleeping through the training. Advocates attributed this hostility and resistance to general negative attitudes among officers toward victim advocates, as well as misperceptions that advocates are “man haters” and engage in too much hand-holding for victims.

Generally, agencies were more receptive to advocate trainings if the advocate had a good personal and working relationship with a law enforcement official or senior officer who could act as a liaison in getting approval for, and helping coordinate, the advocate’s trainings. Advocates who reported that their local law enforcement agencies have been very receptive to letting them conduct trainings

Advocates identified a need for additional law enforcement training on issues such as responding to domestic violence in underserved communities, obtaining and enforcing civil and criminal protective orders, making appropriate domestic violence arrests, and annual updates on relevant legislative and policy changes.

for officers expressed disappointment in the fact that the agencies typically felt that only one or two trainings were needed, as opposed to ongoing education.

- **Advocates reported that their local sheriff's department, in particular, needed training and education on domestic violence.** Advocates noted that their local sheriff's departments do not engage in as much training on domestic violence as their local police departments do, if at all. They cited this lack of education as causing harmful attitudes among local sheriff's deputies toward domestic violence cases, such as a general belief that responding to domestic violence incidents is not important or a part of their job, as well as negative judgment about domestic violence victims. Victim advocates also reported difficulties in getting their local sheriff's department to participate in inter-agency collaborations aimed at improving community responses to domestic violence.

Responding to and Investigating Domestic Violence Incidents and Restraining Order Violations

Law enforcement perspective:

- **A majority of officers reported that their agencies currently have specialized Domestic Violence Units.** Although Domestic Violence Units varied from agency to agency, they generally shared the following two objectives: (1) building evidence to support prosecution in the event the victim recants and (2) providing additional support and services for domestic violence victims and their children. With regard to the first objective, officers reported that their Domestic Violence Units consist of investigators who work primarily or solely on domestic violence crimes. Because

victims often recant when faced with having to testify against their abusers, these investigators focus on creating comprehensive evidence-based prosecutions, as opposed to prosecutions based primarily on witness testimony. This means that their domestic violence investigations involve much more detailed evidence gathering than they would engage in for other types of crimes, including thoroughly interviewing and documenting statements from the victim, perpetrator and witnesses. Some investigators also review officer reports involving general assault crimes in order to ensure that domestic violence cases are not being mislabeled and missed.

With regard to the second objective, some Domestic Violence Units have advocates on staff, in addition to investigators, who provide information, support and resources for victims and their children. Most Units that do not have an advocate on staff work with local advocacy organizations to provide counseling and support services to victims (see discussion of DVRTs below). While officers reported having good working relationships with both in-house and external advocates, several officers commented that their interests tend to diverge from advocates' interests in cases where advocates continue to support a victim who recants.

Most officers felt that having a Domestic Violence Unit significantly improved an agency's response to, and investigation of, domestic violence crimes. All of the officers who worked in a Domestic Violence Unit felt that having a Unit significantly improved how they handle domestic violence cases. In fact, one officer whose department had recently lost its Domestic Violence Unit due to funding issues reported that he has already noticed a decrease in filing and prosecution rates for domestic violence. Those who did not have a Domestic Violence Unit felt that they would benefit

Most officers surveyed felt that having a Domestic Violence Unit significantly improved an agency's response to, and investigation of, domestic violence crimes.

Officers and advocates agreed that DVRTs result in more comprehensive responses to domestic violence, increased access to services for victims, and stronger relationships among law enforcement and advocacy agencies.

from having one. Funding was identified as the primary reason why local agencies did not have, or could not sustain, a Domestic Violence Unit.

- **Most officers reported that their agencies have established formal DVRTs or informal partnerships with local victim advocacy agencies to provide counseling, services and support for victims at the scene of a domestic violence incident.** Officers who participated in DVRTs felt that these teams helped build good relationships with victims as well as local victim advocacy agencies. They felt that these teams also helped educate victims and increase victim access to services. Officers noted that the involvement of advocates is particularly important in cases where officers have to leave the scene to respond to another call or to complete an arrest of a perpetrator. In such cases, advocates can remain with the victim and family members to provide continued contact and support. Many officers who did not have local DVRTs expressed a desire to have one. One agency utilizes a Trauma Intervention Team (TIP) in domestic violence cases. The TIP resembles a DVRT in that it is a volunteer group comprised mostly of female advocates trained on the dynamics of domestic violence who help provide information and follow-up services for victims.
- **Officers believed that female domestic violence victims felt more comfortable talking to a female officer or female advocate at the scene of a domestic violence incident than a male officer.** However, one law enforcement official who was interviewed felt that the male officers under his supervision did a better job at empathizing with victims and making them feel comfortable than his female officers. He attributed this dynamic to the fact that some female officers were more judgmental

toward women in domestic violence relationships because many of them feel that they would never let themselves be abused or remain in an abusive relationship. These attitudes resulted in female officers being less sympathetic to victims. He said that male officers, on the other hand, tended to have paternalistic and protective attitudes toward victims, which ultimately resulted in better responses to victims and domestic violence incidents in general.

- **Most officers reported that they complete and file criminal reports for every domestic violence incident.**

Officers emphasized that reports are taken even if there are no serious injuries, no arrest is made, the victim is uncooperative, or the officer has reason to believe that the victim will recant. Some officers said that they note in their report whether a victim was cooperative or whether they have reason to believe that she will later recant her story so that the prosecutor is aware of this information. One supervisory officer reported that officers in his agency will be reprimanded if they fail to file a report on a domestic violence incident.

Perspectives of advocates and other practitioners:

- **Most advocates touted the success and benefits of instituting DVRT teams.** They noted that having advocates at the scene of a domestic violence incident can help provide a “wake-up call” to victims by educating them about the dynamics of domestic violence and how these dynamics relate to the victim’s particular situation. They further noted that advocates can provide empathy and understanding for victims in a way that officers cannot, and that victims can talk to advocates “off the record” without having to worry that what they say will be subsequently used against them

by law enforcement or prosecutors. Advocates believe that they are also typically better equipped than officers to explain available options to victims. Moreover, advocates can provide valuable follow-up visits and check-ins with victims, particularly when officers have no time for, or interest in, victim follow-up.

Advocates also saw DVRT participation as an opportunity to educate officers about how best to approach victims and ensure that officers are properly responding to domestic violence in general. Indeed, operating in a team setting allowed advocates to develop more trusting and respectful relationships with responding officers, particularly if the same advocates and officers are constantly responding to domestic violence incidents. Advocates noted that officers more likely to do their job correctly if advocates are present. Advocates further noted that they feel more comfortable addressing problems and suggestions directly with the responding officers due to the strong relationships they have developed. However, some advocates commented that their local DVRT has failed to result in stronger relationships between advocates and law enforcement and that mistrust and misunderstandings still persist between these two groups. Generally, in such cases, advocates and officers do not respond to the scene of domestic violence at the same time. Rather, law enforcement will respond first and take the offender into custody, if needed, and then call advocates to attend to the victim after they have left the scene, which could be a significant time after the incident is over.

- **Several advocates, however, reported concerns that officers are minimizing the seriousness of domestic violence incidents in order to avoid having to call an advocate out to the scene.** These advocates were concerned

that this conduct results in victims having less access to critical services and counseling.

- **Advocates in rural communities complained of long response times to domestic violence incidents due to the insufficient number of officers in local law enforcement agencies.** These advocates noted that, in some rural areas, there may be only one or two officers responsible for patrolling several hundred square miles of the agency's jurisdiction. This could result in response times exceeding 30 minutes. Advocates reported that response times could be even longer if an officer calls in sick or is attending to another crime. One advocate reported hearing of officers taking as much as 3 hours to respond to a domestic violence incident.
- **Advocates reported that law enforcement's personal biases sometimes influence whether they decide to follow mandated policies and procedures in certain cases.** Advocates noted that in rural and small counties, there is a significant likelihood that the responding officer will know, and possibly be personal friends with, the batterer. The responding officer may be reluctant to arrest or take other punitive actions against his friend. Advocates noted the same dynamic occurs when the batterer is a fellow officer. Some advocates commented that middle and upper-class victims also tend to receive less aggressive responses from law enforcement due to the fact that professional batterers appear more credible to officers or because the batterer's status and resources intimidate officers from intervening or making an arrest. Advocates also reported that officers often failed to take reports of domestic violence seriously when a victim shows signs of being under the influence of drugs or alcohol.

Advocates in rural communities complained of long response times by law enforcement and inadequate responses to domestic violence incidents due to officers' personal biases.

Advocates and other practitioners reported a serious lack of bilingual law enforcement officers even in cases where the parties involved in a domestic violence incident speak a common foreign language, such as Spanish.

- **Advocates reported that law enforcement does not always ensure the safe separation of parties when responding to a domestic violence incident.** Advocates noted that there are still some cases in which officers interview the victim and perpetrator in the same room or within earshot of one another. Some advocates reported dealing with cases where officers waited outside of a family residence while allowing the batterer to go into the residence to retrieve his belongings while the victim was there.
- **Advocates and other practitioners noted a significant lack of bilingual law enforcement officers.** This was true even for common foreign languages, such as Spanish. Advocates complained that officers sometimes use children or other family members – and even the batterer – to translate their conversations with victims who do not speak English. Their obvious concern about using a batterer as an interpreter is that batterer can misrepresent statements made between an officer and the victim in order to mislead the officer as well as intimidate the victim and make her think that the officer does not believe her. Advocates noted that using children and family members as interpreters is also problematic because they may be just as angry and frustrated with the victim as the abuser. In addition, advocates felt that it is inappropriate and harmful to use children as translators because they are likely to have been victimized or traumatized by the incident as well, and having them serve as interpreters only further traumatizes them.
- **Advocates stated that law enforcement’s ignorance of the unique needs and challenges faced by victims in certain underserved communities impacts both the effectiveness and appropriateness of police responses to domestic violence.** For example, advocates noted that

immigrant and migrant populations can pose unique challenges for officers. Officers need to be sensitive to the fact that victims in these communities may be afraid to call the police or cooperate with criminal prosecution because, although they want the abuse to stop, they do not want to risk their batterer being deported. Moreover, officers may have to make greater efforts to locate batterers in these communities in order to investigate the case, make an arrest or effect service of legal documents due to the batterer's undocumented and/or migrant status.

Other examples identified by advocates involved victims and perpetrators of domestic violence with disabilities. With regard to perpetrators, for example, advocates commented that officers may be unable to understand how a physically disabled person can be a perpetrator of domestic violence, particularly when the victim does not suffer from a disability. Such perceptions may result in no action being taken as well as in the wrongful arrest of the victim. Advocates advised that law enforcement needs to be aware of issues confronting certain underserved communities and should conduct outreach and education to these communities in order to make calling the police a more viable alternative for victims.

- **Advocates reported that officers are not providing victims with complete and accurate information at the scene of a domestic violence incident, particularly with regard to restraining orders.** Advocates reported that some officers are handing out Victim Information Cards with outdated contact information for shelters and other services or, in some cases, are failing to hand out these cards at all. Moreover, advocates reported that officers often do not explain the availability of EPOs and other restraining orders to victims. Advocates further reported that, even in cases where law enforcement does mention

Advocates reported that officers are not providing victims with complete and accurate information about their legal rights and available resources at the scene of a domestic violence incident.

While most officers reported that they file written reports for every domestic violence call, advocates reported numerous examples of cases in which law enforcement refused to complete an incident report.

the availability of restraining orders, they are unable to effectively communicate to victims what a restraining order entails and what process the victim needs to go through to get one.

- **Advocates expressed concerns that officers are providing misinformation to victims regarding the obtainment and enforcement of EPOs.** Advocates reported that officers have improperly informed victims that they can be held in violation of their own EPO if they voluntarily talk to the batterer. In such cases, victims have advised advocates that they decided against requesting an EPO because they were scared that they would violate the order. Advocates were unsure of whether this miscommunication is the result of a lack of law enforcement training on EPOs or whether officers are using scare tactics to avoid having to issue these orders to victims. Advocates also reported cases in which officers told victims that they could not obtain an EPO after business hours.
- **Advocates and practitioners reported that law enforcement does not always take a report in domestic violence cases.** They noted that this was particularly true in cases where the perpetrator has threatened the victim's life, but has not yet inflicted serious violence against the victim. Advocates reported several examples of cases where officers advised a victim that they will not respond to her complaints of domestic violence until she obtains a restraining order. Advocates further reported that, even when a victim has a restraining order, officers have been known to refuse to take a report or even respond to the scene of a restraining order violation unless violence or property damage has occurred. One practitioner reported that officers will also interview the victim, perpetrator and witnesses over the telephone instead of coming to the scene to investigate and take a report. Advocates and practitioners also reported numerous problems faced by victims in

trying to obtain a free copy their incident face sheets and reports, including significant delay and complete denials of their requests.

Arrest Policies and Practices

Law enforcement perspective:

- **All officers reported that their agencies have aggressive arrest policies for domestic violence.** Most agencies adopted pro-arrest policies, while some agencies instituted mandatory arrest policies for domestic violence. Most agencies only require/encourage their officers to make an arrest if there are visible injuries to the victim (i.e., cases of felony domestic violence). Five agencies, however, reported having a “zero tolerance” policy for domestic violence that requires an arrest to be made when there is probable cause to believe that domestic violence has occurred, even if there were no apparent injuries identified at the crime scene.
- **A few officers felt that law enforcement needed to have more discretion in deciding when to make an arrest.** Several officers expressed concern that too many domestic violence arrests are being made as a result of aggressive arrest policies, with one officer expressing concern over the fact that such policies sometimes require officers to arrest and jail innocent men when victims lie. This officer warned that officers should act reasonably and make arrests only when they have good reason to do so.
- **Officers admitted experiencing difficulties in determining the dominant aggressor when responding to domestic violence incidents involving mutual fighting between the parties.** They noted that this was particularly true when there

Officers and advocates agreed that law enforcement still experiences significant problems in determining the dominant aggressor and making appropriate arrest decisions.

are no children or other witnesses present who could corroborate one party's side of the story. One officer commented that part of the reason that it is difficult to make these decisions is because officers may be unable to access information about prior arrests or other evidence of a history of domestic violence between the parties until after they return to the office. Some officers forward the matter to special investigators if they cannot make an immediate determination at the scene. Moreover, some officers believed that there are a significant number of incidents that truly involve mutual combat between the parties in which it is appropriate to make a dual arrest.

Perspectives of advocates and other practitioners:

- **Advocates agreed that officers still face significant problems in making appropriate arrest decisions, including determining the dominant aggressor.** Advocates noted that inappropriate dual arrests, wrongful arrests of victims and complete failures to arrest despite cause for doing so are problems that still persist with regard to law enforcement's response to domestic violence. Some advocates attributed these problems to the fact that officers are indifferent to making appropriate arrest decision or sometimes get frustrated with having to respond to the same residence multiple times. Some attributed these problems to persisting stereotypes among officers about what a "victim" should look like. For example, advocates reported that victims who appear angry, are rude to officers or are under the influence of alcohol or drugs are more likely to be wrongfully arrested for domestic violence. Advocates stated that officers need to learn that being in an abusive relationship may cause the victim to become violent at times and lash out, and that officers must consider the whole history of violence between the parties when deciding who to arrest or

who is the dominant aggressor. Advocates also noted that part of the problem stems from the fact that officers simply do not receive adequate training on how to make appropriate arrests, including learning to distinguish between offensive and defensive wounds. Advocates further noted that officers often fail to make an arrest in cases of restraining order violations even though they are mandated to do so under state law.

Removal of Firearms

Perspectives of law enforcement, advocates and other practitioners:

- **Officers, advocates and practitioners expressed serious concerns over current weapon removal procedures for domestic violence offenders.** Law enforcement officers expressed frustration over their inability to identify and control for the fact that a perpetrator is able to buy unregistered guns. Some officers felt that they do not have sufficient authority to confiscate weapons at the scene of a domestic violence incident or in cases where a perpetrator is subject to a court-ordered firearms relinquishment. Advocates and other practitioners, on the other hand, felt that officers in many cases are simply not exercising their authority and discretion to confiscate firearms from perpetrators. Officers, advocates and practitioners agreed, however, that there needs to be greater accountability for perpetrators subject to restraining orders and other firearms restrictions. Specifically, they agreed that the current “honor system” for firearms relinquishment by restrained parties is insufficient for ensuring that a restrained party will actually give up all of the firearms in his possession.

Officers, advocates and practitioners agreed that there needs to be greater accountability for perpetrators subject to court-ordered firearms restrictions.

Advocates noted that state legislation is currently pending to increase law enforcement's authority to confiscate weapons, including authorizing courts to issue warrants for the immediate search and seizure of a perpetrator's weapons in certain cases. However, this legislation has been held over until the 2006-2007 legislative session.

Notifying Victims of Perpetrator's Release From Jail

Law Enforcement's Perspective:

- **Officers did not identify any significant problems relating to victim notification systems.** A few officers noted that they will personally call a victim to let her know when a perpetrator will be released from jail as part of their agency's overall emphasis on trying to provide ongoing support for the victim.

Perspectives of Advocates and Other Practitioners:

- **Los Angeles advocates and practitioners identified serious problems with the effectiveness of their local victim notification system.** Los Angeles advocates and practitioners reported a serious problem with the operation of the Los Angeles County Sheriff's Office's victim notification system, which had dire consequences for domestic violence victims. Advocates cited recent problems involving the Sheriff's decision to authorize the early release of over 120,000 county jail inmates, some of who are domestic violence perpetrators, due to budget issues. Advocates and practitioners reported that because some victims were never notified of their abuser's release, their abuser was able to find them and attack them soon after being released. They reported that some of these victims were seriously injured by

their abusers. Advocates from other parts of the state, however, reported that their local victim notification systems generally worked well.

Challenges and Frustrations Identified by Officers in Responding to Domestic Violence

- **The biggest area of frustration identified by law enforcement involved their interactions with victims of domestic violence.** Most officers felt that uncooperative victims and victims who repeatedly return to their abusers after law enforcement intervenes pose the biggest challenge in their ability to effectively respond to domestic violence cases. In particular, officers expressed frustration with the following dynamics in victims' behavior: (1) refusing to get help for domestic violence despite the fact that there are so many services available; (2) disregarding the terms of their restraining orders; (3) recanting in order to avoid criminal prosecution of their batterer; (4) moving back in with their batterers after law enforcement intervention has helped secure the parties' separation; (5) denying that they are caught in a cycle of domestic violence. Several officers also expressed frustration with victim advocates who continue to support a victim after she recants.
- **Officers also expressed frustration in working with their local district attorney's office.** Some officers complained that the district attorney's office is not able to file many of the cases that they investigate due to prosecutors' heavy workload. They felt that heavy workloads caused prosecutors to over scrutinize cases and choose only the ones that they are completely sure they can win. Moreover, officers reported that, in some rural counties, there

Most officers felt that uncooperative victims and victims who repeatedly return to their batterers pose the biggest challenge in their ability to respond to domestic violence cases.

Lack of funding was a primary reason why law enforcement agencies were unable to make important reforms aimed at improving their response to domestic violence incidents.

may be only one district attorney who prosecutes violence against women cases. Officers recommended that the district attorney's offices reprioritize their cases and hire additional staff so that more domestic violence cases can be prosecuted. However, most officers reported having strong working relationships with their local district attorneys office and acknowledged how difficult it is for prosecutors to file cases if there is insufficient evidence to support charges or a conviction.

- **Officers identified a lack of sufficient funding as one of the major challenges they faced in taking steps to improve their agency's response to domestic violence.**

Lack of funding was a primary reason why agencies were unable to make important reforms such as establishing a Domestic Violence Unit and a DVRT or instituting specialized community outreach and education programs. It was also a primary reason why some agencies were unable to maintain these improvements once they were instituted. Several officers noted that budget cuts have either reduced the number of officers in their Domestic Violence Units or have resulted in the complete elimination of these Units, making it extremely difficult for agencies to respond to domestic violence incidents in a timely and effective manner.

- **One challenge identified by law enforcement was the highly charged, emotional nature of domestic violence incidents.** Several officers commented on the fact that the high degree of emotion, tension and volatility among parties involved in a domestic violence incident may have an impact on an officer's emotional state as well. They noted that, without adequate "people skills" and training on how to deal calmly and effectively with parties in high-conflict situations, officers may unintentionally escalate the parties' emotions and reactions to each other.

- **Several supervising officers that we interviewed expressed frustration with their inability to completely regulate and ensure that individual officers are always making appropriate responses in domestic violence cases.** Supervising officers expressed concern over the fact that, despite having instituted numerous reforms aimed at ensuring that officers are appropriately and effectively responding to domestic violence calls, they cannot know exactly what officers were doing in the field unless a complaint from the public or a fellow officer surfaces. One supervisor stated that the only additional reform he could make to improve overall officer response is to make all officers perfect so that they would do their job perfectly. To this end, many of the advocates we interviewed said that they always tell victims to report improper responses to the responding officer's supervisor or Watch Commander.
- **Both officers and advocates identified a need for greater networking and communication among law enforcement agencies and among law enforcement and other criminal justice and community agencies.** Advocates noted that people have become increasingly more mobile and, consequently, tend to work and live in completely different cities or counties. These advocates felt that effective communication between law enforcement agencies would help improve implementation of mandated responses to domestic violence by allowing officers to track offenders across jurisdictional lines. Information-sharing among agencies can also give officers a more complete picture of the history of abuse between two parties.

Some officers and advocates felt it would be beneficial to adopt the "one stop shop" model of inter-agency collaboration that has been implemented in San Diego County. Under this model,

Supervisory officers expressed frustration with their inability to completely regulate and ensure that individual officers are making appropriate responses to domestic violence incidents.

Officers believed that state-wide requirements were important for ensuring some level of consistency among law enforcement responses to domestic violence.

important domestic violence-related criminal justice and community agencies are housed in one building so that the victim does not have to travel to different offices to participate in the investigation and prosecution of her abuser or to access services. Officers and advocates noted that this model promotes increased accountability for law enforcement with regard to how it investigates and responds to domestic violence because officers are able to work closely and in constant communication with prosecutors and advocates. They further noted that this model promotes better relationships between law enforcement and other agencies.

Successes and Innovations in Preventing and Responding to Domestic Violence

- **Officers attributed the success of improved investigation and evidence collection techniques to an overall increase in the number of criminal domestic violence filings in their communities.** As described above, many officers emphasized the importance of having specialized training and skills in investigating and documenting evidence in domestic violence cases. Building a solid evidentiary case helps prosecutors go forward with charges even when the victim recants, as well as increases the likelihood of conviction in cases where the victim does not recant. One officer was excited about a new policy instituted by his agency in which patrol cars are now equipped with video cameras so that officers can tape witness statements and document injuries immediately upon arriving at a domestic violence incident.
- **Officers recognized the benefits of enacting statewide laws and policies governing law enforcement response**

to domestic violence. Officers believed that statewide requirements were important for ensuring some level of consistency among law enforcement responses to domestic violence and for encouraging agencies and municipalities to institute local policies that surpass statewide requirements. The enactment of a pro-arrest law was identified by officers as being the most successful and important reform. Laws requiring officer training on domestic violence and police reports in all domestic violence incidents were also identified as making a significant impact. Several officers admitted that, before such laws were enacted and implemented, officers were often dissuaded from reporting and trying to prosecute domestic violence cases.

- **One officer reported that her agency has a special program that conducts lethality assessments in domestic violence cases.** These lethality assessments are conducted through the agency's SAFER (Support, Awareness, Feedback, Enforcement/Education and Responsibility) Program. This program was created after the community experienced 7 domestic violence-related deaths in 2003. Pursuant to this program, officers responding to the scene of a domestic violence incident schedule the victim and perpetrator to come to the police department and meet separately with the department's domestic violence specialist. The specialist asks each party specific questions and, based on their responses, assigns a numerical value for their case that indicates the likelihood of violence erupting between the parties in a subsequent argument. After the assessment, a social worker meets with each party separately to educate them about available legal services and give them referrals for counseling. The officer believed that people have been responding very positively to this program, but noted that they have a 33 percent attendance rate for the meetings.

Law enforcement agencies that appeared to be doing a good job generally had officials and other leaders within their departments or communities who were able to institute agency-wide commitments to addressing domestic violence.

- **One officer reported that her agency engages in annual reviews of its domestic violence policies and protocols.** This officer noted that her county's Police Chiefs' Association developed a protocol for domestic violence that all departments in the county must agree to. Regular reviews of this protocol are conducted on an ongoing basis with input from the local district attorney's office. In addition, all law enforcement agencies are required to conduct annual reviews of their approaches to domestic violence.
- **Officers conducted community education and outreach on domestic violence.** Several agencies have instituted programs targeting young people in which they go to local high schools and talk to students about domestic violence and how to avoid perpetrating or becoming a victim of abuse. One agency conducted outreach to local churches by making officers available after services to answer questions about domestic violence and what to expect when law enforcement responds to a domestic violence incident. One agency sponsors weekly support group that offers shelter, education and guidance to victims. This agency reported plans for establishing a similar support group for high school students.
- **Local successes and innovations were primarily attributed to the efforts and commitment of strong leaders who made responding to domestic violence a priority.** Law enforcement agencies that appeared to be doing a good job generally had officials and other leaders within their departments or communities who were able to institute agency-wide commitments to addressing domestic violence. One officer noted, for example, that serious reforms in his department only came when

the Police Chief made a commitment to addressing domestic violence after realizing that their community had an excessively high number of domestic violence reports. Agencies seemed to work best when agency-wide commitments were also instituted among other local criminal justice and community agencies.

- **When asked what could be done to improve how they currently respond to domestic violence, nearly all of the officers interviewed felt that nothing needed to be changed at this point.** However, when presented with specific reform ideas, such as establishing Domestic Violence Units and DVRTs, these officers all felt that their departments could benefit from these reforms. Officers also expressed a need for additional funding to support their response to domestic violence.

Nearly all of the officers surveyed felt that no additional reforms were needed in order to improve how they currently respond to domestic violence.

WHERE DO WE GO FROM HERE?

- **Law enforcement agencies should ensure that all supervisory and patrol officers who have primary responsibility for overseeing/responding to domestic violence cases have a basic level of training on domestic violence and response protocols.** Domestic violence incidents are unique cases that involve specialized responses and duties on the part of law enforcement. Like any other specialty, “domestic violence response” should be performed by someone who has a basic knowledge of the area and its various intricacies. While on-the-job training is valuable, standardized course training promotes uniform and informed responses by officers. Such training can also expose officers to innovative strategies and techniques for handling domestic violence cases, as well as put a stop to stereotypes and misperceptions that can often be perpetuated through on-the-job training. In addition to a basic 8-hour, entry-level course on domestic violence, state law requires officers below the rank of supervisor who normally respond to domestic violence calls to complete two hours of instruction on domestic violence every two years. Moreover, state law encourages, but does not require, agencies to provide periodic training on domestic violence to higher-ranking officers as part of their advanced officer training programs.

While the entry-level training received by officers covers important subject areas, officers who spend the majority of their time dealing with domestic violence require much more detailed and intensive education than that which can be provided in a 8-hour training. Moreover, only a handful of the supervising officers we interviewed reported actually receiving regular education and updates on domestic violence. Agencies should require additional basic training for supervisory and patrol officers who are primarily responsible for overseeing or handling domestic violence cases. Training should include issues that may be particularly problematic for the agency’s officers, such as instruction on restraining orders or how to determine the “dominant aggressor.” Agencies should also encourage these officers to take additional continuing education on domestic violence (i.e., two hours every year, as opposed to every two years).

- **Law enforcement agencies should conduct regular reviews of their policies and protocols for responding to domestic violence.** Agencies should assess their existing policies to ensure that they provide adequate guidance to officers on all aspects of domestic violence response and investigation and conform to existing model law enforcement policies in this area. Agency policies and protocols should also be subject to regular, ongoing review so that they can be adapted to address legislative and policy changes and special issues

facing officers in that particular community. Reviews of an agency's policies and protocols should be conducted with input from officers who are primarily responsible for responding to domestic violence, prosecutors and local victim advocates. Agencies should keep officers apprised of any changes to, and provide regular training to officers about, their policies and protocols.

- **Law enforcement agencies should establish, and regularly assess the effectiveness of, inter-agency response teams aimed at improving officer response to domestic violence and providing immediate and ongoing support and services for victims.** Officers and advocates widely agreed that the development of DVRTs and other inter-agency response teams has not only significantly improved the way that local systems respond to domestic violence, it has also increased victims' access to resources and their comfort level in contacting the police. Agencies without response teams should explore ways to establish formal or informal partnerships with local advocates and other agencies to create such teams. Agencies that currently have these response teams should conduct regular assessments of the effectiveness of their team's practices. Indeed, while most officers and advocates reporting having strong and effective team relationships, some interviewees reported persisting tension and mistrust between officers and advocates, as well as concerns that officers were failing to call advocates out to incidents where their services were needed.

- **Law enforcement agencies should establish Domestic Violence Units or, at a minimum, designate specific officers to respond to and/or investigate domestic violence cases.** Domestic Violence Units have significantly improved agencies' overall response to, and investigation of, domestic violence crimes, as well as increased successful prosecutions of domestic violence offenders. Because lack of funding was the primary reason why agencies have not been able to establish formal Units, agency officials should consider at least designating specific officers to be primarily responsible for responding to and/or investigating domestic violence cases. All officers in Domestic Violence Units and all specially designated officers should receive extensively training on domestic violence response and investigation issues.

- **All officers who have primary authority for responding to and/or investigating domestic violence should complete specialized training on investigation and evidence collection techniques in domestic violence cases.** Such training was cited by officers as resulting in significant increases in the number of domestic violence cases that have been charged and successfully prosecuted in their communities. In addition, prosecutors should be more proactive in conducting trainings for law enforcement on how officers can better support

local prosecutions of domestic violence through effective evidence collection and documentation. Officers should also receive ongoing training and updates on these issues to keep themselves apprised of new techniques and technologies.

- **Law enforcement agencies should take affirmative action (e.g., institute policies, protocols and training) to ensure that domestic violence calls involving restraining order violations are treated as high priority calls and are responded to in a manner that best promotes the safety of the protected party.** The fact that a victim is protected by a restraining order should indicate to officers that the restrained party currently poses a serious threat of harm to the victim. Accordingly, officers should take all restraining order violations seriously and treat them as high priority incidents even if the victim has not suffered any violence, injuries or threats of violence. Indeed, if law enforcement fails to enforce minor violations, the restrained party will not take the order seriously and will only be emboldened to commit more serious violations in the future. A lack of resources is often cited by agencies as the reason that they cannot respond to every report of a restraining order violation. However, given the immediate and ongoing threat of danger posed to the protected party, it is critical that agencies be more proactive in identifying ways to reprioritize resources and calls to ensure that a report is taken for every reported restraining order violation and that officers respond to each violation. If the restrained party is no longer at the scene when officers arrive, they should make every reasonable effort to locate and arrest the restrained party.

- **Law enforcement agency policies should require officers to always ensure the safe separation of parties when responding to a domestic violence incident.** Allowing the victim and abuser to remain in each other's presence, or within earshot of each other, only enables the abuser to further intimidate the victim through words, glances or body gestures. Moreover, violence between the parties can escalate even in the presence of officers. To avoid such harmful scenarios from occurring, officers should always completely separate parties to a domestic violence incident. This includes ensuring that a victim is kept safe and separate from the abuser when officers escort either the victim or abuser to the family residence to retrieve their belongings. Safe separation of the parties requires that law enforcement dispatch at least two officers to the scene of domestic violence incidents or police escorts.

- **Law enforcement agencies should take affirmative steps to ensure that officers are able to communicate with parties who speak foreign languages and/or American Sign Language.** Affirmative steps should include conducting targeted recruitment of bi-lingual officers and staff, partnering with

local advocacy and community organizations that have interpretation and translation capabilities, and exploring the use of new translation technologies and private translation services that can be used by officers at the scene of a domestic violence incident. Children, family members and the batterer should never be used as interpreters at the scene of a domestic violence incident.

- **Law enforcement agencies should ensure that all officers who respond to domestic violence have a working knowledge of emergency, civil and criminal protective orders relating to domestic violence.** This includes knowledge about what standards victims have to meet in order to obtain each type of order and the different processes they have to go through. Although officers are not attorneys and, therefore, should not be giving legal advice, it is critical that they be able to relate accurate and useful information about restraining orders and other legal remedies to parties involved in a domestic violence incident. The parties view officers as authority figures who are knowledgeable about the law. Thus, if an officer provides a victim with inaccurate information (i.e., EPOs cannot be issued after business hours), the victim is not likely to question this information and may be unjustifiably prevented from obtaining an order that could protect her safety. Increased knowledge of restraining orders may also improve officers' enforcement of such orders. Although the topic of restraining orders may currently be covered in cadet and officer training, it is important that agency officials provide additional training, informational materials, and/or updates, as needed, to ensure that all officers who currently respond to domestic violence are able to accurately relate information about domestic violence restraining and protective orders.

- **Law enforcement agency policies should require that officers always advise victims of the availability of EPOs when responding to a domestic violence incident.** This requirement has been included in model law enforcement policies cited in this report. As few people know about EPOs and what they entail, victims may not know to ask for an EPO unless an officer advises them that such orders are available. Officers should advise victims of the availability of EPOs even if an incident appears to be non-life threatening, as the victim is likely to have a better awareness and understanding than the officers of the threat level posed by the abuser in light of her entire history of abuse.

- **Law enforcement agencies should provide clear standards and guidance for officers on making appropriate arrests in domestic violence cases pursuant to state law and local policies, including providing initial and ongoing training for officers on these issues.** Although agency policies may currently include protocols for making domestic violence arrests, the fact that officers are still

experiencing significant difficulties in making appropriate arrests for domestic violence indicates that additional guidance is needed. Standards and training for officers should include guidance on determining whether there is probable cause to make a domestic violence arrest. Such guidance can standardize officers' definitions of "probable cause" in domestic violence cases, and minimize the influence of personal biases and stereotypes on officers' arrest decisions, by specifying what factors officers should and should not be taking into consideration when determining whether probable cause exists. In addition, as many officers admitted to having difficulty in identifying the "dominant aggressor" in mutual fighting situations, standards and training should also provide guidance for officers in determining the "dominant aggressor." Finally, standards and training should emphasize officers' duties to make reasonable and informed arrest decisions. Because California has a "pro-arrest" arrest policy for domestic violence, officers are encouraged, but not required, by state law to make a domestic violence arrest. Thus, officers maintain some discretion to determine what the reasonable and appropriate course of action should be in each case. Although some agencies have chosen to adopt stricter mandatory arrest policies, officers still maintain some level of discretion in making an arrest because they must first determine whether probable cause exists. Nevertheless, many officers felt that they are under significant pressure to make an arrest in every domestic violence case and had no ability to exercise their discretion or judgment otherwise. Officer frustration and pressure only promotes inappropriate decision-making. Consequently, agencies should emphasize to officers the importance of making reasonable and informed arrest decisions, rather than simply stressing the act of arrest itself.

- **Law enforcement agencies should provide counseling services and training to officers who are experiencing frustration, stress or "burn out" from having to regularly respond to domestic violence.** Having to repeatedly respond to domestic violence incidents on an ongoing basis can be extremely stressful for officers. Some of the main complaints voiced by officers when responding to domestic violence involved frustrations in interacting with domestic violence victims. Officers who are under stress or who are harboring ill feelings toward victims are less likely to take aggressive and appropriate actions to address domestic violence. Moreover, officers who are experiencing frustration over the fact that victims recant, refuse to obtain services and repeatedly return to their batterers may benefit from having additional training on the dynamics of domestic violence that explains why it is normal for victims to engage in these behaviors.

- **Law enforcement agencies should encourage officers to engage in community education on domestic violence and law enforcement responses to domestic violence.** Community education is an important part of domestic violence prevention. It can also improve law enforcement's relationship with the general public and make people feel more comfortable in calling the police when domestic violence occurs. Several

interviewees described the positive results that have come from community education programs and support groups instituted by their agencies that target groups such as young people and domestic violence survivors. Agencies should support and encourage the continuation of such community programs and services, as well as encourage additional and ongoing community education efforts by officers. When conducting education on the nature and dynamics of domestic violence, officers should partner with local advocates who have training and expertise on these issues. At a minimum, agencies should publish brochures or website information on domestic violence and what a party can expect when she calls law enforcement.

- **Law enforcement agencies should encourage officer education and outreach concerning underserved populations of victims in their community.** Law enforcement agencies must be more vigilant about ensuring that officers are knowledgeable about the unique needs and barriers faced by underserved populations of victims in their communities and populations of victims who are generally less likely to seek help from law enforcement. Agencies should also support and encourage outreach efforts by officers to these communities. Moreover, officers who have primary responsibility for responding to domestic violence should take steps to educate themselves on the above issues by establishing connections with local victim advocates and community agencies that work with underserved communities.

- **Law enforcement agencies should better utilize, and be more receptive to, trainings and educational opportunities offered by local domestic violence advocates and community organizations.** Limited agency resources may make it difficult to provide officers with the amount of training that they would need in order to ensure that they are adequately responding to domestic violence. Statewide and local domestic violence organizations have a high level of expertise in domestic violence issues and offer numerous trainings on relevant issues for criminal justice professionals. However, advocates report that agency officials and officers have been resistant to the trainings they offer. Incorporating these trainings into officers' basic training and continuing education requirements can help save agency resources and ease officer resistance to receiving training from professionals outside of the law enforcement field.

- **Law enforcement agencies should institute internal mechanisms for holding officers accountable when they fail to properly respond to domestic violence.** One way to improve how individual officers respond to domestic violence is to discipline them when they fail to follow established policies and protocols. Law enforcement officials and supervisors should create a system for imposing appropriate discipline on officers in such cases. For example, one interviewee stated that his agency had a policy of reprimanding officers

who failed to take a police report in domestic violence incidents. Officers with repeated serious violations should be restricted from responding to domestic violence cases. Agencies should promptly investigate all citizen complaints about officer responses to domestic violence and take disciplinary action when warranted. Supervisors should conduct random reviews of domestic violence cases to ensure that officers are following prescribed protocols.

- **Law enforcement agencies, particularly county Sheriff's Offices, should establish and implement clear mechanisms for ensuring that victim notification systems are functioning effectively and are providing the maximum amount of notice to victims when county jail inmates are released.** Agencies should conduct assessments of their victim notification systems to ensure that the maximum possible amount of advance notice is being provided to victims and other registered parties. Moreover, agencies should develop procedures for ensuring that no jail inmate is released until the notification process has begun for all parties registered with the system to receive notice of an inmate's release, particularly in cases where an inmate is subject to an early release. Complete information about an agency's notification program should be published on its website and, at a minimum, should be provided to victims in every case in which an offender is arrested and taken into custody. Whenever possible, officers involved in a domestic violence case who are aware of an inmate's scheduled release date should advise the victim of this release regardless of whether the victim has asked for notification or has registered with the local notification system.

- **Law enforcement, victim advocates and other professionals who work in the domestic violence field should advocate for legislative and policy reforms aimed at increasing law enforcement's authority to confiscate weapons from domestic violence offenders.** Practitioners from various fields, including law enforcement, agreed that existing laws and policies do not go far enough in ensuring that domestic violence offenders who are subject to restraining orders or other court-ordered firearms restrictions actually relinquish all firearms in their possession. State legislation is currently pending to increase law enforcement's and the court's authority to confiscate weapons in such cases. Law enforcement officials and associations should support this legislation and provide policymakers with input aimed at making these reforms as effective as possible. If the legislation is successful, law enforcement officials should ensure that these reform are effectively implemented and that officers are consistently and properly exercising their expanded authority to remove and confiscate weapons. If this legislation is unsuccessful, law enforcement should continue to advocate for stronger firearms removal laws in domestic violence cases.

- **Law enforcement officers, advocates and other professionals in the domestic violence field should work together to ensure that local law enforcement agencies institute strong, agency-wide commitments to addressing domestic violence.** Too often, important reforms and collaborations aimed at improving law enforcement response to domestic violence fall to the wayside when law enforcement leaders, officers, or the professionals they work with, leave their positions. Consequently, major improvements in law enforcement response to domestic violence are more likely to be established and sustained on an ongoing basis if an agency has an institutional, rather than an individualized, commitment to addressing domestic violence. Everyone who works in the domestic violence field, including law enforcement officers, should ensure that all people who are promoted or appointed to leadership positions within law enforcement have strong commitments to addressing domestic violence. Practitioners should also maintain constant pressure on law enforcement agencies and their leaders to make domestic violence a priority.

- **Law enforcement agencies should explore ways to establish formal partnerships and collaborations with other criminal justice and community agencies aimed at improving overall systemic responses to domestic violence.** Responding to domestic violence requires coordinated actions by a variety of different criminal justice and community agencies (i.e., law enforcement, prosecutors, courts, victim advocates, social services, probation, etc.). Law enforcement response to domestic violence is most effective, therefore, when law enforcement knows about the involvement of other agencies in a particular case and works together with these agencies to coordinate their responses. Whether local agencies consider adopting the “one-stop-shop” model established in San Diego County, or simply establish better communication and partnerships with other agencies that respond to domestic violence, law enforcement agencies should actively explore different approaches for collaborating more effectively with other criminal justice and community agencies.

- **More federal and state funding should be made available for local law enforcement agencies in rural communities that are seeking to expand their capacity and partnerships with local advocates to provide faster and more effective responses to domestic violence.** A primary reason that agencies in rural counties are having such a difficult time in ensuring quick and effective responses to domestic violence incidents is that they simply do not have sufficient funding to make domestic violence a priority. Although there are currently government grants available to rural agencies that wish to improve their response to domestic violence, this funding should be increased. Funding should also specifically support capacity building,

since one of the main factors affecting rural agency response is a shortage of officers. Rural agencies that are experiencing problems should actively pursue available government funding for domestic violence.

- **Law enforcement agencies should explore methods for conducting lethality assessments in domestic violence cases and communicating the results of these assessments to victims and perpetrators.** Conducting and communicating the results of lethality assessments in domestic violence cases is an important intervention method that can be used by law enforcement to emphasize the serious nature of domestic violence to the parties involved, as well as to impress upon the victim why it is important that she cooperate with criminal prosecution and take advantage of available community services. It also allows law enforcement to convey to the community that it has a strong interest in preventing, as opposed to merely punishing, domestic violence crimes. The SAFER Program, described above, provides a good model for agencies to consider. Agencies could also partner with local victim advocates to conduct such assessments, including incorporating these assessments into their DVRT response protocols.

(Footnotes)

1. Sources: Heistand, J., *Man Kills Wife, Then Himself; Domestic Violence Activists Irate*, DAILY NEWS OF LOS ANGELES (August 8, 1998); Moore, S., *Deputies Find Man, Wife Shot to Death at Home in Murder-Suicide*, LOS ANGELES TIMES (August 8, 1998).

2. Sources: Jones, J.H., *Vistan denies killing wife; bail is \$2 million*, SAN DIEGO UNION-TRIBUNE (November 9, 2000); Soto, O., *Accused wife-killer's shouts disrupt hearing*, SAN DIEGO UNION-TRIBUNE (December 20, 2000); Soto, O., *Slaying suspect called wife the devil, daughter testifies*, SAN DIEGO UNION-TRIBUNE (December 21, 2000); Soto, O., *Man who beat wife to death sentenced to 17 years to life*, SAN DIEGO UNION-TRIBUNE (February 28, 2002).

3. Sources: Squatriglia, C., *Photographer's husband charged; Suspect in Oakland slaying expected to enter not guilty plea*, SAN FRANCISCO CHRONICLE (December 6, 2001); Fernandez, L., *Slain photographer said she was afraid of husband*, SAN JOSE MERCURY NEWS (December 7, 2001); Chapman, G., *Man sentenced in fatal shooting of wife; Raymond Houston maintains innocence as he faces 40 years to life in prison*, ALAMEDA TIMES-STAR (December 13, 2003).

4. Barbara J. Hart, *Arrest: What is the Big Deal*, 3 WM. & MARY J. OF WOMEN & L. 207, 211 (Spring 1997).

5. Erez, E., L.L.B., Ph.D., *Domestic Violence and the Criminal Justice System: An Overview*, ONLINE JOURNAL OF ISSUES IN NURSING, VOL. 7, NO. 1 (January 31, 2002) available at http://www.nursingworld.org/ojin/topic17_3.htm (accessed July 30, 2005) and U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, OFFICE FOR VICTIMS OF CRIME, *New Directions From the Field: Victim's Rights and Services for the 21st Century*, OFFICE OF VICTIMS OF CRIME BULLETIN, NCJ 172813 (August 1998).

6. In 2003, law enforcement agencies in California received 194,288 domestic violence-related calls for assistance. CALIFORNIA DEPARTMENT OF JUSTICE, CRIMINAL JUSTICE STATISTICS CENTER, *Domestic Violence-Related Calls for Assistance, 1986-2003*, available at <http://ag.ca.gov/cjsc/glance/cht11.htm> (accessed July 30, 2005).

7. Women's Justice Center, *Form for Evaluating Police Response to Domestic Violence*, available at http://www.justicewomen.com/help_police_evaluation.html (accessed July 30, 2005).

8. From 1990 through 2003, the percentage of women arrested for felony domestic violence in California increased from 7 percent (2,855 out of 43,760 total arrests) to 20 percent (9,529 out of 48,854 total arrests). *Review of Domestic Violence Statistics*, CALIFORNIA DEPARTMENT OF JUSTICE, CRIMINAL JUSTICE STATISTICS CENTER, Data Tables, Table 2, available at <http://caag.state.ca.us/cjsc/publications/misc/dvsr/dataTabs.pdf> (accessed July 30, 2005). Some attribute the dramatic increase in female arrests to a lack of adequate training for law enforcement on

responding to domestic violence. See Gael Strack, "She hit me, too" *Identifying the Primary Aggressor: A Prosecutor's Perspective*, available at http://www.ncdsv.org/images/She_hit_me.pdf (accessed July 30, 2005) and Carey Goldberg, *Spouse Abuse Crackdown, Surprisingly, Nets Many Women*, NEW YORK TIMES (November 23, 1999).

9. U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, OFFICE FOR VICTIMS OF CRIME, *First Response to Victims of Crime 2001*, available at <http://www.ojp.usdoj.gov/ovc/publications/infores/firstrep/2001/welcome.html> (accessed July 30, 2005).

10. Erez, E. and Belknap, J., *In their own words: Battered women's assessment of the criminal processing system's responses*, VIOLENCE AND VICTIMS, 13(3) (1998) pp. 251-268.

11. See U.S. DEPARTMENT OF JUSTICE, *supra* note 9.

12. Hart, *supra* note 4; Austin, T., Buzawa, and C. Buzawa, *The Role of Arrest in Domestic Versus Stranger Assault, Is There a Difference?* in Buzawa C., and Buzawa, E. (eds), *Do Arrests and Restraining Orders Really Work?* SAGE PUBLICATIONS, INC. (1996) pp. 150-151.

13. Reaves, B., Ph.D., et al., *Census of State and Local Law Enforcement Agencies, 2000*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NCJ 194066 (October 2002), Table 4.

14. *Id.*

15. *Id.*

16. See *Municipal Police Departments in Los Angeles County*, LOS ANGELES ALMANAC, available at <http://www.losangelesalmanac.com/topics/Crime/cr69.htm> (accessed July 30, 2005) (documents that there are 14,019 officers employed by municipal police departments in Los Angeles County); *Campus Police, Universities and Colleges, Los Angeles County*, LOS ANGELES ALMANAC, available at <http://losangelesalmanac.com/topics/Crime/cr75.htm#Public%20Universities%20-%20Campus%20Police> (accessed July 30, 2005); Reeves, *supra* note 14, Table 11 (the Los Angeles County Sheriff's Department is the largest sheriffs' department in the country, employing 8,438 officers in 2000).

17. *Id.* at note 11, p. 6, Table 7.

18. Greenfield, G. et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NCJ 167237 (March 1998), p. 19 [four most common reasons given by victims for not calling the police are (1) they feel the abuse is a private, personal matter; (2) they fear retaliation by the abuser; (3) they believe that the police will not do anything if called; and (4) they feel the incident was not significant enough to warrant calling the police].

19. *Id.*

20. Felson, R., Messner, S., Hoskin, A., and Deane, G., *Reasons for reporting and not reporting domestic violence to the police*, CRIMINOLOGY, 40, 617-647 (2002); Fluery, R., *Missing*

Voices: Patterns of battered women's satisfaction with the criminal legal system, VIOLENCE AGAINST WOMEN, 8, 181-205 (2002); and Martin, M., *Police Promise: Community policing and domestic violence victim satisfaction*, POLICING, 20, 519-529 (1997).

21. This statistic represents the average number of domestic violence-related calls for assistance received by California law enforcement agencies, each year, from 1998 through 2003, as reflected in California Department of Justice statistics. See CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 6.

22. This statistic represents the average number of adult and juvenile arrests made by California law enforcement agencies for domestic violence (in violation of Penal Code §273.5), each year, from 1998 through 2003, as reflected in California Department of Justice statistics. See CALIFORNIA DEPARTMENT OF JUSTICE, CRIMINAL JUSTICE STATISTICS CENTER, *California Arrests for Domestic Violence, Adults & Juveniles (Penal Code 273.5) by Gender, 1980-2002*, available at <http://safestate.org/documents/arrests%20for%20dv.pdf> (accessed July 30, 2005).

23. These officers may not understand or accept the dynamics of domestic violence that cause many victims to stay in abusive relationships. See Marvin, D., *The Dynamics of Domestic Abuse*, FEDERAL BUREAU OF INVESTIGATION, LAW ENFORCEMENT BULLETIN (July 1997) (finding that police officers will be better prepared to respond to domestic violence if they understand the nature and dynamics of abuse).

24. *Summary of Interviews on Law Enforcement Response to Domestic Violence*, CALIFORNIA WOMEN'S LAW CENTER (2004) (on file with author).

25. See Erez, *supra* note 5.

26. Lanzendorfer, J., *Right to Life: Almost eight years after Maria Teresa Macias' death, where are we in the fight against domestic violence?* NORTH BAY BOHEMIAN (December 18-24, 2003), available at <http://www.metroactive.com/papers/sonoma/12.18.03/macias-0351.html> (accessed July 30, 2005).

27. Melton, H., *Police Response to Domestic Violence*, JOURNAL OF OFFENDER REHABILITATION, VOL. 29 (1/2) (1999) pp. 14.

28. An EPO may be issued to a victim at the scene of a domestic violence incident and lasts up to 7 days. The EPO is issued by a judge, at the request of law enforcement, where there are reasonable grounds to believe that a person or child is in immediate and present danger of abuse. See CAL. FAM. CODE §§6240-6273 (2005).

29. *Summary of Interviews on Law Enforcement Response to Domestic Violence*, *supra* note 24.

30. Buzawa, E. and Buzawa, C., *Domestic Violence: The Criminal Justice Response* (3rd ed.), SAGE PUBLICATIONS, INC. (2003) pp. 71-88.

31. *Id.* at 81-83.

32. See CAL. PEN. CODE §§13700, et seq. (2005).

33. *Id.*

34. Initially, only officers of local police departments and sheriff's offices were required to undergo domestic violence training. See CAL. PEN. CODE §13519 (1987). Training requirements have since been expanded to also apply to officers of the Department of Parks and Recreation, the University of California Police Departments and housing authority officers. CAL. PENAL CODE §13519(b) and (e) (2005).

35. CAL. PENAL CODE §13519 (2005).

36. *Id.*

37. *Id.*; 11 C.C.R. 1005 and 11 C.C.R. 1081.

38. The LERDVA requires officers who completed their entry-level course requirements prior to 1986 to undergo supplementary training on domestic violence. CAL. PEN. CODE §13519(e) (2005).

39. CAL. PEN. CODE §13519(g) (2005).

40. *Id.*; 11 C.C.R. 1081(a)(25).

41. CAL. PEN. CODE §13519(e)(4) (2005).

42. *Violence Against Women Act (VAWA) Training Courses*, COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING, available at http://www.post.ca.gov/training/tps_bureau/VAWANotice.asp (accessed July 30, 2005).

43. See *CA POST Courses: Domestic Violence Courses*, SAN DIEGO REGIONAL TRAINING CENTER, available at http://www.sdrtc.com/post_courses/posttoc.htm (accessed July 30, 2005).

44. In 2005, the California Alliance Against Domestic Violence and the Statewide California Coalition for Battered Women merged to form the California Partnership to End Domestic Violence. See CALIFORNIA ALLIANCE AGAINST DOMESTIC VIOLENCE, *Statewide Technical Assistance and Training*, available at <http://www.caadv.org/programs.html> (accessed July 30, 2005) and STATEWIDE CALIFORNIA COALITION FOR BATTERED WOMEN, *Statewide Training*, available at <http://www.sccbw.org/training.htm> (accessed July 30, 2005).

45. CAL. PEN. CODE §13701 (2005).

46. *Id.*

47. CAL. PEN. CODE §13702 (2005).

48. CAL. PEN. CODE §13710 (2005).

49. In 1990, this mandate was expanded to include records of domestic violence protective orders that have not yet been served on the restrained party. CALIFORNIA ASSEMBLY BILL 4237 (1990); CAL. PEN. CODE §13710 (2005).

50. The Domestic Violence Restraining Order Registry is a statewide database containing information about the nature and terms of all criminal and civil protective orders issued in California as a result of domestic violence. The Registry was created in 1994 and is administered through the California Department of Justice. Each county is responsible for immediately transmitting specified information to the Department of Justice, for inclusion in the Registry, whenever it issues a criminal or civil protective order for domestic violence. CAL. FAM. CODE §6380 (2005).

51. CAL. FAM. CODE §6383 (2005) and CAL. PEN. CODE §13710 (2005) .

52. CAL. PEN. CODE §13730(a) (2005).

53. See CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 6; CAL. PEN. CODE §13730(a) (2005).

54. *Id.*

55. CAL. PEN. CODE §13730(c) (2005).

56. This requirement was added in 1995 by CALIFORNIA SENATE BILL 132.

57. This requirement was added in 1995 by CALIFORNIA SENATE BILL 132.

58. This requirement was added in 2001 by CALIFORNIA ASSEMBLY BILL 469.

59. CAL. PEN. CODE §13730(c) (2005).

60. CAL. FAM. CODE §6228 (2005) (enacted in 1999).

61. CAL. PEN. CODE §646.93(a) (2005).

62. See, e.g., *Santa Clara County, Victim Notification Service (VINE)*, available at <http://www.scvmed.org/channel/0,4770,chid%253D58793,00.html> (accessed August 3, 2005) (system will notify victims up to 15 days prior to a scheduled release).

63. See, e.g., *Orange County Sheriff's Department, VINE, Victim Information and Notification Everyday*, available at <http://www.ocsd.org/Investigations/PDFs/VINE.pdf> (accessed August 3, 2005).

64. CAL. PEN. CODE §13702 (2005).

65. *Id.*

66. Sources: *Domestic Violence: Best Practices for Law Enforcement Response, A Model Policy Manual Prepared Under the Violence Against Women Act*, NORTH CAROLINA GOVERNOR'S CRIME COMMISSION, VIOLENCE AGAINST WOMEN COMMITTEE (January 1998), p. 1; *Uniform Marin County Law Enforcement Protocol for the Handling of Domestic Violence Cases*, MARIN COUNTY POLICE CHIEFS' ASSOCIATION (adopted January 11, 2001), pp. 10-1; and *Domestic Violence Protocol for Law Enforcement, 2002*, POLICE CHIEFS' ASSOCIATION OF SANTA CLARA COUNTY (adopted February 14, 2002), pp. 12-2.

67. CAL. PEN. CODE §13701(c)(9) (2005).

68. CAL. PEN. CODE §13701(c)(9)(H) (2005).

69. CAL. PEN. CODE §13701(c)(7) (2005).
70. MARIN COUNTY POLICE CHIEFS' ASSOCIATION, *supra* note 66 at p. 18; POLICE CHIEFS' ASSOCIATION OF SANTA CLARA COUNTY, *supra* note 66 at p. 17.
71. CAL. PEN. CODE §13701(c)(8) (2005).
72. CAL. PEN. CODE §13730 (2005).
73. CAL. PEN. CODE §13730(c) (2005).
74. This requirement was added in 1995 by CALIFORNIA SENATE BILL 132.
75. This requirement was added in 1995 by CALIFORNIA SENATE BILL 132.
76. Sources: NORTH CAROLINA GOVERNOR'S CRIME COMMISSION, VIOLENCE AGAINST WOMEN COMMITTEE, *supra* note 66 at pp. 3-4; MARIN COUNTY POLICE CHIEFS' ASSOCIATION, *supra* note 66 at pp. 12-23; and POLICE CHIEFS' ASSOCIATION OF SANTA CLARA COUNTY, *supra* note 66 at pp. 15-21.
77. CAL. FAM. CODE §6228(a) (2005).
78. CAL. FAM. CODE §6228(b) (2005).
79. CAL. FAM. CODE §6228(c) (2005).
80. In 2002, California law enforcement officers made 50,479 arrests for felony domestic violence, alone. CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 22.
81. Machaela M. Hctor, *Domestic Violence as a Crime Against the State: The Need for Mandatory Arrest in California*, 85 CALIF. L. REV. 643, 649-650 (1997); Erez, *supra* note 5.
82. *Id.*
83. Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970-1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 46-53 (Spring1992) (in 1975, the Oakland Police Department's training bulletin for dispute intervention states that officers responding to domestic disputes should act more as "mediators and peacemakers" than enforcers of the law and that arrests should normally be avoided in such cases; in addition, during this time, Michigan's Police Training Academy directed officers to avoid making arrests for domestic violence, if possible); Karuturi, M., *Assessing the Implementation of Mandatory Arrest Policy for Intimate Partner Violence in the State of Rhode Island*, paper submitted in partial fulfillment of the requirements for the degree of Bachelor of Arts with Honors, DEPARTMENT OF PUBLIC POLICY AND AMERICAN INSTITUTIONS, BROWN UNIVERSITY (April 2001) (noting that the Detroit police department previously had a written policy directing officers to "recognize the sanctity of the home and diplomatically end the disturbance without making an arrest").
84. Sherman, L. and Berk, R., *The Minneapolis Domestic Violence Experiment*, POLICE FOUNDATION REPORTS (April 1984).
85. Buzawa, *supra* note 30 at pp. 93-94.
86. Sherman, L. and Berk, R., *The specific deterrent effects of arrest for domestic assault*,

AMERICAN SOCIOLOGICAL REVIEW, 49(2), 261-272 (1984). The experiment was conducted from March 17, 1981 through August 1, 1982.

87. *Id.*

88. *Thurman v. Torrington*, 595 F. Supp. 1521 (1984).

89. *Id.* at 1524-1526.

90. *Id.* at 1526-1529.

91. *Id.*

92. Geigis, D., *Tracey Thurman Motuzick; marital crimes*, HARTFORD COURANT (March 15, 1992). Tracey later settled out of court with the city for \$1.9 million after the city appealed her \$2.3 million award. See Hctor, *supra* note 81, footnote 83 (citing Ann Jones, *Next Time She'll be Dead: Battering & How to Stop It*, p. 52).

93. *Scott v. Hart*, Case No. C-76-2395 (N.D. Cal., filed October 28, 1976) (lawsuit filed on behalf of a class of domestic violence victims against the Oakland Police Department resulted in a settlement in which the department agreed to adopt specific policies for responding to domestic violence, including policies for ensuring quick responses to domestic violence calls and for making felony arrests for domestic violence). *Zorza*, *supra* note 83; *Bruno v. Codd*, 396 N.Y.S.2d 974 (Sup. Ct. 1977) (lawsuit filed on behalf of a class of domestic violence victims against the New York City Police Department resulted in a consent decree imposing specific duties and responsibilities on the department in responding to and making arrests for domestic violence arrests). *Id.*

94. The *Thurman* case is also discussed in the section of this report entitled, *Legal Liability of Law Enforcement*.

95. Buzawa, *supra* note 30 at pp. 105-107.

96. Cohn, E., and Sherman, L., *Police Policy on Domestic Violence, 1986: A National Survey*, CRIME CONTROL INSTITUTE (Washington, D.C. 1986).

97. U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Violence Between Intimates*, NCJ 149259 (November 1994) p. 5.

98. Gelles, R., *Constraints Against Family Violence: How Well Do They Work?* in *Do Arrests and Restraining Orders Work?* (Eve Buzawa & Carl Buzawa eds.) p. 31 (1996) (noting that only 10 days after the results of the Minneapolis Experiment were released, the New York Police Commissioner issued orders requiring mandatory arrest in domestic violence cases and that, by the end of 1986, 176 cities across the country had similar policies); Holly Maguigan, *Symposium: Wading Into Professor Schneider's 'Murky Middle Ground' Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 AM. U.J. GENDER SOC. POL'Y & L. 427, n.3 (noting that mandatory and pro-arrest policies for domestic violence have been

enacted by city or county ordinance in many local jurisdictions].

99. U.S. DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, *Violence Against Women Act of 1994: Encouraging Arrest Policies*, available at http://www.ojp.usdoj.gov/vawo/laws/vawa/stitle_b.htm#40231 (accessed July 30, 2005).

100. *Id.*

101. *Id.*

102. Hirschel, D. and Buzawa, E., *Understanding the Context of Dual Arrest With Directions for Future Research*, 8 VIOLENCE AGAINST WOMEN 1449, 1451 (2002).

103. Cunningham, C., *Domestic Violence: I Don't Need Bruises to Feel Pain—A Worthy Exception to the Warrant Requirement*, 28 PAC. L.J. 731, 739 (1997); Niemi-Kiellsilainen, J., *The Deterrent Effect of Arrest in Domestic Violence: Differentiating Between Victim and Perpetrator Response*, 12 HASTINGS WOMEN'S L.J. 283, 283 (2001).

104. Before the enactment of warrantless arrest laws, states generally required officers to obtain warrants prior to making an arrest unless (1) the officer had probable cause to believe a felony took place or (2) a misdemeanor crime occurred in the officer's presence. As most incidents of domestic violence are characterized as misdemeanor crimes, and domestic violence is rarely perpetrated in the presence of law enforcement, such warrant requirements prohibited arrest of many domestic violence offenders. See Epstein, D., *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1853 (2002).

105. See Sherman and Berk, *supra* note 84, Table 1.

106. The authors of the study noted that the officers occasionally failed to follow the design of the experiment due to forgetfulness, confusion over experiment requirements, and ignoring their assigned experimental response when they felt such response was inappropriate to a particular incident. *Id.*

107. *Id.*

108. For further discussion on the criticisms of the Minneapolis Experiment, see Melton, *supra* note 26 at pp. 1-21; Weisz, A., Ph.D., *Spousal Assault Replication Program: Studies on the Effect of Arrest on Domestic Violence*, WAYNE STATE UNIVERSITY (rev. November 2001), available at http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_arrest.php (accessed July 30, 2005); Joan Zorza, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENG. L. REV. 929 (1994);

109. *Id.*

110. See Sherman and Berk, *supra* note 84.

111. Maxwell, C., Garner, J., and Fagan, J., *The Effects of Arrest on Intimate Partner Violence: New Evidence From the Spouse Assault Replication Program*, NATIONAL INSTITUTE OF

JUSTICE (July 2001).

112. Buzawa, *supra* note 30 at pp. 98-103; Weisz, *supra* note 108; and Zorza, *supra* note 108.

113. *Id.*; Weiz, *supra* note 108.

114. *Id.*

115. Welch, D., *Symposium: Vital Issues in National Health Care Reform: Comment: Mandatory Arrest of Domestic Abusers: Panacea or Perpetuation of the Problem of Abuse?* 43 DEPAUL L. REV. 1133, 1157-1158 (1994).

116. Buzawa, *supra* note 30 at pp. 103-104; Weisz, *supra* note 108; and Zorza, *supra* note 108.

117. *Id.*; Welch, *supra* note 115 at 1156-1163.

118. Popham Durant, C., *When to Arrest: What Influences Police Determination to Arrest When There is a Report of Domestic Violence?* 12 S. CAL. REV. L. & WOMEN'S STUD. 301, 304-305 (Spring 2003); Saccuzzo, D., *How Should the Police Respond to Domestic Violence: A Therapeutic Analysis of Mandatory Arrest*, 39 SANTA CLARA L. REV. 765, 777 (1999); and Maguigan, *supra* note 98 at 428-431 (the desire to remove discretion from police due to their past inadequacy in responding to domestic violence, the need to send a message that domestic violence is a serious crime and the need to protect victims from their abuser's pressure to forego legal action were some of the reasons that advocates favored mandatory arrest policies).

119. *Id.*; Ciraco, V.N., *Fighting Domestic Violence With Mandatory Arrest, Are We Winning?: An Analysis in New Jersey*, 22 WOMEN'S RTS. L. REP. 169, 180-182 (Spring 2001).

120. Dayton, J., *Student Essay: II. Intimate Violence: The Silencing of a Woman's Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases*, 9 CARDOZO WOMEN'S L.J. 281, 284-285 (2003) and Popham Durant, *supra* note 118 at 303-304.

121. Coker, D., *Special Issue Feminism and the Criminal Law: Crime Control and Feminist Law Reform in Domestic Violence: A Critical Review*, 4 BUFF. CRIM. L. R. 801, 822-823 (2001) and Ciraco, *supra*, note 119 at 177 (advocates who favor mandatory arrest assert that, as a result of abuse, victims often lack the financial, emotional or psychological resources to make sound decisions to protect their safety).

122. Dayton, *supra* note at 120, 285-286; Han, E., *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. THIRD WORLD L.J. 159, 175-176 (Winter 2003).

123. Ciraco, *supra* note 119 at 177.

124. Maguigan, *supra* note 98 at 439-444; Coker, *supra* note 121 at 807-808.

125. For instance, some studies suggest that African-American women are more likely

than other women to report domestic violence to the police. Greenfeld, L., et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*, U.S. DEPARTMENT OF JUSTICE, NCJ #167237 (Washington DC: 1998); *New study documents domestic violence by race, income in Rhode Island* (April 2003), available at <http://www.scienceblog.com/community/older/2003/D/20031508.html> (accessed July 30, 2005) (Brown University study found that Black women were just as likely to report domestic violence to the police regardless of whether they were from a poor or affluent neighborhood, whereas reporting among White and Hispanic women declined as their economic status increased).

126. Coker, D., *Piercing Webs of Power: Identity, Resistance, and Hope in Lacrit Theory And Praxis: Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1042-1043 (Summer 2000); Coker, *supra* note 121 at 849-855 (noting that disproportionate numbers of African-American, Latino and indigenous men in prison can be attributed, in part, to discriminatory police enforcement and hyper-aggressive policing in minority neighborhoods); Erwin, P.E. and Vidales, G., *Domestic Violence, People of Color and the Criminal Justice System, A Case for Prevention*, FAMILY VIOLENCE PREVENTION FUND, RACIAL JUSTICE PROJECT (December 11, 2001) pp. 14-19; *Conversations With Mothers of Color Who Have Experienced Domestic Violence Regarding Working With Men to End Domestic Violence*, FAMILY VIOLENCE PREVENTION FUND (January 2003) (in interviews conducted with 32 battered women of color, most women agreed that they were just as afraid of police violence as they were of their abuser, several women reported being treated like criminals by the police and one women reported that the police accused her of engaging in mutual combat after she had been beaten unconscious by her abuser).

127. Coker, *supra* note 126 at 1042; Stark, E., and Sherman, L., *Should Police Officers be Required to Arrest Abusive Husbands?* HEALTH, VOL. 8, NO. 5, 32-36 (1994).

128. FAMILY VIOLENCE PREVENTION FUND, RACIAL JUSTICE PROJECT, *supra* note 126 at pp. 14-15 (most of the 32 battered women of color surveyed believed that their situation only stayed the same or worsened when the police were involved).

129. Bent-Goodley, T., *Eradicating domestic violence in the African-American community: A literature review and action agenda*, 2 TRAUMA, VIOLENCE & ABUSE JOURNAL 316-330 (2001); Carter, N., *Forging New Collaborations Between Domestic Violence Programs, Child Welfare Services and Communities of Color: A Report From the Focus Groups Conducted by the Women of Color Network (WOCN)*, published by the NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE (2003) (of the 568,000 children in foster care in 1999, 36% were Caucasian, 42% were African-American, 15% were Hispanic and 7% were other non-Caucasian races); White, A., et al., *The Race Factor in Child Welfare*, CENTER FOR AN URBAN FUTURE (June 1, 1998), available at <http://www.nycfuture>.

org/content/reports/report_view.cfm?repkey-9 (accessed July 30, 2005) (African-American children in New York City are more than twice as likely as White children to be taken away from their parents following a confirmed report of abuse or neglect; one out of every 10 children from Central Harlem is in foster care).

130. White, *supra* note 129 (one out of every four African-American foster children remains in foster care five years or more; only one in 10 Caucasian children remains in the system as long).

131. Buzawa, *supra* note 30 at pp. 168-169 (study of a Midwestern police department's response to 376 domestic violence and stranger assaults in a 10-month period found that officers appeared to utilize a higher standard of "probable cause" when making an arrest for domestic violence, as compared to stranger assaults).

132. *Family Protection and Domestic Violence Intervention Act of 1994: Evaluation of the Mandatory Arrest Provisions, Final Report to the Governor and Legislature*, NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE (January 2001), available at http://www.opdv.state.ny.us/criminal_justice/police/finalreport/index.html (accessed July 30, 2005).

133. *Id.* at p.6.

134. *Id.*

135. *Id.*

136. *Id.* at pp. 6-7.

137. Popham Durant, *supra* note 118 at 317-22; J. David Hirschel and D.J. Dawson, *Violence Against Women: Synthesis of Research for Law Enforcement Officials* (September 2003), p. 6.

138. Strack, *supra* note 8; Goldberg, *supra* note 8; Mareva Brown, *Arrests of women soar in domestic abuse cases*, SACRAMENTO BEE (December 7, 1997).

139. See CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 8. When compared to the total number of felony domestic violence arrests made each year, the percentage of women arrested for felony domestic violence in California increased from 7 percent (2,855 out of 43,760 total arrests) in 1990 to 20 percent (9,529 out of 48,854 total arrests) in 2003.

140. Goldberg, *supra* note 8; Brown, *supra* note 138.

141. *Id.*; Goldberg, *supra* note 8; and Sue Osthoff, *But Gertrude, I Beg to Differ, a Hit Is Not a Hit Is Not a Hit: When Battered Women Are Arrested for Assaulting Their Partners*, VIOLENCE AGAINST WOMEN, Vol. 8 No. 12 (December 2002) 1531-2, 1533-4.

142. For example, studies have found that batterers are increasingly using strangulation as a form of physical abuse precisely because the physical effects of strangulation are not immediately apparent. Gael Strack and George McClaine, *How to Improve Your Investigation*

and *Prosecution of Strangulation Cases*, SAN DIEGO CITY ATTORNEY'S OFFICE, available at http://www.ncdsv.org/images/strangulation_article.pdf (accessed July 30, 2005). Thus, the use of strangulation can result in the wrongful arrest of victims who defend themselves by biting, scratching, or otherwise causing injury to their batterer.

143. California first enacted laws discouraging dual arrests and requiring that law enforcement make reasonable efforts to arrest the appropriate person in 1996. The number of women arrested for felony domestic violence in California increased from 1996 to 2003 (1996: 8,609 arrests; 1997: 9,858 arrests; 1998: 9,373 arrests; 1999: 9,024 arrests; 2000: 9,340 arrests; 2001: 9,730 arrests; 2002: 9,594 arrests; and 2003: 9,529 arrests). CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 8.

144. The California Legislature adopted pro-arrest policies in 1996 not only to bolster law enforcement response to domestic violence, but to make state and local agencies eligible for federal funding under the Violence Against Women Act and Violent Crime Control and Law Enforcement Act of 1994. Applicants for federal grants pursuant to these Acts were required to certify, among other things, that their laws and policies encourage or mandate arrest of domestic violence offenders when there is probable cause that a domestic violence offense has occurred or a domestic violence restraining order has been violated. *See Senate Floor Analysis of Senate Bill 591*, CALIFORNIA STATE SENATE, SENATE RULES COMMITTEE, OFFICE OF SENATE FLOOR ANALYSES (July 7, 1995).

145. CAL. PEN. CODE §13701(b) (2005).

146. *See, e.g., Guidelines for Law Enforcement Response to Domestic Violence*, CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING (rev. 2004), pp. 5-6; POLICE CHIEFS' ASSOCIATION OF SANTA CLARA COUNTY, *supra* note 66 at pp. 13-4.

147. *See, e.g., Marin County Police Chiefs' Association*, *supra* note 66 at p. 12.

148. *See* CAL. PEN. CODE §273.5 (2005).

149. CAL. PEN. CODE §836(a) (2005).

150. CAL. PEN. CODE §836(d) (2005).

151. CAL. PEN. CODE §836(c) (2005).

152. *Id.*

153. *Id.*

154. CAL. PEN. CODE §13701(b) (2005).

155. *Id.*

156. CAL. PEN. CODE §836(c)(3) (2005).

157. CAL. PEN. CODE §13701(b) (2005).

158. *See Senate Floor Analysis of Senate Bill 1944*, CALIFORNIA STATE SENATE, SENATE RULES

COMMITTEE, OFFICE OF SENATE FLOOR ANALYSES (August 25, 2000).

159. CAL. PEN. CODE §13701(b) (2005).

160. MARIN COUNTY POLICE CHIEFS' ASSOCIATION, *supra* note 66 at p. 17; POLICE CHIEFS' ASSOCIATION OF SANTA CLARA COUNTY, *supra* note 66 at p. 16; Strack, *supra* note 8 at pp. 4-5.

161. MARIN COUNTY POLICE CHIEFS' ASSOCIATION, *supra* note 66 at p. 13; POLICE CHIEFS' ASSOCIATION OF SANTA CLARA COUNTY, *supra* note 66 at p. 14; NORTH CAROLINA GOVERNOR'S CRIME COMMISSION, VIOLENCE AGAINST WOMEN COMMITTEE, *supra* note 66 at p. 4.

162. *Id.* at 17; MARIN COUNTY POLICE CHIEFS' ASSOCIATION, *supra* note 66 at pp. 24-7.

163. CAL. FAM. CODE §§6241, 6250 and 6251 (2005). EPOs may also be issued to protect against an immediate and present danger of child abuse, child abduction and elder abuse. *Id.*

164. CAL. FAM. CODE §6256 (2005).

165. CAL. FAM. CODE §6252 (2005).

166. CAL. FAM. CODE §6250 (2005).

167. CAL. FAM. CODE §6254 (2005).

168. CAL. FAM. CODE §§6271 and 6273 (2005).

169. However, a law enforcement officer may not be held civilly or criminally liable for failing to enforce an EPO if the officer can demonstrate that he/she made a good faith attempt to enforce the order. CAL. FAM. CODE §6272 (2005).

170. CAL. FAM. CODE §6240 (2005).

171. Civil domestic violence restraining orders are issued by a civil or family court judge and include EPOs, orders issued pursuant to Family Code Sections 6320 (stay away, no contact), 6321 (exclusion from family residence), and 6322 (other specified behavior), and orders issued pursuant to Code of Civil Procedure Sections 527.6 (civil harassment orders) and 527.8 (workplace violence restraining orders).

172. A criminal protective order is an order issued by a criminal court judge pursuant to Penal Code Section 136.2 requiring a criminal defendant to stay away from and not contact the victim of, or witnesses to, the crime. A criminal protective order may be issued any time following the arrest of the defendant. CAL. PEN. CODE §136.2 (2005).

173. CAL. PEN. CODE §§166(c) (2005) and 273.6(a) (2005).

174. See CAL. PEN. CODE §§166(c)(4) (2005) and 273.6(d) and (e) (2005).

175. CAL. PEN. CODE §836(c) (2005); CAL. FAM. CODE §§145 (2005) and 6402 (2005).

176. CAL. FAM. CODE §6384 (2005).

177. CAL. PEN. CODE §§13710(b) (2005) and 13711(c) (2005).

178. CAL. PEN. CODE §136.2(i)(2) (2005).

179. 2005 CAL. ALS 132; California Assembly Bill 112 (Chaptered on July 27, 2005).

180. *Id.*

181. CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING, *supra* note 144, p. 9.

182. CAL. PEN. CODE §836(c)(3) (2005).

183. This average is based on California Department of Justice Statistics for 1998 through 2003 concerning the total number of domestic violence-related calls for assistance involving a firearm as a weapon that were received by law enforcement agencies each year during that time period. CALIFORNIA DEPARTMENT OF JUSTICE, CRIMINAL JUSTICE STATISTICS CENTER, *Domestic Violence-Related Calls for Assistance, 1986 – 2003, Statewide by Type of Call and Weapon*, available at <http://safestate.org/documents/dv-calls-weapons.pdf> (accessed August 3, 2005).

184. *Intimate Partner Homicide Victims by Weapon and Gender*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, available at <http://www.ojp.usdoj.gov/bjs/homicide/tables/intweaptab.htm> (accessed August 3, 2005).

185. CAL. PEN. CODE §13730(a) and (b)(3) (2005).

186. CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 181.

187. CAL. PEN. CODE §12028.5(b) (2005).

188. *Id.*

189. *Id.*

190. CAL. PEN. CODE §12028.5(f) (2005).

191. CAL. FAM. CODE §6389(a) (2005); CAL. PEN. CODE §136.2(h) (2005).

192. CAL. FAM. CODE §6389(c) (2005); CAL. PEN. CODE §136.2(h)(2) (2005).

193. State law provides an exemption from relinquishment requirements in cases where a restrained party can show that their firearm "is necessary as a condition of continued employment and that the [party's] current employer is unable to reassign the [party] to another position where a firearm is unnecessary." CAL. FAM. CODE §6389(h) (2005). See the section of this report entitled, *Law Enforcement Response to Officer-Perpetrated Domestic Violence* for additional discussion on this exemption and its application to law enforcement officers who perpetrate domestic violence.

194. CAL. FAM. CODE §6389(c) and (e) (2005).

195. CAL. FAM. CODE §6389(g) (2005).

196. *Domestic Violence Response Teams (DVRTs)*, COUNTY OF SAN DIEGO, HEALTH AND HUMAN SERVICES AGENCY, OFFICE OF VIOLENCE PREVENTION, available at <http://www2.sdcountry.ca.gov/hhsa/ServiceDeatils.asp?ServiceID=722> (accessed August 3, 2005).

197. *Domestic Violence Response Team*, MARJAREE MASON CENTER, available at http://www.mmcenter.org/services_dvrt.html (accessed August 3, 2005).

198. *Domestic Abuse Team Long Overdue*, LOS ANGELES TIMES (November 13, 1994).

199. See *Domestic Violence Response Team*, STATE OF CALIFORNIA, OFFICE OF EMERGENCY SERVICES, available at <http://www.oes.ca.gov/Operational/OESHome.nsf/Content/3E99D8EBDF61207188256E2200725D02?OpenDocument> (accessed August 3, 2005); Janine DaFao, *Detectives, counselors team up to break cycle of abuse*, SACRAMENTO BEE (June 22, 1997).

200. A total of 24 people attended the Northern and Central California roundtable discussions.

201. For purposes of this section, "practitioner" includes all non-victim advocate professionals who participated in an interview or roundtable discussion as part of our information gathering process for this report. These professionals included prosecutors, medical professionals, probation officers, coroners, victim-witness assistance program representatives, and attorneys.