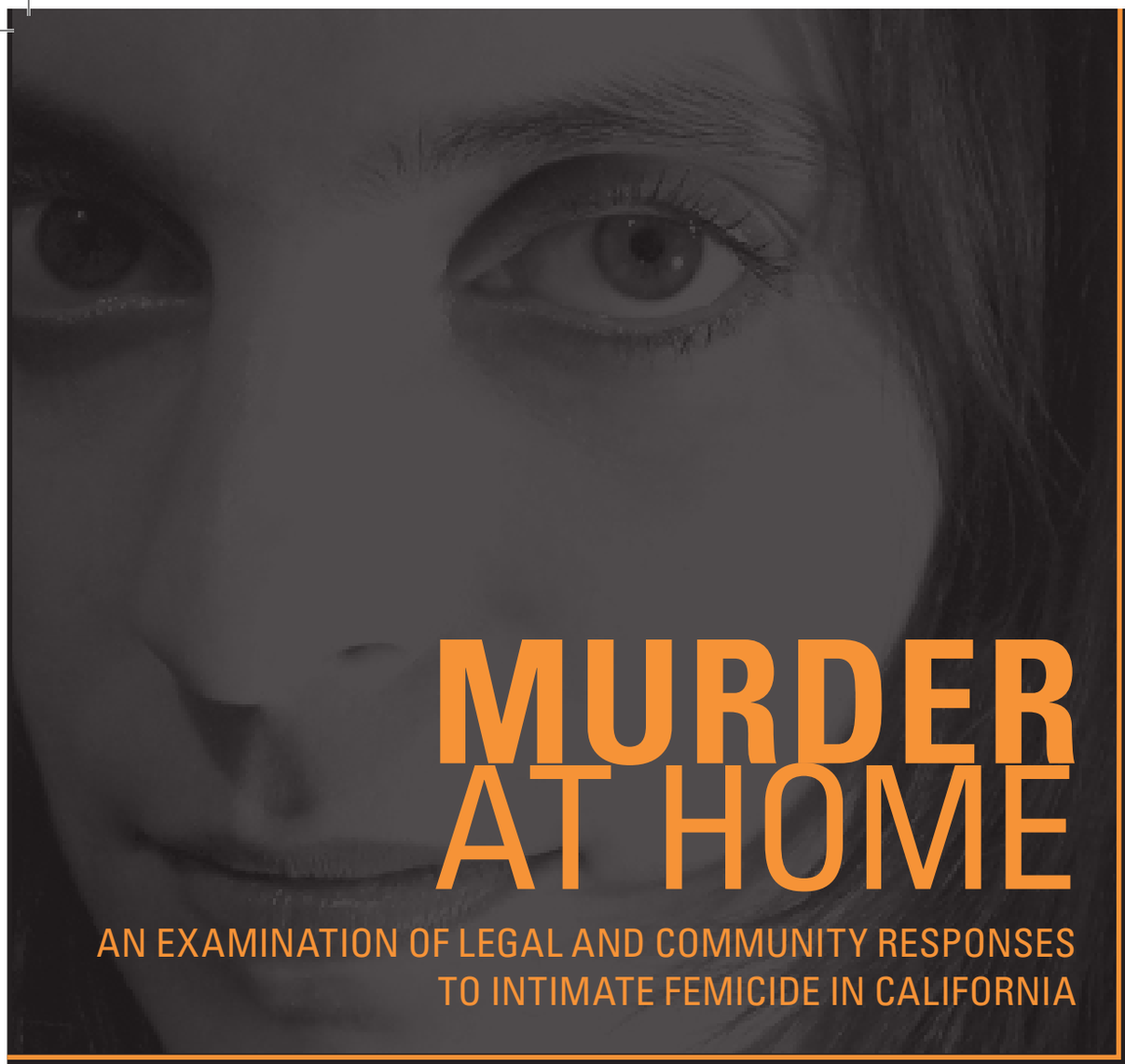

MURDER AT HOME

AN EXAMINATION OF LEGAL AND COMMUNITY RESPONSES TO INTIMATE FEMICIDE IN CALIFORNIA

VOLUME ONE

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The California Women's Law Center works to secure justice for women and girls by ensuring that life opportunities for women and girls are free from unjust social, economic and political constraints.

This report is intended to provide background information on California and federal law. Receiving and/or reading this policy brief does not make you a client of the California Women's Law Center. It is not intended to be, nor shall it be relied upon as, legal advice.

This report is dedicated to Abby, Philip and Laura,
and to everyone who has lost a loved one to domestic violence.

NINA CLARE LEIBMAN

Nina was a dynamic and accomplished woman. As a young girl growing up in the San Fernando Valley, Nina developed a passion for cinema that led to a career as a professor of film and television studies. Nina served on the faculty of Loyola Marymount University, the University of California at Santa Cruz, and Santa Clara University where she was well-liked and respected by her students and peers. By the age of 38, Nina had authored numerous publications in her field and had published her first book.

Nina's greatest passion, however, was her two children, Philip and Laura. Nina was a loving mother who had close, devoted relationships with her family and an intimate circle of friends. Even those who knew Nina briefly were struck by her intelligence, accessible nature, and contagiously warm spirit.

What was not immediately apparent about Nina, however, was that she was in an abusive marriage. By 1995, the verbal and emotional abuse heaped upon Nina and her children by her husband of ten years, Ken Donney, had seriously escalated. Consequently, in September of 1995, Nina filed for divorce. Because Ken's attorney advised him not to move out of the family home until he had secured a custody arrangement for the children, Nina began sleeping on the foldout couch in the den of the home while the couple negotiated a custody agreement.

In the early morning hours of October 27, 1995, the day before he was scheduled to move out of the family home, Ken entered the den where Nina slept, and closed the door. He woke Nina, beat her in the face, and stabbed her multiple times in the chest with an eight-inch kitchen knife. Nina, who did not have her glasses on and was legally blind without them, was unable to defend herself or escape. When she finally collapsed near the foot of the bed, she had more than two dozen stab wounds. Her seven year-old son, Philip, was

awakened by her screams and went to check on his mother. The last words that Philip heard his mother say were, "I don't want to die." Ken responded, "You should have thought of that before."

On May 14, 1996, a week before his trial date, Ken pled guilty to second-degree murder. Although Ken claimed that he wanted to spare his children the pain of a criminal trial, his guilty plea also spared him from the possibility of a conviction for first degree murder and a minimum mandatory sentence of 25 years to life in prison. Ken is now serving sixteen years to life at the California Men's Colony in San Luis Obispo.

The horror of Nina's story did not end with her brutal murder. Community members expressed disbelief over the fact that this kind of violence could happen in what seemed to be a perfect, upper-middle class family. Disturbingly, Ken received public support from numerous colleagues and friends and was often portrayed as one of the "victims" of the heinous crime that he committed. Even the judge who presided over Ken's sentencing hearing described the murder as a "family tragedy," rather than as a malicious and criminal act of violence. The media painted a sympathetic portrait of Ken as a loving father and a gentle man who had been driven to murder simply because he loved his family too much. What is worse, some reporters and community members suggested that Nina was somehow at fault for her own murder by focusing more on her actions prior to her murder, rather than Ken's, such as the fact that she minimized Ken's abusive behavior to others, failed to get a kick out order after filing for divorce and refused Ken's attempts to reconcile for the children's sake.

Taken together, these portrayals not only trivialize the brutality and injustice of Nina's murder, they absolve Ken Donney of personal accountability for the crime he committed. Moreover, the depiction of intimate partner murder as a shocking and unexpected family tragedy overlooks the preventable nature of many of these deaths and absolves the community of its responsibility for

The depiction of intimate partner murder as a shocking and unexpected family tragedy overlooks the preventable nature of many of these deaths and absolves the community of its responsibility for developing ways to better intervene in potentially violent and lethal relationships.

developing ways to better identify and intervene in potentially violent and lethal relationships.

INTIMATE PARTNER FEMICIDE

Although a decade has passed since Nina's murder, her story continues to echo in the lives and deaths of women murdered by their intimate partners. Women in California are more likely to be killed by their intimate partners than by strangers.[1] Indeed, although women accounted for only 19 percent of all homicide victims in 2002,[2] they constituted almost 80 percent of all intimate partner homicide victims that year.[3, 4] Overall, an average of 124 women are killed each year in California as a result of domestic violence, and this number has been increasing in recent years.[5] The loss of each of these lives is the loss of a mother, daughter, sister or friend. It is the loss of a life that contributed, and should have continued to contribute, to society and the lives of those around them.

Women in California are more likely to be killed by their intimate partners than by strangers.

What is most tragic about these deaths is that many of them could have been prevented. Effective legal and community interventions can break the cycle of domestic violence before it escalates into serious violence or murder and provide victims and their children with services that enable them to leave and survive an abusive relationship. Indeed, regardless of the nature and extent of abuse suffered by a victim, every woman in an emotionally or physically abusive relationship faces a risk of lethal violence by her abuser. Whether abuse is physical, emotional, economic or sexual, an abuser's primary objective is to establish power and control over his victim.[6] In such cases, taking the victim's life becomes the ultimate exertion of power and control by an abuser over his victim. It is critical, therefore, that all legal and community systems that come into contact with victims and/or perpetrators of domestic violence are able to effectively identify and respond to signs of abuse in a relationship.

THE MURDER AT HOME PROJECT

The Murder at Home Project was established in 1999, in memory of Nina Clare Leibman. The Project investigates and highlights systemic problems concerning the prevention and punishment of intimate partner femicide in California. The Project also examines how media language with regard to these cases shapes the public's view and awareness of intimate partner murder, contributing to stereotypes that can keep women in danger or create unjustified sympathy for batterers who kill their partners. The overarching goal of the Murder at Home Project is to advance policies that improve the way in which California's criminal justice and community agencies respond to domestic violence and domestic violence murder.

The Murder at Home Project focuses on domestic violence deaths in order to provide a more expansive analysis of how legal and community systems respond to domestic violence in general. When a domestic violence death occurs, for example, it is important to first examine what could have been done to prevent that death. A variety of different government agencies and community systems play a role in responding to domestic violence. Each of these agencies and systems must be responsible for appropriately intervening in domestic violence situations before they escalate into serious injury or death. Focusing on domestic violence deaths also requires an examination of the various issues that arise after an intimate murder has occurred. Effective criminal prosecution, data collection and media coverage concerning these murders all contribute to the prevention of domestic violence and domestic violence deaths.

Another goal of the Murder at Home Project is to advance policies derived from actual intimate murder cases and concerns raised by professionals who work in the domestic violence field. For example, our first major achievement under the Project was to secure legislation to address a problem highlighted by Nina's case. One of the factors that contributed to Nina's risk of harm was that she and Ken were living together in the family home while they were

going through divorce proceedings. The reason that Ken was still living in the family home at the time of the murder was that he was advised by his family law attorney that moving out of the home and leaving the children with Nina could jeopardize his child custody rights. We conducted a survey of family law attorneys and discovered that this legal advice was routine in family law cases involving a child custody dispute. The reason for the advice was that, at the time, courts tended to view the fact that a parent has moved out of the family home as a negative reflection of that parent's relationship with, and responsibility for, their children.

We felt that forcing parties to remain in the same home when they are going through a divorce or child custody dispute creates a "pressure cooker" situation that can ignite violence even in relationships with no prior history of abuse or conflict between the parties. Moreover, we feared that domestic violence victims would be unfairly denied custody of their children if they were forced to flee their abusers while child custody proceedings were pending and did not have the resources to take their children with them. Codified in Family Code Section 3046, the legislation that we helped secure prohibits family courts from considering the fact that a parent has moved out of the family home as a factor in determining that parent's custody or visitation rights, particularly where a parent leaves the home to escape domestic violence.

In addition to this effort, through the Murder at Home Project, we have advocated for numerous legislative and policy changes to enhance domestic violence prevention efforts. We have also engaged in public education, training, technical assistance, and high impact litigation aimed at improving prevention efforts. Shortly after the Project was established, however, it became clear that a comprehensive examination of legal and community responses to domestic violence was needed in order to adequately address the complex nature of domestic violence, as well as the complex relationships among the various systems that address this violence. It is for this reason that we decided to issue this groundbreaking report.

THE MURDER AT HOME REPORT – SCOPE AND METHODOLOGY

There are a variety of different legal and community systems that play a vital role in identifying and responding to abuse suffered by domestic violence victims. Whether it is the criminal justice system, social service system, medical community, legal services, family courts, or a victim's personal support system — each of these systems must be responsible for appropriately intervening and responding to domestic violence before this violence escalates into serious injury or death. *Murder at Home: An Examination of Legal and Community Responses to Intimate Partner Femicide in California* ("Murder at Home Report") is a comprehensive assessment of how different systems work together, and separately, to address domestic violence and domestic violence murder in our state.[7]

This first volume of the Murder at Home Report focuses on law enforcement and probation department responses to domestic violence, as well as inter-agency efforts to gain meaningful information and prevention strategies through post-homicide data collection and domestic violence death reviews. Also included in this volume are the results from our survey of 100 cases, occurring from 1998 through 2002, in which women were murdered by their male intimate partners ("100-Case Survey").

Future volumes of the Murder at Home Report will examine other systems and issues that play a role in domestic violence homicide prevention including the criminal prosecution and punishment of domestic violence, medical community responses to domestic violence, family court responses to domestic violence, civil remedies for domestic violence, and economic issues facing domestic violence victims. We will also examine how domestic violence prevention efforts and issues impact underserved communities of victims including young women, women of color and women in rural communities.

The Murder at Home Report addresses the following three areas for each topic covered:

- **How Far Have We Come?** Chronicles important advancements and setbacks concerning domestic violence prevention and response efforts in the targeted area.
- **Where Are We Now?** Summarizes research and commentary gathered from interviews with professionals who work in the domestic violence field in order to reflect the current status of prevention and response efforts in the targeted area.
- **Where Do We Go From Here?** Sets forth policy recommendations for improving legal and community responses to domestic violence and domestic violence murder in the targeted area.

The assessments of current practices and policy recommendations included in this volume are based, in part, on interviews and roundtable discussions[8] conducted with over 100 professionals throughout the state who work in the domestic violence field. These professionals included coroners, prosecutors, law enforcement officers, probation officers, healthcare professionals, victim advocates, family law attorneys, civil rights attorneys, victim-witness assistance representatives, representatives from the California Attorney General's Office, and academics. Our interviews and roundtable discussions reached professionals in 41 out of 58 California counties. Our assessments and recommendations were also based on our analysis of current research and model programs concerning domestic violence prevention, as well as the results of our 100-Case Survey.

(Footnotes)

1. The California Department of Justice was able to identify the relationship of the victim and offender in 345 femicides that occurred in California in 2002. Forty-one (41) percent of these femicides were perpetrated by an intimate partner. Only 17 percent were perpetrated by a stranger. *See Homicide Crimes 2002: Gender and Race/Ethnic Group of Victim by Relationship of Victim to Offender*, California Department of Justice, Criminal Justice Statistics Center, Table 12, *available at* http://caag.state.ca.us/cjsc/publications/homicide/hm02/tabs/12.pdf (accessed August 9, 2005).

2. *Homicide Crimes, 1993-2002: By Gender of Victim*, California Department of Justice, Criminal Justice Statistics Center, Table 2, *available at* http://caag.state.ca.us/cjsc/publications/homicide/hm02/tabs/2.pdf (accessed August 9, 2005).

3. There were a total of 178 intimate partner murders in California in 2002. In 79 percent of these murders (141 of 178), the victim was a current or former wife or girlfriend of the perpetrator. Seven of the 178 murders involved homosexual relationships in which the gender of the victim/perpetrator was not identified. Thus, the percentage of female victims of intimate partner homicide in 2002 may be slightly higher depending on the gender of these victims. *See Willful Homicide Crimes, 2002, County by Victim to Offender Relationship*, California Department of Justice, Criminal Justice Statistics Center, (on file with author).

4. *See also*, Hemenway, D., Shinoda-Tagawa, T. & Miller, M., *Firearm availability and female homicide victimization rates among 25 populous high-income countries*, JAMWA (2002), 57:100-104 (while the United States accounts for 32% of the total female population among the 25 highest income nations, it accounts for 70% of all female homicide victims in these nations).

5. According to California Department of Justice Statistics, the following numbers of women were killed each year by an intimate partner from 2000 to 2003: 2000 – 104 women; 2001 – 130 women; 2002 – 128 women; 2003 – 134 women. *See Willful Homicide Crimes, 2000, Precipitating Event: Domestic Violence, County by Victim to Offender Relationship*; *Willful Homicide Crimes, 2001, Precipitating Event: Domestic Violence, County by Victim to Offender Relationship*; *Willful Homicide Crimes, 2002, Precipitating Event: Domestic Violence, County by Victim to Offender Relationship*; *Willful Homicide Crimes, 2003, Precipitating Event: Domestic Violence, County by Victim's Relationship to Offender*; California Department of Justice, Criminal Justice Statistics Center, (on file with author).

6. *Violence in the Family: Report of the American Psychological Association Presidential Task Force on Violence in the Family*, American Psychological Association (1996).

7. The issues covered in this volume of the report are limited to domestic violence and domestic violence homicide cases involving a female victim and a male perpetrator. Issues

concerning domestic violence and domestic violence homicide among lesbian, bi-sexual and transgendered women will be covered in future volumes of the Murder at Home report.

8. We conducted a Northern California Roundtable Discussion and a Central California Roundtable Discussion. The Northern California Roundtable Discussion was attended by fifteen (15) professionals who work in the domestic violence field. These professionals represented a total of nine (9) counties in Northern California. The Central California Roundtable Discussion was attended by nine (9) professionals who work in the domestic violence field. These professionals represented a total of nine (9) counties in Central California.

PREVENTING DOMESTIC VIOLENCE HOMICIDE

On August 8, 2002, authorities discovered the body of Loretta Paluszynski in the bedroom of her Salinas apartment. Loretta had been brutally beaten and repeatedly stabbed by her ex-boyfriend, Juan Gabriel Nunez. Juan fled the scene and is still at large. Family and friends described Juan as "possessive" and witnessed his physical abuse of Loretta. On one occasion, Juan beat Loretta so badly that she had to be hospitalized for her injuries. Loretta subsequently obtained a restraining order against Juan. One year before her murder, Juan was convicted of violating the restraining order and was placed on probation. Less than two months before the murder, Juan was again charged with violating a restraining order, domestic abuse against Loretta and abuse against her 4-year old son. When Juan failed to appear in court on these charges, the court issued a warrant for his arrest. Juan managed to evade arrest and, a few weeks later, Loretta was dead.[1]

The first, and most critical, step in addressing intimate partner homicide in California is to examine how these murders can be prevented.

The first, and most critical, step in addressing intimate partner homicide in California is to examine how these murders can be prevented. Our survey of 100 intimate femicides in California ("100-Case Survey") revealed some disturbing similarities in the lives of women murdered by their male intimate partners:

- Most of the perpetrators had a confirmed history of domestic violence against the victim (59% of cases had a history of domestic violence and, in 47% percent of these cases, the abuser made prior threats on the victim's life);
- Nearly half (45%) of the victims had recently separated or were in the process of separating themselves from their abuser at the time of the murder;
- A significant number of perpetrators had prior contact with the criminal justice system for domestic violence against the woman they ultimately killed (59% of perpetrators with prior arrests had been arrested for domestic violence against the victim they killed;

26% of the perpetrators who had prior criminal convictions were convicted of domestic violence against the women they killed); and

- The vast majority of victims who were abused never sought court, medical or community services for domestic violence (86% of abused victims never sought domestic violence-related services from hospitals, shelters or community-based organizations prior to their murder, and only 20% had an active restraining order against their abuser at the time of the murder).

Domestic violence murders are often the culmination of escalated violence in relationships where there is a history and pattern of abuse against the victim.

These findings illustrate what domestic violence professionals and policymakers have urged for years – domestic violence homicides are some of the most preventable homicides that occur in our society.

Several reasons have been cited for the predictability and "preventability" of these murders. First, unlike stranger murder, domestic violence homicide is typically not a crime of sudden, unanticipated violence by an intimate partner. Rather, these murders are often the culmination of escalated violence in relationships where there is a history and pattern of abuse against the victim. A study of 220 female victims of intimate partner homicide found that 70% of the victims had been physically abused by their intimate partners prior to their deaths.[2] Preventing domestic violence homicide necessarily includes preventing the occurrence and reoccurrence of domestic violence in general.

Second, in addition to a history of abuse in the relationship, other identifiable factors contribute to a woman's risk of intimate partner murder. Studies show that, in cases where women are abused by their male partners, the abuser's access to guns, unemployment, prior threats on the victim's life, and escalating severity of violence against the victim are among the most significant predictors of intimate partner murder.[3] A victim's attempts to separate herself or her children from a highly obsessive and controlling abuser has also been cited as a serious risk factor for intimate partner murder.[4] Recognizing and adequately responding to these "warning signs," therefore, can mean the difference between life and death for many women at risk of violence or murder at the hands of their intimate partners.

"Warning signs" can also occur in relationships where no history of violence or abuse exists. Studies show that factors such as a male partner's highly controlling and jealous behavior, chronic substance/alcohol abuse and suicidal tendencies are associated with an increased risk of intimate partner homicide for women in non-abusive relationships.[5] Our 100-Case Survey revealed that 17 percent of perpetrators with no confirmed history of abuse against their victim had a known recent history of drug or alcohol abuse, or were using drugs and/or alcohol at the time of the murder. In addition, the survey revealed that 20 percent of non-abusive perpetrators had a known recent history of mental illness, or were suffering from a serious mental condition at the time of the murder.

Moreover, risks for women in non-abusive relationships may be intensified when coupled with a traumatic event for the perpetrator, such as a sudden loss of employment, known or suspected infidelity by the other partner, or threats of separation by the other partner. In 49 percent of our surveyed murder cases involving a non-abusive relationship, the victim had recently separated herself from the perpetrator, the perpetrator suspected the victim was having an affair or was jealous of a new intimate relationship and/or the perpetrator was experiencing serious financial difficulties. In light of the above statistics, domestic violence homicide prevention must include strategies for identifying and responding to the predictors of intimate partner murder in non-abusive relationships.

Finally, studies show that, prior to the time of murder, victims and perpetrators of domestic violence homicide often come into contact with, or seek the help of, agencies and individuals whose intervention could have reduced the victim's risk of danger. An examination of domestic violence homicides in Oklahoma, for example, found that victims and perpetrators often had repeated contacts with the legal system and service providers and, in 57 percent of the cases surveyed, someone (family members, law enforcement and/or friends) knew of ongoing violence in the relationship.[6] In our 100-Case Survey, in 92 percent of cases with a confirmed history of abuse, the parties had prior contact with police, courts or

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community service providers regarding incidents of domestic violence and/or family and friends had prior knowledge of abuse in the couple's relationship.

In our 100-Case Survey, in 92% of cases with a confirmed history of abuse, the parties had prior contact with police, courts or community service providers regarding incidents of domestic violence and/or family and friends knew of the abuse in the couple's relationship.

The magnitude of a woman's risk of being murdered by her intimate partner, therefore, depends on how effectively different systems and individuals identify and respond to abuse suffered by domestic violence victims. Whether it is the criminal justice system, social service system, medical community, legal services, family courts, or a victim's personal support system — each of these systems must be responsible for appropriately intervening and responding to domestic violence before this violence escalates into serious injury or death.

Indeed, the predictable nature and cycle of domestic violence has caused practitioners and policymakers in California, and throughout the country, to implement different strategies for improving the way that individual systems respond to victims and perpetrators of such violence. Each attempt to improve current practices contributes to the "prevention" of domestic violence homicide. Nevertheless, while law enforcement agencies, courts, prosecutors, health professionals, and social service organizations have all made significant improvements in addressing domestic violence generally, preventable homicides still occur at an alarming rate.

In this volume of the report, we examine and make recommendations regarding efforts to prevent domestic violence and domestic violence homicide in the following areas: law enforcement, probation, data collection and death review. Future volumes of the report will examine other systems and issues that play a role in domestic violence homicide prevention including the criminal prosecution and punishment of domestic violence, medical community responses to domestic violence, family court responses to domestic violence, civil remedies for domestic violence, and economic issues facing domestic violence victims. Future volumes will also examine how all of the above systems and issues impact underserved communities of victims.

(Footnotes)

1. *Sources*: Nix, K., *Salinas police seek victim's ex, man has criminal history of abuse,* The Californian (August 10, 2002); Nix, K., *Police on lookout for killing suspect,* The Californian (August 13, 2002); Nix, K., *Protection orders not always helpful outside the legal bounds,* The Californian (August 29, 2002); and Nix, K., *Loretta Paluszynski stabbed to death; suspect evades capture,* The Californian (August 8, 2003).

2. *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study,* American Journal of Public Health, Vol. 93 No. 7 (July 2003).

3. *Id.*; Campbell, J., et al., *Assessing Risk Factors for Intimate Partner Homicide,* National Institute for Justice Journal, Issue No. 250 (2003); Walton-Moss, J. and Campbell, J., *Intimate Partner Violence: Implications for Nursing,* Online Journal of Issues in Nursing, Vol. 7 No. 1 (January 31, 2002).

4. *Family and Intimate Partner Violence Homicide,* Virginia Department of Health, Office of the Chief Medical Examiner (2000) p. 5; Moracco, K., et al., *Female Intimate Partner Homicide: A Population-Based Study,* JAMWA, Vol. 58, No. 1 (2000); Campbell, D., et al., *Could We Have Known? A Qualitative Analysis of Data from Women Who Survived an Attempted Homicide by an Intimate Partner,* Journal of General Internal Medicine, Vol. 18, Issue 10 (2002).

5. Campbell, *supra* note 3; Block, C., *Chicago Women's Health Risk Study (Part I and II), Final Report,* NCJ 183128, U.S. Department of Justice, National Institute of Justice (Washington, DC: June 2000).

6. *Murder in Oklahoma: A Report of the Oklahoma Domestic Violence Fatality Review Board,* Oklahoma Domestic Violence Fatality Review Board (2002).

THE CRIMINAL JUSTICE SYSTEM

On July 17, 1999, Jackie Anderson called the Mendocino County Sheriff's Department to report that her estranged husband, David Anderson, was at her home, threatening her. Soon after Jackie ended the call, David dragged her to the basement of the home, put a gun in her mouth, and shot her. By the time that sheriff's deputies arrived at the scene, Jackie was dead.

Criminal records evidencing David's history of abuse against Jackie date back to 1992 when he was charged with four misdemeanors, including assaulting Jackie with a deadly weapon. David pled guilty to driving under the influence and resisting arrest, all other charges were dismissed, and he was placed on probation. In 1996, David was charged with misdemeanor battery against Jackie, as well as multiple misdemeanors and felonies for violence and threats against responding officers. David pled guilty to misdemeanor battery on a police officer, all other charges were dismissed, and he was sentenced to two years probation.

In June 1999, less than three weeks before the murder, David was arrested for hitting Jackie and threatening to kill her and her three children. That night, sheriff's deputies issued an emergency protective order to Jackie and recommended that felony charges of spousal abuse, false imprisonment and terrorist threats be filed against David. Instead, the district attorney charged David with only a probation violation and obtained a criminal protective order requiring David to stay away from Jackie and her children. Two days later, David was released on just $2,500 bail.

On the day before the murder, sheriff's deputies were called when David showed up at the family home in violation of a restraining order. However, the criminal protective order issued by the court was, inexplicably, never entered into the sheriff department's computer system. Moreover, although Jackie obtained a

The criminal justice system has been the primary focus of historical and current efforts to combat domestic violence.

civil protective order against David a few days earlier, she had not yet delivered a copy of the order to the sheriff's department. Consequently, sheriff's deputies failed to enforce either of these orders and no arrest was made. The next morning, David returned to the home and killed Jackie.[1]

For centuries, the American criminal justice system turned a blind eye to domestic violence. While efforts to prevent and punish domestic violence date back as early as the mid-1600s,[2] movements toward the effective criminalization of domestic violence were short-lived and failed to overcome overwhelming societal perceptions that domestic violence was, above all else, a private family matter.[3] In fact, it was only thirty years ago that the first cohesive and comprehensive anti-domestic violence movement in our country began to take shape.

The criminal justice system has been the primary focus of historical and current efforts to combat domestic violence. In the 1960s, women's rights advocates, victim advocates, and policymakers across the nation began to raise public awareness about the seriousness of domestic violence and the need to hold batterers criminally accountable for abuse.[4] Heightened public awareness about domestic violence led to significant criminal justice reforms in the 1970s and 1980s that transformed domestic violence from a private family matter, to a public problem warranting intervention by the state.[5] For instance, laws specifically criminalizing domestic violence and allowing for warrantless arrests of domestic violence offenders became commonplace among states.[6]

With the creation and expansion of criminal domestic violence laws came increased reporting of domestic violence as a crime and increased investigation and prosecution of domestic violence. By the 1990s, most states, including California, supplemented laws criminalizing domestic violence with laws mandating law enforcement and criminal justice responses to domestic violence and establishing special criminal protections for domestic violence victims.[7]

As the criminal justice community grew more seasoned in handling domestic violence cases, reforms began to address specific frustrations that arose among criminal justice professionals when handling domestic violence cases. The past decade and a half, therefore, has been marked with criminal justice reforms aimed at remedying specific problems that inhibit the effective investigation and prosecution of domestic violence cases, such as lack of victim cooperation and persisting bias toward domestic violence victims within the criminal justice community.[8] These reforms include the development of written protocols for law enforcement's response to domestic violence, institution of "no-drop" prosecution policies, creation of specialized criminal courts dedicated to hearing domestic violence cases, and increased training requirements for law enforcement and criminal justice professionals.[9]

As a result of these targeted reforms, society has vested a substantial amount of authority and faith in the criminal justice system by making it the primary "system" responsible for responding to domestic violence. Thus, while the criminal justice system's response to domestic violence is only one of many responses that contribute to reducing the incidence of domestic violence homicide, it is clearly one of the most significant interventions to date.

Society has vested a substantial amount of authority and faith in the criminal justice system by making it the primary "system" responsible for responding to domestic violence.

Improving Criminal Justice Responses to Domestic Violence

The criminal justice system consists of many different agencies and institutions (i.e., law enforcement, criminal courts, prosecutors, and probation departments), each of which have felt, and continue to feel, the impact of domestic violence reform. While there have been many changes in the way the criminal justice system responds to domestic violence, the overall goals of criminal justice reform have remained fundamentally the same over the past thirty years. These goals are (1) ensuring victim safety from repeated or escalated acts of violence or abuse and (2) ensuring batterer accountability for abusive criminal conduct.

Domestic violence poses a serious threat to public safety. In our 100-Case Survey, a person other than the intended victim was either injured or killed at the time that the murder took place in 1 out of every 5 cases surveyed.

In striving to achieve these goals, advocates and criminal justice professionals alike constantly struggle with the unique tension presented by the criminalization of domestic violence. On one hand, efforts to improve criminal justice responses to domestic violence are often grounded in the belief that domestic violence is a serious crime that should be treated by the criminal justice system as seriously as violent crimes committed against strangers. On the other hand, the intimate nature of the victim and offender's relationship in cases of domestic violence, as compared to stranger violence, often demands special considerations and protections from the criminal justice system.

Indeed, while victims of stranger violence seldom suffer future violence from their attackers, many victims of intimate partner violence continue to have personal contact with their perpetrators even after seeking help from the criminal justice system. This is particularly true if the victim lives or has children with the abuser. Consequently, domestic violence is one of the few crimes for which local agencies have developed multidisciplinary response teams, consisting of specially trained victim advocates and mental health professionals, to provide support, counseling and information to victims at the scene of a reported domestic violence incident. These special intervention services help victims better prepare themselves to leave an abusive relationship and seek assistance for domestic violence.

Compounded with the tensions caused by the victim and perpetrator's intimate relationship is the reality that domestic violence is generally not perceived as a "public crime." While society has grown to view domestic violence as unacceptable criminal conduct, most people perceive the threat of harm posed by domestic violence as being limited to the safety of the individual victim of abuse. Unlike other violent crimes, such as car-jackings and muggings, domestic violence is not viewed as a threat to the safety of the public at large.

This attitude may make it difficult to convince criminal justice agencies to devote scarce resources to maintaining or expanding specialized programs and

services for domestic violence crimes. It may also make it difficult to generate widespread support for sweeping criminal justice reforms aimed reducing the incidence of domestic violence and domestic violence homicide in our state.

What is worse, these public perceptions are patently untrue. In our survey of 100 cases of intimate femicides in California, a person other than the victim was either injured or killed at the time that the murder took place in 1 out of every 5 cases that we surveyed. A total of 16 children and 11 adults were killed in addition to the 100 female murder victims. The collateral victims in these cases included children, siblings, new intimate partners, co-workers, neighbors and friends.

Domestic violence victims have not benefitted equally from criminal justice reforms.

Finally, there are those who feel that the criminal justice system is simply ill-equipped and unsuited to take such a primary role in responding to domestic violence. Given the high rates of domestic violence and domestic violence homicide that continue to occur in our communities, advocates across the country have questioned whether the heavy reliance on the criminal justice system has been misplaced, and whether other approaches, such as active "community policing,"[10] would be more effective in reducing the incidence of domestic violence in our society.[11]

Indeed, U.S. Department of Justice statistics show that victims of domestic violence have not benefited equally from criminal justice reform. In fact, these statistics suggest that advancements in the area of domestic violence have primarily benefited men. From 1976 to 2000, the number of Caucasian male victims of intimate partner homicide in the U.S. decreased by 54 percent[12] and the number of African-American male victims decreased by 77 percent.[13] In contrast, while the overall number of women killed by an intimate partner declined by 22 percent from 1976 to 2000,[14] the proportion of all female murder victims who are killed by an intimate partner has steadily increased since 1995.[15] Moreover, as with male victims, the rate of decline in intimate murder among female victims over the past thirty years has varied by race. The

number of Caucasian female victims steadily increased from 1976 to 1989, at which time the number dropped significantly from 1,007 to 883 victims.[16] Although the number of Caucasian female victims reached an all time low of 761 in 1997, this number has been increasing in recent years.[17] The number of African-American women murdered by an intimate partner, on the other hand, decreased significantly from 1976 to 1977, remained relatively stable from 1977 to 1993, and has been steadily decreasing in recent years.[18, 19]

Although women of color constitute approximately 20% of California's population, they accounted for 67% of female victims of intimate partner homicide in California in 2002.

These statistics suggest that criminal domestic violence reforms have affected different communities in different ways. In fact, while California has been a leader among states in implementing such reforms, the number of women of color killed by intimate partners in our state has steadily increased in recent years.[20] Although this increase may be partially attributed to general population increases among racial and ethnic minorities in California, the rising number of murders may also reflect a failure on the part of the criminal justice system, as well as other legal and community systems, to address the needs of victims in certain racial and cultural communities. In fact, although women of color constitute approximately 20 percent of California's population,[21] they accounted for 67 percent of female victims, and 59 percent of all victims, of intimate partner homicide in California in 2002.[22]

One possible reason for the above disparities is that our criminal legal system is grounded in the belief that "fairness" and "justice" are best achieved by applying bright-line rules to every case. Criminal justice professionals are conditioned to view criminal matters in "black and white" terms. The uniform application of policies and protocols in domestic violence cases, however, often discounts the unique needs and experiences of domestic violence victims and their batterers.

The nature and dynamics of domestic violence, the reasons why women stay in abusive relationships, and the reasons why men perpetrate violence against their intimate partners are extremely complex and vary greatly from

victim to victim. As these complexities often dictate which criminal justice approach is the most effective and safe for a particular victim, criminal justice responses to domestic violence need to be flexible enough to account for such differences.

Moreover, criminal justice professionals are only human. Law enforcement officers, prosecutors and judges share the same biases and misconceptions as the general public when it comes to domestic violence. These biases can seriously affect how criminal justice protections are applied in individual cases. For example, if a law enforcement officer believes that African-American women are aggressive and instigate altercations with their intimate partners more often than women of other races, the officer is likely to engage in completely divergent responses based upon whether the alleged victim of domestic violence is, or is not, an African-American female.[23] Such biases need to be combated through agency oversight and accountability, as well as and regular education and training, for all levels of criminal justice personnel.

There is no "one size fits all" solution for how a particular county or agency can best address domestic violence in its community.

Improving criminal justice responses to domestic violence requires considering and balancing all of the different tensions and factors described above. Moreover, improvement starts with recognizing that there is no "one size fits all" solution for how a particular county or agency can best address the needs of the community it serves. Rather, shortcomings and inequities among local criminal justice agencies should be remedied through multi-agency, collaborative strategies that take into account the unique needs of individual communities and community members. Indeed, if the criminal justice system is to live up to its promise of "justice" for victims of domestic violence, the domestic violence community, as a whole, must be committed to regularly informing, evaluating and implementing meaningful criminal justice reforms aimed at preventing domestic violence and domestic violence homicide in our communities.

In this volume of the report, we begin by examining law enforcement and probation department responses to domestic violence. Issues relating to the

criminal prosecution and punishment of domestic violence will be addressed in future volumes of this report.

(Footnotes)

1. *Sources*: Tanya Brannan, *The Murder of Jackie Anderson*, Purple Berets (1999); Tanya Brannan, *Deadly Consequences, Law Enforcement Fails: Another Domestic Violence Homicide Rocks California's North Coast*, Purple Berets (1999); Wang, U., *Ukiah Man Declared Competent Murder Charge in Wife's Death*, The Press Democrat (September 20, 2000); Wang, U., *Judge Sets Trial for Ukiah Man in Alleged Murder*, The Press Democrat (January 12, 2002); and Wang, U., *Teen Recounts Screams, Shots in Slaying Case*, The Press Democrat (March 15, 2002).

2. The Puritans enacted the first laws criminalizing domestic violence in 1641. *See* Elizabeth Pleck, *Domestic Tyranny* (Oxford University Press: 1987).

3. Elizabeth Peck, *Criminal Approaches to Family Violence, 1640-1980* in *Family Violence, Volume II, Crime and Justice: An Annual Review of Research*, edited by Lloyd Ohlin and Michael Tonry (Chicago: University of Chicago Press 1989).

4. Jeffrey Fagan, *The Criminalization of Domestic Violence: Promises and Limits*, NIJ Research Report (January 1996).

5. Buzawa, E. and Buzawa, C., *Domestic Violence: The Criminal Justice Response, 3rd ed.* (Sage Publications: 2003).

6. *Id.* at pp. 109-15.

7. *Id.*

8. *Id.*; *The Nature and Scope of Violence Against Women in San Diego*, San Diego Association of Governments (March 2000) pp. 29-30.

9. *Id.*

10. The U.S. Department of Justice defines "community policing" as a "policing philosophy that promotes and supports organizational strategies to address the causes and reduce the fear of crime and social disorder through problem-solving tactics and police-community partnerships," *See What is Community Policing?* U.S. Department of Justice, Office of Community Oriented Policing Services, *available at* http://www.cops.usdoj.gov/default.asp?Item=36 (accessed August 8, 2005).

11. *Safety & Justice for All: Examining the Relationship Between the Women's Anti-Violence Movement and the Criminal Legal System*, Ms. Foundation for Women (2003).

12. The number of Caucasian males killed by an intimate partner dropped from 493 in 1976 to 229 in 2000. *Homicide Trends in the U.S.: Intimate Homicide*, U.S. Department of Justice, Bureau of Justice Statistics, *available at* http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm (accessed August 8, 2005).

13. The number of African-American males killed by an intimate partner dropped from 846 in 1976 to 192 in 2000. *Id.*

14. *Intimate Partner Violence, 1993-2001*, U.S. Department of Justice, Bureau of Justice Statistics (February 2003), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv01.pdf (accessed August 8, 2005).

15. The percentages of female homicide victims who were killed by an intimate partner from 1995 through 2000 are as follows: 26.3 percent in 1995; 29.6 percent in 1996; 29.5 percent in 1997; 32 percent in 1998; 32.1 percent in 1999; and 33.5 percent in 2000. U.S. Department of Justice, *supra* note 12.

16. *Id.*

17. *Id.*

18. The number of African-American women killed by an intimate partner dropped from 714 in 1976 to 570 in 1977, remained relatively stable at an average of 525 deaths each year from 1978 through 1992, and gradually decreased from 542 in 1993 to 333 in 2000. *Id.*

19. No uniform national statistics documenting similar trends among other specific racial and/or ethnic groups were gathered during this period.

20. According to California Department of Justice statistics, the numbers of women identified as a race other than Caucasian who were killed by an intimate partner each year from 1998 through 2002 are as follows: 73 in 1998; 78 in 1999; 91 in 2000; 100 in 2001; and 121 in 2002. *Willful Homicide Crimes, 1998-2002, Domestic Violence as the Precipitating Event by Race/Ethnic Group of the Victim*, California Department of Justice, Criminal Justice Statistics Center (on file with author).

21. This statistic is an estimation based on U.S. Census Bureau statistics which indicate that, in 2000, 40.5 percent of California's population identified as a race other than "White" and 50.2 percent of the population was female. *California Quick Facts*, U.S. Census Bureau, *available at* http://quickfacts.census.gov/qfd/states/06000.html (accessed August 8, 2005).

22. In 2002, a total of 206 people were killed by an intimate partner in California. Of the 181 women murdered by an intimate partner that year, 121 were identified as a race/ethnicity other than Caucasian. See California Department of Justice, *supra* note 20.

23. *See Third National Conference on African American Women and the Law: Facing Challenges – Forging Change, African American Women's Action Agenda* in *Voices of African American Women in the United States of America: The Unkept Promises of the Platform for Action*, Lawyers' Committee for Civil Rights Under Law (May 2000), p. 37 (One of the action items on the African American Women's Action Agenda from the Third National Conference on African American Women and the Law stated as follows: "Training of law enforcement to address the perception that Black women can 'take' the abuse because they are strong bodied; and to expose the fear that law enforcement officers have of African American women. This

training should decrease the tendency of law enforcement to respond inappropriately [to violence against African American women] as they view sisters as being 'loud,' aggressive and dangerous.").

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]

Law enforcement officers are the gatekeepers of the criminal justice system for domestic violence victims and their abusers.

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]

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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.

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.

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.

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]

A common reason given by domestic violence victims for not calling the police is that they believe the police will not do anything to address their situation.

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 offense[25] 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.

Law enforcement officers must have thee 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.

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]

Starting in the 1980s, 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.

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 officers[34] 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]

Since 1986, California law enforcement officers have been required to complete basic minimum training on domestic violence and handling domestic violence complaints.

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;

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

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

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

Law enforcement agencies are required to issue a written incident report for every call that they respond to that involves domestic violence.

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.

County sheriffs' offices and certain municipal police departments are required to 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 county jail.

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]

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.

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;

- 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]

Law enforcement officers must provide emergency assistance to victims of domestic violence when needed.

• 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 orhospitals; (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]

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]

California law requires law enforcement officers to provide one free copy of a domestic violence incident report face sheet and domestic violence incident report to the victim or the victim's representative, if the victim is deceased.

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.

By the late 1980s, a significant shift occurred among law enforcement agencies across the country toward using arrest as a primary method of domestic violence prevention and intervention.

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]

Proponents of mandatory arrest 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.

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

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]

Opponents of mandatory arrest argue that it is unrealistic and sometimes harmful to apply a one-dimensional response to domestic violence.

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 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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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]

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.

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 has both pro-arrest and mandatory arrest laws for domestic violence, depending on the nature of the domestic violence incident.

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

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

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

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]

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.

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, which ever 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.

Enforcing Restraining Orders

Law enforcement officers play a primary role in the enforcement of civil domestic violence restraining orders[171] 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 mandated to arrest an offender whom they have probable cause to believe violated the terms of a civil restraining order or criminal protective order.

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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.

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.

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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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.

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

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

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 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.

- **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

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 recent 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.

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

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.

- **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.

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.

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.

- **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

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.

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

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.

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

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.

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.

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.

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.

- **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.

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

- **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,

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.

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

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 it's 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 leaderships 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. Hoctor, *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* Hoctor, *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-Kielsilainen, 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.sdcounty.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.

LAW ENFORCEMENT RESPONSE TO OFFICER-PERPETRATED DOMESTIC VIOLENCE

In September 1999, Veda Harris fled with her children to her sister's home after her ex-boyfriend, Tony Bailey, a federal drug enforcement officer, attacked her 14-year old son and hit her when she tried to protect him. Three weeks later, Tony burst into the home and shot Veda in the head, killing her instantly. Veda's sister was shot in the stomach while trying to wrestle the gun away from Tony, but survived her injuries. Tony fled the scene and was found three days later in Louisiana where he shot himself after being discovered by authorities.

In 1990, a former girlfriend filed a report with police alleging that Tony choked her and slammed her to the ground when she tried to end their relationship. No criminal charges were filed against Tony. In 1995, Tony was questioned in connection with the suspicious death of another girlfriend who was 9 months pregnant with Tony's child. The investigation stalled when the state of the woman's decomposed body prevented the coroner from being able to determine the cause of her death. In 1997, another former girlfriend obtained a restraining order against Tony after he hit her in the face and threatened her. That same year, Tony faced charges of felony child abuse after violently shaking his young daughter, causing her to suffer severe brain damage. Although Tony was eventually acquitted of the charges, he was placed on paid administrative leave as a result of the incident. Tony was still on administrative leave at the time he killed Veda.[1]

A major barrier to ensuring effective law enforcement response to domestic violence is the prevalence of domestic violence among law enforcement officers themselves.

A major barrier to ensuring effective law enforcement response to domestic violence is the prevalence of domestic violence among law enforcement officers themselves. While no uniform data is collected regarding the incidence of abuse in police families, one study found that rates of abuse in police families may be anywhere from 2 to 4 times higher than in American families in general.[2] Regardless of the actual numbers, the fact that law enforcement officers are

perpetrating domestic violence against their intimate partners and family members presents some very serious societal dangers.

Victims of officer-perpetrated domestic violence are essentially shut out of the normal channels of seeking protection from abuse.

The most immediate danger posed by officer-perpetrated domestic violence is to the victim of abuse herself. Victims of officer-perpetrated domestic violence are essentially shut out of the normal channels of seeking protection from abuse. Unlike other domestic violence situations, the victim's abuser is part of the very system that she must turn to for help. Moreover, the victim's abuser is constantly armed,[3] has a high level of public authority, has the backing of law enforcement and criminal justice system personnel, and is specially trained to intimidate and track the victim down no matter where she runs.[4] An officer-abuser is also familiar with the legal system's response to domestic violence and, therefore, knows how to manipulate the system to avoid being held criminally accountable for domestic violence.[5]

Calling the police is often not a safe option for a victim of officer-perpetrated domestic violence due to the potential for abuse or retaliation by the abuser or his fellow officers. Reporting the violence to a department supervisor carries a similar threat of retaliation, with little promise of actual consequences for the abuser or protection for the victim. If the victim obtains a restraining order, she must look to her abuser or his colleagues to enforce the order.[6] If she tries to flee to a shelter, the abuser is well aware of, and has access to, the locations of confidential domestic violence shelters.

Seeking assistance for domestic violence can be an even greater challenge when the victim is also a member of law enforcement. An officer-victim may be perceived by some of her peers as being a "troublemaker" who has betrayed their professional code of loyalty if she files a report against her abuser for domestic violence.[7] In addition, reporting the domestic violence to unsympathetic or even hostile supervisory personnel may jeopardize the victim's professional career and result in disciplinary action against her, rather than

her abuser.[8] Given all of these factors, victims of officer-perpetrated domestic violence are among the most vulnerable domestic violence victims.[9]

Officer-perpetrated domestic violence also threatens the safety of the community at large. An officer who is abusive is more likely to be overly sympathetic to an abuser and, consequently, less likely to demonstrate objectivity and concern for the victim's safety when responding to a domestic violence situation. As such, the officer may minimize the victim's allegations and refuse to take the necessary steps to ensure the victim's safety, such as arresting the abuser, issuing an emergency protective order, enforcing an existing restraining order, or referring the victim to appropriate services or shelter. This dereliction of duty increases the risk to the victim, her family, and community members of being injured or killed by the abuser once the officer leaves the scene of the incident.

Law enforcement leaders have a responsibility to victims, law enforcement personnel, and the public to develop and strictly enforce policies that hold law enforcement accountable for violence inflicted on intimate partners and family members. The integrity of their agencies depends on prompt and effective response to officer abuse. The failure to meet this responsibility can expose the department to civil liability should serious injury or death occur as a result of known or suspected domestic violence committed by an officer.[10] Moreover, ignoring officer-perpetrated domestic violence and exempting its own officers from the very laws that they are mandated to enforce causes the agency to lose credibility and forfeit the trust of the community that it serves. For domestic violence to be treated as a serious crime, no one can be immune from criminal domestic violence laws.

Law enforcement agencies that exempt their own officers from the very laws that they are mandated to enforce jeopardize the public's safety and forfeit the trust of the communities they serve.

HOW FAR HAVE WE COME?

Identifying and Defining the Problem

For many years, domestic violence in law enforcement families was a problem that received little attention by the criminal justice system and the community. It was not until the early 1990s that social scientists, victim advocates and law enforcement professionals began to seriously examine the relationship between law enforcement officers, the law enforcement culture, and family violence within law enforcement families. Several studies, in particular, have been instrumental in sparking interest in this issue.

The first study was conducted in 1991 by Dr. Leanor Boulin Johnson of Arizona State University. The Johnson study surveyed 728 officers and 479 spouses in three East Coast police departments regarding work-related stress and its impact on the officers' family life. Forty (40) percent of the officers surveyed reported that they had been verbally or physically abusive toward their spouses or children within the six months prior to the survey.[11] Ten (10) percent of the spouses surveyed reported physical violence by their officer-spouses during this period, and 20 to 30 percent reported that their partners "frequently became verbally abusive toward them or their children."[12]

While some questioned the methodology of the Johnson study,[13] another study released a year later in 1992 produced similar results. In this study, researchers Neidig, Russell and Seng surveyed 385 male police officers, 40 female officers and 115 female spouses of officers. Approximately 40 percent of the officers surveyed reported experiencing at least one incident of physical aggression during a marital conflict within the prior year, and 28 percent admitted that they were physically violent toward their intimate partners during this period.[14] Eight (8) percent of male officers reported severe physical violence, including strangling, beating, or using a weapon against their intimate partners.[15]

Two years later, in 1994, the Southwestern Law Enforcement Institute[16] conducted a nationwide survey of 123 police agencies serving populations of 100,000 or more. The survey examined police officials' perceptions of the scope of domestic assault problems in their departments, departmental policy responses to such assaults, and disciplinary actions taken. Survey responses revealed that 28 percent of the departments experienced an increase in officer-involved domestic violence within the prior two years, and that 45 percent of the departments had no specific policy in place for dealing with officer-involved domestic violence.[17] For officers facing their first sustained complaint of domestic violence, 52 percent of departments preferred counseling to other methods of discipline.[18] Forty-eight (48) percent of departments preferred to discipline officers facing a second sustained complaint by suspending them without pay.[19]

While these studies accounted for only a small sample of officers and agencies, the startling findings alerted law enforcement departments across the country to the need to address domestic violence within their own ranks. These findings also caused social scientists and advocates to examine whether there was something inherent in the "police culture" and "police personality" that contributed to the prevalence of domestic violence within law enforcement families.

In 1998, the Federal Bureau of Investigation ("FBI") convened a group of law enforcement officers, attorneys, psychologists, victim advocates, and chaplains for a conference at the FBI Academy in Quantico, Virginia, to share their views and research on officer-perpetrated domestic violence.[20] Conference participants submitted commentary and research on a variety of issues relating to domestic violence in police families that were compiled and published by the FBI.[21]

Some conference participants attributed the potential for domestic violence by officers to the ingrained "culture" of law enforcement that promotes authoritarianism, entitlement, emotional detachment, and the use of force to

resolve conflicts.[22, 23] Other participants cited the impact of the law enforcement profession itself, and the significant stress and conflict that it causes for officers and their families, as a contributing factor for officer-perpetrated domestic violence.[24]

A primary barrier to achieving safety for victims of officer-perpetrated domestic violence is the persisting "Code of Silence" that exists among members of law enforcement.

With regard to victim safety, participants identified multiple barriers that victims face in seeking protection from officer-perpetrated abuse. These included the inability to obtain confidential access to emergency shelters, heightened dangers to victims' physical safety due to their partners' possession of weapons and specialized training in the use of force, and the victims' inability or reluctance to rely on officers and criminal justice personnel who may be hostile to their efforts to accuse a fellow officer of domestic violence.[25] In fact, participants acknowledged that a primary barrier to achieving safety for victims is the persisting "Code of Silence" among members of law enforcement, under which fellow officers refuse to report or otherwise provide information concerning other officers' misconduct out of loyalty to their peers.[26]

While the participants in the FBI conference had diverse backgrounds and held divergent beliefs about the actual prevalence of, and contributing factors for, officer-perpetrated domestic violence, participants were generally in agreement about what steps should be taken to improve the response of law enforcement to this problem. Recommendations from participants on this topic included:

- Developing and strictly enforcing written protocols for addressing officer-perpetrated domestic violence;
- Conducting training for law enforcement on identifying, preventing and intervening in cases of officer-perpetrated domestic violence;
- Shifting departmental priorities from authoritarianism and the use of force to building communication and non-violent conflict resolution skills among officers;

- Establishing a "zero tolerance" policy within departments for domestic violence by officers;
- Using pre-employment screening tools to identify employees with abusive or violent tendencies;
- Placing a greater emphasis on and encouraging a commitment to protecting the safety of victims of officer-perpetrated domestic violence;
- Establishing early intervention policies and services for officers who may be at risk of perpetrating domestic violence or abuse;
- Increasing collaboration between law enforcement and victims advocacy groups; and
- Conducting further research on the prevalence and risk factors for officer-perpetrated domestic violence.[27]

The FBI conference was a valuable effort that brought together professionals and research from across the nation to examine the various problems associated with preventing and holding officers accountable for domestic violence, as well as ensuring the safety of victims of such violence. However, the burden remained with individual law enforcement departments to use this expertise to examine and improve their own policies for addressing officer-perpetrated domestic violence.

Legal and Policy Changes

As societal recognition of officer-perpetrated domestic violence grew, so did the demand for more accountability for such violence and responsibility for the safety of victims. One of the most significant legal advancements in this area occurred in 1996, when Congress passed the Lautenberg Amendment to the Gun Control Act of 1968. Codified in 18 U.S.C. § 922, the Lautenberg Amendment prohibits anyone who is convicted of a misdemeanor crime of

IMPACT OF GUN RESTRICTIONS ON POLICE PERPETRATORS OF DOMESTIC VIOLENCE

IF SUBJECT TO A RESTRAINING ORDER:

California Law:

- Prohibits persons subject to civil domestic violence restraining orders from owning, possessing, purchasing, receiving or attempting to purchase or receive a firearm while the restraining order is in effect.[i]
- However, provides for a "public interest" exception whereby peace officers who use firearms in connection with their official duties can petition the Court to continue to carry a firearm, either on duty or off duty.[ii]

Federal law:

- Prohibits a person who is subject to a protective order from possessing or receiving a firearm.[iii]
- However, provides for an "official use exception" for police officers, military personnel, and other government employees who use firearms in connection with their official duties.[iv]

IF CONVICTED OF MISDEMEANOR DOMESTIC VIOLENCE:

California Law:

- Prohibits a person convicted of misdemeanor domestic violence from owning, purchasing, receiving or possessing a firearm for a period of 10 years.[v]
- However, provides for a one-time "public interest" exception whereby peace officers can petition the Court for relief from this prohibition.[vi]

Federal Law:

- Prohibits a person convicted of misdemeanor domestic violence from possessing or receiving a firearm.[vii]
- There is no "official use exception" for police officers, military personnel, and other government employees convicted of misdemeanor domestic violence.[viii, ix]
- Federal law also makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person has been convicted in any court of misdemeanor domestic violence.[x, xi]

IF CONVICTED OF FELONY DOMESTIC VIOLENCE:

California Law:

- Prohibits a person convicted of felony domestic violence from owning, purchasing, receiving or possessing a firearm.[xii]
- However, allows convicted felons who have never been convicted of a felony involving the use of a deadly weapon to seek a pardon from the Governor to restore their civil rights, including the right to own, possess or keep a firearm.[xiii]

Federal Law:

- Prohibits a person convicted of felony domestic violence from possessing or receiving a firearm.[xiv]
- However, provides for an "official use exception" for police officers, military personnel, and other government employees who use firearms in connection with their official duties.[xv] Thus, peace officers who are convicted of misdemeanor domestic violence are subject to a permanent federal firearm ban, while peace officers who are convicted of a domestic violence felony are not.[xvi]

domestic violence from owning or possessing a firearm. Despite intense lobbying from law enforcement agencies and associations, no exception was created for government employees who use guns in carrying out their official duties.

Subsequent to its passage, the Lautenberg Amendment withstood constitutional challenges initiated by law enforcement associations and private individuals alleging that its application would unfairly deprive law enforcement officers of their livelihoods.[28] Thus, the Lautenberg Amendment continues to apply to all local, state, federal and military law enforcement officers and to all misdemeanor domestic violence convictions, including convictions prior to the enactment of the amendment.

Law enforcement officers are subject to federal laws that prohibit anyone who is convicted of a misdemeanor crime of domestic violence from owning or possessing a firearm.

While the Lautenberg Amendment constituted a major step toward achieving accountability for officers who perpetrate domestic violence, as well as safety for their victims, it also had unintended consequences. Because a domestic violence conviction could end an officer's career by taking away his right to possess a firearm, law enforcement departments had an even greater incentive than before to hide or trivialize allegations of officer-perpetrated domestic violence.

In fact, research on the implementation of the Lautenberg Amendment reveals that very few law enforcement officers have actually been affected by federal gun restrictions. For instance, a 1999 survey of 217 law enforcement agencies in Kentucky found that only 4 percent of the state's law enforcement departments reported having officers within their ranks with misdemeanor convictions for domestic violence.[29] Only 12 officers statewide were identified as having domestic violence convictions that triggered the federal gun prohibition.[30] Of these 12 officers, 2 were terminated and 7 had their convictions expunged.[31] Similarly, a survey of the 100 largest police departments in the U.S. found that as of 1999, only 11 officers from these departments had been affected by the federal gun ban.[32]

A recent study revealed that only 29% of law enforcement agencies surveyed had specific policies in place for addressing officer-involved domestic violence and only 3% had detailed, comprehensive policies that were comparable to existing model policies.

The fact that the Lautenberg Amendment affected only a handful of law enforcement officers across the nation did not mean that domestic violence simply disappeared within the law enforcement community.[33] To the contrary, advocates viewed these low numbers as evidence that departments were enabling officers to evade federal gun restrictions by allowing them to plead to crimes other than domestic violence, or by expunging their domestic violence convictions.[34] Indeed, these findings demonstrated that creating a "zero tolerance" culture within law enforcement departments for domestic violence by officers was just as critical as creating more legal accountability for officer-perpetrated domestic violence.

Consequently, following the passage of the Lautenberg Amendment, the International Association of Chiefs of Police ("IACP") released a model policy for addressing domestic violence by law enforcement officers.[35] The model policy was a collaborative effort between law enforcement, victim advocates and domestic violence victims from across the country.[36] The IACP put forth its model policy with the recommendation that law enforcement leaders adopt some version of the policy in the interest of ensuring the safety of victims of officer-perpetrated domestic violence, maintaining the integrity of their departments, and avoiding potential liability should serious injury or death occur.

The model policy emphasizes the prevention of officer-perpetrated domestic violence through hiring and training practices and immediate intervention by supervisors when signs of domestic violence become evident. In addition, the model policy requires departments to institutionalize structured responses to officer-perpetrated domestic violence that protect the victim's safety and hold abusive officers strictly accountable for their conduct.[37]

A recent study revealed that only 29 percent (23 of 78) of law enforcement agencies surveyed indicated that they had specific policies in place for addressing officer-involved domestic violence.[38] The study analyzed policies submitted by 22 agencies and found that only 2 agencies had detailed, comprehensive

policies for addressing officer-involved domestic violence that were comparable to the IACP's model policy.[39] In fact, policies varied widely among agencies and many failed to address critical issues such as screening officer candidates for domestic violence, monitoring and reporting abusive conduct by officers, investigating domestic violence complaints against officers, weapons seizure and responding to officers who are victims of domestic violence.[40]

A 1997 investigation revealed flagrant failures on the part of the Los Angeles Police Department to effectively address the problem of domestic violence perpetrated by its own officers.

California's Response

During the time that the IACP was developing its model policy, a series of events brought national attention to the problem of officer-perpetrated domestic violence in California. In 1997, a consultant named Bob Mullally released confidential Los Angeles Police Department ("LAPD") records to the media documenting countless acts of violence by 79 LAPD officers against their intimate partners and family members.[41] None of the officers had been arrested. Instead, the records showed that every case was handled internally by the LAPD, with the majority of officers receiving only a reprimand or brief suspension for their conduct.

In light of this information, the Los Angeles Police Commission's Domestic Violence Task Force and the Office of the Inspector General ("OIG") launched an investigation of the LAPD's internal affairs investigations of officer-involved domestic violence completed between 1990 and 1997, a total of 227 cases.[42] The results of the investigation revealed a consistent failure on the part of the LAPD to effectively address the problem of domestic violence by its officers. Of the 227 cases reviewed, only 40 percent of the investigated complaints of domestic violence were sustained.[43] Sixty (60) percent of the complaints were dismissed due to a finding that the abuse did not occur, that there was insufficient evidence of abuse, or that the conduct of the officer was justified and lawful.[44]

Of the complaints that were sustained, 61 percent resulted in suspensions, with the vast majority falling between one and fourteen days.[45] Twenty-two (22) percent of the perpetrators received only a reprimand or admonishment from their supervisor,[46] and only 9 percent were actually terminated from their employment.[47, 48] Only 4 officers were actually convicted of domestic violence offenses.[49] Appallingly, of these 4 officers, one had his conviction expunged, and two received only minimal suspensions from the department for their misconduct.[50]

Despite the inconsequential punishment of these officers, many of the acts of abuse that their victims complained about were severe and life-threatening. The conduct included choking, punching, sexual assault, threats with a weapon, pushing the victim down a flight of stairs, and slamming the victim's head into a car windshield. In fact, one officer was given a two-day suspension, later reduced to an admonishment, after hitting his wife so hard that he split her lip.[51]

Even more astounding, the investigation revealed that sustained allegations of domestic violence did not affect an officer's performance evaluations or promotability. In one case, the abuser-officer grabbed his victim by the hair, threw her down on the floor, and repeatedly punched her in the stomach. His performance evaluation made no mention of the incident and concluded that the "[officer] has consistently displayed a calm and professional demeanor even when dealing with the most highly agitated and stressful situations."[52]

Indeed, almost a third of officers with sustained domestic violence complaints were eventually promoted.[53] None of the officers were barred from obtaining desired positions or transferring to other assignments that were inconsistent with the allegation of domestic violence. One officer was even transferred to the Police Academy to serve as a special instructor shortly after being suspended for domestic violence involving a firearm.[54]

As a result of the investigation, the OIG made numerous recommendations for improving LAPD officers' responses to domestic violence, including:

- Create a specialized unit within the Internal Affairs Division to investigate complaints of domestic violence by officers;
- Mandate that officers accused of domestic violence be subject to the same treatment as civilians, including arresting the officer when required under state law;
- Institute a "no-drop" policy for departmental investigations similar to that of the City Attorney regarding domestic violence prosecution;
- Develop a checklist for investigating complaints of domestic violence by officers;
- Provide training to internal affairs personnel and command staff on the definition and dynamics of domestic violence;
- Mandate that the same criteria for referring a domestic violence complaint for criminal prosecution that are used in cases involving civilians be used in cases involving officers;
- Ensure that departmental discipline is commensurate with the severity of the offense;
- Create a data base to track allegations of misconduct by officers; and
- Train supervisors to identify signs of officer domestic violence and intervene.[55]

One month after the OIG report was released, a special unit was created within the LAPD's internal affairs department to investigate complaints of domestic violence by officers. The creation of the specialized unit resulted in a surge of investigations and arrests of officers for domestic violence.[56]

In addition, the OIG continues to monitor how the LAPD handles complaints of officer-perpetrated domestic violence. Most recently, the OIG reviewed

the department's investigation and actions in 19 cases of alleged domestic violence by officers, completed between July and September 2003.[57] The OIG identified problems with respect to 4 of the 19 cases that it reviewed.[58] In one of the problematic cases, an officer was charged with three counts of domestic violence and one count of providing misleading statements to a supervisor during an official investigation.[59] The officer was determined to be guilty of all charges and the LAPD's Board of Rights ("BOR") recommended that the officer be terminated.[60] The decision was later reviewed by the Chief of Police, who reduced the penalty to a five-day suspension.[61] The OIG questioned the appropriateness of this action given that the complaint file failed to contain any justification or explanation for the decision.[62]

Two years after the LAPD scandal, a highly publicized homicide shifted attention to problems of officer-perpetrated domestic violence among Northern California law enforcement departments. On November 8, 1999, Phillip Garcia, an officer for the Newark Police Department in Santa Clara County, ran his ex-girlfriend, Lisa Munoz, off the road as she was driving home.[63] Garcia walked up to Lisa's vehicle and shot her three times in the head as she sat in her car.[64] He then shot himself and died at the scene.[65]

It was later discovered that two restraining orders had been issued against Garcia in the 1990s.[66] The first restraining order was issued in 1992 after Garcia had threatened a previous girlfriend.[67] The second restraining order was issued in 1993 at the request of Lisa's parents who were concerned that Garcia, who was then 22 years old, began dating Lisa when she was a minor.[68] Despite these restraining orders, Garcia was hired by the King City Police Department in 1996.[69] Two years later, he was hired by the Newark Police Department, which also failed to uncover the restraining orders during its initial screening and investigation of Garcia.[70]

The murder of Lisa Munoz ignited local inquiries into whether law enforcement agencies utilized adequate screening processes and background

checks for new recruits. These inquiries revealed that many law enforcement agencies failed to review civil and family court records when conducting background checks for new recruits.[71] In fact, the San Jose Mercury News conducted a survey of fifteen Bay Area law enforcement agencies and found that less than one-third reviewed civil and family court records when investigating prospective officers.[72]

Statewide minimum guidelines for conducting background checks of officer candidates do not require that law enforcement agencies review civil and family court records.

One reason for this oversight was that state guidelines for conducting background checks of officer candidates do not require a search of civil and family court records. Minimum guidelines for conducting background checks are established by the Commission on Peace Officer Standards and Training ("POST"), a division of the California Department of Justice.[73] The minimum guidelines require law enforcement agencies to review federal and state criminal records, as well as other records evidencing the personal "character" of the candidate, such as driving and credit records. There is no requirement, however, that agencies review civil and family court records when investigating an officer candidate.[74] Even in the wake of the Munoz case, state law and POST guidelines were never amended to specifically require such an investigation.[75] Consequently, individual department policies dictate whether an agency will exceed minimum state guidelines, and investigate whether civil and family court proceedings demonstrate that a candidate has a history of domestic violence.[76]

The spotlight on problems in Los Angeles and Santa Clara County caused other law enforcement departments in California and across the nation to examine their own practices and track records in this area. However, as media and public attention on the issue waned, so did the momentum among police departments to aggressively address domestic violence within their ranks.

WHERE ARE WE NOW?

We interviewed representatives from thirteen law enforcement departments in different California counties[77] to assess current departmental policies and practices that address police-perpetrated domestic violence. The interviewees were the primary persons in their departments responsible for responding to complaints of domestic violence from police officer families. The results of these interviews are described below.

Our interviews exposed harmful attitudes among law enforcement departments and officers charged with responding to officer-perpetrated domestic violence.

Departmental Attitudes

Despite the many efforts to bring attention to officer-perpetrated domestic violence, this issue continues to be a sensitive subject for law enforcement departments:

- A majority of interviewees (8 out of 13) became very defensive when asked how their departments respond to complaints of officer-perpetrated domestic violence. One interviewee even made it a point to clarify that he has never committed an act of domestic violence against anyone.

- A majority of interviewees (8 out of 13) were extremely reluctant to provide any information about their policies and procedures for addressing officer-perpetrated domestic violence. This remained true even after the interviewer assured the interviewees that there was no expectation that they would share sensitive or confidential information. One interviewee claimed that it was against department policy to release this type of information to the public.

Our interviews also exposed some harmful attitudes among law enforcement departments and officers charged with responding to officer-perpetrated domestic violence:

- One interviewee stated that most incidents of domestic violence are "petty crimes" that are best addressed by sending couples

to relationship counseling rather than taking legal action. The majority of interviewees, however, acknowledged the need to treat domestic violence as a serious crime.

- Two interviewees conceded that one of the main impediments to identifying and prosecuting law enforcement officers who perpetrate domestic violence is the existence of a "police culture" of secrecy and loyalty among officers.

- While many interviewees valued domestic violence training for officers, one stated that rigorous training has not been sufficient to change core attitudes among fellow officers and community members that domestic violence, including domestic violence by police officers, is a not serious matter.

- Several interviewees adhered to the belief that victims are likely to come forward and report domestic violence despite feelings of embarrassment or fear of their abusers.

- One interviewee commented that because the surrounding community largely consists of uneducated, agricultural people, it would be impractical for the department to spend money and energy educating the community about domestic violence resources and services.

- All but one of the interviewees stated that their departments were doing an excellent job, and that there was nothing else that could be done to improve the investigation and prosecution of police officer domestic violence.

- In fact, when asked whether external oversight of how departments handle cases of police-perpetrated domestic violence was needed, one interviewee stated, "Our community loves us, so we don't need a civilian review board."

Departmental Policies

While California law requires law enforcement departments to establish written protocols for responding to complaints of domestic violence in the community, there is no requirement that departments develop protocols for

responding to officer-perpetrated domestic violence. The decision to develop an internal policy for handling such cases is left to the discretion of individual departments:

Most law enforcement departments that we surveyed had no specific policies or protocols in place for conducting criminal and administrative investigations of officer-perpetrated domestic violence.

- Eleven (11) of the 13 departments surveyed had no specific written policies or protocols for conducting criminal investigations of officer-perpetrated domestic violence. Rather, many interviewees stated that there is an "expectation" within their departments that an officer accused of domestic violence will be treated like any civilian who perpetrates domestic violence, and will be subject to the same criminal laws. One department noted, however, that it is currently developing a "best practices" guide for conducting criminal investigations into domestic violence by officers.

- Eleven (11) of the 13 departments surveyed had no specific written policies or protocols for conducting administrative investigations of officer-perpetrated domestic violence. The majority of departments conducted such investigations according to their policies and protocols for addressing and punishing officer misconduct in general.

- Most interviewees were unaware of the model policies propagated by the International Association of Chiefs of Police for responding to officer-perpetrated domestic violence, as well as other national and local advocacy efforts to improve departmental response this problem. This was particularly troubling given that all interviewees were identified as the primary persons within their respective departments responsible for responding to complaints of officer-perpetrated domestic violence.

Investigation and Accountability

Each department surveyed conducts both a criminal and an administrative investigation in response to allegations of officer-perpetrated domestic violence. Departments reported taking similar approaches to handling these investigations:

- All of the departments surveyed require separate criminal and administrative investigations for allegations of officer-perpetrated domestic violence. In some counties, "separate" means that the criminal and administrative investigations are handled by different law enforcement investigators. In other counties, it means that criminal investigations are turned over to district attorney investigators, while the administrative investigation remains with the accused officer's department.

- If the domestic violence incident occurs outside the department's jurisdiction, the criminal investigation is conducted by the local law enforcement authorities and district attorneys where the incident occurred, while the department maintains authority over the administrative investigation.

- Most departments surveyed (10 out of 13) do not conduct concurrent criminal and administrative investigations of police-perpetrated domestic violence. Rather, the criminal investigation of the officer is completed first, and the case is referred to the district attorney. If charges are filed against the officer, most departments will wait until the criminal case is fully adjudicated before starting the administrative investigation.

- If the officer is criminally convicted of domestic violence, a majority of departments will terminate the officer. Some departments, however, will impose either suspension or termination, taking such factors into consideration as the officer's history of abuse, the extent of the victim's injuries, and whether the officer used any weapons.

- If the officer is acquitted or no criminal charges are filed by the prosecutor, 12 of the 13 departments surveyed still pursue an administrative investigation to see whether the officer violated any administrative or professional rules. In such cases, the officer can be required to undergo counseling or additional training on domestic violence, or may even be suspended or terminated. One department reported that it continues with an administrative investigation of the officer only if the allegations "seem serious."

- Nearly half of the departments surveyed did not support conducting investigations into past allegations of domestic violence by officers.

Nearly half of the law enforcement departments that we surveyed did not support conducting investigations into past allegations of domestic violence by officers.

Some departments, however, described unique partnerships and practices in their counties for investigating and responding to domestic violence by officers:

- One department has established a special unit within its Internal Affairs Department specifically to handle cases involving domestic violence by its officers.
- One department works closely with a special unit of its local district attorney's office whose sole purpose is to lead criminal investigations in cases involving public and/or high-ranking individuals, such as law enforcement officers and judges.
- One department has established a civilian review board to oversee all of its internal administrative investigations, including investigations of police officer domestic violence. Two other departments reported an interest in having a civilian review board or civilian oversight committee.

Most law enforcement departments attributed their low number of officer-involved domestic violence complaints to the fact that their departments are doing an excellent job in responding to this problem and their belief that the prevalence of intimate partner abuse within police families is actually lower than among civilians.

Outreach, Accessibility to Victims and Prevention Efforts

When responding to domestic violence in the community, police departments take great pride when domestic violence calls for assistance to their department are "on the rise." Indeed, rising numbers of domestic violence reports to police are often applauded as evidence that law enforcement, the criminal justice system, and community advocates are doing a better job at making themselves accessible to victims and giving them the support they need to safely come forward and report abuse.[78]

Departments seem to adopt a very different perspective, however, when it comes to complaints of officer-perpetrated domestic violence. Disturbingly, most departments surveyed by CWLC attributed their low number of officer-involved domestic violence complaints to (1) the fact that their departments are doing an excellent job in responding to this problem and (2) their belief that

the prevalence of intimate partner abuse within police families is actually lower than among civilians.

- On interviewee noted a steep decline in complaints within the past five years, with a current average of two cases of domestic violence by officers each year. The interviewee attributed this decline to expanded education requirements for officers on domestic violence, and improved departmental awareness and practices about the seriousness of violence by officers.

- One interviewee attributed his department's low number of complaints of police officer domestic violence (4 complaints each year in a department of over 700 officers) to the fact that law enforcement officers are generally held to a higher standard of moral conduct than others in the community.

- A representative from a larger, urban department stated that, although the department receives approximately 60 complaints of police officer domestic violence each year, these complaints involved only 0.5 percent of its officers, whereas the prevalence of domestic violence among society in general is approximately 3 to 4 percent. He stated that these numbers reflect the good record that the department's officers have regarding domestic violence compared to the public at large.

- Two interviewees boasted that their departments had not received a single complaint of domestic violence against its officers in almost twenty years.

Several interviewees cited their low numbers of complaints as a reason why there was no need to devote time and resources to providing special outreach services to police families related to domestic violence. In fact, none of the departments surveyed conduct regular and ongoing outreach to intimate partners or family members of officers. None provide intimate partners or family members of officers with information about the unique dangers that victims of police officer domestic violence face, or how to file domestic violence complaints against officers with the department.

Interviewees cited their low number of complaints as a reason why there was no need to devote time and resources to providing special outreach services to police families related to domestic violence.

One department that we spoke to, however, recognized the need to take some proactive steps to educate officer spouses about domestic violence, and to make departments accessible to family members who may be experiencing abuse. This department reported holding a 4-hour training session for officer spouses to discuss the experience of living with a police officer. Issues of domestic violence were included in the training.

With regard to their efforts to prevent officer-perpetrated domestic violence, surveyed departments highlighted current recruiting and employment practices for identifying and addressing abusive or potentially abusive officers. These practices include screening new employees for abusive behavior and tendencies, educating officers about domestic violence, and providing employment-related services for officers with a history of abusive or violent behavior:

- Departments reported that polygraph tests for incoming officers have become standard, with some departments conducting psychological evaluations to specifically determine whether a recruit is prone to violent behavior.
- A majority of departments surveyed noted that current mandatory training and continuing education for officers on domestic violence helps ensure that officers are cognizant of laws prohibiting and criminalizing domestic violence.
- A majority of departments surveyed stated that they encourage and, in some cases recommend, that officers utilize employee assistance programs and counseling services if they are having problems with their spouses or significant others.

While these activities and services are beneficial, it is critical that law enforcement departments place a stronger emphasis on evaluating how they can better identify and respond to domestic violence by their officers. This includes demonstrating the department's commitment to holding its own accountable for domestic violence.

Improvement must begin with the recognition that just because a department receives only a handful of complaints of officer-perpetrated domestic violence each year, this does not mean its officers are not committing acts of domestic violence. To the contrary, given the significant barriers and isolation that victims of officer-perpetrated domestic violence face, and studies that indicate rates of domestic violence among law enforcement families to be at least comparable to those of the general public, a low number of complaints demonstrates that departments are not doing all they can to address this problem.[79]

Indeed, victim advocates argue that despite advancements, departments continue to trivialize, ignore and conceal officer-perpetrated domestic violence.[80] Some reasons cited by advocates for this lack of accountability include: (1) persisting attitudes among law enforcement that responding to officer-perpetrated domestic violence constitutes an improper intrusion into a fellow officer's private family life; (2) enduring codes of silence and loyalty among law enforcement that deter officers from acting when confronted with accusations that could jeopardize a fellow officer's employment or the department's reputation; (3) departmental incentives to protect officers from federal gun bans tied to domestic violence; and (4) institutional and societal resistance to acknowledging and addressing the unique barriers that effectively keep victims of officer-perpetrated domestic violence shut out of the normal channels of seeking help.[81]

Victim advocates argue that despite advancements, law enforcement departments continue to trivialize, ignore and conceal complaints of officer-perpetrated domestic violence.

WHERE DO WE GO FROM HERE?

Based on our interviews with law enforcement representatives and our review of current research on officer-perpetrated domestic violence, we make the following recommendations for improving the response of law enforcement to officer-perpetrated domestic violence:

• **Law enforcement departments should develop and strictly enforce comprehensive written protocols for preventing, identifying and responding to officer-perpetrated domestic violence**. Existing law enforcement protocols for responding to domestic violence in the community fail to adequately address the unique dangers to victims and challenges for departments when members of law enforcement perpetrate acts of domestic violence. The same is true of existing protocols for conducting internal investigations into officer misconduct. For example, these protocols may not include procedures for protecting the safety of the victim of the officer's misconduct, which is vital in cases of officer-perpetrated domestic violence. It is critical, therefore, that departments adopt specific protocols for conducting criminal and administrative investigations into officer-perpetrated domestic violence.

Department protocols should include policies for ensuring the safety of victims and holding officers strictly accountable for confirmed acts of domestic violence or abuse. They should include strategies for preventing and identifying domestic violence by officers, as well providing intervention and support services for officers and family members. In addition, protocols should include polices for taking disciplinary action against officers and supervisors who fail to report or adequately respond to domestic violence by other officers. Departments should review model policies, such as those promulgated by the International Association of Chiefs of Police, in developing their policies.

• **Law enforcement leaders should institutionalize a "zero tolerance" policy within their departments for domestic violence by officers**. Protocols regarding officer-perpetrated domestic violence are meaningless unless they are accepted and strictly enforced by all levels of law enforcement. Accordingly, the effective enforcement of such protocols cannot be achieved in a "police culture" that promotes harmful attitudes and loyalties among officers. Chiefs of police and other law enforcement leaders have the greatest ability to change core attitudes within their departments that promote and protect acts of domestic violence and abuse by officers. Law enforcement leaders must reinforce written protocols with clear departmental mandates that domestic violence is serious crime that will not be tolerated by the department.

• **Criminal investigations of complaints of officer-perpetrated domestic violence should be separate from and independent of departments' own administrative investigations into such complaints**. To ensure the greatest protection from bias, criminal investigations of officers accused of domestic violence should be immediately referred to and conducted by investigators within the office of the district attorney where the abuse occurred. Departments should also conduct a comprehensive internal investigation of the officer to determine whether disciplinary action is warranted, regardless of the outcome of criminal proceedings against the officer.

• **Departments should adopt hiring and recruiting practices that screen out potentially violent or abusive officers**. Departments should conduct thorough background checks on all potential employees that include investigations into prior allegations, disciplinary actions, or convictions relating to domestic violence or other violent conduct by prospective officers. Background checks must include a search of civil and family court records, as well as the California Law Enforcement Telecommunications System ("CLETS"),[82] to identify prior restraining orders or other evidence of past abuse by a candidate. Departments should also utilize psychological screening tools that focus on identifying violent and abusive behaviors or tendencies among applicants.[83]

• **Departments must conduct regular outreach and educational activities related to domestic violence for the intimate partners and families of officers**. Departments must be committed to being accessible to, and supportive of, intimate partners and families of officers who may be experiencing abuse. This includes regularly advising partners and families of criminal laws and department policies on domestic violence, and explaining who to contact within the department to file a domestic violence complaint. It also involves communicating the department's policies for investigating and resolving a domestic violence complaint, and which department and/or community support services are available to victims of domestic violence. Services and outreach to intimate partners and family members should be confidential, and should emphasize the department's commitment to protecting the safety of domestic violence victims.

• **Departments should train supervisors to identify the warning signs of domestic violence and abuse by officers**. Departments should provide supervisors at all levels of law enforcement with a copy of departmental policies for addressing officer-perpetrated domestic violence. Departments should advise supervisors of their specific duties pursuant to these policies. Departments should also provide supervisors with the training and

tools needed to effectively identify and intervene in a situation in which an officer is exhibiting abusive conduct or tendencies. Supervisors who fail to adhere to established policies should be disciplined.

• **Departments should train all levels of law enforcement personnel how to address officer-perpetrated domestic violence**. Current domestic violence training for law enforcement personnel tends to focus on the general dynamics of domestic violence, and how officers should respond to such incidents in the community. Officers must also be educated about the unique dynamics of officer-perpetrated domestic violence, as well as their own potential for perpetrating abuse. Officers should be informed of departmental policies prohibiting domestic violence and holding officers accountable for abuse. Training should include strategies to prevent and identify abuse in officers' personal relationships or those of their peers. Training should also include education on how officers can use communication and nonviolent conflict resolution skills in their personal and professional lives as alternatives to force and aggression.

• **Departments should provide counseling and support services to officers and their families aimed at reducing work-related stress and addressing interpersonal conflicts**. Adopting a purely punitive approach to officer-perpetrated domestic violence only serves to promote the concealment and escalation of abuse in officer families. Accordingly, departments must provide officers with the encouragement and support they need to feel comfortable utilizing employment resources to address personal problems and conflicts, before these conflicts escalate into violence. These support services, however, should be offered as preventative measures only. The existence of these services does not excuse a department from failing to hold officers criminally and internally accountable for domestic violence or failing to take adequate steps to protect the safety of a victim of officer-perpetrated domestic violence.

• **Departments should establish a civilian review board or other external oversight body for overseeing complaints of domestic violence and other misconduct by officers**. Civilian oversight may be the only effective, immediate solution for achieving objectivity, officer accountability and victim safety for departments with a history of and reputation for trivializing domestic violence and other misconduct by officers. To be truly effective, a civilian oversight board should be comprised of neutral experts with a background in criminal justice and/or civil rights. The board should be appointed by, and operate out of, a neutral government agency, and be vested with the authority required to investigate, evaluate and resolve complaints of officer misconduct. This includes the authority to issue subpoenas and recommend the disposition of complaints. Alternatively, a department

should establish an ombudsman or designate a government office external to itself to receive complaints of domestic violence and other misconduct by officers.

• **Counties should be required to document, track and report uniform data on all incidents of domestic violence by law enforcement, including the criminal and administrative dispositions of each complaint**. Departments should be required to maintain comprehensive and accurate records of all complaints of domestic violence against their officers. This includes documenting the steps taken by the department to investigate each complaint, the results of investigations, and the criminal and administrative dispositions of the complaints. Moreover, as incidents of officer-perpetrated domestic violence can occur in another jurisdiction or may simply escape the attention of an officer's supervisor or internal affairs department, departments should utilize existing statewide criminal justice databases and internal tracking systems to monitor all domestic violence-related incidents involving their officers. On a broader level, requiring departments to make annual reports to the state regarding the number, nature and disposition of domestic violence complaints against officers will enable government and community agencies to better address the incidence of officer-perpetrated domestic violence in California.

• **Departments should work with prosecutors and victim advocates to identify strategies for ensuring the safety of victims of officer-perpetrated domestic violence**. Victims of officer-perpetrated domestic violence face significant barriers and extreme vulnerability in accessing existing domestic violence resources and legal protections, including accessing emergency shelters and applying for and enforcing civil protective orders. Law enforcement, prosecutors and advocates need to work together to modify current policies, practices and protocols to ensure that they more adequately address the safety needs of victims who are abused by officers.

• **State law should be amended to remove the "public interest" exception that allows law enforcement officers who have been criminally convicted of misdemeanor domestic violence to seek relief from firearms restrictions**. Although all domestic violence misdemeanants and felons are strictly prohibited by state law from owning or possessing firearms for a period of 10 years, state law provides an one-time exemption to this prohibition for domestic violence misdemeanants who are law enforcement officers. Pursuant to this exemption, officers can petition the court to regain access to their firearms if their livelihood is dependent upon their ability to legally possess a gun. Given the serious and unique dangers posed by officer-perpetrated domestic violence, these perpetrators must, at a minimum, be held to the same firearm restrictions as all other domestic violence misdemeanants. Although removing the "public interest" exception can have a negative impact on an

officer-perpetrator's employment, this interest is outweighed by the public's and the victim's interest in preventing an officer with a proven history of violence from legally carrying a firearm.

• **Federal laws that impose a permanent ban on firearm ownership and possession for domestic violence misdemeanants, including misdemeanants who are law enforcement officers, should be strictly enforced**. Federal law imposes a permanent life ban on gun ownership and possession for all persons, including law enforcement officers, who have been convicted of a misdemeanor crime of domestic violence. However, misdemeanants are rarely held accountable by federal law enforcement agents and prosecutors when they violate this prohibition. Federal agents and prosecutors should be more proactive in identifying and prosecuting domestic violence perpetrators who violate federal guns restrictions. In addition, local criminal courts should notify domestic violence misdemeanants upon conviction that they are subject to, and may be prosecuted for violating, federal gun bans in addition to firearms restrictions imposed by state law.

• **Conduct comprehensive data collection and research on the causes and prevalence of domestic violence within California law enforcement families**. While numerous studies have been conducted on police-perpetrated domestic violence, most have involved small samples of officers and law enforcement departments in other states. Consequently, to date there has not been a comprehensive examination of domestic violence against the intimate partners and families of law enforcement officers in California. Such an examination is needed to assess the true nature and incidence of officer-perpetrated domestic violence in our state, and to raise awareness of this important issue.

(Footnotes for Gun Restrictions Table)

i. Cal. Fam. Code § 6389 (a)(2005) and Cal. Code Civ. Proc. § 527.9 (a)(2005).

ii. The court may grant a petition for a "public interest" exception if the party can show that "a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the [party] to another position where a firearm is unnecessary." If a petition is granted, the court is required to order that the party only be allowed to possess the firearm during scheduled work hours and during travel to and from work. However, a court may allow a party whose personal safety depends on the ability to carry a firearm to possess the firearm both on duty and off duty if the court finds by preponderance of the evidence that the officer does not pose a threat of harm. This finding must be based on a psychological evaluation of the party and the court may require the party to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence. Cal. Fam. Code § 6389(h) and Cal. Code Civ. Proc. § 527.9 (f).

iii. 18 U.S.C. § 922(g)(8).

iv. 18 U.S.C. 925(a)(1).

v. Cal. Pen. Code § 12021(c)(1) (2005).

vi. An officer may petition the court only once for relief from state firearm restrictions for domestic violence misdemeanants. In order to grant the petition, the court must find by preponderance of the evidence that the petitioner is likely to use the firearm in a safe and lawful manner. In addition, the petitioner must not have any previous convictions for violating state firearm restrictions for misdemeanants and felons and must not otherwise be prohibited from possessing a firearm as specified. Cal. Pen. Code 12021(c)(2) (2005).

vii. 18 U.S.C. §922(g)(9).

viii. 18 U.S.C. 925(a)(1).

ix. However, as a federal offense, only federal prosecutors have the authority to bring charges and prosecution rates are extremely low. From 1997-2001, only 378 cases were filed under section 922(g)(9) by U.S. Attorney's offices. It has been estimated that there may be as many as one million potential defendants who would meet the requirements for prosecution under federal law. Tom Lininger, *A Better Way to Disarm Batterers*, 54 Hastings L.J. 525, 532 (2003).

x. 18 U.S.C. § 922 (d)(9).

xi. In July 2002, the General Accounting Office documented that at least 3,000 persons subject to the gun ban under section 922(g)(9) were able to acquire new guns from federally licensed dealers between 1998 and 2001. Lininger, *supra* note 9 at 532.

xii. Cal. Pen. Code §12021(a)(1) (2005).

xiii. Cal. Pen. Code § 4852.17 (2005).

xiv. 18 U.S.C. §922(g)(1).

xv. 18 U.S.C. § 925(a)(1).

xvi. Congress instituted a permanent firearm ban solely for domestic violence misdemeanants because existing state laws adequately deal with firearm restrictions for felons. T.J. Halstead, *Firearm Prohibitions and Domestic Violence Conviction: The Lautenberg Amendment, CRS Report for Congress* (2001) at 8.

(Footnotes)

1. H. Laurie, et al., *Woman's Slaying Fits Domestic Abuse Profile*, Orange County Reg. (Oct 29, 1999) at A25; S. Pfeifer, et al., *Allegations of Abuse Never Stuck to Wanted DEA Agent,* Orange County Reg. (Oct. 29, 1999) at A24; B. Rams, et al., *DEA Agent Wanted in Shooting Death*, Orange County Reg. (Oct. 29, 1999) at A1; W. Orshoski, et al., *Fugitive DEA Agent Kills Self*, Orange County Reg. (Oct. 31, 1999) at A1.

2. P.H. Neidig, A.F. Seng, & H.E. Russell, *Interspousal Aggression in Law Enforcement Personnel Attending the FOP Biennial Conference*, Nat'l FOP J., Fall/Winter 1992, at 25-28.

3. Jacquelyn Campbell & Anna D. Wolf, *Risk Factors for Femicide in Abusive Relationships: Results From a Multi-Site Case Control Study*, Am. J. Pub. Health, July 2003 (finding that access to guns is one of the strongest predictors of female homicide in abusive relationships, increasing a victim's risk of murder more than five times than when no weapons are present).

4. Sandra Stone, *Barriers to Safety for Victims of Police Domestic Violence*, in U.S. Dep't of Justice, Fed. Bureau of Investigation, *Domestic Violence by Police Officers: A compilation of Papers Submitted to the Domestic Violence by Police Officers Conference at the FBI Academy in Quantico, VA*, 331-42 (Donald Sheehan ed., 2000) [hereinafter FBI Domestic Violence Compilation].

5. P. Conis, K. Lonsway, & D. Wetendorf, *Lessons Learned From Tacoma: The Problem of Police Officer Perpetrated Domestic Violence* (2003).

6. California Family Code §6224 requires that all restraining orders issued pursuant to the Domestic Violence Prevention Act state, on their face, "This order is effective when made. The law enforcement agency shall enforce it immediately on receipt. It is enforceable anywhere in California by any law enforcement agency that has received the order or is shown a copy of the order."

7. Diane Wetendorf, *The Impact of Police-Perpetrated Domestic Violence*, in FBI Domestic Violence Compilation, *supra* note 4 at 375-382.

8. Conis et al., *supra* note 5.

9. For a more thorough examination of the unique dynamics of officer-perpetrated domestic violence, *see* Wetendorf, *supra* note *7.*

10. *See Wright v. Vill. of Phoenix*, 2000 U.S. Dist. LEXIS 2182 (N.D. Ill. 2000) (upholding claims that a police department's failure to respond to a wife's complaints of domestic violence because her husband was the police chief, which led to an escalated pattern of violence that caused her murder, constituted a violation of 42 U.S.C. §1983); *see* section of this report entitled *Legal Liability of Law Enforcement.*

11. Leanor Boulin-Johnson, *On the Frontlines: Police Stress and Family Well-Being* (May 1991) (paper presented at a hearing before the Select Committee on Children, Youth, and Families, U.S. House of Representatives, 102nd Congress).

12. *Id.*

13. The Johnson study failed to include a clear definition of "violence." Thus, of the 40 percent of officers who acknowledged the presence of abuse within their families, it is unclear how many were referring to physical abuse, verbal abuse, or both.

14. P.H. Neidig, H.E. Russell, & A.F. Seng, *Interspousal Aggression in Law Enforcement Families: A Preliminary Investigation*, Police Stud.: The Int'l Rev. of Police Dev., 1992, at 30-38.

15. *Id.*

16. The Southwestern Law Enforcement Institute is now called the Institute for Law Enforcement Administration.

17. Boyd Larry, Daniel Carlson, Rick Smith and Gary Sykes, *Domestic Assault Among Police: A Survey of Internal Affairs Policies*, The Inst. for Law Enforcement Administration (1995), *available at* http://www.cailaw.org/ilea/publications.html (accessed August 10, 2005).

18. *Id.*

19. *Id.*

20. FBI Domestic Violence Compilation, *supra* note 4.

21. *Id.*

22. Robert Sgambelluri, *Police Culture, Police Training, and Police Administration: Their Impact on Violence in Police Families*, in FBI Domestic Violence Compilation, *supra* note 4; Stone, *supra* note 4; Roger Wittrup & Donald McLellan, *The Role of Entitlement in Domestic Abuse Cases Committed by Law Enforcement Personnel*, in FBI Domestic Violence Compilation, *supra* note 4.

23. A. L. Honig and E. K. White, *Violence and the Law Enforcement Family in Law Enforcement Families: Issues and Answers*, at 101-109 (J.T. Reese & E. Scrivner, eds.) (1994); Ellen Kirschman, *I Love a Cop: What Police Families Need to Know* (Guilford Press 1997); Diane Wetendorf, *Police Perpetrated Domestic Violence*, Nat'l Ctr. for Women & Policing, (1998) (1998 Annual Conference).

24. Leanor Boulin-Johnson, *Burnout and Work and Family Violence Among Police: Gender*

Comparisons, in FBI Domestic Violence Compilation, *supra* note 4; Daniel J. Tyler, *Pitfalls of Police Work Leading to Domestic Violence*, in FBI Domestic Violence Compilation, *supra* note 4; *see also*, Honig and White, *supra* note 23.

25. Stone, *supra* note 4; Wetendorf, *supra* note 7 at 375-382.

26. Nancy Bohl, *Preventing Domestic Violence*, in FBI Domestic Violence Compilation, *supra* note 4; Lonald D. Lott & Philip S. Trompetter, *Bad Apples and Bad Barrels: Establishing Departmental Policy and Procedure to Combat Domestic Violence by Police Officers*, in FBI Domestic Violence Compilation, *supra* note 4; Stone, *supra* note 4. The Code of Silence has also been cited as a source of law enforcement's failure to address incidents of sexual harassment, discrimination and excessive force by its officers. *See Shielded From Justice: Police Brutality and Accountability in the U.S.*, Human Rights Watch (1998) (officers who commit human rights violations are routinely protected by the silence of their fellow officers); Merrick J. Bob, *Eleventh Semiannual Report on the Los Angeles County Sheriff's Department* (1999) (Code of Silence contributes to an atmosphere of sexual harassment and complaint trivialization); Management Practices Group, *Los Angeles County Sheriff's Department Analysis and Evaluation* (2000) (police Code of Silence exists and is strongly reinforced by retaliatory conduct, attributing to pervasive sexual harassment and discrimination within law enforcement agencies).

27. Bohl, *supra* note 26; Michael Campion, *Small Police Departments and Police Officer-Involved Domestic Violence: A Survey*, in FBI Domestic Violence Compilation, *supra* note 4; Daniel Clark, *Domestic Violence Committed by Law Enforcement: A Curriculum Proposal*, in FBI Domestic Violence Compilation, *supra* note 4; Constance Klein & Robert Klein, *The Extent of Domestic Violence Within Law Enforcement: An Empirical Study*, in FBI Domestic Violence Compilation, *supra* note 4; Thomas Kraft, *Violence Risk Assessment for Police Force Families*, in FBI Domestic Violence Compilation, *supra* note 4; Vicki Quinn, *Training Approaches for the Prevention of Officer-Involved Domestic Violence*, in FBI Domestic Violence Compilation, *supra* note 4; Sgambelluri, *supra* note 22; Stone, *supra* note 4.

28. *See Nat'l Ass'n of Gov't Employees, Inc. v. Barrett*, 968 F.Supp. 1564 (N.D. Ga. 1997), aff'd, 155 F.3d 1276 (11th Cir. 1998); *Fraternal Order of Police v. United States*, 152 F.3d 998 (D.C. Cir. 1998); *United States v. Gillespie*, 185 F.3d 693 (7th Cir. 1999); *United States v. Mitchell*, 209 F.3d 319 (4th Cir. 2000). The Lautenberg Amendment was also challenged on the grounds that its retroactive application violated Article 1, §9, cl. 3 (Ex Post Facto Clause) of the United States Constitution. *See Nat'l Ass'n of Gov't Employees*, 968 F.Supp. at 1575-76; *United States v. Mitchell*, 209 F.3d at 322-23.

29. V. Kappeler, *Kentucky's Response to the Lautenberg Act: Curbing Domestic Violence Among Police* (1999).

30. *Id.*

31. *Id.*

32. Nat'l Ctr. for Women & Policing, *Domestic Violence Offender Gun Ban Fact Sheet* [citing Ed Meyer, et al., Few Lose Jobs, Akron Beacon J. (December 5, 1999)].

33. Studies indicate that law enforcement families experienced significant rates of domestic violence prior to the passage of the Lautenberg Amendment. *See* Johnson, *supra* note 11 (10 percent of officer spouses surveyed reported physical violence by their officer-spouse within the six months prior to the survey); Neidig, et al., *supra* note 14 (28 percent of officers surveyed admitted that they were physically violent toward their intimate partners within the prior year); and Boyd, *supra* note 17 (28 percent of law enforcement agencies surveyed experienced an increase in officer-involved domestic violence between 1992 and 1994).

34. *See* Conis, et al., *supra* note 5.

35. Int'l Ass'n of Chiefs of Police, *Domestic Violence by Police Officers: A Policy of the IACP Police Response to Violence Against Women Project* (1999).

36. Int'l Ass'n of Chiefs of Police, *Discussion Paper on IACP's Policy on Domestic Violence by Police* (2003), *available at* http://www.theiacp.org/documents/pdfs/Publications/domviolconceptpaper.pdf (accessed August 10, 2005).

37. *Id.*

38. Kimberly Lonsway, *Policies on Police Officer Domestic Violence: Prevalence and Specific Provisions Within Large Police Agencies* (publication pending; on file with author).

39. *Id.* at 25-26.

40. *Id.* at 12-26.

41. The records were obtained by Mullally while serving as an expert witness in a civil rights lawsuit filed against the City of Los Angeles by the family of Melba Ramos, who was shot and killed by her ex-husband, an LAPD officer. *Wynn v. City of Los Angeles*, No. CV 93-3026-WDK (L.A. County Sup. Ct. 1993). Mullally was subsequently prosecuted for criminal contempt for disclosing the confidential records in violation of a court order. David Rosenzweig, *Consultant in Contempt for LAPD Leak*, Los Angeles Times (January 6, 2001). The criminal prosecution of Mullally incited ardent protest from victims, advocates, criminal justice professionals and other community members who felt that Mullally's actions were heroic and justified. Mullally was convicted and sentenced to sixty days in jail. His sentence was later overturned. *Mullally v. City of Los Angeles*, 49 Fed. Appx. 190 (2002).

42. Kathrine Mader, *Domestic Violence Task Force & Office of the Inspector Gen. Domestic Violence in the Los Angeles Police Department: How Well Does the Los Angeles Police Department Police its Own?* Los Angeles Domestic Violence Task Force (1997).

43. *Id.* at 6-7 (figures A-1 & A-2).

44. *Id.*

45. *Id.* at 8-9.

46. *Id.*

47. *Id.* at 8-9, 31.

48. In one case, an officer was terminated after five previous complaints of domestic violence against his girlfriend, who was also an officer, the last of which occurred in another county and resulted in the officer-abuser pleading "no-contest" to a charge of spousal battery. *See* Mader, *supra* note 42 at 31.

49. *Id.* at 15-16.

50. *Id.*

51. *Id.* at 30-31.

52. *Id.* at ii.

53. *Id.* at ii-iii.

54. *Id.* at 30.

55. The OIG made a total of forty-five recommendations as a result of its investigation of the LAPD. *Id.* at 39-44.

56. Scott Glover, *Domestic Violence Arrests Within LAPD Rise*, Los Angeles Times (February 20, 1998) at B1 (Valley Edition); *LAPD Domestic Abuse Unit Probes 22 Cases*, Los Angeles Times (April 2, 1998) at B4 (Home Edition).

57. *Review of Quarterly Discipline Report, Third Quarter 2003*, Office of the Inspector Gen. (2004) (on file with author).

58. *Id.* at 2-7.

59. *Id.* at 2-3.

60. *Id.*

61. *Id.*

62. *Id.*

63. Ron Kitagawa et al., *Slaying Victim's Last Plea Highway Drama: Frantic Cell Calls Couldn't Stop Jealous Cop*, San Jose Mercury News (November 10, 1999) at 1A.

64. *Id.*

65. *Id.*

66. Michelle Guido, *Garcia Had Faced Two Restraining Orders Over Girls, Killer's Troubled Past Revealed*, San Jose Mercury News (November 13, 1999) at 1A.

67. *Bay Area Datelines*, S.F. Exam'r (November 17, 1999).

68. *Id.*

69. *See* Kitagawa, *supra* note 63.

70. Michelle Guido, *Police Fail to Check Records in Hiring Background: Many Agencies Don't Study Files that Could Show Applicants' Family, Civil Court Troubles*, San Jose Mercury News (November 21, 1999) at 1A.

71. *Id.*

72. *Id.*

73. Cal. Pen. Code §13500 (2005); 11 C.C.R. 1002.

74. Cal. Gov. Code §1031 (2005); 11 C.C.R. 1002; Comm'n on Peace Officer Standards & Training, *POST Administrative Manual,* §§ C-1-1 - C-1-6.

75. *Id.*

76. Cal. Gov. Code §1031 (2005) states, in relevant part, "[t]his section shall not be construed to preclude the adoption of additional or higher standards."

77. Departments surveyed were from the following counties: Santa Clara County, San Jose County, Orange County, Los Angeles County, Riverside County, San Diego County, Monterey County, San Francisco County, Alameda County, Fresno County, Sacramento County, Humboldt County, and Kern County.

78. John Johnson, *Behind the Badge. Three Months with the LAPD*, Los Angeles Times (July 30, 1995) at A1 (former Inspector General Katherine Mader quoted as saying, "if citizens perceived that their complaints would actually be heard, they may have more confidence in the police agency and the number of citizen complaints will actually rise.")

79. *See* Johnson, *supra* note 11 (10 percent of officer spouses surveyed reported physical violence by their officer-spouses within the six months prior to the survey); Neidig, et al., *supra* note 14 (28 percent of officers surveyed admitted that they were physically violent toward their intimate partners within the prior year); and Boyd, *supra* note 17 (28 percent of law enforcement agencies surveyed experienced an increase in officer-involved domestic violence between 1992 and 1994).

80. *See* Wetendorf, *supra* note 7 at 375-382; Nat'l Ctr. for Women & Policing, *Police Family Violence Fact Sheet, available at* http://www.womenandpolicing.org/violenceFS.asp (accessed August 10, 2005); Stone, *supra* note 4; Renae Griggs, Nat'l Police Family Violence Prevention Project, Online Question and Answer Session hosted by the Feminist Majority Found. (May 2003), *available at* http://www.feminist.org/chat/griggs05142003.asp (accessed August 10, 2005).

81. Wetendorf, *supra* note 7, at 375-382; Nat'l Ctr. for Women & Policing, *supra* note 80 Stone, *supra* note 4; Griggs, supra note 80.

82. Cal. Fam. Code § 6380 (2005).

83. State guidelines currently require departments to conduct "psychological suitability" tests on prospective officers to identify job-relevant personality disorders or patterns of abnormal behavior. *See* COMM'N ON PEACE OFFICER STANDARDS & TRAINING, *POST Administrative Manual,* §§ C-2-1 - C-2-11.

LEGAL LIABILITY OF LAW ENFORCEMENT

Maria Teresa Macias was shot and killed by her estranged husband, Avelino Macias. For over one year, the Sonoma County Sheriff's Office had been unresponsive to the Teresa's repeated complaints of domestic violence by her husband. When officers did respond, they omitted key pieces of information from their reports that could have resulted in stricter criminal actions taken against Avelino. They also failed to follow mandatory policies and procedures for responding to domestic violence-related calls for assistance and enforcing domestic violence restraining orders.

Teresa's estate filed a federal lawsuit against the County of Sonoma and members of the Sheriff's Department alleging that the officers' chronic failure to respond to Teresa's complaints of domestic violence constituted a violation of her equal protection rights under the United States Constitution. Defendants filed a motion to dismiss the lawsuit. The Ninth Circuit denied their motion, holding that the estate should be allowed to proceed with its equal protection claim against defendants. In so holding, the Court recognized that domestic violence victims have a constitutional right to have police protection administered in a non-discriminatory manner. Following the Ninth Circuit's decision, defendants agreed to settle the case for $1 million.[1]

Improvements in law enforcement response to domestic violence and accountability for derelict officers are sometimes best achieved through litigation.

Systemic reforms are often not enough to ensure that law enforcement officers are adequately and effectively responding to domestic violence in the field. Sometimes, improvements in law enforcement response and accountability for derelict law enforcement officers may be best achieved through litigation. Although laws and court decisions establishing broad government immunity for certain misconduct have seriously limited the type of lawsuit that battered women and their survivors may bring against law enforcement, many viable federal and state claims still exist for remedying inadequate police responses to domestic violence.

Federal constitutional claims provide a potential basis for liability against law enforcement, even after the United States Supreme Court's decisions in *DeShaney v. Winnebago County Department of Social Services*[2] and *Towne of Castle Rock v. Gonzales*[3] – two watershed cases which established that battered women do not have a constitutional due process right to general police protection from domestic violence under the 14th Amendment of the United States Constitution ("14th Amendment"). There are exceptions to *DeShaney*, for example, that allow parties to bring due process claims against law enforcement in cases where officers actively contributed to a victim's risk of domestic violence or acted with deliberate indifference to the rights of battered women by failing to provide adequate training to officers who regularly respond to domestic violence incidents.

Moreover, *DeShaney* and *Castle Rock* did not foreclose the possibility of bringing equal protection claims against law enforcement under the 14th Amendment. Equal protection claims are a viable remedy for addressing law enforcement's discriminatory policies and practices for responding to domestic violence crimes and domestic violence victims. If successful, these claims can send a strong message to law enforcement agencies throughout the country that domestic violence crimes must be treated as seriously as other violent and life-threatening crimes.

State tort law claims[4] and state constitutional claims are also unaffected by *DeShaney* and *Castle Rock*. As a general matter, state law grants broad immunity to law enforcement agencies and officers from state tort claims. However, state tort law supports claims against law enforcement agencies and officers who fail to discharge duties that are mandated by state law when responding to domestic violence. State tort law also supports claims against law enforcement agencies that fail to adequately address domestic violence perpetrated by their own officers. Although often overlooked as a basis for relief, a party can also bring an equal protection claim against law enforcement under the California Constitution. In fact, the California Constitution affords equal protection claims

based on gender discrimination an even higher level of protection than federal equal protection law by requiring that government agencies have compelling and necessary reasons for discriminating against one gender.

Battered women and their survivors should consider all possible federal and state claims against law enforcement. This section addresses the history, limitations and practicalities of holding law enforcement legally liable for effectively responding to domestic violence under available theories.

Federal constitutional claims against law enforcement officers, law enforcement agencies and city governments may be brought pursuant to Section 1983 of Title 42 of the United States Code (42 U.S.C. §1983).

CONSTITUTIONAL REMEDIES

Federal constitutional claims against individual officers, law enforcement agencies, and city governments may be brought pursuant to Title 42 of the United States Code, Section 1983 (42 U.S.C. §1983, hereinafter "Section 1983"). Section 1983 allows private individuals to seek declaratory,[5] injunctive and/or monetary relief in federal court[6] if they have been deprived of their federal constitutional or statutory rights by someone acting "under color of state law."[7] In order to establish a cause of action under Section 1983, a party must show that: (1) a person (2) who was acting under color of state law (3) caused the party to be deprived of a federal constitutional or statutory right.[8]

"Persons" Who May be Liable Under Section 1983

A state is not a "person" subject to liability under Section 1983.[9] Accordingly, a party may not bring a Section 1983 claim against a state law enforcement agency for its failure to adequately respond to domestic violence. However, a party may bring a Section 1983 claim against a state official (e.g., Commissioner of the California Highway Patrol), in his/her official capacity, so long as the claim only seeks declaratory or injunctive relief, not monetary

damages, against the official.[10] In order to recover monetary damages against a state official, a party must bring a Section 1983 claim against the official in his/her personal capacity alleging that the official should be held individually liable for personally depriving the party of a federal right under color of state law.[11]

Successful federal claims under Section 1983 can set important precedent that provides guidance to law enforcement agencies throughout the country on what constitutes "proper" and lawful responses to domestic violence.

Local government entities and their agencies, on the other hand, may be considered "persons" subject to liability under Section 1983 for declaratory, injunctive and monetary relief if a party can show that the action causing the constitutional violation was performed in order to implement or execute "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that [local government entity's] officers."[12] Thus, a local government body or agency cannot be held liable under Section 1983 for merely employing someone who violated a person's constitutional rights in carrying out their official duties.[13] Rather, liability will only be imposed if a party can demonstrate that an official municipal policy caused a public employee to violate that party's constitutional rights.

Officers and employees of local government agencies may be sued in their official and personal capacities under Section 1983 for declaratory, injunctive and monetary relief.[14] Thus, a party may bring a Section 1983 claim against individual law enforcement officers, law enforcement officials and city officials for failing to adequately respond to domestic violence. However, a limited number of government officials, such as judges and legislators, are afforded absolute immunity from liability for Section 1983 actions if the claim involves conduct that falls within the scope of their official duties.[15]

Acting "Under Color of State Law"

Acting "under color of state law" requires a showing that the person causing the party's rights to be violated exercised power "possessed by virtue

of state law and made possible only because the wrongdoer is clothed with the authority of state law."[16] Generally, public officers and employees act "under color of state law" if they are acting in their officials capacities or exercising their responsibilities pursuant to state law.[17]

Deprivation of Federal Constitutional and Statutory Rights

Conduct causing or constituting a violation of a party's federal rights include deliberate and affirmative acts, participation in another's deliberate and affirmative act, or the failure to perform an act that a government actor is legally required to perform.[18] Purely negligent conduct is insufficient to establish liability for a Section 1983 claim involving the violation of a federal constitutional right.[19] Moreover, a government actor's state of mind may be relevant to determining whether an actionable violation of rights occurred.[20] For example, if a party's claim seeks money damages against a law enforcement officer, the officer may be able to assert a "good faith" defense to this claim by arguing that he/she had a good faith, reasonable belief that the conduct causing the party's rights to be violated was actually lawful.[21] However, the officer will not succeed in raising this defense if the conduct at issue violated constitutional or statutory rights that are so clearly established that a reasonable person would have known that the officer's conduct was unlawful.[22]

There are several potential benefits to using Section 1983 to hold law enforcement accountable for ineffectively responding to domestic violence. Because Section 1983 actions involve federal constitutional and statutory rights, these cases can set important national precedent that provides guidance to law enforcement agencies throughout the country on what constitutes "proper" and lawful responses to domestic violence. Accordingly, successful Section 1983 actions have the power to motivate all local police departments to provide better overall protection to domestic violence victims. Furthermore, federal law provides for the recovery of attorneys fees in Section 1983 cases,[23] thereby

enabling more victims to seek necessary relief for deprivations of their federal rights.

Substantive due process claims and procedural due process claims may be brought against law enforcement under the 14th Amendment of the Federal Constitution.

Section 1983 claims involving inadequate law enforcement responses to domestic violence typically allege a violation of the domestic violence victim's constitutional rights under the 14th Amendment. The 14th Amendment prohibits states from depriving "any person of life, liberty, or property, without due process of law" and "deny[ing] to any person within its jurisdiction the equal protection of the laws."[24] Accordingly, battered women's Section 1983 claims have raised two main theories of liability under the 14th Amendment. First, they have alleged that law enforcement's dereliction of a duty to protect a victim from domestic violence constitutes a violation of the victim's rights under the 14th Amendment's Due Process Clause. Second, they have alleged that law enforcement policies and practices that afford domestic violence victims fewer resources and less protection than victims of non-domestic violent crimes amount to a violation of domestic violence victims' rights under the 14th Amendment's Equal Protection Clause.

Fourteenth Amendment Due Process Claims

There are generally two different types of due process claims that may be brought under the 14th Amendment – substantive due process claims and procedural due process claims. Substantive due process involves the concept that individuals have certain rights and liberties that are so fundamental to traditional notions of justice that, the government should be prohibited from interfering with or infringing upon such rights.[25] Procedural due process is based on the notion that there is a basic level of procedural safeguards that the government must provide to individuals (e.g., providing an individual an opportunity to be heard) to ensure that no one is deprived of their rights to life, liberty or property as a result of government proceedings or decision making without having the opportunity to address and affect the outcome of their case.[26]

Substantive Due Process Claims

In order to successfully raise a substantive due process claim against local law enforcement, a party must establish that they were deprived of a fundamental right to state protection as a result of inadequate law enforcement response to domestic violence. Generally, state actors[27] do not have a constitutional duty to protect individuals from crimes committed by others.[28] This principle was reinforced by the United States Supreme Court's decision in *DeShaney* which held that state actors do not have a constitutional duty to protect parties from violence inflicted by private assailants, even when a state actor is aware that a party is being subjected to repeated and ongoing acts of violence by an assailant.[29]

Although parties do not have a general constitutional right to state protection, state actors may be held liable for a substantive due process claim under Section 1983 if a "special relationship" existed between the state and the injured party that gave rise to an affirmative duty of protection on the part of the state.[30] After *DeShaney*, federal courts look to the following factors in determining whether a "special relationship" exists: (1) whether the injured party or perpetrator of the crime were in the state's custody at the time of the incident; (2) whether a state actor affirmatively placed the injured party in danger; or (3) whether a state actor(s) was deliberately indifferent to a need to adequately train public employees to perform certain tasks relating to their official job functions.[31]

Substantive Due Process Claims Pre-DeShaney

Prior to the United States Supreme Court's decision in *DeShaney*, federal courts reviewing battered women's substantive due process claims issued inconsistent rulings regarding the factual circumstances that were required to establish that a "special relationship" existed between a victim and the state.[32]

Some pre-*DeShaney* courts barred substantive due process claims brought against unresponsive law enforcement agencies where the perpetrator was in the state's custody and the police were fully aware of the imminent danger facing the domestic violence victim. For example, in *Turner v. City of North Charlestown*,[33] a South Carolina district court found there was no "special relationship" between the state and a battered woman in a case where the woman had a long history of contacting law enforcement for domestic violence by her abusive ex-husband, her ex-husband was legally in the state's custody (i.e., on probation) at the time that he shot her, the woman had obtained a restraining order against her ex-husband, and the woman notified the police numerous times within a two-day period immediately prior to the shooting that her ex-husband was harassing and threatening her in violation of the order.[34, 35]

Other pre-*DeShaney* courts, in contrast, upheld domestic violence victims' substantive due process claims in cases involving substantially the same circumstances as described above. However, these favorable decisions were all later reconsidered and amended in light of the Supreme Court's holding in *DeShaney*. For instance, in the often-cited decision, *Balistreri v. Pacifica Police Department*,[36] the Ninth Circuit initially upheld a substantive due process claim brought by battered woman, Jena Balistreri, who had obtained a restraining order against her former husband and reported numerous violations of the order to the police, who either failed to respond at all or responded slowly and to her complaints.

The Ninth Circuit held that police officers' "repeated notice of [her] plight," coupled with the existence of a restraining order committing the police to Jena's protection, may have been sufficient to give rise to a constitutional duty on the part of the state to protect Jena.[37] Although the Ninth Circuit remanded the case to the district court for further review of Jena's due process claim, the opinion in *Balistreri* was later amended in the wake of *DeShaney*. The Ninth Circuit's amended opinion held that Jena's due process claim was no longer viable in a post-*DeShaney* universe.[38] However, the court allowed Jena to proceed on her

equal protection claims against police, which are discussed in further detail later in this section.

Similarly, *Dudosh v. City of Allentown*[39] involved a substantive due process claim brought by the estate of a battered woman who had obtained an order of protection against her abusive boyfriend. The woman had repeatedly filed police reports – including one report shortly before her death – concerning her boyfriend's continued threats and harassment in violation of the order. On the day she was murdered, police allowed the woman to accompany them to the apartment where her boyfriend was and to enter the residence first while the officers stood away from the entryway, at which point the woman was shot and killed by her boyfriend. The Pennsylvania district court initially held that the existence of the restraining order, in conjunction with the woman's frequent contacts with the police, "placed an affirmative duty upon the police department to protect the deceased."[40]

Thereafter, the district court dismissed the substantive due process claim on the grounds that subsequent federal decisions clarified that the establishment of a "special relationship" required proof that the state affirmatively placed the injured party in a position of danger.[41] The court noted that, although the evidence established that the officers knew about the danger faced by the woman, there was no evidence that the officers were responsible for placing the woman in harm's way by requiring her to go to the apartment and enter the residence before them.[42] Shortly after *DeShaney* was decided, the woman's estate filed a motion for the court to reconsider the due process claim, citing *DeShaney* in favor of finding a special relationship between the woman and the state. The district court held that the Supreme Court's reasoning in *DeShaney* supported their prior dismissal of her claim.[43]

Finally, in *Hynson v. City of Chester, Legal Department*, police officers refused to arrest an abused woman's boyfriend the day before he murdered her because her most recent restraining order had expired. The Pennsylvania district

court found that the woman's restraining order and her "interaction with the individual officers" established the special relationship necessary to maintain a substantive due process claim.[44] Two years later, however, the court dismissed the claim, noting that *DeShaney* constituted a significant development in the law since its initial ruling which, when applied to the facts of the case, precluded any recovery for a denial of process.[45]

The United States Supreme Court's decision in *DeShaney v. Winnebago County Department of Social Services* precludes many domestic violence victims from bringing substantive due process claims under the Federal Constitution.

These decisions show the devastating impact that *DeShaney* had on the viability of substantive due process claims brought by battered women and their survivors against law enforcement agencies. Indeed, although *DeShaney* was decided after the *Balistreri*, *Dudosh* and *Hynson* cases, the opinion effectively nullified the federal court decisions in these cases supporting substantive due process claims in the domestic violence context.

DeShaney v. Winnebago County Department of Social Services

The United States Supreme Court decided *DeShaney* in 1989 in order to redefine the state's obligation to protect citizens from privately inflicted harm and resolve the "inconsistent approaches taken by the lower courts in determining when, if ever, the failure of a state or local governmental entity or its agents to provide an individual with adequate protective services constitutes a violation of the individual's due process rights."[46] The result was a highly controversial decision that severely constrains the scope of the due process clause and precludes many domestic violence victims from bringing constitutional claims.

The facts of *DeShaney v. Winnebago County Department of Social Services* are notoriously tragic. From the time he was two years old, Joshua DeShaney was brutally and repeatedly beaten by his father, who was awarded custody after divorcing Joshua's mother. In January 1982, Randy DeShaney's second wife reported the severe abuse to the Department of Social Services

("DSS"). After a brief interview, in which Randy DeShaney denied any accusation of abuse, DSS declined to consider the matter further. One year later, when Joshua was admitted to the hospital for bruises and abrasions, an examining physician suspected child abuse and notified DSS again. Although DSS obtained a court order placing Joshua in the hospital's temporary custody, Joshua was quickly returned to his father after Randy DeShaney agreed with DSS to abide by certain custodial conditions including counseling sessions.

Over the next six months, a DSS caseworker visited the DeShaney home once a month, and reported that Randy DeShaney was not adhering to the agreement terms. On more than one visit, the social worker noted "suspicious injuries" on Joshua's head. Despite the caseworker's substantial record of abuse, DSS took no action. In March 1984, when Joshua was only four years old, he received a severe beating to the head that left him comatose and required emergency brain surgery. During the operation, the surgeon found evidence of prolonged traumatic injury. Joshua is now profoundly retarded and institutionalized.

Joshua's mother brought a Section 1983 claim against the Winnebago County DSS and several DSS employees who had received complaints about Joshua's abuse. The suit alleged that DSS had violated Joshua's right to due process by "failing to intervene to protect him against a risk of violence at his father's hands of which they knew or should have known."[47] The district court issued a judgment in favor of DSS and the Seventh Circuit affirmed this decision.[48] The Supreme Court, in turn, affirmed the Seventh Circuit's decision, holding that "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause."[49] Despite DSS' knowledge of the serious, imminent danger Joshua faced and its asserted intention to protect him, the Court rejected the argument that a special relationship existed. The Court pointed to the fact that Joshua's abuse was "private violence" which "the State played no part in creating."

The *DeShaney* decision did not completely foreclose the possibility of succeeding on a substantive due process claim in the domestic violence context.

Substantive Due Process Claims After DeShaney

Although not decided in the domestic violence context, *DeShaney* sounded the death knell for many substantive due process claims based on law enforcement's failure to protect victims of domestic violence. As a result of *DeShaney*, law enforcement's knowledge of an existing threat to a woman's safety – even coupled with evidence that the state had offered her protection in the past from domestic violence (i.e., issued a restraining order, provided police protection, etc.) – is no longer sufficient to create a special relationship between a domestic violence victim and the state. Law enforcement must have actively played a role in creating or increasing the danger for a victim in order to give rise to a constitutional duty to protect a victim of domestic violence.

Although *DeShaney* severely limited the state's constitutional duty to protect citizens from criminal violence, the decision did not completely foreclose the possibility of succeeding on a substantive due process claim in the domestic violence context. Battered women and their survivors can establish law enforcement liability for substantive due process violations under limited "state custody" and "state-created danger" exceptions to *DeShaney*. Moreover, the United States Supreme Court has recognized that local agencies and officials may be liable for failing to adequately train law enforcement officers.

State Custody Exception

In *DeShaney*, the Supreme Court adopted a narrow view of what it means for someone to be in "state custody" for purposes of establishing a "special relationship" between that person and the state. Where federal courts had previously found "state custody" to be established when a perpetrator was on probation or parole at the time of the crime, the Supreme Court held that "state custody" requires either the victim or the perpetrator to be actually in the state's custody when the harm occurs, such as in a prison or mental institution.[50] For example, the Court suggested that an affirmative duty of protection may

have been established in *DeShaney* if Joshua was in foster care at the time he was abused.[51] This narrow interpretation of "state custody" severely limits the type of case that may be brought under this exception in the domestic violence context.

State-Created Danger Exception

In *DeShaney*, the Court underscored the fact that DSS did not take any action that aggravated the danger that Joshua DeShaney faced at the hands of his father. The Court thereby implied that substantive due process claims are only viable where the state plays a role in either creating or increasing the level of harm to which a party is exposed. Accordingly, federal courts will sustain due process claims under the "state-created danger exception" where (1) a state actor's conduct creates or enhances a party's risk of danger and (2) the state actor was deliberately indifferent to the known or obvious danger to the party.[52]

A party may succeed on a substantive due process claim if law enforcement officers played an active role in creating or increasing a domestic violence victim's risk of danger.

In the domestic violence context, courts are most likely to recognize the exception where police actively interfere with otherwise forthcoming assistance to the victim or ratify and/or encourage the batterer's conduct, thereby increasing the risk of danger and injury to the victim. For example, in *Freeman v. Ferguson*,[53] Geraldine Downen had obtained a restraining order against her estranged husband, Norman "Bud" Downen, Jr. The Eighth Circuit held that the police chief, a close friend of Bud, would be liable under the state-created danger theory if, as alleged in oral argument, he affirmatively told his officers not to take action against Bud, who then murdered Geraldine and her daughter, Valerie, while the restraining order was in effect. The court reasoned that an affirmative duty to protect could be inferred when police conduct interferes "with the protective services which would have otherwise been available in the community – with such interference increasing the vulnerability of decedents . . . and possibly ratifying or condoning such violent actions on [Bud's] part."[54]

The state-created danger exception was also recognized in *Smith v. City of Elyria*,[55] a case in which the police "resolved" a domestic violence situation by encouraging the batterer to return to the family home against the victim's will. Karen Guerrant had permitted her ex-husband Alfred to move into the guest room of her house, but called the police when an argument ensued. The police refused to remove Alfred, explaining that "Karen could not 'just put him out at her whim,' because she had invited him." After the police advised Alfred to reenter the home, he stabbed Karen to death and stabbed and injured Karen's sister and Karen's 9-year-old daughter. The Northern District of Ohio held that the police department's handling of the incident had increased the danger that Karen faced: "Here, Alfred used the apparent authority given to him by the police to remain in his ex-wife's home against her will, and later killed her."[56]

Courts have acknowledged that law enforcement may also empower the batterer and increase the threat of violence to a victim when they respond to a domestic violence call, knock on the door, and leave when there is no answer. In *May v. Franklin County Board of Commissioners*,[57] for example, a police officer was dispatched to a woman's home after receiving two 911 calls from her reporting that she was being assaulted by her ex-boyfriend. The officer knocked on the door, but no one answered. The officer then peered in the window but could not see or hear anything. After a failed attempt to call inside the apartment, the officer left and "cleared" the 911 calls. The woman was found beaten to death the next day. Ruling on the officer's motion to dismiss, the Sixth Circuit held that the woman's due process claim could succeed as long as it could be shown that the officer's behavior – going to the door, knocking, and then leaving – emboldened her ex-boyfriend by diminishing his fear of arrest, thereby increasing the woman's vulnerability to harm.[58, 59]

The state-created danger exception will only be applied, however, when the state's affirmative acts create or enhance the danger faced by the victim. The fact that a state actor failed to protect party who was already in a dangerous position is insufficient to trigger the party's substantive due process rights.[60]

In fact, courts have dismissed substantive due process claims even where law enforcement was present when a domestic violence victim was injured by her batterer and failed to do anything to protect the victim.

In *Losinski v. County of Trempealeau*,[61] for example, a police officer's presence at the victim's home emboldened the victim to have a private conversation in the bedroom with her abusive husband – a conversation that quickly turned violent and ultimately led to the victim's death. In addition, the officer's presence deterred the victim's mother and brother-in-law, who were also present, from assisting when the violent nature of the conversation became clear. Nevertheless, the Seventh Circuit refused to find that the police officer's presence and inaction increased the danger confronting the victim. While recognizing that, "[h]ad the deputy not accompanied [the victim], she may not have proceeded 'into the lion's den,'" the Seventh Circuit nevertheless concluded that "the state simply did not enhance the danger [the victim] faced."[62]

Courts have also failed to uphold a substantive due process claim in the absence of affirmative danger-enhancing conduct by law enforcement even when officers explicitly assured the victim that she was safe from harm. For example, in *Pinder v. Johnson*,[63] a police officer responded to a domestic violence call at Carol Pinder's home, and found that Pinder's former boyfriend, Don Pittman, had broken into the residence, assaulted her, and threatened to murder her and her three children. Pinder informed the officer that Pittman had recently been released from prison after being convicted of attempted arson of Pinder's home approximately ten months earlier. As the officer took Pittman into custody, he assured Pinder that Pittman would not be released from jail that night, and Pinder returned to work based on the officer's reassurances.[64] Later that evening, the same officer brought Pittman before a county commissioner on misdemeanor charges. Pittman was released on his own recognizance, and the officer made no effort to warn Pinder of Pittman's release. Pittman immediately returned to Pinder's home and set it on fire, killing Pinder's three children.[65]

The Fourth Circuit rejected Pinder's arguments that the officer's explicit assurance that Pittman would not be released that night created a "special relationship" between the police and Pinder, holding that under *DeShaney*, "promises do not create a special relationship."[66] While it was clear on the facts of the case that Pinder most likely would not have returned to work and left her children unprotected had the officer not persuaded her that Pittman would be held in custody overnight, the court refused to recognize that the officer had an affirmative duty to protect the plaintiff even to "an extent necessary to dispel the false sense of security that his actions created."[67]

Likewise, in *Salas v. Carpenter*,[68] the Fifth Circuit rejected a substantive due process claim brought by a woman who had complained to the police and the district attorney that her estranged husband was harassing her and molesting her two daughters. In fear of harm, the woman sought refuge with a friend and did not go to work for an entire week. The woman was a clerk at the county courthouse. A judge at the court advised her that she should return to work. On the very day that she returned to work on the advice of the judge, she was taken hostage and killed by her former husband. The Fifth Circuit refused to apply the state-created danger exception despite the fact that the woman in all likelihood would not have been killed in the absence of the state's recommendation to return to work. *Pinder* and *Salas* signal that a battered woman's detrimental reliance on the state's assurances will not usually provide a basis for a due process claim.[69]

Deliberate Indifference to a Need for Officer Training

One additional theory of liability may have survived *DeShaney*'s blow to substantive due process claims brought by victims of domestic violence. In *City of Canton v. Harris*,[70] a case decided in the same term as *DeShaney*, the Supreme Court held that local government agencies and supervisory officials may be liable under Section 1983 for failing to adequately train its police officers.

In this case, a woman who had been arrested by police collapsed and became incoherent while in police custody. Officers asked the woman if she needed medical attention, but she was too incoherent to respond. The officers left the woman on the floor and never summoned medical assistance for her. The woman was later released from custody, at which time her family took her to a nearby hospital where she was treated for several emotional ailments. Plaintiffs in that case claimed that the city was constitutionally liable for failing to adequately train its police officers to recognize when detainees required medical assistance.

In an opinion issued a week after *DeShaney*, the Supreme Court held that the city could be liable for failing to adequately train its employees if "the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact."[71] The Court noted that local government entities and agencies are subject to Section 1983 liability if a municipal policy directly caused the violation of a person's constitutional rights.[72] Accordingly, the Court concluded that, for purposes of Section 1983 liability, "deliberate indifference" may be established if specific duties assigned to officers made it obvious to local officials that failing to provide these officers with a certain level of training would result in the violation of constitutional rights.[73]

A party may succeed on a substantive due process claim if municipal and/or law enforcement officials were deliberately indifferent to a need for officer training.

The "deliberate indifference" exception was also applied by the Third Circuit in *Stoneking v. Bradford Area School District*.[74] In this case, a high school band director sexually harassed and victimized the plaintiff over a period of several years, despite repeated complaints to high school officials.[75] Considering the case prior to *DeShaney*, the Third Circuit initially held that a "special relationship" triggered school officials' affirmative duty to protect the plaintiff.[76] When the Supreme Court remanded the case back to the Third Circuit for consideration of Stoneking's due process claim in light of *DeShaney*, the appellate court concluded that the due process claim remained viable because Stoneking had alleged a theory of liability independent of the "special relationship" doctrine.[77]

Specifically, Stoneking alleged that the school district and its supervisory officials had a policy of acting with deliberately indifference toward "known or suspected sexual abuse of students by teachers," including discouraging and concealing students' complaints about such abuse.[78] The Third Circuit determined that evidence of "deliberate indifference" on the part of local government agencies and officials supports an independent basis for liability under Section 1983 that is unrelated to the issues decided in *DeShaney*.[79]

While the "deliberate indifference" standard sets a high bar for plaintiffs, *Stoneking* and *Canton* create an opportunity for domestic violence victims to bring due process claims against local police without running into *DeShaney*. A party could allege that a city's failure to provide specialized training to officers who regularly respond to domestic violence constitutes deliberate indifference to victims' needs. Alternatively, a party could allege that a city maintains a policy of providing inadequate police protection for domestic violence victims, with deliberate indifference to the impact of that policy on women.[80]

Procedural Due Process Claims

In order to establish a procedural due process claim, a party would have to show that (1) the party has a "legitimate claim of entitlement" (i.e., property interest) in a certain government benefit under state law and (2) the state deprived the party of that benefit without meeting certain due process requirements.[81] In order to confer an actual property entitlement on an individual, the state law must be truly mandatory in nature in that government employees are strictly required to comply with the law and cannot exercise their discretion otherwise.[82]

Although *DeShaney* did not foreclose the possibility of bringing a procedural due process claim based on a battered woman's property entitlement to police protection from abuse,[83] the United States Supreme Court recently issued another

disheartening decision rejecting such a claim involving law enforcement's failure to enforce a domestic violence restraining order.

In *Town of Castle Rock v. Gonzales*, Jessica Gonzales obtained a restraining order against her estranged husband, Simon Gonzales, in Colorado. Colorado law mandated that police "shall" use every reasonable means to enforce restraining orders and "shall" arrest restrained persons in violation of an order.[84] Simon took their three children while they were playing outside the family home in violation of the restraining order. Jessica called the police and asked them to enforce the restraining order, but the police refused to do so. Jessica called the police later that day to inform them that Simon was at a local amusement park with the children and asked that they put out an "all points bulletin" for him and send an officer to the amusement park. Once again, the police refused to do anything. Jessica called the police two more times that same night, but the police still would not assist her or take a report. Finally, she went down to the police station and submitted an incident report, but the officer went to dinner instead of trying to locate Simon and the children. A few hours later, Simon arrived at the police station and opened fire, at which point he was shot and killed by police. Police found the dead bodies of Jessica's three children in Simon's car, all of who had been murdered by Simon earlier that evening.

The United States Supreme Court's decision in *Town of Castle Rock v. Gonzales* forecloses the possibility of bringing a procedural due process claim under the Federal Constitution involving law enforcement's failure to enforce a domestic violence restraining order.

The Tenth Circuit held that the Colorado statute requiring police to enforce restraining orders created an entitlement to receive protective services in accordance with the terms of the statute – an entitlement that carries due process protection against state deprivation.[85] However, the Supreme Court reversed the Tenth Circuit decision, holding that state law did not create a legitimate claim of entitlement to police enforcement of a restraining order. The Court found that, although the Colorado statute was mandatory in nature, its mandate was not absolute as police still maintained some level of discretion in deciding whether, and what steps to take, to enforce a restraining order given the particular circumstances of each case (e.g., whether the perpetrator is present at the scene of the incident) and the other obligations that the police have at that moment.[86]

Moreover, the Court noted that, even if police enforcement of restraining orders was truly "mandatory" under state law, it did not necessarily follow that this mandate conferred an entitlement on Jessica Gonzales, personally.[87] The Court explained that legislative mandates concerning criminal justice agencies and officers are typically intended to benefit the general public, as opposed to private interests, and nothing in the Colorado statute indicated an intention to create a personal entitlement for people protected by a restraining order.[88] Finally, the Court found that, because the right to police enforcement of a restraining order did not resemble "property" in the traditional sense in that it did not "have some ascertainable monetary value," such a right did not constitute a "property" interest for purposes of the Due Process Clause.[89]

The Supreme Court declared that its *Castle Rock* and *DeShaney* decisions, taken together, stand for the general proposition that neither procedural nor substantive due process is triggered by the fact that a party was injured as a result of a crime that may have been prevented by an arrest.[90] Instead, the Supreme Court left it to individual states to provide tort remedies for persons injured as a result of inadequate law enforcement responses to crime.[91] Accordingly, the *DeShaney* and *Castle Rock* decisions send a clear message that battered women and their advocates should not look to the federal courts for relief unless their case falls into one of the exceptions to *DeShaney* described above.

Equal Protection Claims

Equal protection claims remain a viable remedy for victims of domestic violence who have been injured as a result of discriminatory policies or resource allocations by law enforcement. While *DeShaney* and *Castle Rock* pose serious obstacles for bringing due process claims, they did not foreclose the use of an equal protection claim to hold unresponsive police departments liable for failing to protect someone from private violence. In fact, the *DeShaney* Court explicitly stated that equal protection challenges to state inaction would survive

the Court's decision, observing that "[t]he state may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause. . . . But no such argument has been made here."[92]

There are generally two different types of equal protection claims that may be asserted by parties who have been injured when law enforcement responds to domestic violence in a discriminatory manner: gender discrimination or "crime-type" discrimination.[93]

Equal protection claims under the Federal Constitution remain a viable remedy for domestic violence victims who have been injured as a result of discriminatory practices or resource allocations by law enforcement.

Proving Gender Discrimination by Law Enforcement

When a law enforcement policy or practice explicitly discriminates against women on its face, heightened or "intermediate" scrutiny is automatically applied by federal courts, and the policy or custom will only survive an equal protection challenge if it is substantially related to an important government interest. However, where the policy or practice at issue is facially gender-neutral – which is the case with most equal protection claims – plaintiffs must prove that the police department acted with discriminatory intent or purpose in order to invoke heightened "intermediate" scrutiny.

Specifically, plaintiffs can prevail on a gender discrimination claim involving seemingly "gender-neutral" policies and practices if they show that: (1) defendants had a policy or custom of providing less protection to victims of domestic violence than victims of other violent crimes; (2) discrimination against women was the motivating factor for the defendants' policy or custom; and (3) plaintiffs were injured as a result of the operation of this policy or custom.[94]

With regard to the first element, the policy challenged by plaintiffs does not have to be a formal written policy in order to be actionable. Rather, a widespread discriminatory practice or well-settled discriminatory custom is sufficient to trigger an equal protection claim.[95] With regard to the second

element, plaintiffs must show that the policy at issue has a disproportionate impact on women and that this disproportionate impact can be traced to a discriminatory purpose.[96] The United States Supreme Court has explained that "discriminatory purpose" involves situations where a policy maker or decision maker "selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group."[97] The following discussion details some of the ways in which successful equal protection claimants have demonstrated that police acted with the requisite discriminatory purpose.

A party may succeed on an equal protection claim under the Federal Constitution if law enforcement's failure to adequately respond to domestic violence constitutes intentional gender discrimination.

Chronic Failure to Respond to Domestic Violence Complaints

In one of the most well-known domestic violence equal protection cases, *Thurman v. City of Torrington*,[98] months of apathetic police response to a victim's repeated complaints of domestic violence constituted evidence of gender discrimination. Over a period of eight months, Tracey Thurman made numerous reports to the Torrington Police Department that her estranged husband was beating her, stalking her, and threatening to kill her. The Department continuously ignored Tracy's complaints and refused to arrest her batterer. One night she called for help, but the officer on call was slow to respond to the complaint, arriving after her husband had stabbed her more than 12 times. Once present, the officer passively watched as Tracy's husband jumped on her and broke her neck. Tracy survived the attack and filed an equal protection action against the city and its officers.[99]

A Connecticut district court denied the Department's motion to dismiss, finding that its dismissive treatment of Tracy's longstanding complaints illustrated that Torrington police had a "pattern or practice of affording inadequate protection, or no protection at all, to women who complain of having been abused by their husbands or others with whom they have had close relations . . . ."[100] Applying intermediate scrutiny, the court held that, in order to justify this

discriminatory policy, the Department must "articulate an important government interest . . . to discriminate against women who are victims of domestic violence."[101] The court continued, "[a]ny notion that defendants' practice can be justified as a means of promoting domestic harmony by refraining from interference in marital disputes, has no place in the case at hand."[102] Since the police could not produce any legitimate justification for their disparate treatment of battered women, Tracy Thurman won the case.[103]

In *Macias v. Ihde*,[104] the Ninth Circuit sustained a gender discrimination claim alleging that the county and sheriff's department deprived a domestic violence victim of equal protection by failing to arrest the victim's husband and murderer despite numerous complaints to the police. For over one year, the police had been unresponsive to the victim's reports of domestic violence by her husband, had omitted key pieces of information from their reports which could have resulted in stricter criminal actions taken against him, and had not abided by the procedures mandated by state law and departmental policies for dealing with domestic violence-related calls for assistance and enforcing domestic violence restraining orders.

In sustaining the claim, the Ninth Circuit noted that the constitutional "deprivation" suffered by the victim was not the deprivation of her life as a result of being murdered by her abuser, but the deprivation of her right to "have police services administered in a nondiscriminatory manner – a right that is violated when a state actor denies such protection to disfavored persons."[105] Following the Ninth Circuit's decision allowing plaintiffs to go forward with their equal protection claim, defendants agreed to settle the case for $1 million.[106, 107]

Delayed Response to 911 Calls from Domestic Violence Victims

Plaintiffs can also establish gender discrimination based on police officers'

delayed response to domestic violence victims' 911 calls. For example, in *Didzerekis v. Stewart*,[108] police received an emergency call from a woman who frantically telephoned 911 to report that she was being attacked by her husband. The police were aware that the husband had been abusive toward his wife in the past and had a history of mental illness. Moreover, the husband was recently released on bond after having tried to kill the woman on a prior occasion. Nevertheless, when the officers arrived at the scene, they waited 40 minutes outside of the home before trying to make a forced entry into the residence.[109] Upon entering the woman's home, police found that she had already been stabbed to death.

The woman's estate filed a Section 1983 action alleging, in part, that the officers' conduct was governed by city policy. Although the estate did not specifically allege an equal protection claim, the Illinois district court denied the city's motion to dismiss the action, finding that the alleged facts of the case, combined with the allegation that the officers' conduct was based on city policy, were sufficient to state an equal protection claim against the city and its police officers. The court noted that the estate should have an opportunity to conduct discovery to prove that the city actually maintained a policy and practice of providing less protection to domestic violence victims than other victims of violence and that discrimination against women was a motivating factor in this discrimination.[110]

Failure to Enforce State Statutes Designed to Protect Victims of Domestic Violence

Gender discrimination can also be inferred where police fail to enforce specific statutory provisions governing police responses to domestic violence due to an overall discriminatory proclivity among police to provide less protection to female victims of domestic violence than other victims of violent crime.

For example, in *McDonald v. City of Chicago*,[111] six battered women filed a class action alleging that the Chicago police had engaged in a pattern and practice of not enforcing the Illinois Domestic Violence Act by routinely failing to record victims' statements of assault accurately, ignoring previous assaults by repeat abusers, refusing to arrest offenders, ignoring requests for transportation to shelters, and neglecting to advise victims about the preservation of evidence. Plaintiffs further alleged that the failure to enforce these provisions stemmed from a general custom and practice among police to "treat domestic violence abuse reports from women with less priority than other crimes not involving women reporting domestic violence abuse." The Illinois district court held that these allegations were sufficient to assert an equal protection claim based on gender discrimination.[112]

Police Animus Toward Domestic Violence Victims

While it is difficult to provide direct evidence of gender discrimination by law enforcement, discriminatory intent may be inferred when officers engage in overtly rude and insensitive conduct toward victims of domestic violence. For example, federal courts have found evidence of gender-based animus where police indicate support for the aggressive spouse, pressure the victim either not to press criminal charges or to drop pending charges, or protect an abusive partner from mandated legal action.[113]

For example, in *Balistreri v. Pacifica Police Department*,[114] officers refused to make an arrest and provide medical assistance to Jena Balistreri after she had been seriously assaulted by her husband. The Ninth Circuit concluded from the evidence that the police were "rude, insulting, and unsympathetic" to Jena.[115] One officer said that "he did not blame [Jena's] husband for hitting her because of the way she was carrying on," and another "pressured" Jena not to

press charges.[116] Moreover, months later, after Jena's then ex-husband violated a restraining order that she obtained against him, police ridiculed and ignored Jena's cries for help and denied knowledge of her restraining order. Although a California district court granted the police department's motion to dismiss the equal protection claim, the Ninth Circuit reversed this decision and allowed Jena to proceed on her claim. In so holding, the court noted that the allegations of police animus toward Jena, "strongly suggest an intention to treat domestic abuse cases less seriously than other assaults, as well as an animus against abused women."[117]

Proving "Crime Type" Discrimination by Law Enforcement

Where plaintiffs cannot establish that law enforcement's failure to respond adequately to domestic violence constitutes intentional gender discrimination, they still may be able to prove that a departmental policy or custom discriminates against domestic violence victims as a class.

Because "domestic violence victims" are not a class of people who are explicitly afforded constitutional protection from discrimination under the Federal Constitution, a more relaxed standard of review applies to "crime type" discrimination claims. In order to prevail, plaintiffs must show that law enforcement officials treat domestic violence cases less seriously than other violent assaults, and there is no rational relationship between the differential treatment and a legitimate government interest. Plaintiffs do not need to demonstrate an intent to discriminate against women, but rather, that law enforcement generally provides inferior police protection to victims of domestic abuse, or treats perpetrators of domestic violence less harshly than perpetrators of non-domestic assault.

Since there is a lower standard for plaintiffs to meet in "crime type" discrimination cases, law enforcement is given more leeway in justifying their discriminatory practices. Whereas in gender discrimination cases law

enforcement must show that an "important governmental interest" supports disparate treatment, in "crime type" discrimination cases police need only articulate a "legitimate reason" for policies or practices that differentiate between domestic violence and other crimes.

A party may prevail on an equal protection claim under the Federal Constitution if law enforcement's failure to adequately respond to domestic violence constitutes unlawful discrimination against domestic violence victims as a class.

Notwithstanding the application of minimal scrutiny, some courts have ruled in plaintiffs' favor because police were unable to justify their discriminatory conduct even under the lowest standard of scrutiny.[118] For example, in *Fajardo v. County of Los Angeles*,[119] the Ninth Circuit sustained plaintiff's equal protection claim because the sheriff department's justification for distinguishing between domestic violence calls and non-domestic violence calls – namely, that domestic violence "rarely" results in death or severe injury[120] – would not be deemed to be "legitimate" if plaintiffs could prove that law enforcement dispatches officers to prevent crimes that pose an equal or lesser risk of death or severe injury than domestic violence.[121]

Proving "crime type" discrimination can be challenging because parties may not only have to show how law enforcement generally responds to domestic violence crimes, they may have to demonstrate how law enforcement responds to other similar types of crimes as well. The following types of cases have been successful in substantiating claims of "crime type" discrimination.

Statistical Evidence of Discrimination

Statistical evidence of law enforcement's disparate treatment of domestic violence complaints, when presented in conjunction with other evidence of "crime type" discrimination, may be sufficient to establish police liability.[122] In *Watson v. City of Kansas City*, the Tenth Circuit held that statistical evidence that the Kansas City Police Department arrested known domestic violence offenders at a rate of nearly half that of non-domestic assault offenders (16 percent and 31 percent, respectively), combined with evidence that Department

training programs encouraged officers to "use arrest as a last resort" in domestic violence cases, was sufficient to demonstrate that the Department had a policy or custom of affording victims of domestic violence less protection than other assault victims.[123]

Failure to Arrest When Abuse Occurs Outside an Officer's Presence

Equal protection claims have also been established where it is shown that police have a policy of not arresting perpetrators of domestic assaults unless the assault was committed in an officer's presence. For example, in *Cellini v. City of Sterling Heights*,[124] a federal court in Michigan found that police had a policy of never making an arrest for a domestic violence assault unless an officer actually witnessed the assault.[125] Applying minimal scrutiny (i.e., was the policy was rationally related to a legitimate government interest), the court found that because the police could not identify any state interest served by their discriminatory policy, an equal protection violation had been established. The court noted that "[s]uch an unexplained discrepancy in the treatment of victims of domestic assault could legitimately give rise to an inference that the police department acted with discriminatory motive in employing its domestic assault policy."[126]

Failure to Dispatch Police Officers to Emergency Domestic Violence Calls for Assistance

"Crime type" discrimination may also be shown if police customarily dispatch officers to 911 crime-in-progress calls not related to domestic violence, but do not dispatch officers to in-progress domestic violence 911 calls. For example, in *Navarro v. Block*,[127] plaintiffs alleged that the Sheriff's Department had a policy of not treating domestic violence 911 calls as "emergency" calls. Although the Ninth Circuit found that the evidence was not sufficient to establish

an equal protection claim based on gender discrimination, the evidence did support a claim of crime-type discrimination, and plaintiffs could prove that the Department's policy was not rationally related to a legitimate government interest.[128]

Likewise, in *Stevens v. Trumbull County Sheriff's Department*,[129] a police supervisor ignored the 911 call of a woman who reported that her former boyfriend was stalking and harassing her. When the officer finally made it to the scene – after repeated pleading and much delay – the woman had already been shot three times by her ex-boyfriend. An Ohio district court sustained the victim's equal protection claim, allowing her to conduct further discovery on whether the Department had a policy of treating domestic violence crimes less seriously than other violent crimes.[130]

Failure to Remove Domestic Abusers from Victims' Homes

Finally, police will be liable for violating the Equal Protection Clause if they expose a domestic violence victim to further violence by failing to remove the abuser from the victim's home where there is probable cause to do so. In *Smith v. City of Elyria*,[131] the police refused to remove Karen Guerrant's ex-husband from her home, telling Karen that the dispute was "a civil matter, not a police matter."[132] The police were called a second time the same night by Karen's nine-year-old daughter, who told the dispatcher that "my daddy's beating up my mom." The dispatcher informed Karen's sister, who took the phone, that "this is a civil matter," since Karen had initially let her ex-husband into the house.[133] When police finally responded to a third 911 call – seventeen minutes after the call was placed – Karen had been killed and her daughter's ear had been partially severed.

An Ohio district court sustained plaintiffs' claim that police treated

domestic violence differently than non-domestic disputes based on evidence that "a stranger would have been removed" under similar circumstances, and that the police policy manual directed officers to "avoid, if possible, resorting to arrest as the solution to a family dispute."[134]

The California Constitution provides a significant, but often overlooked, remedy for discriminatory law enforcement responses to domestic violence.

Proving Gender Discrimination Under the California Constitution

The California Constitution also provides a significant, but often overlooked, remedy for discriminatory law enforcement responses to domestic violence. The Equal Protection Clause of the California Constitution[135] is applied in the same manner as the federal Equal Protection Clause, with one important exception – the state constitution provides greater protection than the federal constitution for equal protection claims involving gender discrimination.[136] The California Supreme Court has held that discrimination based on gender violates the equal protection clause of the California Constitution and triggers the highest level of scrutiny.[137] Indeed, in order to survive a valid state equal protection claim, a state actor must prove that the challenged gender distinction is "necessary" to achieve a "compelling" state interest.[138] State and local agencies, therefore, would have a harder time justifying policies and practices that discriminate against domestic violence victims on the basis of their gender.

Despite the potential advantage of bringing a state equal protection claim, such claims have not been widely asserted in the domestic violence context, and there are currently no state appellate or supreme court decisions that specifically address law enforcement's liability under the California Constitution's equal protection clause for gender discrimination against victims of domestic violence.

STATE TORT REMEDIES

Domestic violence victims and their representatives can attempt to remedy problems of inadequate police protection by bringing tort lawsuits in state court. In fact, the United States Supreme Court recognized in *DeShaney* that, although a state actor's conduct does not rise to the level of establishing a Section 1983 claim, such conduct may nevertheless give rise to liability under state tort law.[139]

Law enforcement conduct that does not rise to the level of establishing a Section 1983 claim may still give rise to liability under state tort law.

California tort law shares many of the same principles as federal constitutional law when it comes to determining law enforcement liability for failing to properly respond to domestic violence incidents. For example, California courts will only impose liability if a "special relationship" existed between law enforcement and a domestic violence victim that gave rise to an affirmative duty to protect the victim from harm. As with federal precedent, state court decisions have required that law enforcement's conduct actually make a victim more vulnerable to the injury she ultimately suffered in order to establish a "special relationship." Moreover, state law has various immunity provisions that insulate government actors, such as law enforcement, from liability for certain civil damages claims.

However, there are some very important distinctions between state tort law and federal constitutional law that may make state tort remedies a more viable option for battered women and their representatives. First, unlike federal constitutional claims, negligent acts and omissions are sufficient to constitute a breach of an affirmative duty of protection by law enforcement under state tort law. Second, parties can bring claims against law enforcement agencies and officers for specific types of negligence. For example, a law enforcement agency may be liable for negligently hiring or negligently supervising derelict officers. Law enforcement officers may be liable under the doctrine of "negligence per se" when they fail to discharge a mandatory duty under state law. Finally,

although state law grants broad immunity to law enforcement from tort liability, it creates limited exceptions to this immunity that may be asserted to expose law enforcement to liability in the domestic violence context.

Law enforcement officers do not have any greater legal duty than the average citizen to protect, or come to the aid of, persons who are in danger.

General Negligence of Law Enforcement Agencies and Officers

Under California law, law enforcement generally cannot be held civilly liable for failing to protect individuals from crimes or violence committed by others.[140] In fact, the California Supreme Court has held that law enforcement officers, like ordinary citizens, do not have a legal duty to protect, or come to the aid of, another person, even if that person is in grave danger.[141] As long as the officer was not personally responsible for creating the dangerous situation, the officer's status as a law enforcement officer does not confer any greater duty than the average citizen to take action to help someone in distress.

However, the California Supreme Court has recognized that, under certain circumstances, a "special relationship" may be created between law enforcement and an individual that gives rise to an affirmative duty on the part of law enforcement to protect that person from harm.[142] This "special relationship" is created when law enforcement voluntarily takes affirmative action to protect a particular individual, causing that person to rely on a false sense of security created by the officer's conduct that they would receive a certain level of police protection.[143] Once this type "special relationship" exists, the officer has a duty to exercise due care toward that person. The officer is in breach of that duty if he/she negligently provides, or fails to provide, protection to that person, causing them to be placed in danger or to suffer an increased risk of harm.[144]

California courts have never found a "special relationship" to exist between a domestic violence victim and law enforcement, resulting in an affirmative duty to provide police protection from domestic violence. In one

of the first lawsuits brought against a police department for failing to protect a battered woman, *Hartzler v. City of San Jose*, the California Court of Appeal refused to find that the police had a "special relationship" with Ruth Bunnell despite the fact that she had called the San Jose Police Department at least 20 times over a two-year period to report violent assaults committed against her and her two daughters by her estranged husband, Mack Bunnell.[145] On September 4, 1972, Ruth called the police for the final time, begging for help. She informed them that Mack had just warned her over the phone that he was on his way to her house to kill her. Instead of taking immediate action, officers told Ruth to call back if and when Mack arrived. Forty-five minutes later, when the police arrived at Ruth's house in response to a neighbor's call, Mack had already stabbed Ruth to death.

A state trial court dismissed a wrongful death action brought by the administrator of Ruth's estate against the City of San Jose. The California Court of Appeal affirmed the trial court's dismissal of the action, reasoning that, absent evidence that the police actually induced Ruth to rely on an express or implied promise by them to provide her with police protection, no "special relationship" existed between Ruth and the department that would give rise to an affirmative duty of protection.[146]

In keeping with the *Hartzler* decision, in *Benavidez v. San Jose Police Department*, the California Court of Appeal again refused to recognize the existence of a "special relationship" between law enforcement and a domestic violence victim who repeatedly sought the assistance of police concerning violence and threats by her abusive ex-boyfriend. In August 1993, Adela Benavidez contacted the San Jose Police Department after her live-in boyfriend, Richard Cortez, had beaten her. A few months later, in December 1993, there was another incident in which Richard beat Adela, threw her down some stairs and took her car. Although Adela did not call the police after this incident, she had her son call 911 the next morning when Richard returned to the home and attacked her again. Two officers responded to the 911 call. Upon arriving

at the scene, one of the officers told Adela, "'Don't worry, we're here!'" After obtaining a description of Richard, both officers left the scene, with one officer traveling to Richard's mother's house to look for him. Before the officers left, Adela asked them what she should do if Richard returned, and they told her to call 911.

Richard returned to the home within minutes after the officers left the scene and Adela called 911. While she was on the phone with the 911 operator, Richard broke a window and tried to enter the home. Adela ran to the window to try to stop Richard from coming in. Richard reached in, grabbed her, pulled a shard of glass from the broken window, and stabbed Adela in the head and neck. Officers arrived the scene and were able to subdue Richard and take him into custody.

The state trial court dismissed Adela's claims that the police department had been negligent in failing to protect her and her son from the attack. The California Court of Appeal affirmed the trial court's decision, holding that there was insufficient evidence that the officers' conduct increased or changed Adela's risk of harm, creating a "special relationship" between Adela and the officers.

Similarly, in *Zelig v. County of Los Angeles*,[147] the California Supreme Court found no evidence that law enforcement officers or court security personnel did anything to create peril or increase the risk of danger for a woman who was shot to death in the county courthouse by her ex-husband. On the day of the murder, Eileen Zelig and her husband, Harry Zelig, were at the courthouse to attend a family court hearing relating to spousal and child support issues. On at least three occasions prior to the murder, Eileen had informed the bailiff of the family court that she believed Harry would try to attack her or kill her at the courthouse. She also provided the bailiff and the family court judge with letters and phone messages evidencing Harry's threats on her life. Moreover, Harry was subject to a restraining order obtained by Eileen prohibiting him from owning or possessing any firearms. Other than searching Harry for weapons

on at least one occasion, no action was taken by court personnel to protect Eileen.

The California Supreme Court affirmed the trial court and appellate court decisions dismissing claims brought by Eileen's children against the County for the negligence of its employees.[148] The Court reasoned that the bailiff's attempts to provide protection to Eileen on at least one occasion (i.e., searching Harry for weapons) did not give rise to a continuing "special relationship" with Eileen and, absent evidence that officers voluntarily assumed a duty to protect her on the day she was murdered, and then failed to do so, the county was not liable for her children's negligence claims.

A party may succeed on a state tort claim based on law enforcement's negligence in hiring, retaining and/or supervising an officer who failed to adequately respond to domestic violence or who perpetrated domestic violence against an intimate partner.

Negligent Hiring, Retention and Supervision

A party may bring a state tort lawsuit against a public entity employer or public supervisory employee based on their negligent hiring, retention and/or supervision of a public employee who has tortiously injured another.[149] Since these claims attribute negligent conduct to public agencies and employees, a party would still have to demonstrate that a "special relationship" existed between the public employer/supervisory employee and the injured person that gave rise to an affirmative duty to protect that person from harm.[150] If this duty can be established, the public employer/supervisory employee is in breach of the duty if they knew or should have known that the employee posed a foreseeable risk of harm to the injured party, but failed to take measures (i.e., refusing to hire, investigate, discipline or discharge) to protect the party against the harm.[151]

These negligence theories may be used to hold law enforcement accountable for failing to take adequate measures to protect a domestic violence victim in cases where the victim's abuser is a law enforcement officer. In *Mendoza v. City of Los Angeles*,[152] for example, although the California Court

of Appeal did not hold the city liable for negligent hiring and supervision when a city police officer murdered his girlfriend, the court indicated that there may be situations in which it would be proper to impose such liability against a city or law enforcement agency.

In *Mendoza*, an off-duty officer, Edward Mendoza, shot and killed his fiancé, Clementina Maglinti, during an argument over the fact that Edward had returned home late and drunk. Edward shot Clementina with a gun that he personally owned and had purchased when he was a cadet in the police academy. Although Edward had no prior history of violence toward Clementina, he had a long history of alcohol abuse. In fact, when Edward applied for employment with the city's police department, his psychological evaluation indicated a potential alcohol problem. Clementina's children brought a wrongful death suit against the city alleging that it was negligent in hiring and supervising Edward.

In rejecting the wrongful death claim, the Court of Appeal distinguished the case from other cases in which state courts have imposed liability against a police department for an officer's violence toward members of the general public.[153] The court noted that, in these cases, the officer was required to carry his service revolver at all times and the officer's service revolver was the weapon used to inflict the violence.[154] In particular, the court cited a case decided under New York state law in which an off-duty officer shot his wife and then killed himself with his service revolver which he was required to carry at all times.[155] The officer had also displayed past signs of mental and emotional problems during his employment.[156]

The Court of Appeal noted that, unlike the above cases, Edward was not required to be armed at all times and did not use his service revolver to kill Clementina. The court found that, when combined with the fact that Edward was off-duty and outside of his department's jurisdiction when the murder occurred, there was an insufficient connection between Edward's crime and his employment

as a police officer.[157] Moreover, the court found that the city's conduct did not cause Clementina's death.[158] The court reasoned that, although Edward exhibited signs of alcohol abuse, these signs were insufficient to demonstrate that the city should have foreseen that Edward would shoot his girlfriend in a drunken rage, particularly in light of his otherwise unblemished record. The court further reasoned that neither refusing to hire Edward nor properly supervising him in his official duties would have prevented him from accessing the murder weapon and killing Clementina.

While the court in *Mendoza* at least recognized the potential for liability, there are presently no California appellate or supreme court cases that hold a city or law enforcement agency directly liable for injuries to, or the death of, a domestic violence victim resulting from the negligent hiring, supervision or retention of an officer who was the perpetrator of domestic violence. Based on the court's reasoning in *Mendoza*, however, it seems that liability for negligent hiring, retention and/or supervision is likely to be imposed in cases involving the following facts: the officer-perpetrator was required to be armed at all times; the officer used a service weapon and/or specialized training to injure or kill his intimate partner; the officer displayed signs of emotional problems or violent conduct either prior to, or at the time of, hire or during employment; the officer was on duty or in uniform at the time he committed the crime, or had abused, harassed and/or stalked the victim in the past while on duty or in uniform; and the officer's supervisors or co-workers engaged in intentional and/or negligent conduct that increased the victim's risk of danger.

Violation of Mandatory Duty Under State Law

Public entities and pubic employees may be liable for "negligence per se" for injuries resulting from their failure to discharge a duty that is mandated by state law.[159] In order to establish liability, a party must show that (1) a legislative enactment[160] imposes a mandatory, as opposed to discretionary, duty on

A party may succeed on a state tort claim based on law enforcement's failure to discharge a duty that is mandated by state law.

the public entity/public employee, (2) the enactment was intended to protect against the type of injury suffered by the party, and (3) the public entity/public employee's breach of their mandatory duty was the proximate cause[161] of the injury suffered by the party.[162] If these three elements can be established, the public entity/public employee can still avoid liability by demonstrating that they exercised reasonable diligence in discharging their mandatory duty.[163]

It is extremely difficult to establish a claim of "negligence per se" against a law enforcement agency or officer. First, it may be difficult to prove that a law enforcement agency and/or officer had a mandatory duty to take a particular course of action in response to criminal activity. While state law grants law enforcement specific powers to prevent and address crime, an officer's decision about when and how to exercise these powers is largely discretionary, and there are very few laws that actually require officers to take specific actions to address a situation. Second, even if you can establish a mandatory duty, state law grants broad immunity to law enforcement for claims involving a failure to provide police protection, enforce laws, or make arrests.[164] Accordingly, state courts have not held law enforcement liable for negligence per se in most cases.[165]

In *Alejo v. City of Alhambra*,[166] however, the California Court of Appeal held that a claim for negligence per se may be properly asserted against a city and its police officers for failing to discharge a mandatory duty to investigate and report reasonable suspicions of child abuse pursuant to California's Child Abuse and Neglect Reporting Act (the "Act").[167] In this case, police officers failed to investigate and report suspected physical abuse against a child who subsequently suffered more severe abuse resulting in a permanent disability.

The Act states, in relevant part, that any "employee of a child protective agency . . . who has knowledge of or observes a child, in his or her professional capacity, or within the scope of his or her employment, whom he or she reasonably suspects has been the victim of child abuse, shall report the . . . abuse to a child protective agency . . . and shall prepare and send a written report

thereof within 36 hours of receiving the information concerning the incident."[168] The court held that this language creates both a mandatory duty to investigate, and a mandatory duty to report, known or reasonably suspected child abuse on the part of law enforcement.[169] In so holding, the court noted that the Act established "an elaborate system for reporting and cross-reporting" child abuse, the success of which depended on all professionals subject to the Act to comply with its provisions.[170] The court noted that police, in particular, were uniquely positioned to discover cases of child abuse due to their specialized training and role in the community.[171]

With regard to the remaining two elements of the negligence per se claim, the court found that, since the purpose of the Act is to protect children from abuse, the Act was intended to protect against the very type of harm inflicted upon the child in the case.[172] In addition, the court found that the plaintiff should be allowed to prove that the officers' failure to take action was the "proximate cause" of the child's injuries. The city could not negate this element of the claim simply by arguing that, as a matter of law, the fact that the child abuser's criminal conduct was the immediate cause of the child's injuries made the connection between the officers' conduct and the injuries too tenuous and speculative.[173] Since child abuse most often involves repeated and ongoing abusive conduct that only increases in severity without proper intervention, the court held that the plaintiff could prove "proximate cause" by presenting evidence that the officers should have reasonably foreseen that the child's caretakers were likely to resume their physical abuse and inflict further injuries upon the child if the child remained in their custody.[174]

The holding in *Alejo* supports a claim of negligence per se against law enforcement for failing to investigate known or reasonably suspected incidents of teen dating violence that fall within the purview of the Child Abuse Neglect and Reporting Act. Indeed, the Act's definition of "child abuse" is not limited to abuse inflicted by parents and caretakers of children. Rather, it includes all physical injuries "inflicted by other than accidental means upon a child by another

person," including in sexual abuse (i.e., rape, sexual assault, sodomy, etc.).[175] Moreover, teen dating violence, like child abuse, involves repeated abusive conduct that is likely to grow in severity over time. Thus, law enforcement may be held liable for failing to investigate and report known or suspected cases of teen dating violence, as mandated under the Act.

Law enforcement may be liable under state tort law for failing to investigate and report cases of teen dating violence as mandated by state law.

Alejo may provide some support for holding law enforcement accountable for responding to domestic violence against adult intimate partners. For example, state law provides that, when an officer has probable cause to believe that a domestic violence restraining order has been violated, that officer "shall . . . make a lawful arrest of the person [who violated the order] without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer."[176] An argument can be made, therefore, that state law imposes a mandatory duty on law enforcement to arrest someone who has violated a domestic violence restraining order, and that they can be held liable if their failure to do so results in serious injury or death to the person protected by the order.

The California Supreme Court has held, however, that the mere use of the word "shall" in a statute does not automatically mean that the legislature intended to impose a mandatory duty on government agencies or employees to engage in specified conduct.[177] The analysis of whether a mandatory duty truly exists is a question of law to be determined by a court through the examination of more than just the statutory language, but also the body of law of which that particular statute is a part, as well as relevant principles, precedents and legislative intent.[178]

In the case of mandatory arrest for restraining order violations, the law mandating arrest was enacted pursuant to omnibus domestic violence legislation designed to "improve the effectiveness of domestic violence protective orders (DVPO) and provide greater security and protection for victims of domestic

violence."[179] To this end, the omnibus legislation made numerous reforms in addition to mandating arrest, such as requiring courts to inform persons subject to a domestic violence restraining order that they are prohibited from owning or possessing firearms and requiring courts to impose specific conditions of probation in domestic violence cases.[180]

Law enforcement may be liable under state tort law for failing to make a mandated arrest of a perpetrator who has violated a domestic violence restraining order.

Accordingly, it could be argued that, like the Child Abuse and Neglect Reporting Act at issue in *Alejo*, the omnibus domestic violence legislation established an elaborate, inter-agency system for protecting domestic violence victims by ensuring that their domestic violence restraining orders are effectively enforced. It could be further argued that the legislative history and intent behind the mandatory arrest law, combined with the use of the word "shall" in the arrest statute, creates a mandatory duty on the part of law enforcement to make an arrest when they have probable cause to believe that a domestic violence restraining order has been violated. In fact, in keeping with the reasoning of *Alejo*, police are uniquely positioned to identify and respond to restraining order violations.

Assuming a court finds a mandatory duty to arrest, it would not be very difficult to establish the second element of a negligence per se claim in a case where a woman protected by a domestic violence restraining order was severely injured or killed after law enforcement failed to arrest her abuser for violating the order. Indeed, since the purpose of the omnibus legislation was to provide greater protection to domestic violence victims, the legislation was intended to protect against the very type of injury inflicted against the victim in such a case. However, a party would still have to meet the third element of the claim by proving that the failure to make an arrest for the restraining order violation was a proximate cause of the injuries later suffered by the victim, which is much more difficult to establish. Moreover, the law enforcement agency/officer could still avoid liability by demonstrating that they exercised reasonable diligence in trying to make an arrest.

State tort claims may be limited by government immunities.

Courts are extremely reluctant to impose mandatory duties, particularly a mandatory duty to arrest, on law enforcement. Indeed, given the overwhelming number of domestic violence incidents that law enforcement must respond to on a daily basis, courts may have strong concerns that the establishment of a mandatory duty to respond to domestic violence would open up a floodgate of litigation against law enforcement. Nonetheless, until this issue is litigated, "negligence per se" remains a potentially viable claim for domestic violence victims.

Exceptions to Government Immunity

Even if a person is able to establish a valid claim of negligence against law enforcement, the offending law enforcement agency or officer may nevertheless be immune from tort liability under state law. As a general rule, state law grants public entities, such as law enforcement agencies, absolute immunity from liability for torts committed by the public entity or public employees.[181] Public entities and employees are also immune from liability for failing to provide, or providing inadequate or faulty, police protection.[182] This includes immunity for specific conduct relating to the provision of police protection such as failing to enforce the law,[183] failing to make an arrest or hold an arrested person in custody,[184] and deciding whether to release a prisoner or parolee.[185]

Despite these immunities, public entities and employees may be subject to tort liability if the California Legislature enacts a statute that expressly imposes such liability on public entities and employees.[186] California statutory law recognizes the following limited exceptions to the broad immunity granted to public entities and employees.

Public Employer Liability for Employee Negligence

State law recognizes that public employers, like private employers, may be liable for injuries caused by the negligence of their employees so long as (1) the conduct was within the scope of the employee's duties and (2) the employee can be held personally liable for negligence.[187, 188] Accordingly, a law enforcement agency may be held liable if an officer commits an act of battery, false imprisonment or excessive force while performing his/her duties because officers are not immune from claims involving such conduct.[189]

Public Employer Liability for Negligent Hiring, Retention and Supervision

The California Supreme Court had held that state government immunities do not limit a party's right to bring claims of negligent hiring, retention or supervision against public employers.[190] Thus, law enforcement agencies may be held directly liable for their own negligence in hiring, retaining or supervising a derelict officer whom they know or should have known posed a danger of committing certain misconduct.[191]

Public Employee Liability for Their Own Torts

State law recognizes that public employees are liable for their own negligence and torts to the same extent as private individuals.[192] However, state law grants immunity to public employees from liability for injuries resulting from "discretionary acts" performed within the scope of the employees' authority.[193] In the case of law enforcement, "discretionary acts" may include the decision to arrest or detain a suspect, pursue a suspect, or investigate the scene of an accident.[194]

Public Employee Liability for Negligence in Performing Ministerial Acts

While state law grants absolute immunity to public employees for "discretionary acts," courts have imposed liability on law enforcement where injury to another results, not from the officer's exercise of discretion in carrying out his/her professional duties, but from the officer's negligence in performing ministerial acts after the officer has made a discretionary decision to take a certain action."[195, 196]

In *Carpenter v. City of Los Angeles*, for example, a witness in the criminal prosecution of an armed robbery defendant was assured by police that the criminal defendant posed no danger of harm to him. Police later learned that the criminal defendant had put a "contract" out on the witness's life, but failed to inform the witness of this danger. The witness was subsequently the victim of an attempted murder by an unknown assailant shortly before he was to testify in the criminal trial. The witness filed a lawsuit alleging that the city, through its police force, had a duty to warn him about the threat on his life and should be held liable for the injuries he suffered as a result of its failure to do so.

The court found that the city owed the witness a duty of care which required that city police, who had lulled the witness into a false sense of security, inform the witness of the subsequent, credible threat on his life.[197] Moreover, the court held that neither the "discretionary act" nor "police protection" immunities barred the witness's claims.[198] With regard to "discretionary act" immunity, the court noted that the decision made by police about what information to share with the witness was not a "basic policy decision" that was subject to immunity. With regard to "police protection" immunity, the court found that because warning the witness would have involved a simple phone call, not the deployment of police forces to protect the witness, this immunity also did not apply.[199] The court reversed the trial court's decision in favor of the city and remanded the case for a determination of whether the city breached its duty to the witness.[200]

Similarly, in *Morgan v. County of Yuba*,[201] the court held that a wrongful death claim may be brought against a county in a case where a woman was murdered after county sheriffs failed to notify her, as promised, about the release of someone who they knew had threatened the woman's life. The sheriffs had expressly promised on two occasions to contact the woman immediately if the person was released on bail, but failed to do so. The county argued that both it and its officers were not liable for the wrongful death of the woman because public entities/employees were immune from liability for injuries resulting from their discretionary acts and decisions to release prisoners. The court concluded, however, that the negligent conduct at issue in the case involved a failure to warn, as promised, and that, even though the decision to release the dangerous prisoner may have been discretionary, notifying the protected party about the prisoner's release called for a simple ministerial act for which the county and its officers were not immune.[202]

Although parties must meet significant hurdles in order to successfully bring a negligence claim against law enforcement under state tort law, state law leaves open the possibility of establishing liability in such cases. Accordingly, it is important that attorneys and victim advocates remain vigilant and continue to bring state tort claims against law enforcement. Litigating cases with strong legal and factual bases for holding law enforcement civilly accountable may help clarify and expand existing limitations on law enforcement liability in this area. Another alternative is to amend state laws on government tort liability to make it easier for victims and their representatives to sue law enforcement for how it responds to domestic violence.

It is important that attorneys and victim advocates remain vigilant and continue to bring cases against law enforcement that help clarify and expand existing limitations on law enforcement liability under state tort law.

WHERE DO WE GO FROM HERE?

• **Civil rights attorneys, advocates and victims must work together to bring cases that will set strong precedents for holding law enforcement liable for inadequately responding to incidents of domestic violence.** In a post-*DeShaney* and *Castle Rock* universe, the most viable theories for asserting a constitutional due process claim are to argue that law enforcement took affirmative action that made a victim more vulnerable to domestic violence, or that law enforcement acted with deliberate indifference in failing to provide domestic violence training for officers. Since the "state-created danger" and "deliberate indifference" exceptions to *DeShaney* have not been widely tested in the domestic violence context, and since decisions applying these exceptions are somewhat inconsistent, it is advisable for attorneys to bring litigation that helps clarify and expand the scope of these critical exceptions.

Equal protection claims are also highly recommended as these claims were not impacted by *DeShaney* and they signal to law enforcement that domestic violence is not a negligible, family matter, but rather a serious, potentially lethal crime that must be dealt with in the same manner as violent crimes between strangers. Moreover, it is important to remember that, in some cases, law enforcement may be immune from civil liability unless a party can show that an officer violated a clearly established constitutional right. Increased litigation of both due process and equal protection claims will help strengthen victims' constitutional remedies by clarifying victims' constitutional and statutory rights under federal law and reducing the likelihood that law enforcement will be immune from liability.

Plaintiffs in California should also remember to look to state law remedies. Unlike federal civil remedies, state tort law allows a party to recover civilly for purely negligent conduct. However, the party must first met the burden of showing that a "special relationship" gave rise to a duty of protection on the part of law enforcement, which has been challenging in the domestic violence context. Claims of negligent hiring, retention and/or supervision should be brought against law enforcement agencies who fail to adequately respond to domestic violence perpetrated by their own officers. Indeed, as this is an area of liability that has not been widely tested, advocates and attorneys should try to litigate these issues further when an appropriate case arises. State court decisions also lend support for bringing claims of negligence per se against law enforcement agencies that fail to discharge mandatory duties under state law, particularly in the cases of teen dating violence. Litigants should also remember to include state constitutional claims, when appropriate, given the high level of protection afforded in the California Constitution for gender discrimination.

• **Advocates should collect statistical and anecdotal data that can help support litigation aimed at improving law enforcement response to domestic violence.** In many of the cases described above, parties were successful in bringing equal protection claims because the cases took place before the systemic, criminal justice reforms established by the anti-domestic violence movement had been implemented by law enforcement. Thus, many departments still had written policies and entrenched practices that blatantly discriminated against domestic violence victims.

Now that law enforcement is more knowledgeable about, and responsive to, domestic violence, it is less likely that parties will be able to identify such explicit evidence of discrimination. Rather, discrimination against domestic violence victims is likely to take on much more subtle forms today. It is important, therefore, that advocates work with civil rights attorneys to document, on a local level, evidence of a particular department's chronic failure to respond adequately to domestic violence calls and/or repeated non-compliance with laws designed to protect domestic violence victims (e.g., mandatory arrest laws). This information may be useful in assisting attorneys and litigants with their claims.

• **Policymakers and advocates should work together to strengthen and expand state and federal laws in order to ensure that domestic violence victims and their survivors have effective statutory bases for holding law enforcement legally accountable for how it responds to domestic violence.** Government immunities and the strong reluctance of courts to interpret the law in a way that exposes government agencies to civil liability has made it extremely difficult for parties to bring successful claims against law enforcement, even in cases involving egregious and shocking conduct by officers. However, parties do not have to be constrained to working within the law as it currently exists. Advocates and policymakers can push for legislative and other reforms aimed at creating more clear and effective civil remedies for parties who have been injured as a result of faulty law enforcement responses to domestic violence.

Ensuring civil remedies for victims includes paying close attention to how legislative language is crafted. For example, in many of the cases described above, courts were able to avoid imposing liability on law enforcement for breaching mandatory duties to victims by stating numerous reasons why the use of the word "shall" in a statute fails to create a "mandatory" duty for law enforcement. Policymakers can help end this confusion by clearly stating, within the legislative language itself, whether a particular law is intended to create a mandatory duty for law

enforcement for which civil liability may be imposed. Policymakers can also specify restrictions on liability to ease concerns about opening up a floodgate of litigation against law enforcement.

- **State and local law enforcement officials should be knowledgeable about their agency's and officers' potential for liability for failing to adequately respond to domestic violence.** Law enforcement officials who are aware of their potential for civil liability are more likely to take steps to ensure that their agency and officers are effectively responding to domestic violence complaints. However, officials should not use their knowledge of liability and immunity issues to identify "bare minimum" responses to domestic violence. Rather, their goal should be to ensure that all responses are appropriate and effective, and never even raise the possibility of civil liability.

(Footnotes)

1. *Sources*: *Macias v. Ihde.* 219 F. 3d 1018 (9th Cir. 2000) and Marie De Santis, *Macias Case Legal History,* Women's Justice Center, *available at* http://www.justicewomen.com/macias_history.html (accessed August 30, 2005).

2. *DeShaney v. Winnebago County Department of Social Services,* 489 U.S. 189 (1989).

3. *Towne of Castle Rock v. Gonzales,* 125 S. Ct. 2796 (2005).

4. Tort claims are state civil causes of action that allow individuals to seek monetary damages if they have been personally injured by the negligent or intentional conduct of another. Tort claims do not include claims for breach of contract.

5. A "declaratory judgment" is a court decision in a civil case that defines the respective rights of parties to a legal dispute without awarding monetary damages or ordering the parties to do something.

6. State courts also have jurisdiction to hear 42 U.S.C. §1983 claims. *Howlett v. Rose,* 496 U.S. 356, 358 (1990).

7. 42 U.S.C. §1983.

8. *Hafer v. Melo,* 502 U.S. 21 (1991).

9. The 11th Amendment of the United States Constitution bars private parties from suing a state in federal court. *Will v. Michigan Department of State Police,* 491 U.S. 58, 71 (1989).

10. *Id.*

11. *Hafer, supra* note 8 at 30-1 (Because a "personal capacity" lawsuit is asserted against a state official in his/her individual, rather than official, capacity, the plaintiff does not need to establish a connection between the official's tortious conduct and a governmental policy or custom).

12. *Monell v. New York City Dept. of Soc. Servs.,* 436 U.S. 658, 690 (1978).

13. *Id.* at 691.

14. *Monell, supra* note 12.

15. *Tenney v. Brandhove,* 341U.S. 367, 372-6 (1951); *Pierson v. Ray,* 386 U.S. 547, 553-5 (1967).

16. *United States v. Classic,* 313 U.S. 299, 326 (1941).

17. *West v. Atkins,* 487 U.S. 42, 50 (1988).

18. 61 A.L.R. Fed. 7.

19. *Daniels v. Williams,* 474 U.S. 327 (1986).

20. *Baker v. McCollan,* 443 U.S. 137, 140, footnote 1 (1979).

21. *Ricciuti v. New York City Transit Auth.,* 124 F.3d 123, 128 (1997).

22. *See Pourny v. Maui Police Dept.,* 127 F. Supp. 2d 1129 (D. Haw. 2000); *Robinson*

v. Johnson, 975 F. Supp. 950 (S.D. Tex. 1996); and *Clark v Beville*, 730 F. 2d 739 (CA11 Ga. 1984).

23. 42 U.S.C. §1988.

24. U.S. Const. amend. XIV §1.

25. *Reno v. Flores*, 507 U.S. 292, 301-2 (1993).

26. *Board of Regents v. Roth*, 408 U.S. 564 (1972).

27. A "state actor" is a person acting under color of state law who may be subject to liability under Section 1983 as described in this section.

28. *Balistreri v. Pacifica Police Dep't*, 855 F.2d 1421 (9th Cir. 1988), *amended and superceded by* 901 F.2d 696 (9th Cir. 1990).

29. *DeShaney*, *supra* note 2.

30. *Balistreri*, *supra* note 28.

31. *Id.*; *DeShaney*, *supra* note 2; *City of Canton v. Harris*, 489 U.S. 378 (1989).

32. It should be noted that while the decisions of the United States Supreme Court on issues of federal law are binding on state courts in California, lower federal court decisions – including Ninth Circuit decisions – are not. *See, e.g., McLaughlin v. Walnut Properties*, 119 Cal. App. 4th 293, 297 (2004). In fact, California appellate courts have held that "[w]here the federal circuits are in conflict, the decisions of the Ninth Circuit are entitled to no greater weight than those of other circuits." *Forsyth v. Jones*, 57 Cal. App. 4th 776, 783 (1997). Lower federal courts sitting in the Ninth Circuit are, however, bound by decisions of the Ninth Circuit on issues of federal law. While the opinions of federal courts outside the Ninth Circuit may be given weight or consideration, they in no way control the decisions of federal courts within the Ninth Circuit. *See, e.g., Kanter v. Warner-Lambert Co.*, 52 F. Supp. 2d 1126, 1132 (N.D. Cal. 1999). The states that fall within the Ninth Circuit Court of Appeals' jurisdiction are California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska and Hawaii.

33. *Turner v. City of North Charleston*, 675 F. Supp. 314 (D.S.C. 1987).

34. *Id.*

35. *See also, Estate of Gilmore v. Buckley*, 787 F. 2d 714 (1st Cir.), *cert denied*, 479 U.S. 882 (1986) (Woman was kidnapped and murdered by her abuser the day after he was "released on furlough" from a state hospital where he was serving time for criminally threatening her. Doctors at the hospital knew about the abuser's history of violence against the woman and determined that he posed a "murderous" threat to her. The First Circuit Court of Appeals affirmed the dismissal of a substantive due process claim brought by the woman's estate, funding that no "special relationship" existed because there was no evidence that the state took any affirmative action to increase the woman's risk of danger).

36. *Balistreri, supra* note 28.

37. *Id.* at 1426.

38. *Id.* ("[T]he state's knowledge of DeShaney's plight and its expressions of intent to help him were no greater than its knowledge of Balistreri's plight and its expressions of intent to help her."); *see also Jones v. Union County,* 296 F. 3d 417, 430 (6th Cir. 2002) (order of protection does not create the "special relationship" necessary to support a due process cause of action); *O'Brien v. Maui County,* 2002 U.S. App. LEXIS 10835 (9th Cir. 2002) (fact that plaintiff had obtained restraining orders on several occasions and had alerted police officers to the threat posed by her batterer did not give rise to a special relationship).

39. *Dudosh v. City of Allentown,* 629 F. Supp. 849 (E.D. Pa 1985), *summary judgment granted, in part, Dudosh v. City of Allentown,* 665 F. Supp. 381, 394 (E.D. Pa. 1987), *reconsideration denied sub nom. Dudosh v. Warg,* 668 F. Supp. 994 (E.D. Pa. 1987), *vacated,* 853 F. 2d 917 (3rd Cir.) (per curiam), *cert. denied,* 488 U.S. 942 (1988), *reconsideration granted in part and denied in part sub nom. Dudosh v. City of Allentown,* 722 F. Supp. 1233 (E.D. Pa. 1989).

40. *Id.* (629 F. Supp. 849, 855).

41. *Id.* (665 F. Supp. 381).

42. *Id.* (665 F. Supp. 381, 390).

43. *Id.* (722 F. Supp. 1233).

44. *Hynson v. City of Chester,* 827 F.2d 932 (3d Cir. Pa. 1987), *writ of certiorari denied, Delaware County Prison Bd. of Inspectors v. Hynson,* 484 U.S. 1007 (1988), *later proceeding at Hynson v. Chester,* 684 F. Supp. 1294 (E.D. Pa. 1988), *later proceeding at Hynson v. Chester,* 1988 U.S. Dist. LEXIS 3358 (E.D. Pa. April 19, 1988), *vacated by Hynson v. Chester, Legal Dep't,* 864 F.2d 1026 (3d Cir. Pa. 1988), *summary judgment granted, in part, and denied, in part, by Hynson v. City of Chester,* 731 F. Supp. 1236 (E.D. Pa. 1990).

45. *Id.* (731 F. Supp. 1236).

46. *DeShaney, supra* note 2 at 194.

47. *Id.* at 193.

48. *DeShaney v. Winnebago County Dep't of Social Servs.*, 812 F.2d 298, 301 (7th Cir. 1987).

49. *DeShaney, supra* note 2 at 197.

50. *Id.* at 199-200.

51. *Id.* at footnote 9.

52. *Kennedy v. Ridgefield City,* 411 F.3d 1134, 1142-4 (9th Cir. 2005).

53. *Freeman v. Ferguson,* 911 F. 2d 52 (8th Cir. 1990).

54. *Id.* at 54.

55. *Smith v. City of Elyria*, 857 F. Supp. 1203 (N.D. Ohio 1994).

56. *Id.* at 1210.

57. *May v. Franklin County Board of Commissioners*, 59 Fed. Appx. 786 (6th Cir. 2003).

58. *Id.* at 795-6.

59. *See also, Kennedy, supra* note 52 (A woman was shot and her husband was shot and killed by their 13-year-old neighbor. The woman previously reported to police that she suspected the boy of molesting her 9-year-old daughter. She also reported that the boy and his family were violent and unstable and asked an officer to notify her before they informed the neighbors about the allegations against their son. The officer promised to provide such notice and promised to patrol the neighborhood, but did not follow through with either of these promises. The Ninth Circuit Court of Appeals held that the officer violated the woman's constitutional rights under the state-created danger doctrine because his failure to fulfill his affirmative promises augmented the parties' risk of danger).

60. *Piotrowski v. City of Houston*, 237 F.3d 567, 584 (5th Cir. 2001).

61. *Losinski v. County of Trempealeau*, 946 F.2d 544 (7th Cir. 1991).

62. *Id.* at 550-51.

63. *Pinder v. Johnson*, 54 F.3d 1169 (4th Cir.), *cert. denied,* 116 S. Ct. 530 (1995).

64. *Id.* at 1172.

65. *Id.*

66. *Id.* at 1175.

67. *Id.* at 1177.

68. *Salas v. Carpenter*, 980 F.2d 299 (5th Cir. 1992).

69. *See generally* Susanne M. Browne, *Due Process and Equal Protection Challenges to the Inadequate Response of the Police in Domestic Violence Situations*, 68 S. Cal. L. Rev. 1295, 1308-11 (1995).

70. *City of Canton, supra* note 31.

71. *Id.* at 389.

72. *Id.* at 389-90; *Monell, supra* note 12.

73. *City of Canton, supra* note 31 at 389-90.

74. *Stoneking v. Bradford Area School District,* 882 F.2d 720 (3rd Cir. 1989).

75. *Id.* at 722.

76. *Id.* at 722-23.

77. *Id.* at 725.

78. *Id.* at 725-6.

79. *Id.* at 725.

80. *See* Laura S. Harper, *Battered Women Suing Police for Failure to Intervene: Viable Legal Avenues After DeShaney v. Winnebago County Department of Social Services*, 75 Cornell L. Rev. 1393, 1417 (Sept. 1990).

81. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

82. *Town of Castle Rock, supra* note 3 at 2803.

83. Rather, the *DeShaney* Court declined to consider petitioners' argument, raised for the first time in their brief to the Supreme Court, that an Illinois child protection statute gave Joshua a property entitlement to protection from abuse under the Supreme Court's 1972 decision in *Board of Regents of State Colleges v. Roth. See DeShaney, supra* note 2 at 195, footnote 2.

84. Colo. Rev. Stat. §18-6-803.5(3) (2005).

85. *Gonzales v. City of Castle Rock*, 366 F. 3d 1093, 1264 (10th Cir. 2004).

86. *Town of Castle Rock, supra* note 3.

87. *Id.* at 2808-10.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* The Supreme Court cited the following cases upholding claims involving police failure to enforce restraining orders: *Donaldson v. Seattle*, 65 Wn. App. 661(1992); *Matthews v. Pickett County*, 996 S.W.2d 162 (Ten. 1999); *Campbell v. Campbell*, 294 N. J. Super. 18 (1996); *Sorichetti v. New York*, 65 N. Y. 2d 461 (1985); and *Nearing v. Weaver*, 295 Ore. 702 (1983).

92. *DeShaney, supra* note 2 at footnote 3.

93. One of the first equal protection cases involving law enforcement response to domestic violence was filed in 1976 by a class of female, African-American domestic violence victims against the Oakland Police Department. One of the claims alleged by the class was that the department violated the Equal Protection Clause of the 14th Amendment by maintaining a policy of discouraging arrests in domestic violence situations. The case eventually settled, and the Department agreed to adopt better policies for responding to domestic violence, including a policy requiring officers to make arrests whenever there was probable cause to believe that a felonious assault had occurred or that a misdemeanor assault had been committed in an officer's presence. Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970 – 1990*, 83 J. Crim. L. & Criminology 46, 62-3 (Spring 1992); Michaela M. Hoctor, *Domestic Violence as a Crime Against the State: The Need for Mandatory Arrest in California*, 85 Calif. L. Rev. 643, 651-2 (May 1997).

94. *Watson v. Kansas City,* 857 F. 2d 690, 694 (10th Cir. 1988).

95. *Monell, supra* note 12 at 691.

96. *See Personnel Administrator v. Feeney,* 442 U.S. 256, 273-5 (1979).

97. *Id.* at 279.

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

99. *Id.*

100. *Id.* at 1527-8.

101. *Id.*

102. *Id.* at 1529.

103. *Id.* at 1528.

104. *Macias, supra* note 1.

105. *Id.* at 1028.

106. *Macias Case Legal History, supra* note 1.

107. Some plaintiffs have not been as successful in bringing gender discrimination claims due to chronic police unresponsiveness to domestic violence complaints. *See Watson, supra* note 93 (finding that, despite evidence of repeated inaction by police to a victim's complaints of domestic violence, as well as evidence that police had a policy of providing less police protection to domestic violence victims than victims of other violent crime, the victim failed to state a prima facie case of gender-based discrimination because she could not show that defendants' policy was adopted to purposefully discriminate against women); *Williams v. City of Montgomery,* 21 F. Supp. 2d 1360 (M.D. Ala. 1998), *vacated,* 48 F. Supp. 2d (M.D. Ala. 1999) (finding no evidence of gender discrimination despite victim's repeated calls to police to report violent incidents and threats over an eighteen-month period); *Shipp v. McMahon,* 199 F.3d 256 (5th Cir. 2000) (finding that officers were immune from liability after repeatedly refusing to respond to victim's complaints of domestic violence and failing to intervene on one occasion until after she had been raped and shot in the chest by her abuser; officers were immune because standards governing a party's right to bring an equal protection claim based on gender discrimination were not "clearly established law" at the time that the alleged improper conduct occurred).

108. *Didzerekis v. Stewart,* 41 F. Supp. 2d 840 (N.D. Ill 1999).

109. *Id.* at 842.

110. *Id.* at 847-8.

111. *McDonald v. City of Chicago,* 1994 U.S. Dist. LEXIS 18445 (N.D. Ill. 1994).

112. *Id.* at 13.

113. *See* Blackwell, B.S., and Vaughn, M.S., *Police civil liability for inadequate response to*

domestic assault victims, JOURNAL OF CRIMINAL JUSTICE 31(2),129-146, 135 (2003); Browne, *supra* note 69 at 1324.

114. *Balistreri, supra* at note 28.

115. *Id.* at 698.

116. *Id.* at 701.

117. *Id.*

118. *See, e.g., Watson, supra* note 94; *Dudosh, supra* note 39.

119. *Fajardo v. County of Los Angeles*, 179 F.3d 698 (9th Cir. 1999).

120. *Id.* at 699

121. *Id.* at 700.

122. *See* Blackwell & Vaughn, *supra* note 113 at 138 ("[W]hile statistical data can be employed, it must be combined with other evidence that 'ripens into proof' that domestic violence victims are treated differently than other victims.") (citing cases).

123. *Watson, supra* note 94 at 696; *see also Hakken v. Washtenaw County*, 901 F. Supp. 1245, 1254 (E.D. Mich. 1995) (statistical evidence allowed to support claim that police customarily provided less protection to domestic assault victims than to non-domestic assault victims).

124. *Cellini v. City of Sterling Heights*, 856 F. Supp. 1215 (E.D. Mich. 1994).

125. *Id.* at 1222.

126. *Id.*

127. *Navarro v. Block*, 72 F.3d 712 (9th Cir. 1995), *aff'd Fajardo v. County of Los Angeles*, 179 F.3d 698 (9th Cir. 1999).

128. *Id.* at 716-7.

129. *Stevens v. Trumbull County Sheriff's Department*, 63 F. Supp. 2d 851 (N.D. Ohio 1999).

130. *Id.* at 856-7 (court also sustained plaintiff's gender discrimination claim, but rejected her substantive due process claim because officers did not engage in any affirmative acts that increased her risk of danger).

131. *Smith, supra* note 55.

132. *Id.* at 1206.

133. *Id.* at 1207.

134. *Id.* at 1208.

135. CAL. CONST. ART. I, §7, SUBD. (a).

136. *Connerly v. State Personnel Board*, 92 Cal. App. 4th 16, 31-2 (2001).

137. *Sail'er Inn, Inc. v. Kirby*, 5 Cal.3d 1, 17-20 (1971).

138. *Id.* at 16-7.

139. *DeShaney, supra* note 2 at 201-2.

140. *Zelig v. County of Los Angeles,* 27 Cal. 4th 1112, 1126 (2002).

141. *Id.*

142. *Williams v. State of California,* 34 Cal. 3d 18, 23-5 (1983).

143. *Id.*

144. *Id.*

145. *Hartzler v. City of San Jose,* 46 Cal. App. 3d 6 (1975).

146. *Id.* at 10.

147. *Zelig, supra* note 140.

148. Eileen's children brought various negligence claims (i.e., negligence, negligent infliction of emotional distress, wrongful death) against the County of Los Angeles and the Los Angeles County Sheriff's Department, as well as a constitutional civil rights claim pursuant to 42 U.S.C. §1983. *Id.*

149. *John R. v. Oakland Unified School District,* 48 Cal. 3d 438 (1989); Cal. Gov. Code §§820 and 820.2 (2005).

150. *Doe v. City of Murietta,* 102 Cal. App. 4th 899, 917-8 (2002).

151. *Doe v. Capital Cities,* 50 Cal. App. 4th 1038, 1054 (1996).

152. *Mendoza v. City of Los Angeles,* 66 Cal. App. 4th 1333 (1998).

153. *Id.* at 1340 [citing *Marusa v. District of Columbia,* 484 F. 2d 828 (D.C. Cir. 1973); *Corridon v. City of Bayonne,* 129 N. J. Super. 393 (1974); and *McCrink v. City of New York,* 296 N. Y. 99 (1947)].

154. *Id.*

155. *Id.* [citing *Bonsignore v. City of New York,* 683 F. 2d 635 (2d Cir. 1982)].

156. *Id.*

157. *Id.* at 1340-2.

158. *Id.*

159. Cal. Gov. Code §815.6 (2005).

160. An "enactment" is defined to include constitutional provisions, statutes, charter provisions, ordinances or regulations. Cal. Gov. Code §810.6 (2005).

161. "Proximate cause" is defined as an "original event which in natural unbroken sequence produces a particular foreseeable result, without which the result would not have occurred." The Law Dictionary, Anderson Publishing Company (2002). There may be more than one proximate cause of an injury.

162. *Becerra v. County of Santa Cruz,* 68 Cal. App. 4th 1450, 1458 (1998).

163. Cal. Gov. Code §815.6 (2005); *Sullivan v. City of Sacramento,* 190 Cal. App. 1070, 1079 (1987).

164. Cal. Gov. Code §§821, 845, and 846 (2005).

165. *See Shelton v. City of Westminster,* 138 Cal. App. 3d 610 (1982) (city and its police officers did not have a mandatory duty to provide the family of a murdered boy with his dental records in a timely manner); *Stout v. City of Porterville,* 148 Cal. App. 3d 937 (1983) (police officers did not have a mandatory duty to arrest an intoxicated person who was later hit by a car after being stopped and questioned by police); and *Fleming v. State of California,* 34 Cal. App. 4th 1378 (1995) (state parole officers did not have mandatory duty to arrest a parolee whom they knew was in violation of parole and were immune from liability under Government Code §845.8).

166. *Alejo v. City of Alhambra, 75* Cal. App. 4th 1180 (1999).

167. Cal. Pen. Code §§11164, et seq. (2005).

168. Cal. Pen. Code §11166(a) (2005).

169. *Alejo, supra* note 165 at 1185-7.

170. *Id.*

171. *Id.*

172. *Id.* at 1189.

173. *Alejo, supra* note 165 at 1190.

174. *Id.* at 1190-1.

175. Cal. Pen. Code §§11165.1 and 11165.6 (2005).

176. Cal. Pen. Code §836(c) (2005).

177. *See Morris v. County of Marin,* 18 Cal. 3d 901 (1977); *Nunn v. State of California,* 35 Cal. 3d 616 (1984); *Stout, supra* note 164.

178. *Id.*

179. California Senate Bill 218 (Chaptered October 10, 1999); *Senate Floor Analysis of Senate Bill 218,* California State Senate Rules Committee, Office of Senate Floor Analyses, *available at* http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_0201-0250/sb_218_cfa_19990910_112146_sen_floor.html (accessed July 25, 2005).

180. *Id.*

181. Cal. Gov. Code §815 (2005).

182. Cal. Gov. Code §845 (2005). Courts have held that this immunity applies to discretionary budgetary and policy decisions involving the hiring or deployment of police force. *Carpenter v. City of Los Angeles,* 230 Cal. App. 3d 923 (1991).

183. Cal. Gov. Code §§821 and 818.2 (2005).

184. Cal. Gov. Code §846 (2005).

185. Cal. Gov. Code §845.8 (2005).

186. *Becerra, supra* note 161.

187. Cal. Gov. Code §815.2 (2005).

188. Thus, if a public employee is immune from liability for certain negligent acts, so is the public entity-employer. *Sava v. Thomas*, 249 Cal. App. 2d 281, 284 (1967).

189. *Blessed Herve v. City*, 2004 U.S. Dist. LEXIS 25281 at 21-5.

190. *Grudt v. City of Los Angeles*, 2 Cal. 3d 575, 583-85 (1970); *Farmers Insurance Group v. County of Santa Clara,* 11 Cal. 4th 992, 1022 (1995).

191. *Id.*

192. Cal. Gov. Code §820 (2005).

193. Cal. Gov. Code §820.2 (2005). Discretionary acts are defined broadly to include basic governmental policy or quasi-legislative decisions that involve the exercise of professional discretion vested in the employee. Immunity applies even if the discretionary act is malicious or constitutes an abuse of the employee's discretion. *Caldwell v. Montoya,* 10 Cal. 4th 972, 979-82 (1995).

194. *See McCorkle v. Los Angeles*, 70 Cal. 2d. 252 (1969); *Gibson v. Pasadena,* 83 Cal. App. 3d 651 (1978); and *Michenfelder v. Torrance,* 28 Cal. App. 3d 202, 206-7 (1972).

195. *Sullivan, supra* note 162 at 1080-81.

196. State law distinguishes "discretionary acts" from purely "ministerial acts" that are performed merely to implement a policy that has already been formulated. *Caldwell, supra* note 192.

197. *Carpenter, supra* note 182 at 931-2.

198. *Id.* at 935.

199. *Id.* at 934-5.

200. *Id.*

201. *Morgan v. County of Yuba*, 230 Cal. App. 2d 938 (1964).

202. *Id.* at 942-6.

PROBATION SUPERVISION OF DOMESTIC VIOLENCE OFFENDERS

On June 29, 2001, Dawn Norris was stabbed 40 times with a butcher knife by her ex-husband, Ronnie Martin, as she sat in her car outside her apartment complex. Ronnie claimed that he bought the knife earlier that day to kill himself if Dawn refused to take him back.

Ronnie had a history of violence and abuse against Dawn. In 1996, Dawn sought a restraining order against Ronnie. In her application for the order, Dawn alleged that Ronnie became physically abusive and started threatening her life as early as 1995, describing one incident where he put her head through a window. In 1999, Ronnie was charged with misdemeanor domestic violence against Dawn and was ultimately sentenced to 30 days in jail and summary probation for one year. Only months after his probation ended, Ronnie was again charged with domestic violence after he punched Dawn in the face. Ronnie was sentenced to 30 days in jail, placed on three years' probation and ordered to enroll in a batterer's treatment program. A few months later, Dawn was murdered.[1]

As the number of domestic violence offenders on probation has grown, so has the responsibility of California county probation departments to ensure that they are effectively monitoring these offenders.

Domestic violence offenders are being arrested, prosecuted and convicted in greater numbers than ever before. A majority of offenders who are convicted of domestic violence receive some form of probation. In fact, California Department of Justice statistics reveal that almost 90 percent of offenders convicted of felony domestic violence in 2000 were placed on probation, whether their sentence was limited to probation only or included probation coupled with some jail time.[2]

As the number of domestic violence offenders on probation has grown, so has the responsibility of California county probation departments[3] to ensure that they are effectively monitoring this particular group of offenders. The supervision

Effective supervision of an abuser's probation is critical to ensuring a domestic violence victim's safety.

of domestic violence offenders presents unique challenges for probation officers. Unlike crimes such as burglary and stranger assault, an abuser who is "on the streets" presents a constant and serious risk of further violence and criminal acts against his victim. In monitoring domestic violence cases, therefore, probation departments must not only fulfill their traditional duties of promoting general public safety and fostering offender rehabilitation,[4] departments must also place a high priority on the safety of victims of domestic violence.

Indeed, once an abuser is placed on probation, the probation officer becomes a primary guardian and defender of the victim's safety in three significant ways. First, the probation officer is responsible for investigating and evaluating the offender to assess his potential risk of danger to others, including the victim, and to develop a probation plan that best addresses these risks. Second, the probation officer is responsible for continually monitoring the offender to ensure that he is complying with the terms of his probation, including refraining from further acts of violence and abuse against the victim. Third, the probation officer communicates with and makes recommendations to the court regarding the offender's compliance with the terms of his probation and can request that further action be taken against the offender for violations of probation, including incarceration.[5] Thus, the effective supervision of an abuser's probation is often crucial to a victim's safety.

HOW FAR HAVE WE COME?

In 1994, the California legislature enacted Penal Code Section 1203.097 which sets forth minimum sentencing requirements for domestic violence offenders who are placed on probation. The legislature's purpose in enacting Section 1203.097 was to address deficiencies in the way that domestic violence offenders were being monitored to "ensure the greatest effort to prevent repeat assaults" while a perpetrator is on probation.[6] Penal Code Section 1203.097

has been amended over the years, and currently sets the minimum terms of probation for domestic violence as follows:

- A minimum probationary period of 3 years;
- The issuance of a criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment by the probationer;
- Notice to the victim of the disposition of the case;
- The probationer must enroll in a 52-week batterer's treatment program with weekly sessions of a minimum of two hours class time duration (probationer shall file proof of enrollment in a batterer's program with the court within 30 days of enrollment);
- The batterer's treatment program is required to make periodic progress reports to the court regarding the probationer every three months or less;
- The probationer must complete the batterer's treatment program within 18 months and must attend consecutive weekly sessions of the program, unless granted an excused absence for good cause (probationer cannot be excused from participation for more than three individual sessions during the entire program);
- The probationer shall be ordered to perform community service;
- The probationer shall pay a minimum fine of $400 to be disbursed among state and county Domestic Violence Funds (based on ability to pay);
- In addition, the probationer may also be required to (a) make payments to a battered women's shelter, up to a maximum of $5,000 and/or (b) reimburse the victim for reasonable expenses that the court finds are the direct result of the probationer's offense.

Section 1203.097 also sets forth the duties of probation officers, prosecutors and the courts to ensure compliance by the offender with these conditions of probation. For instance, if the offender is not complying with the terms of probation, is not benefiting from batterer's treatment, or has committed

acts of violence against the victim or another person, the probation officer or prosecutor can request, or the court can itself order, that additional sentencing be imposed on the offender, up to and including incarceration.[7]

The probation standards enumerated in Penal Code Section 1203.097 grew in importance when "diversion" was eliminated as a method for dealing with domestic violence offenders. Under "diversion," certain offenders charged with misdemeanor domestic violence were allowed to avoid criminal prosecution by agreeing to participate in batterer's treatment and/or other rehabilitative programs.[8] The offender's record would be expunged upon completion of the diversion program. Diversion statutes were repealed in 1995 with the intent of taking a tougher stance on domestic violence by treating it as seriously as other violent crimes.[9] As a result, offenders who would have traditionally been placed in a diversion program are now being prosecuted and placed on probation if convicted.

With the influx of more domestic violence offenders into the probation system, it became increasingly apparent that probation officers needed specialized training to effectively supervise these offenders. Since the enactment of Section 1203.097, there have been several legislative attempts to mandate domestic violence training for probation officers, all of which were unsuccessful. In 1997, Assembly Bill 520 was introduced. The bill required that probation officers have 16 hours of training and coursework in domestic violence assessment, intervention, and reporting as part of their minimum standard training requirements. Assembly Bill 520 also required that probation officers receive at least 8 hours of domestic violence training every two years within the six year period following their initial training.

By the time that Assembly Bill 520 was introduced, laws had already been passed requiring domestic violence training for prosecutors, judges and law enforcement officers. Although probation officers also played a significant role in preventing and punishing domestic violence, they were not held to the

same training standards as the police or other members of the criminal justice system. Nevertheless, Governor Pete Wilson vetoed the bill, stating that these requirements were already being met through the mandatory training provided to probation officers by the Board of Corrections and that, since not all probation officers would be responsible for handling domestic violence cases, the decision to select appropriate training according to an officer's work assignment was best left to the discretion of each county probation department.[10]

Legislative attempts to mandate domestic violence training for probation officers have all been unsuccessful.

A second attempt to mandate domestic violence training for probation officers was made in 2000 with the introduction of Senate Bill 2059. Senate Bill 2059 mandated 3 hours of domestic violence training for probation officers as part of their minimum training requirement, as well as ongoing continuing education in domestic violence for 3 hours every two years. The bill was vetoed once again, this time by Governor Gray Davis. Like Governor Wilson, Governor Davis stated that the training requirements were duplicative of the training already received by probation officers through the Board of Corrections.[11] In 2002, Senate Bill 2059 was re-introduced as Assembly Bill 145. This time, the bill was "held under submission" in the Assembly Appropriations Committee and never reached the Governor's desk.

Although mandatory training for probation officers remained elusive, probation officers struggling to effectively manage domestic violence cases were not without guidance or resources. The California Department of Health Services awarded a grant to the California Institute on Human Services of Sonoma State University to establish the Probation Project. The purpose of the Probation Project was to decrease the incidence of domestic violence in California by assisting probation departments in institutionalizing batterer program approval processes, facilitating collaboration between probation departments and the domestic violence community, and increasing funding for domestic violence prevention activities.[12]

In our 100-Case Survey, nearly 70% of the perpetrators who were on probation or parole at the time of the murder were on probation/parole for committing domestic violence against the woman they ultimately killed or another intimate partner.

In addition, many county probation departments established specialized units for supervising domestic violence offenders.[13] These units generally consist of officers who have undergone training on domestic violence and whose sole responsibility is to supervise and monitor domestic violence offenders.

Despite these advancements, probation supervision of domestic violence offenders remains problematic. Fifteen (15) percent of the perpetrators in our 100-Case Survey were on probation or parole at the time of the murder. Nearly 70 percent of these perpetrators were on probation for past domestic violence against the woman they killed or another intimate partner.

The failure to effectively monitor these offenders and hold them accountable for probation violations can result in serious and deadly consequences. In a highly publicized San Francisco murder in 2000, Claire Joyce Tempongko was killed by her ex-boyfriend, Tari Ramirez, while he was on probation and attending a batterers treatment program. A few weeks before her murder, Ramirez violated his probation by attacking Tempongko and choking her, but was never arrested. Days later, he threatened Tempongko, violating his probation again, as well as an emergency protective order obtained by Tempongko after the choking incident. Although Ramirez was taken into custody, he was able to give police a false identity and, as a result, was charged with public drunkenness and ordered to perform community service rather than being jailed for a probation violation.

While there were many errors within the criminal justice system that contributed to Tempongko's murder, had the probation department been more effective in monitoring Ramirez's actions and communicating with Tempongko about her interactions with him, Ramirez should have been in jail at the time of the murder.

WHERE ARE WE NOW?

Twenty (20) county probation departments were surveyed in order to assess current practices within California's probation departments in monitoring domestic violence offenders and gain departmental feedback on how to improve these practices to successfully protect victims and hold offenders accountable. Questions posed to departments covered all aspects of probation including intensity of supervision, frequency of contact with offenders and victims, and leniency of officers and courts with violations of probation. Each probation officer interviewed was also asked what the strongest and weakest aspects of the department's general protocols were with regard to combating domestic violence and what areas warranted improvement or change. The results of this survey are described below.

Most probation departments surveyed have specialized domestic violence units.

County probation departments implemented a variety of different methods of monitoring domestic violence offenders, depending on their size and resources.

Specialized Domestic Violence Units:

Most of the probation departments surveyed (12 out of 20) have specialized domestic violence units. These units consist of probation officers, most of whom have undergone some type of specialized training in domestic violence, whose sole responsibility is to monitor domestic violence offenders. Even departments without a formalized unit typically assign all domestic violence cases to the same officer or officers. Only one department randomly assigned domestic violence cases to its officers.

Only 15% of probation departments surveyed had reduced caseloads for officers responsible for monitoring domestic violence offenders.

Officer Caseloads:

Only 3 of the departments surveyed had significantly reduced caseloads for officers monitoring domestic violence offenders, particularly those monitoring "high-risk"[14] offenders. For example, in one county, domestic violence probation officers supervise just 50 offenders versus the usual 150 offenders for probation officers in other units. Generally though, the caseloads remain large. Moderate caseloads consist of 150 offenders per officer. Larger caseloads varied from 200 to 450 offenders per officer, with one department reporting that one officer supervises approximately 1,500 domestic violence offenders who have been determined to require only "minimal" supervision.

Offender Monitoring and Check-ins:

Most probation officers supervise offenders by setting up regular check-ins (either by phone or in person) or conducting field visits (at the offender's home or work). The frequency with which probation officers are able to see offenders is closely related to the size of the officer's caseload and the risk of danger posed by the offender. In counties with intense supervision of high-risk domestic violence offenders, weekly or bi-weekly check-ins are typically required, whether by phone or a face-to-face meeting. However, low-risk offenders may meet with their probation officer only once every two to four months. One department uses a graduated system whereby the probation officer has contact with the offender on a weekly basis when probation starts and then, depending on the offender's behavior and compliance, the meetings become less frequent. On average, however, most county probation officers see their domestic violence probationers once a month, with occasional field visits. Only two departments reported conducting surprise visits with offenders on a regular basis. The remaining counties

cited lack of adequate manpower as the primary reason why they were unable to conduct such visits.

Minor Probation Violations:

The severity of consequences imposed by probation officers for violations of probation varies according to the nature of the violation. For "technical" violations, such as missing a batterer's treatment class or a check-in with the parole officer, most departments (14 out of 20) will give the offender another chance or an opportunity to correct the violation. If the offender persists in committing the same or other technical violations, the officer will send him to court to explain the reasons for the technical violations and, in some cases, will recommend incarceration. Probation officers may be more lenient with offenders who have exhibited good behavior. However, the probation officers interviewed generally only allowed for 2-3 technical violations before sending the offender to court. Some officers allowed for more violations, stating that judges did not want to see offenders before them merely for one or two technical violations.

Serious Probation Violations:

All departments reported taking a tough stance on serious violations of probation or new criminal conduct by the offender. Serious violations can include threats or violence against the victim, being terminated from a batterer's treatment program, testing positive on a drug test while enrolled in a court-ordered substance abuse program, or lesser conduct if dealing with a "high-risk" offender. In such cases, officers will send the offender back to court for the violation. In some cases, the probation officer will recommend to the judge that probation be revoked and jail or prison time imposed.

All departments reported taking a tough stance on serious probation violations and new criminal conduct by the domestic violence offenders they supervise.

Only 5 departments reported having a "zero tolerance" policy for any violation of probation. In one county, missing even one class will result in requiring the offender to return to court and explain to the judge about the absence.

The majority of probation departments surveyed do not conduct regular check-ins with the victims of the domestic violence perpetrators they supervise.

Victim Contact and Check-ins:

A majority of the departments surveyed do not conduct regular check-ins with domestic violence victims. Rather, most departments (14 out of 20) only contact victims at the start of probation in order to evaluate the offender, notify victims of the status and terms of probation, and/or provide victims with a list of local resources. Five (5) departments reported sending victims their notification and list of resources by mail, thus, having no personal contact with victims. One department reported never having any contact with victims throughout the entire probation period. Of the departments that did regularly communicate with victims, 3 departments only engage in such communication if the victim is still in a relationship with the offender. In such cases, one department requires victims to attend regular check-ins with offenders. The probation officer then meets separately with the victim and the offender.

Data Collection and Analysis:

None of the departments surveyed tracked statistics or information regarding their domestic violence caseload in order to assess their programs and areas for improvement.

Many of the surveyed probation officers experienced similar successes and setbacks in their efforts to monitor domestic violence offenders.

Need for Officer Training:

A majority of probation departments repeatedly emphasized that it is critical for officers, attorneys and judges, to receive domestic violence training in order to understand the context of the situations and better handle the unique aspects of domestic violence cases and offenders.

Need for Specialized Domestic Violence Courts:

There was a consensus among departments that specialized domestic violence courts are critical to ensuring that domestic violence cases and offenders are properly handled, particularly where probation is concerned.

Unmanageable Caseloads:

Many departments highlighted unmanageably large caseloads as a glaring weakness in their domestic violence probation programs. Most often, departments blamed budget cuts and lack of funding for the understaffed, over-burdened state of domestic violence caseloads. Departments expressed concern that large caseloads do not afford probation officers the adequate resources or time to implement the intense supervision that domestic violence cases require. Indeed, many interviewees felt that, due to lack of adequate resources, they were only able to put out fires as emergencies arose, rather than have long term positive effects in combating domestic violence and keeping victims safe.

Victim Non-cooperation and Recanting:

Many departments expressed frustration with victims' reluctance to cooperate with the penal system and to permanently separate themselves from their abuser. Some departments noted that victims

Many departments cited budget cuts and unmanageable caseloads as the primary reasons why they are not able to take a more active and comprehensive approach to monitoring domestic violence offenders.

would often call the probation officer with complaints about the offender, but would not want the offender arrested or brought in for his behavior. One department complained about victims filing false police reports when they were upset with the offender. This department suggested that victims be prosecuted for this type of behavior. Many departments suggested mandatory counseling for both the offender and the victim in such cases.

A significant number of probation departments complained that judges are being too lenient with domestic violence offenders and are failing to hold repeat offenders accountable for probation violations.

Need for More Judicial Training:

Departments were largely in agreement that judges trained in the area of domestic violence better understand the special circumstances involved in domestic violence cases and recognize the importance of imposing significant consequences and restrictions on domestic violence offenders who violate probation. Moreover, a trained judge is more likely to understand the cycle of the violence and the psychological stronghold the offender often has over the victim, as well as recognize that batterers come in all forms and sizes and, therefore, will be equally punitive with all offenders regardless of their demeanor or lack of prior criminal record.

Judicial Leniency:

A significant number of departments complained that judges were too lenient with domestic violence offenders and, in particular, failed to hold repeat offenders accountable for probation violations. According to these departments, judges often ignored their recommendations for imprisonment or serious punishment of the offender and, instead, let the offender off with a slap on the wrist even for serious violations of probation. Departments complained that the failure of judges to enforce their recommendations made their jobs more difficult because such leniency gives offenders

the impression that their behavior is acceptable. This complaint surfaced less frequently in counties that had specialized domestic violence courts.

Need for More Effective Batterer's TreatmentPrograms:[15]

Many departments expressed dissatisfaction with current batterer's treatment programs and their failure to hold offenders accountable for their abusive behavior. In addition, a few departments complained that the current 52-week batterer's treatment programs are not long enough to effect lasting change or improvement for an abuser. One department complained that, despite the fact that California law requires enrollment in a 52-week program, judges are allowing defense attorneys to plea bargain down the length of enrollment to as low as 22 weeks.

Many probation departments expressed dissatisfaction with current batterer's treatment programs.

A few departments complained that offenders' inability to pay fees for attending court-ordered batterer's treatment programs makes it extremely difficult for them to force compliance with this condition of probation. Some departments attributed this problem to the failure of the courts to reduce or waive such fees based on the offender's ability to pay. One department attributed this problem to the way offenders prioritize spending their money, rather than unjust court orders.

Officer Turnover:

One department cited the constant turnover and movement of officers within the department as being problematic. This department complained that removing an officer who has established a routine, knowledge base, and rapport with a domestic violence offender can be very detrimental to the overall supervision of that offender.

Effective Collaborations:

As an area of success, a few departments highlighted the fact that they are able to work very collaboratively with other agencies, including the district attorney's office, local law enforcement, and domestic violence service organizations, to identify the best way to address the various problems and issues faced by a particular offender and his victim.

WHERE DO WE GO FROM HERE?

Departments were asked to voice suggestions for improving their counties' domestic violence probation programs and supervision efforts. Not surprisingly, suggestions for improving probation supervision of domestic violence offenders mirrored department complaints about the current challenges that they face in their work. After reviewing the suggestions offered by the surveyed departments, as well as current research and model programs concerning the effective probation supervision of domestic violence offenders, we offer the following recommendations for improvement:[16, 17]

• **Counties should establish specialized units within their probation departments dedicated to monitoring domestic violence offenders**. Given the significant fiscal constraints faced by many departments, this recommendation includes providing county probation departments with the financial and technical support they need to establish these specialized units. At a minimum, probation departments should routinely assign all domestic violence offenders to the same officer(s).

• **Probation officers responsible for supervising domestic violence offenders should be required to complete substantial training and continuing education on domestic violence**. Officer training should be developed and conducted by legal, medical and/or community professionals who specialize in assisting domestic violence victims or offenders. Training should include instruction on cycles and patterns of abuse, the tactics and psychology of batterers, and the reasons why victims often recent or refuse to cooperate with authorities. It should also include practical instruction for officers on conducting comprehensive lethality and risk assessments for offenders with regard to victims and other family members.

• **Probation officers should conduct pre and post-trial lethality /risk assessments for offenders, with regular follow-up assessments of offenders' potential risk of danger to victims and other family members during the probationary period**. Lethality/risk assessments should be comprehensive and include confidential interviews with the victim and other family members who have knowledge about the offender's past history of violence and abuse. Numerous tools and models have been developed to assist probation officers in conducting lethality/risk assessments, including guides for effectively interviewing domestic violence victims.[18] Departments should review available models and adopt lethality/risk assessment protocols and forms for probation officers. In addition, departments should provide trainings for officers in how to conduct lethality/risk assessments.

• **All domestic violence probationers should be subject to intensive monitoring and supervision**. All domestic violence offenders must be treated as potentially dangerous to their victims and subject to intense probation supervision. The level of intensity of supervision may vary, or be modified over the probationary period, according to the results of lethality/risk assessments performed by the probation officer. However, even "low risk" offenders should be subject to frequent, regular check-ins and visits. Intense supervision is crucial given the constant risk of harm to the victim while her abuser is "on the streets" and the ability of many "high risk" batterers to present themselves to courts and officers as amiable, mild-mannered and respectful.

• **Probation departments should reduce caseloads to the extent practicable to ensure that officers are able to effectively supervise domestic violence offenders**. Probation departments must be provided with the financial and technical support they need to reduce officer caseloads.

• **Probation departments should conduct regular check-ins with victims of domestic violence offenders**. The victim is the best source of information about the offender's conduct while on probation. Moreover, it is important that officers remain accessible to victims throughout the probationary period in the event the offender harasses, threatens or commits further acts of violence against the victim. Probation officers should conduct regular check-ins with victims regardless of whether the victim and the offender are still in a relationship. Meetings with a victim should be confidential and conducted at a separate time than the officer's meetings with the offender. The officer should keep that victim apprised of any developments in the offender's case or probationary status.

• **Probation departments should establish and implement protocols for monitoring domestic violence offenders**. Protocols should institutionalize probation officer duties and responsibilities pursuant to Penal Code §1203.097, emphasize victim safety and offender accountability, and incorporate our recommendations listed above for supervising domestic violence offenders and maintaining contact with victims. Protocols should be developed with input and assistance from judges, prosecutors, probation officers who supervise domestic violence offenders, victim advocates and other relevant professionals.

• **Probation officers and judges should enforce a "zero tolerance" policy for probation violations committed by domestic violence offenders**. Domestic violence offenders must be held strictly accountable for complying with all conditions and terms of their probation. To this end, probation officers should recommend, and judges should impose, meaningful consequences for all probation violations. For minor or technical

violations, offenders should, at a minimum, be sent to court to address the reasons for the violation with the judge. For serious violations, jail time should be imposed on the offender. For violations involving further violence or threats against the victim, probation should be immediately revoked and the offender incarcerated. An offender should be held accountable for probation violations even if the victim does not want the offender to be arrested or suffer consequences for his behavior.

• **Judges who regularly oversee criminal domestic violence cases and offenders should be required to complete substantial training and continuing education on domestic violence**. Judicial training should be developed and conducted by legal, medical and/or community professionals who specialize in assisting domestic violence victims or offenders. Training should emphasize the critical role that courts play in holding batterers accountable and keeping victims safe, including examples of how effective court orders and sentencing contribute to the prevention of domestic violence and domestic violence homicides.

• **Judges should not allow domestic violence offenders to reduce the term of a 52-week batterer's treatment program as part of a plea bargain. California mandates enrollment in a 52-week batterer's treatment program for all domestic violence probationers**. By authorizing plea bargains that enable batterers to avoid complying with this mandate, judges send a dangerous message to the perpetrator and the community that domestic violence offenders will not be held fully accountable for their criminal conduct.

• **Probation departments should take steps to reduce high officer turnover**. Actions to reduce officer turnover may include strengthening hiring and recruiting practices and providing officers with the support and resources they need to deal with work-related "burn out" and stress.

• **Probation departments should foster interagency partnerships and collaborations aimed at preventing domestic violence and domestic violence homicide**. Officers who monitor domestic violence offenders should be strongly encouraged to participate in coalitions and working groups focused on domestic violence and domestic violence homicide prevention. In addition, departments should take the lead in developing networks with other county probation departments, as well as with local government agencies and community-based organizations that play a role in responding to domestic violence. Such collaborations will

assist departments in continuing to evaluate how they can improve oversight and monitoring of domestic violence offenders.

• **Probation departments should collect and analyze data on domestic violence probationers**. Collecting and analyzing data on domestic violence probationers can help departments assess their effectiveness in supervising these offenders and provide advocates with vital information on trends and potential risk factors concerning batterers on probation. In addition to general demographic data (e.g. age, race, relationship to victim, etc.), information collected should include the number, type and seriousness of probation violations among offenders, including tracking the extent to which offenders complete court-ordered treatment programs and the prevalence of recidivism among offenders.

(Footnotes)

1. Jose Arballo, *Violence Visited Her One Last Fatal Time; Crime: Authorities Allege That a Perris Abuse Victim's Former Husband Took Away Her Future*, The Press-Enterprise (July 12, 2001); Mike Kataoka, *Man Recalls Panic at Wife's Death*, The Press-Enterprise (July 23, 2002); Mike Kataoka, *Man Found Guilty of Killing Ex-Wife*, The Press-Enterprise (July 26, 2002).

2. This statistic is based on California Department of Justice statistics regarding the disposition of adult arrests for felony spousal abuse in 2000. According to these statistics, there were a total of 12,132 felony domestic violence convictions in 2000. As a result of these convictions, 10,846 offenders received a sentence of probation or probation with jail.

3. Unlike many other states, there is no statewide agency that governs probation for adults and juveniles in California. Rather, probation is entrusted to county governments and each of California's 58 counties has a probation department. San Francisco County has separate juvenile and adult county probation departments, resulting in a total of 59 county probation departments in the state. *See* Christopher D. Condon, *Falling Crime Rates, Rising Caseload Numbers: Using Police Probation Partnerships*, Corrections Today (February 2003).

4. U.S. Department of Labor, Bureau of Labor Statistics, *Probation Officers and Correctional Treatment Specialists*, Occupational Outlook Handbook (2002-03 ed.), *available at* http://www.bls.gov/oco/ocos265.htm (accessed August 8, 2005).

5. County probation departments are responsible for certifying and monitoring batterer's treatment programs. Batterer's treatment programs will be discussed in further detail in future volumes of this report.

6. California State Assembly, *Assembly Committee Analysis of Assembly Bill 93X* (July 18, 1994).

7. Cal. Penal Code § 1203.097(a)(12) (2005).

8. Eligibility for "diversion" was based on the following factors: (1) charge was a misdemeanor; (2) assault did not involve a deadly weapon; (3) defendant had not been convicted of any violent offenses or been diverted within the past 10 years; (4) defendant's record did not indicate that probation or parole had ever been revoked without having been completed.

9. California State Senate, *Senate Committee Analysis of Senate Bill169* (July 15, 1995).

10. Veto letter addressed to the Members of the California Assembly and signed by Governor Pete Wilson on September 29, 1997, *available at* http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0501-0550/ab_520_vt_19970929.html (accessed August 8, 2005).

11. Veto letter addressed to the Members of the California Senate and signed by Governor Gray Davis on September 10, 2000, *available at* http://www.leginfo.ca.gov/pub/99-00/bill/

sen/sb_2051-2100/sb_2059_vt_20000910.html (accessed August 8, 2005).

12. Promising Practices Guide, The Probation Project, p. 1, *available at* http://www.sonoma.edu/cihs/html/Probation/probationpromisingpractices.htm (accessed August 8, 2005).

13. *See County Probation Department,* Contra Costa County Probation Department, *available at* http://www.co.contra-costa.ca.us/depart/probation/index.html (accessed August 8, 2005); *Who We Are – Department Overview,* Riverside County Probation Department, *available at* http://www.probation.co.riverside.ca.us/deptoverview.htm (accessed August 8, 2005); *Adult Division-Domestic Violence,* San Mateo County Probation Department, *available at* http://www.co.sanmateo.ca.us/smc/department/home/0,,1999_18885651_18885644,00.html (accessed August 8, 2005).

14. Most county probation departments conduct a risk/needs assessment to determine the appropriate level of probation supervision for an offender. National Center for Juvenile Justice, *State Profiles: California, Probation Supervision, avalable at* http://www.ncjj.org/stateprofiles/profiles/CA04.asp?state=CA04.asp&topic=Profile (accessed August 30, 2005). Generally, "high-risk" offenders are those who have been determined to pose a serious risk to the community that warrants heightened supervision and monitoring by probation officers. *See* Los Angeles County Probation Department, *Adult Special Services Bureau, Adult Supervision, High Risk Offenders (HFO), available at* http://probation.co.la.ca.us/adult/aspecial.html#ADULT%20SUPERVISION (accessed August 30, 2005) and Santa Barbara County Probation Department, *The Santa Barbara County Probation Department (2004),* p. 17, *available at* http://www.countyofsb.org/probation/generalinfo/department_ow.pdf (accessed August 30, 2005).

15. An in-depth examination of batterer's treatment programs will be included in future volumes of this report.

16. Policy recommendations regarding batterer's treatment programs will be included in future volumes of this report.

17. It should be noted that the American Probation and Parole Association ("APPA") and Council of State Governments ("CSG") have been awarded a federal grant to evaluate the effectiveness of the Rhode Island Department of Corrections' Domestic Violence Unit, which administers a specialized probation program for domestic violence offenders similar to that utilized by some California county probation departments. While the results of this study are still pending, they will be critical to evaluating what further actions can be taken to improve domestic violence probation supervision in our state.

18. *See* The Probation Project, *supra* note 12; F. Mederos et al., *Domestic Violence and Probation,* Violence Against Women Online Resources, *available at* http//:www.vaw.umn.edu/documents/bwjp/probationv/probationv.html.

POST-HOMICIDE DATA COLLECTION AND DEATH REVIEW

In 1990, Veena Charan was shot to death by her estranged husband, Joseph Charan, as she was dropping her son off at school. Joseph committed suicide at the scene. Prior to her murder, Veena had obtained a restraining order and contacted numerous agencies, including the San Francisco Police Department and the San Francisco County District Attorney's Office, about abuse and threats by Joseph. The agencies contacted by Veena were not only aware of Joseph's threats, they were also aware that he owned a gun. Moreover, Joseph was on probation for domestic violence against Veena at the time he committed the murder.

The San Francisco Commission on the Status of Women launched an investigation to determine whether systemic failures in the way city and county agencies responded to Veena's case contributed to her risk of murder. The investigation revealed, among other problems, a lack of effective communication and information-sharing among agencies that had contact with Veena, a need for improved data collection systems for domestic violence cases, and a need for increased training on domestic violence for law enforcement officers, probation officers, and civil and criminal court judges.. A report issued by the Commission concerning its investigation of Veena's murder made over 100 recommendations for improving San Francisco's response to domestic violence.

Ten years later in San Francisco, Claire Joyce Tempongko was stabbed to death by her ex-boyfriend, Tari Ramirez, while her two children watched. Like Veena, Claire had secured restraining orders and called the police numerous times during the year prior to her murder in order to protect herself and her children from Tari. Like Joseph Charan, Tari was on probation when he killed Claire. At the time of Claire's murder, less than half of the recommendations promulgated by the Charan investigation had been implemented and there were no formalized procedures for ensuring that implemented changes were being

Understanding the circumstances of past domestic violence deaths can save the lives of women currently at risk of intimate partner murder.

consistently and effectively applied by local agencies. Given the disturbing similarities between Veena and Claire's cases, Claire's murder resulted in another city-wide investigation into local agency responses to domestic violence.[1]

Understanding the circumstances of past domestic violence deaths can save the lives of women currently at risk of intimate partner murder. A meaningful analysis of individual murders can uncover systemic gaps in services and legal protections, and provide government agencies and practitioners with valuable strategies for increasing victim safety and ultimately reducing the incidence of domestic violence murder in their communities.[2] The two primary ways that government agencies and the domestic violence community attempt to analyze and "learn" from domestic violence murders is through data collection and the establishment of local death review teams.

DATA COLLECTION

Comprehensive data collection is critical to understanding and preventing intimate partner murder.[3] Data sets can be used to identify common trends and circumstances among intimate murders, such as the extent to which prior cases have involved a history of violence in the relationship, attempts by the victim to seek help from legal and community agencies for abuse, or evidence of suicidal tendencies and other mental health issues among victims and perpetrators.[4] Based upon this information, practitioners can assess whether there are certain "risk factors" for domestic violence homicide. Evidence of "risk factors" can lead to legislative and policy reforms that improve system responses and save women's lives.[5]

Data sets can be used to identify "risk factors" for domestic violence homicide and to support legislative and policy reforms that improve system responses to domestic violence.

Despite these benefits, one of the most challenging aspects of collecting data on domestic violence homicide is that intimate murder, by its very nature, is resistant to statistical analysis.[6] The dynamics of intimate partner violence and murder are often so complex that standardized data collection, while good for tracking general trends, may be insufficient to support a comprehensive examination of intimate murder in the context in which this violence occurs.[7] The "cold hard facts" can often seem far removed from victims' actual experiences as they fail to capture unquantifiable, yet still significant, factors such as victims' perceptions and fears and unique social, cultural and economic dynamics or pressures that contributed to the murder.[8] Accordingly, advocates, researchers and government agencies have struggled to find the right balance of data collection and analytical techniques that provide a meaningful analysis of these cases.

How Far Have We Come?

National Data Collection

The U.S. Department of Justice (USDOJ) has collected national data on crimes through its Uniform Crime Reporting Program (UCRP) since 1930.[9] Data collected by the UCRP comes from monthly crime reports sent by state and local law enforcement agencies to the Federal Bureau of Investigation (FBI). Currently, law enforcement agencies participating in the UCRP represent approximately 93 percent of the nation's total population.[10]

The USDOJ has collected and analyzed data on intimate partner murder, specifically, since 1976.[11] Federal data on intimate partner murder includes information about the age, race, and sex of victims and offenders, the victim-offender relationship (e.g., current or former spouse, boyfriend, or girlfriend) and the type of weapon used in the murder.[12]

Although the federal government has been collecting intimate partner homicide data for almost thirty years, for much of this period the data was incomplete[13] and was not being analyzed or disseminated in a way that provided meaningful information and guidance to the public and government agencies. Consequently, in 1994, the Violence Against Women Act (VAWA) required the U.S. Attorney General to investigate how federal and state agencies were collecting data on domestic violence crimes, including domestic violence homicide, and make recommendations to Congress for improving and centralizing data collection efforts.[14] In addition, VAWA provided six million dollars in grants to state and local governments to improve data collection relating to domestic violence and stalking.[15]

The USDOJ's Bureau of Justice Statistics (BJS)[16] and National Institute of Justice (NIJ)[17] were charged with the responsibility for investigating national data

collection practices as mandated by VAWA.[18] Forty-seven states and territories, including California, participated in a study conducted by the BJS and NIJ and the results were issued in a 1996 report entitled, Domestic and Sexual Violence Data Collection: A Report to Congress Under the Violence Against Women Act.[19]

The study found that, although the federal and a majority of state governments were collecting data on domestic violence offenses, definitions of "intimate partner violence" and established data reporting systems differed so widely among states that aggregate data was hard to accurately and completely analyze on a national level.[20] These reporting problems were exacerbated by the fact that over 25 percent (12 of 47) of the surveyed states and territories were not collecting any information on domestic violence or domestic violence homicide at the time of the study.[21]

The BJS/NIJ study also raised concerns that existing federal and state data collection systems were insufficient for tracking the level of detailed information needed to engage in a meaningful analysis of domestic violence crimes.[22] During this time, the UCRP was a summary-based reporting system that only tracked aggregate data concerning specified crimes.[23] Crime data collected under the UCRP would reflect, for example, the total number of homicides that occurred in given time period and, depending on the data collection practices of individual states and localities, the total number of homicides that were domestic violence-related.[24] The BJS/NIJ researchers noted that the lack of detail inherent in aggregate data made summary-based reporting more suitable for tracking general crime trends rather than analyzing commonalities among domestic violence crimes or informing policy in this area.[25]

Although the federal government decided in the mid-1980s to change the UCRP from a "summary-based" to an "incident-based" reporting system called the National Incident-Based Reporting System (NIBRS), the study found that many states were slow to follow this transition.[26, 27] The incident-based

reporting system requires agencies to collect information on 53 different data elements for every crime incident handled by state and local law enforcement agencies.[28] The victim-offender relationship, substance abuse by the offender, and circumstance of the murder (i.e. "lover's triangle," "brawl due to influence of alcohol," etc.) are some of the data elements tracked under the NIBRS with regard to homicide crimes.[29] Moreover, the NIBRS links initial incident reports to subsequent criminal arrests, thereby indicating the proportion of domestic violence offenses that result in arrest.[30]

While the BJS/NIJ researchers touted the benefits of switching to a national, uniform incident-based data collection system, they noted that the attainment of this goal would require a substantial commitment of federal resources.[31] Given that the criminal justice system is not the only government system that has regular contact with domestic violence victims and offenders, the study also recommended that data collection be expanded to include domestic violence-related data from health and social services agencies.[32]

In addition to the data collected through the UCRP, the BJS collects national data on intimate partner violence through its National Crime Victimization Survey (NCVS). The NCVS was established in 1973 to supplement FBI crime data.[33] NCVS data is gathered through surveys conducted twice a year among a nationally representative sample of households.[34] Approximately 150,000 individuals ages 12 and over are surveyed annually.[35] The NCVS's interview-based method allows for the collection of detailed information on criminal victimization, as well as the collection of data on crimes that were not reported to law enforcement. This method, however, does not allow for the collection of data on homicide crimes, as the victims in such cases cannot be interviewed.

The BJS uses the data collected through the NCVS to produce national estimates on the incidence of, and trends associated with, criminal victimization in our country. In the early 1990s, the BJS completed a substantial redesign of

the NCVS in order to increase the accuracy of its data and broaden the scope of the survey.[36] One of the primary objectives of the redesign was to enhance the NCVS's capacity to collect meaningful information about the nature and consequences of violence against women, including intimate partner violence.[37] The BJS began releasing and analyzing data on intimate partner violence collected through the redesigned survey in 1993.

Federal data has provided criminal justice and community agencies with valuable information and insight on intimate partner violence and intimate partner murder. The BJS has published numerous reports analyzing federal data on intimate partner violence obtained through FBI crime reports and the NCVS. In 2000, the BJS released Intimate Partner Violence, Special Report. The report found that the percentage of female murder victims who were killed by an intimate partner during the period 1976 through 1998 remained fairly constant at 30 percent.[38] African American men experienced the greatest decrease in intimate partner murder, dropping 74 percent during this same period, with an overall decrease of 60 percent in the number of male victims of intimate partner murder.[39] Caucasian females were the only category of victims for whom there had not been any substantial decrease in intimate partner murder since 1976.[40] The report also found that several common factors were associated with higher rates of intimate violence.[41] Among female victims, these factors included being African-American, young, divorced or separated, earning lower incomes, living in rental housing and living in an urban area.[42]

Federal data has provided criminal justice and community agencies with valuable information and insight on intimate partner violence and intimate partner murder.

The BJS report, Intimate Partner Violence and Age of Victim, 1993-99, highlighted further trends in intimate partner violence regarding the age of the victim.[43] Younger women generally experienced higher rates of domestic violence in comparison with older women during the period 1993 through 1999, with women ages 16 to 24 being the most vulnerable to nonfatal intimate partner violence.[44] Women ages 35 to 49, however, were found to be the most vulnerable to intimate murder.[45] In fact, the report noted that women in

this age group experienced the smallest percentage decline in intimate partner murder, as compared to other age groups, and that they actually experienced an increase in intimate partner murder between 1997 and 1999.[46]

Federal data has also been used by private organizations to advance policy regarding intimate partner violence. The Violence Policy Center has produced a series of reports entitled, When Men Murder Women, based on federal homicide data.[47] These reports summarize national data on female homicide victims, including examining the age and race of victims, the victim-offender relationship, the type of weapon used, and the circumstances of the homicide (i.e., victim killed during the course of an argument).[48] The purpose of these reports is to highlight the importance of reducing access to firearms among individuals involved in intimate partner violence. In fact, the Violence Policy Center noted that guns were the most common weapon used by men to murder women in 2001, and that having a gun in the home significantly increases a woman's risk of intimate partner murder, even when the woman bought the gun for her own protection.[49]

The Violence Policy Center also ranks each state according to its rate of intimate partner femicide. California ranked twenty-second in the nation with regard to the number of females murdered by male intimate partners, with a homicide rate of 1.42 per 100,000 people.[50] The national average for 2001 was 1.35 per 100,000.[51] State comparisons are helpful in placing California's intimate partner murder rate into a national context.

In addition to data collection, the federal government, through the NIJ and other federal agencies, also provides grants to private researchers to conduct targeted studies on risk factors and dynamics of intimate homicide that are difficult to capture and assess through hard data alone.[52] For example, one new approach among federally-funded researchers to studying intimate murder is to survey women who were victims of "attempted" murder by their intimate partner.[53, 54] Focusing on attempted murder cases allows researchers to have

the benefit of interviewing the actual victim of domestic violence to gain a more accurate and complete understanding of the history and escalation of violence in the relationship, the victim's state of mind, and other relevant factors that may only be known to the victim.[55]

One study surveyed thirty (30) victims of attempted intimate murder to determine whether they shared similar characteristics or experiences that could provide guidance to practitioners in identifying and assisting women at risk of lethal domestic violence.[56] Interviews were conducted with victims covering topics such as the nature of the victim's intimate relationship with the perpetrator, the victim's perceptions of danger, and the victim's interactions with criminal justice and community agencies.[57]

The study's findings highlight the importance of conducting more targeted, in-depth examinations of actual and attempted intimate murder cases, as opposed to mere data collection. For instance, researchers found that, although the vast majority (28 of 30) of victims had experienced past physical abuse and/or highly controlling behavior by the perpetrator, many women reported being more concerned about problems other than abuse at the time they were attacked, such as infidelity and alcohol or drug abuse by the perpetrator.[58] Almost half of the victims did not suspect that their lives were in danger.[59] Moreover, researchers found that, while the majority of victims were attacked when they were trying to leave the relationship, most of these women decided to end the relationship for reasons other than abuse.[60]

Based on these findings, the researchers concluded that clinicians and practitioners should be vigilant in advising all victims of domestic violence about their risk of intimate murder, instead of waiting until the victim expresses fear for her life or safety before counseling her on these matters.[61] Researchers further concluded that clinicians and practitioners should never force victims of intimate violence or abuse to leave the relationship before dealing with the possible safety issues that the victim may face in doing so.[62] Such studies demonstrate

the value of using targeted, federally-funded studies to supplement and inform current federal data collection information and techniques.[63]

California law authorizes and encourages the coordination of state and local data to create a "body of information to prevent domestic violence deaths."

California Data Collection

Although the California Department of Justice (CADOJ) has collected crime information from local governments and agencies since 1955, the department did not begin collecting data on intimate partner murder until 1979.[64] The CADOJ collects data on intimate partner murder under the purview of general homicide data collection. State homicide data collection tracks, among other factors, the relationship between the victim and the perpetrator of the murder and whether domestic violence was a precipitating event to the murder. In addition, the CADOJ tracks the race of the victim and perpetrator, as well as the location of the murder and the weapon used.[65] Moreover, since as early as 1981, CADOJ has also tracked homosexual intimate partner murders, which is a progressive category of analysis for the nation.[66]

Aside from collecting data, the CADOJ does not engage in extensive analysis of its homicide data to identify statewide trends in intimate partner murder. Total numbers of intimate partner murders, including breakdowns by gender and race, are included in annual homicide reports issued by the CADOJ.[67] Thus, although an increase or decrease in rates of intimate partner murder may be tracked each year, the CADOJ's analysis of intimate partner murder rarely extends beyond this level.[68]

In 1995, the California Legislature attempted to rectify this deficiency by enacting Penal Code Section 11163.5 which encourages the coordination of state and local data to create a "body of information to prevent domestic violence deaths."[69] Section 11163.5 authorizes, but does not mandate, the California Department of Justice to: (1) produce an annual report on domestic

violence homicides based on state and local data collected, analyzed and interpreted, (2) develop a state and local database of domestic violence deaths, and (3) distribute the report on domestic violence homicides to public officials and county agencies that respond to domestic violence or investigate domestic violence deaths.[70] The structure of Section 11163.5 mirrors earlier child death review team and data collection legislation.[71] It was introduced with the purpose of setting up review strategies almost identical to child death cases.[72] However, the provisions of Section 11163.5 have not been implemented, likely due to a lack of funding.

In addition, in 1996 the state legislature created a pilot data collection program by designating the San Diego Association of Governments (SANDAG) as a clearinghouse for criminal justice data on domestic violence in San Diego County.[73] In establishing this regional clearinghouse, the legislature found that there was a serious dearth of data on the characteristics of, and commonalities among, domestic violence victims who seek services from community and government agencies.[74] The legislature further found that tracking such information was necessary to developing a victim profile that would allow community and government agencies to learn how they can better prevent and intervene in domestic violence situations.[75] SANDAG developed a standard intake form for San Diego County shelters, which tracked detailed information about the victim.[76] In addition, San Diego County added a supplemental data collection form to their standard police report to gather more detailed information on domestic violence crimes.[77] In 2000, SANDAG issued a report on the information on domestic violence and domestic violence victims that it had collected through San Diego's enhanced data collection procedures.[78]

The data collected by local domestic violence shelters resulted included the following findings:[79]

- Almost 70 percent of the domestic violence shelter clients were women of color;

- More than half of the shelter clients had been staying at a place other than their own residence prior to seeking shelter;
- Seventy-four (74) percent of the clients came with their children to the shelter;
- Sixty-six (66) percent of the clients reported they sustained some type of injury in the most recent incident of domestic abuse;
- Forty (40) percent of the clients reported having obtained restraining orders against their current partner;
- Seventy-three (73) percent of clients reported having police come to their household as a result of domestic violence;
- Fifty-five (55) percent of victims reported that their batterers had been previously charged with domestic violence;
- Thirty-nine (39) percent of the clients had previously received services related to domestic abuse; and
- About 50 percent of the clients, and over 80 percent of their batterers, had witnessed abuse while growing up.

The data collected from supplemental law enforcement police reports included the following findings:[80]

- Victims of a domestic violence incident were predominantly female (82 percent) and Caucasian (55 percent);
- The most frequent type of weapon used against victims were the suspect's hands (88 percent; knives and firearms were used in less than 3 percent of the cases);
- There were children present in over 50 percent of the incidents and, in 58 percent of these cases, the children present actually witnessed the abuse;
- In 80 percent of the incidents, there was a history of prior abuse by the suspect against the victim and about 40 percent of the suspects had been previously arrested;

- A high proportion of incidents involved injury to the victim and substance abuse on the part of the suspect at the time of the incident;
- Thirty-one (31) percent of the suspects were arrested at the scene of the incident;
- Over 75 percent of arrests were for felony charges, with the most common charge being the infliction of corporal injury on a spouse/cohabitant;
- The primary reasons arrests did not take place were: the suspect was not present at the scene, the victim did not want the suspect to be arrested, there was no visible injury to the victim, and officers determined the incident to be mutually combative; and
- Over 50 percent of the cases that were referred to the prosecutor by law enforcement were rejected.

SANDAG's findings revealed critical information about the nature and dynamics of domestic violence among victims and perpetrators who come into contact with law enforcement and victims who are forced to seek shelter from abuse. Although the SANDAG study focused on domestic violence generally, not intimate partner murder, the data collected and the development of an effective data collection protocol is instructive for intimate partner murder analysis.

Nationally, many states and local agencies have not yet converted to an incident-based data collection and reporting system that complies with the National Incident Based Reporting System.

Where Are We Now?

National Data Collection

Nationally, many states and local agencies have not yet converted to an incident-based data collection and reporting system that complies with the NIBRS. As of 2004, approximately 5,300 law enforcement agencies contributed incident-based NIBRS data to the FBI.[81] These agencies represent 20 percent of

the U.S. population and 16 percent of the crime statistics collected through the UCRP. Consequently, the collection and tracking of comprehensive, incident-based federal data on intimate partner murder remains an elusive goal.

Discrepancies between federal agency definitions of "intimate partner" may cause federal data on intimate partner violence and intimate murder to be inconsistent and significantly understated.

In addition, discrepancies between the FBI and BJS's definition of "intimate partner" for purposes of federal data collection may cause federal statistics on intimate violence and intimate murder to be inconsistent and significantly understated. In conducting the NCVS, the BJS defines "intimate partner" as including current and former spouses, current and former boyfriends/girlfriends, and same sex relationships.[82]

The FBI's NIBRS, on the other hand, tracks the following categories of "intimate partners": spouse, common law spouse, ex-spouse, boyfriend/girlfriend, and homosexual relationship. Although the FBI purports to include former boyfriends/girlfriends in its definition of "intimate partner," it does not include a separate category for these relationships in its data collection and reporting system.[83] Rather, the FBI includes former boyfriends/girlfriends in its general "boyfriend/girlfriend" category.

If there is no separate category for former boyfriends/girlfriends, law enforcement agencies participating in the UCRP that report intimate partner murders or crimes could misreport on the front-end, by not considering former boyfriend/girlfriend relationships to qualify as "intimate partner" relationships. Such discrepancies are particularly significant with regard to FBI data on intimate murder, as the NCVS does not have the capability to track data on homicide crimes. Researchers have estimated that excluding former boyfriends/girlfriends from intimate murder data collection practices may result in federal statistics being understated by as much as 11 percent.[84]

California Data Collection

Statewide data collection and analysis has also failed to result in reliable and comprehensive information on intimate partner murder due to systemic problems, which include a lack of funding and ineffective inter-agency communication and collaboration. CWLC's interviews with advocates and practitioners revealed the following challenges and shortcomings with respect to state data collection practices:

Statewide data collection efforts have failed to result in reliable and comprehensive information on intimate partner murder.

> The range of data collected by state and local agencies is insufficient to allow for a meaningful analysis of intimate partner murder in our state.

The CADOJ database is constructed from "summary-based" county criminal reports sent on a monthly basis to the Criminal Justice Statistics Center by local law enforcement agencies.[85] The Attorney General's office has been working to move California toward "incident-based" reporting for criminal databases, which would allow more details and circumstances of crimes to be analyzed.[86] A pilot program for incident-based reporting was launched in a few counties.[87] Unfortunately, the last incident-based report was received in June 2004.[88] The pilot program contained 53 data fields, including a flag for "domestic violence related" incident.[89] The state has not been able to implement incident-based reporting on a state level or even maintain the pilot program due to a lack of funding, although some local agencies have converted to such a system.[90]

Moreover, as mentioned above, the collection of comprehensive data on domestic violence homicides authorized by Penal Code Section 11163.5 has not become a reality, likely due to a lack of funding. As a result, little progress has been made toward creating a centralized, statewide domestic violence homicide database.[91] Intimate murder data continues to be entered into the state's general homicide database[92] and California has not published

a formal report specifically analyzing its domestic violence homicide data to date.[93] However, the Attorney General's office recently affirmed the importance of collecting comprehensive criminal justice data on domestic violence incidents and recommended that the CADOJ develop a web-based system that allows local criminal justice agencies to report extensive data on domestic violence cases to the state.[94]

Variances in data collection and reporting systems, technologies and resources at the local level make it difficult to gather uniform and accurate intimate partner murder data on a statewide basis.

Finally, the subtle complexities of intimate partner murder, such as the history of domestic violence, previous criminal activity, and mental health of the perpetrator or victim, are not quantified in state homicide reports nor collected by the statistics department.[95] More specialized information is needed to capture trends in intimate partner murder and learn from these crimes. Although many agencies, including social service agencies and shelters, collect data on cases involving domestic violence, this information is rarely shared among agencies and this data is not being collected and analyzed in any meaningful way on a statewide basis.

California's data on intimate partner homicide is inaccurate and subject to underreporting

Several problems were identified as contributing to inaccuracies and underreporting in state data on intimate murder:

- Lack of uniform data collection standards and accountability among local agencies

There are 58 counties and over 500 law enforcement agencies in California, many of which have divergent data collection and reporting practices.[96] Variances in data collection and reporting systems, technologies and resources at these local levels, make it difficult to gather uniform and accurate intimate partner murder data on a statewide basis.

Moreover, there is evidence that some local agencies may be reporting inaccurate numbers to the state. CADOJ statistics show, for example, that there was only one intimate murder in Ventura County in 1999 and that this case involved the murder of a woman by her boyfriend.[97] CWLC's search of local news stories, however, identified at least three intimate murders in Ventura County that year.[98] One murder was a highly publicized case of a woman who shot her husband and dismembered his body, yet CADOJ statistics show no record of any husband murders in Ventura County in 1999.[99]

One reason for the transmission of inaccurate data is that a murder may not be fully resolved and classified as an "intimate murder" until the completion of a lengthy investigation and/or criminal trial. Criminal investigations and trials can take over a year to complete, causing the crime to be omitted from reported intimate murder data in the year in which the crime occurred. Another reason for inaccuracies at the local level, however, is that some agencies are simply failing to fulfill their reporting requirements to the state.

- Need for greater inter-agency collaboration and specialized training on identifying intimate murder

California's homicide database tracks cases where domestic violence was a precipitating event to the murder. For a murder to be included in this category, however, it must have been properly investigated and identified by a local law enforcement agency as involving domestic violence. Whether a domestic violence murder is missed or mislabeled, therefore, greatly depends on the training, resources, and priorities of local law enforcement agencies.

Indeed, intimate murder is not always easy to identify and corroborate. In order to properly classify intimate murders, or confirm suspicions that what appears to be an "accidental" death is actually an intimate murder, it is often critical that investigators know how to detect the warning signs of intimate murder and establish effective collaborations with medical, social services and community agencies that had prior involvement with the victim or perpetrator.

The accuracy of statewide intimate partner murder data depends greatly on the training, resources and priorities of local law enforcement agencies and coroner departments.

One type of murder that was repeatedly cited by practitioners as being easily mislabeled by investigators is strangulation murder cases. A 1996 San Diego study uncovered significant findings regarding the use of strangulation in domestic violence cases. The study examined 100 cases over a five-year period in which a woman reported being choked or strangled by her intimate partner. Findings included the following:

- Ninety (90) percent of the women surveyed reported prior abuse by the partner who strangled them;[100]
- In most cases, strangulation of the victim produced no visible injuries or only produced minor injuries, such as red marks;[101]
- Because strangulation often produced no immediate, visible signs of serious injury, police tended to treat such cases as a minor incidents and failed to arrest or prosecute the suspect;[102] and
- Even when strangulation resulted in serious injury, police reports generally lacked relevant details about the incident, including victims' symptoms and complaints of injury, and many police photos were blurry and unusable as evidence of the injury.[103]

Moreover, the study noted that victims of strangulation murders, in general, are predominantly female[104] and that strangulation was one of the most lethal forms of domestic violence. In fact, the study noted that strangulation was commonly used as a form of domestic violence precisely because it is a way of silencing and causing serious injury to the victim, while leaving no marks.[105]

The study proposed a comprehensive training curriculum for law enforcement, coroners and prosecutors.[106] The training was aimed at improving how these agencies identify strangulation, collect and document useful evidence of strangulation, and work together to prosecute strangulation and strangulation murder cases.[107]

Several practitioners interviewed by CWLC also emphasized the important role that county coroner's offices play in identifying and collecting data on

intimate partner murder and the need for better collaboration among these offices and law enforcement investigators. The coroner is responsible for inquiring into and determining the circumstance, manner, and cause of all violent, sudden, or unusual deaths.[108] A coroner's ability to accurately identify signs of intimate murder, particularly where someone has died under suspicious circumstances, has an important impact on intimate murder data collection.

In fact, in our 100-Case Survey, several murders were thought to be accidents at the scene, only to have coroner's offices uncover more suspicious, but less conspicuous, causes of death such as strangulation or bludgeoning. In the case of Kristine Fitzhugh, Kristine was found dead at the bottom of the stairs. Her husband, Kenneth, insisted that she must have fallen down the stairs, by slipping on some plastic while wearing "slippery" shoes.

Law enforcement investigators labeled the scene an accidental death and did not investigate further. However, the coroner discovered signs of strangulation and determined that her cause of death was a blow to the head, unrelated to falling down the stairs. The death was then labeled a homicide to be criminally investigated, and Kenneth was ultimately found guilty of murder.[109] In Kristine Fitzhugh's case, the coroner's report was the first indication of intimate partner murder. This case underscores how critical it is that law enforcement and coroners have the appropriate tools, training and collaboration needed to properly identify cases of intimate partner murder.

- Lack of concrete data on domestic violence-related deaths

Another problem that contributes to under-representative data on domestic violence-related deaths, is the failure to identify and track deaths that are caused by domestic violence, but are not the result of a domestic violence murder. One example that surfaced in a roundtable discussion conducted by CWLC involved a case where a woman, who was part of a battered women's support group, was killed in a car accident when the car that she and her batterer were driving in went off the side of the road and crashed.[110] This woman described to

her group, on numerous occasions, how her batterer would lock her in his car and beat her as he drove around town.[111] Members of her support group were convinced that her death was caused by the batterer losing control of the car on such an occasion.[112]

In order to gain a complete picture of domestic violence fatalities, it is critical that state and local data collection systems track domestic violence-related fatalities in addition to domestic violence homicide statistics.

Another example involves domestic violence against elderly women. Studies show that abused and neglected elders have significantly higher mortality rates than their non-abused peers, even after controlling for other health factors such as chronic diseases.[113] Elderly women who die prematurely due to health problems that are caused or exacerbated by ongoing domestic violence are not reflected in existing data on domestic violence fatalities. Similarly, battered women's suicides resulting from ongoing abuse are typically not considered, or labeled as, domestic violence related deaths.[114]

- Lack of concrete data on the number of collateral victims of intimate partner murder

In 1 out of every 5 cases surveyed in our 100-Case Survey, a person other than the intended victim was either injured or killed at the time that the murder took place. A total of 27 people were killed in addition to the 100 intended intimate murder victims. Victims included children, friends, relatives, neighbors, current intimate partners of the victim, and co-workers. It is critical to find ways to identify and track these types of domestic violence-related deaths in order to gain a true picture of domestic violence fatalities in our state.

Where Do We Go From Here?

• **Local, state and federal definitions of "intimate partner" should be standardized and clearly articulated to advocates, researchers and law enforcement**. Unifying and expanding definitions of "intimate partner" will allow intimate violence and intimate murder to be accurately counted. Current and former spouses, current and former dating partners and same-sex relationships must be included in the definition of "intimate partner" at all levels of data collection and entry.

• **More state and federal funding should be committed to helping agencies convert to incident-based data collection and reporting systems**. Incident-based reporting is a move in the right direction because it tracks more meaningful details and paints a more complete picture of intimate murder. Law enforcement agencies in California and across the nation would like to implement effective incident-based data collection and reporting systems, but lack the funding and resources to do so.

• **Existing incident-based reporting standards should be expanded to include other significant factors relating to intimate partner murder**. Current models of incident-based reporting still fail to capture important data on intimate partner murders (i.e. perpetrator's prior history of abuse, prior convictions, prior arrests, etc.). Instead, detailed information gathering and analysis on intimate murder is primarily occurring locally through private research and the work of county domestic violence death review teams (see Domestic Violence Death Review section below). Further investigation and research is needed to identify additional relevant factors that could be tracked through incident-based reporting on intimate murder and to determine the feasibility of imposing expanded reporting requirements on local agencies.

• **State funding and resources should be directed toward establishing a separate, statewide data collection and analysis program on domestic violence deaths, as authorized by Penal Code Section 11163.5**. The full implementation of Penal Code Section 11163.5 should be made a higher priority. Given the preventable nature of intimate murder, it is vital that state and local agencies engage in a more detailed level of data collection and analysis than that which is currently performed for stranger murder or other violent crime.

• **Law enforcement investigators and coroners should receive specialized training on identifying and documenting data on intimate murder**. Properly determining a person's cause of death is central to collecting accurate data on intimate murder. As the primary agencies responsible for making these

determinations, law enforcement and corners must have the tools and training needed to effectively investigate and identify cases of intimate murder.

• **State and local agencies should explore ways to identify and collect data on non-homicide, domestic violence-related deaths**. In order to gain a true picture of domestic violence fatalities in our state, domestic violence-related deaths, such as battered women suicides, collateral deaths and premature deaths due to domestic violence injuries and stress, should be included in state and local data collection efforts. Identifying and collecting data on such cases, however, is extremely challenging and would require strong commitments and collaborations among various agencies that respond to domestic violence in the community. For counties with active domestic violence death review teams, analysis and tracking of these cases may be performed within the review team setting. However, data collection and analysis of these cases should be standardized and centralized on a statewide basis.

• **State and local agencies should explore ways to require data collection and reporting on domestic violence from health and social services agencies**. Preventing intimate murder requires gaining a better understanding of domestic violence generally, including victims and perpetrators' interactions with agencies outside of the criminal justice system. Many public health, social services and shelter agencies engage in some level of data collection and documentation on cases involving domestic violence. However, this information is rarely shared among agencies and it is not being tracked or analyzed in any meaningful way on a statewide basis. Further, investigation is needed to identify information that can be tracked by these agencies on a statewide basis and to determine the feasibility of imposing data collection and reporting requirements on these agencies.

DOMESTIC VIOLENCE DEATH REVIEW

The demand for more detailed data collection and analysis of intimate partner murder led to the establishment of domestic violence death reviews in California and across the nation. Although domestic violence death reviews are performed after an intimate murder has already occurred, the underlying goal of "death review" is to prevent future homicides from occurring and ultimately reduce the incidence of these murders in the community.

The underlying goal of domestic violence death review is to prevent future homicides from occurring and ultimately reduce the incidence of these murders in the community.

To this end, general objectives of domestic violence death reviews include: (1) collecting detailed information about the history and circumstances of particular intimate murder cases; (2) identifying agency or systemic failures that may have contributed to a victim's risk of murder; (3) making recommendations for improving agency responses to domestic violence; (4) building interagency collaboration and communication about intimate violence and murder; and (5) increasing public and agency understanding about domestic violence generally.[115]

The establishment of domestic violence death reviews represents a shift in focus among government and community agencies from protecting individual victims and holding their perpetrators accountable, toward addressing and improving broader systemic responses to domestic violence.[116] Two types of domestic violence death reviews have developed in California: government-sponsored death review teams and independent death reviews.

How Far Have We Come?

Government-Sponsored Domestic Violence Death Reviews Teams

Government-sponsored domestic violence death review teams ("DVDRTs") are typically formed on a county-wide basis and are composed of members from

various government and community agencies that play a role in responding to domestic violence in that community. Team members may include prosecutors, coroners, law enforcement officers, probation and parole officers, mental health and health care professionals, child protective service workers, victims' advocates, batterer's treatment counselors and representatives from community agencies who deal with a significant population of domestic violence victims, such as victim-witness assistance and immigration agencies.[117]

The multi-agency review process of DVDRTs allows for a comprehensive examination of intimate murders. DVDRT meetings provide a confidential forum for each agency involved in a particular intimate murder to come forward with relevant information that can assist the team in tracking exactly what happened in that case and how different agencies could have better protected the safety of the victim.[118] Indeed, central to the mission of most DVDRTs is the creation of a safe and collaborative environment that promotes systemic change and improvement, rather than imposing blame on individual agencies for perceived failures or mistakes in responding to domestic violence.[119]

The first DVDRTs in the U.S. were established in the early 1990s.[120] DVDRTs were largely modeled after child abuse fatality review teams, which originated in the late 1970s and were considered successful in improving systemic responses to child abuse and neglect.[121] Consequently, DVDRTs share many common characteristics with child abuse fatality review teams, such as interagency collaboration and an underlying conviction that intimate partner murders, like child abuse deaths, are often preventable.

The Charan Investigation, mentioned in the case study at the start of the section, was the first government-sponsored domestic violence death review in the nation.[122] The investigation was conducted in response to the 1990 murder-suicide of Veena Charan and her estranged husband, Joseph Charan. In this case, Veena did everything she could to protect herself from her abusive husband. She separated from Joseph and obtained custody of their then 9 year-

old son. She obtained a civil restraining order against Joseph. Moreover, during the 15 months prior to her murder, Veena made numerous calls to police to report domestic violence by Joseph against herself and other family members, but these reports were not taken seriously by police.

Although Joseph was eventually arrested and convicted of domestic violence, investigators failed to provide the prosecutor with complete information about Joseph's past history of abuse against Veena. As a result of the conviction, Joseph was placed on probation, the terms of which included participation in domestic violence counseling and the Sheriff's Work Alternative Program. On January 15, 1990, less than two weeks after he was placed on probation, Joseph showed up at his son's school and shot and killed Veena before killing himself.

The Charan Investigation was conducted by the San Francisco Commission on the Status of Women at the request of the San Francisco Domestic Violence Consortium.[123] In 1991, the Commission issued a report stating its findings and recommendations from the investigation of the Charan case. The Commission found that Veena's murder highlighted systemic problems with the way that San Francisco's civil and criminal justice agencies responded to domestic violence, and that future domestic violence murders could be prevented if significant changes were made.[124] In fact, the Commission noted that, if Veena's domestic violence complaints had been taken seriously by law enforcement and information about her case had been effectively communicated between law enforcement, prosecutors and the probation department, stronger criminal justice measures could have been taken against Joseph to prevent the escalation of violence that led to Veena's murder.[125]

In particular, the Commission's investigation revealed four significant gaps in services: (1) a lack of effective communication and coordination between the various city agencies that deal with domestic violence cases (i.e., police department, municipal court, adult probation); (2) a lack of systematic

California law authorizes and encourages the establishment of county domestic violence death review teams.

data collection and centralized information about domestic violence cases; (3) barriers to accessing services, including insensitivity among city agencies to cultural and gay/lesbian issues; and (4) insufficient training on multicultural awareness issues.[126] The Commission made over 100 recommendations for improving agency response to domestic violence in San Francisco and then worked with local agencies to implement their recommendations.[127] Changes included the establishment of an inter-agency council to coordinate domestic violence services throughout the city and the establishment of specialized domestic violence units within local police, district attorney and probation departments.[128]

A few years later, in October 1994, Santa Clara County established one of the first on-going, multi-agency DVDRTs, which has served as a model for teams across the nation.[129] The Santa Clara Domestic Violence Death Review Committee was established as a sub-committee of the Santa Clara Domestic Violence Council.[130] Since 1997, the Committee has issued annual reports summarizing data on domestic violence murders occurring in the county each year, analyzing trends and significant issues concerning these murders, and making recommendations for improving local responses to domestic violence.

Growth and Standardization of County Domestic Violence Death Reviews

In 1995, California enacted legislation authorizing the establishment of domestic violence death review teams in all California counties ("1995 Authorizing Legislation").[131] Although state law does not require every county to have a review team, it encourages the formation of such teams and sets forth general principles and standards for their operation.[132]

Penal Code Section 11163.3 describes the general objectives of county DVDRTs to include the following: (1) identifying and reviewing domestic violence

deaths, including homicides and suicides; (2) facilitating communication among agencies involved in domestic violence cases; and (3) reviewing agency involvement in domestic violence incidents to develop recommendations aimed at reducing the incidence of domestic violence in the community.[133]

Section 11163.3 also lists categories of professionals who should be included on county DVDRTs, including forensic pathology experts, coroners, prosecutors, law enforcement personnel, medical professionals, battered women's advocates, and representatives from child abuse agencies.[134] Moreover, Section 11163.3 authorizes counties to develop protocols and written reporting procedures to assist coroners and others who perform autopsies in identifying whether a person had been a victim of domestic violence prior to death and whether domestic violence was the actual cause of death for a victim.[135]

The growing number of DV-DRTs in California has led to a growing need among counties for guidance on how to effectively carry out team objectives.

The number of county DVDRTs in California grew with the passage of the 1995 Authorizing Legislation. Currently, there are at least twenty-four (24) counties in California that have on-going, formalized DVDRTs.[136] The growth of DVDRTs led to a growing need among counties for guidance on how to effectively carry out the objectives articulated in Penal Code Section 11163.3. Areas of particular concern included general protocol development, data collection, and confidentiality issues among team members.

General Protocol Development

The 1995 Authorizing Legislation required the California Attorney General's Office to create a statewide protocol to assist counties with developing and implementing DVDRTs.[137] Shortly after the 1995 legislation was enacted, the Attorney General's Office and Department of Health Services began gathering information for the statewide protocol by conducting focus groups with professionals involved in domestic violence prevention and response, and meeting with existing domestic violence death review teams.[138] In addition, in

1998, the Attorney General's Office established a Domestic Violence Death Review Protocol Advisory Committee ("Protocol Advisory Committee") to assist the office with defining the statewide protocol.[139]

Published in 2000, the statewide protocol provides guidance to counties in the following areas: team goals, team membership, case review, confidentiality, data collection and policy recommendation development.[140] The protocol outlines state law standards in each of these areas and supplements these standards with recommended practices developed by the Protocol Advisory Committee. With regard to team membership, for example, the protocol states that, in addition to the list of core team members set forth in Penal Code Section 11163.3 (i.e., forensic pathology experts, coroners, prosecutors, law enforcement personnel, etc.), Protocol Advisory Committee members recommended having professionals such as probation officers, judges, and rape crisis advocates on county DVDRTs.[141] The statewide protocol also includes an appendix of important resources for teams, such as sample confidentiality agreements and data collection forms.[142]

The statewide protocol is not mandatory, but rather, is intended as a guide for existing and future DVDRTs.[143] County review teams are free to develop their own mission statements, protocols, and forms in conformance with state law. This flexible structure has the benefit of allowing counties to tailor their review team in a way that best meets their community's needs. However, divergence in strategies and procedures among teams may make it difficult to gather uniform, statewide data on domestic violence deaths.

In addition to developing the statewide protocol, in 2002, the Attorney General's Office held two regional conferences for California DVDRTs.[144] These conferences provided a valuable opportunity for teams to share information about strategies for conducting death reviews, important trends and risk factors identified through local death reviews, and recommendations for preventing future domestic violence deaths.[145] However, due to budget restraints, the Attorney

General's Office has no current plans to hold additional regional conferences in the future.[146] The office does hope to produce an on-line newsletter for teams, as well as a team listserv, both of which will better enable teams to share information and resources.[147]

The National Domestic Violence Fatality Review Initiative (NDVFRI) has also served as an important resource for DVDRTs.[148] The NDVFRI is funded by a grant from the U.S. Department of Justice's Office on Violence Against Women.[149] NDVFRI provides technical assistance, training and resources for DVDRTs throughout the country. In addition, each year, the NDVFRI holds a national Domestic Violence Fatality Review Conference to help foster the growth and development of local teams. The California Attorney General's Office encourages county teams to attend these annual conferences.[150]

Although DVDRTs track and analyze critical data on local domestic violence deaths, there are currently no minimum, statewide data collection standards for local teams.

Data Collection

Another purpose of the 1995 Authorizing Legislation was to create a "body of information to prevent domestic violence deaths."[151] Section 11163.5, which was enacted as part of the 1995 legislation, authorizes the California Department of Justice ("CADOJ") to issue an annual report analyzing state and local data on domestic violence deaths, including the data collected by local DVDRTs.[152] To this end, Section 11163.5 authorizes the CADOJ to establish minimum data collection standards for DVDRTs in order to better assess the data collected by local teams on a statewide basis.[153]

Although more than 10 years have passed since the enactment of Penal Code Section 11163.5, the state has not been successful in creating a statewide "body of information" on domestic violence deaths. Moreover, the CADOJ has yet to issue a report analyzing state and local data on domestic violence deaths. The delay in achieving these goals may be attributed, in part, to the difficulty of standardizing and coordinating state and local data collection efforts. Indeed,

although the CADOJ intends to develop a standardized data collection form for county DVDRTs,[154] there are currently no minimum data collection standards for local teams.

In 1999, Penal Code Section 11163.6 was enacted to ensure more consistent and uniform data collection by county death review teams. Section 11163.6 promotes standardized data collection by defining what qualifies as a "domestic violence death" for purposes of conducting local domestic violence death reviews.[155] Pursuant to Section 11163.6, county review teams may, but are not required to, consider the following deaths in conducting their reviews:

- Deceased was murdered by an intimate partner;[156]
- Deceased committed suicide and was a victim of domestic violence committed by an intimate partner;
- Deceased committed suicide after murdering an intimate partner;
- Deceased murdered an intimate partner and was then killed in connection with the domestic violence incident;
- Deceased was the child of the victim and/or perpetrator of a domestic violence homicide;
- Deceased was an intimate partner of the domestic violence perpetrator's intimate partner;
- Deceased was a law enforcement officer, emergency medical personnel, or other agency representative responding to a domestic violence incident;
- Deceased was a family member of the domestic violence perpetrator, other than those identified above;
- Deceased murdered a family member, other than those identified above; and
- Deceased is someone who is not included in one of the above categories, but whose murder was related to domestic violence.

Section 11163.6 allows a wide range of murders and suicides to be reviewed by county DVDRTs. However, because Section 11163.6 does not require that local teams use its expansive definition of "domestic violence death," these provisions, while instructive, do not guarantee that teams are utilizing uniform definitions in selecting and reviewing cases.

Confidentiality Issues

Confidentiality is critical for the effective operation of county DVDRTs. Without a safe and confidential environment, team members may be reluctant or unable to share their agency's information about a particular case or speculate about how agency omissions and/or failures may have contributed to the victim's risk of murder.[157] Even with a confidential environment, however, a team's authority to gather and assess information about a case is not without its limits. Teams must balance their interest of conducting an effective and comprehensive case review with the community's interest in ensuring that the team's efforts do not unlawfully infringe on a person's or agency's privacy rights.

DVDRTs must balance their interest of conducting effective and comprehensive case reviews with the community's interest in ensuring that the team's efforts do not unlawfully infringe on a person's or agency's privacy rights.

There are generally two levels of confidentiality when it comes to a team's case review process: team confidentiality and member confidentiality.[158] Team confidentiality covers all communications and activities that occur during a team meeting.[159] Member confidentiality applies on an individual level, and requires that each team member keep specific case information confidential and not discuss this information with anyone outside the group, including others in their member agency.[160]

The 1995 Authorizing Legislation addressed confidentiality issues for DVDRTs by enacting Penal Code Section 11163.3(e) which states that all communications and documents shared within, or produced by, a DVDRT relating to a case review are confidential and, therefore, are not subject to disclosure or discoverable by a third party.[161] The same privilege applies to

communications and documents shared between a third party and a DVDRT relating to a case review.[162] In addition, recommendations developed by a DVDRT may be publicly disclosed only when a majority of death review team members agree on publishing the recommendations.[163]

In 1999, Penal Code Section 11163.3 was amended to further clarify confidentiality rules concerning a DVDRT's case review process.[164] Penal Code Section 11163.3(f) specifically authorizes agencies that are members of a DVDRT to share information their agency has about a particular victim or case under review with other team members, even if the information is otherwise deemed to be confidential or privileged. For example, if a team member represents a battered women's shelter at which the victim subject to review had previously sought assistance for domestic violence, Section 11163.3(f) allows that team member to share his/her agency's records concerning the victim with the DVDRT, despite the fact that such records may be prohibited from disclosure under the domestic violence victim-counselor privilege (Evidence Code Sections 1037, et seq.). Section 11163.3(f) states that information disclosed by a member agency to the team under these circumstances is confidential.

Penal Code Section 11163.3 (g), which was also enacted in 1999, allows DVDRTs to make written requests to third party agencies for information relating to a case review, including that which is confidential or privileged under state law.[165] Pursuant to Section 11163.3(g), information requested by a team may include the following:

- Medical information;
- Mental health information;
- Information concerning a report or investigation of elder abuse, except for the identity of the person who made the report;
- Information concerning a report or investigation of child abuse, except for the identity of the person who made the report;

- Criminal history and criminal offender information;
- Information concerning mandated reports by health practitioners of injuries inflicted by a firearm or assaultive or abusive conduct, including information concerning whether a physician referred the injured party to local domestic violence services as recommended under state law;
- Information in juvenile court proceedings;
- Information maintained by the family court;
- Information provided to probation officers in the course of their duties, including, but not limited to, the duty to prepare reports; and
- In-home supportive services records, unless federal law prohibits the disclosure of such records.

The broad range of information that DVDRTs are authorized to request pursuant to Penal Code Section 11163.3(g) is among the most expansive in the nation.[166] However, DVDRTs cannot compel individuals or agencies to provide them with the information described above.

The California Attorney General's statewide protocol recommends having DVDRT members and guests sign a confidentiality agreement at the beginning of every meeting that sets forth the team's confidentiality rules.[167] The protocol further recommends that members and guests also be verbally reminded at the beginning of each meeting that information shared or discussed during the meeting cannot leave the room.[168]

The only exception to the confidentiality agreement recognized by the statewide protocol involves the rare situation where a prosecutor learns new information during a team meeting that he/she is constitutionally mandated to disclose to the defense in a case where the perpetrator is awaiting trial or has already been convicted.[169] All other breaches of confidentiality should result, at a minimum,[170] in the offending member being removed from the team.[171]

Annual reports from DVDRTs summarize data on county domestic violence deaths, analyze trends or patterns illustrated by this data, and list the team's recommendations for improving local responses to domestic violence.

Key Findings From Domestic Violence Death Review Teams: Annual Reports

Annual reports are one of the most important products of DVDRTs. These reports summarize the data collected from the team's review of county domestic violence deaths during the prior year, analyze trends or patterns illustrated by this data, and list the team's recommendations for improving local responses to domestic violence. Included below is a summary of important highlights from some of the most recent annual reports issued by DVDRTs in California.

Santa Clara County Domestic Violence Death Review Committee

The Domestic Violence Death Review Committee of the Santa Clara County Domestic Violence Council issues an annual report at the end of each calendar year. The Committee's most recent annual report reviews six (6) domestic violence deaths occurring in Santa Clara County in 2004.[172]

Key Findings

Key findings included, but were not limited to, the following:

- Only six (6) domestic violence deaths (2 homicides, 1 homicide/suicide, 2 suicides after an attempted homicide) occurred in the county in 2004, which represented a dramatic decrease from the twenty-one (21) identified cases that occurred the year before. The Committee attributed this decrease to a number of factors, including increased reporting of domestic violence incidents, improved responses by law enforcement and prosecutors, increased community awareness of domestic violence, and member agency's application of what they learn from participating in the Committee to their every day work;

- People close to the victims and perpetrators of the murder knew that something was seriously wrong in the relationship, but did nothing to intervene;

- Perpetrators of fatal domestic violence shared common characteristics which included making prior threats of murder or suicide, exhibiting signs of anger or depression, perpetrating prior physical violence against the victim or a prior intimate partner, and engaging in highly controlling and obsessive behavior against the victim; and

- Domestic violence deaths occurred in nearly every jurisdiction in the county and involved different racial and socio-economic groups. Individuals from middle and upper-middle classes made up the majority of deaths.[173]

Policy Recommendations

As a sub-committee of the Santa Clara Domestic Violence Council, the Committee makes its recommendations directly to the Council. Policy recommendations made by the Committee to the Santa Clara Domestic Violence Council included, but were not limited to, the following:

- Encourage community members to report domestic violence;

- Continue to educate the public about domestic violence issues, including ethnic minority and immigrant communities;

- Continue to encourage victims to obtain restraining orders;

- Promote legislation requiring all mental health professionals to have domestic violence education;

- Encourage local school districts to develop curriculum addressing domestic violence, dating violence and stalking; and

- Continue to educate the public about gun restrictions for domestic violence offenders.[174]

San Diego County Domestic Violence Fatality Review Team

The San Diego County Domestic Violence Fatality Review Team ("SDDVFRT") was established in 1996 and issued its first report in 2001. The

SDDVFRT's most recent annual report reviews twenty-five (25) cases occurring in 2002 and 2003 and combines these findings with findings from previous SDDVFRT case reviews, analyzing a total of sixty-one (61) domestic violence fatalities occurring from 1997 to 2003.[175]

Key Findings

Key findings included, but were not limited to the following:

- The SDDVFRT identified the following eight (8) major risk factors for domestic violence lethality (listed in order of importance): history of domestic violence, access to firearms, victim ended the relationship prior to death, alcohol and/or drug abuse in the relationship, mental health issues in the relationship, suicidal tendencies, death threats against victim by perpetrator, and victim obtained a restraining order prior to death;[176]
- Firearms were used in 44 percent of fatalities, including suicides;[177]
- In 43 percent of the cases, victims did not access any services or receive support from the criminal justice system prior to their death;[178] and
- A total of 52 children were impacted by the death of one or both of their parents, with 12 children actually witnessing the murder of their parent(s) and 4 children being the first ones to find the victim's body.[179]

Policy Recommendations

The SDDVFRT focused the recommendations in their 2004 Report on "access to firearms" due to the high percentage of cases (44 percent) in which firearms were used to perpetrate a homicide or suicide. They recommended that agencies (i.e., courts, law enforcement, prosecution and probation) be more proactive in ensuring that domestic violence offenders subject to court-ordered

gun restrictions actually relinquish their weapons, including taking the following steps:

- Law enforcement should inquire if there are weapons in the home and if the weapons were used in the incident, as well as confiscate any weapons found at the scene of a domestic violence incident;
- A registered firearms check should be made at the first court hearing in a domestic violence case and, after conviction, court orders should require that the defendant show proof of relinquishment of firearms as a condition of probation;
- A registered firearms check should be made in a domestic violence restraining order proceedings upon the entry of an order after a hearing. The firearms registration information should be included in the restraining order; and
- Local courts, law enforcement and prosecutors should work together to develop and implement standardized policies and procedures for the safe relinquishment and destruction of weapons.[180]

The SDDVFRT also made recommendations for improving their case review process, including placing a greater focus on attempted domestic violence murders and suicides with a history of domestic violence, conducting follow-up services for children who have lost their parent(s) due to a domestic violence fatality and refining their case investigative reports to be more inclusive of lethality risk factors.[181]

Sacramento County Domestic Violence Death Review Team

The Sacramento County Domestic Violence Death Review Team ("SCDVDRT") is a sub-committee of the Sacramento County Domestic Violence Coordinating Council. The SCDVDRT was established in 1998 and issued its first annual report in 2000. Its most recent report reviews six (6) cases occurring from November 2002 to September 2003 and combines these findings with the

findings from previous SCDVDRT case reviews, analyzing a total of thirty-one (31) cases occurring from 1993 through September 2003.[182]

Key Findings

Key findings included, but were not limited to, the following:

- There was a history of domestic violence in virtually all of the thirty-one (31) reviewed cases;[183]
- There were a disturbing number of cases in which the victim had previous contact with agencies (e.g., law enforcement, courts, probation, child protective services, etc.), but still lost her life;[184]
- Of the six (6) cases occurring from November 2002 to September 2003, eleven (11) children were exposed to domestic violence, with one child dying after a premature birth due to injuries cause in utero;[185]
- Two of the six (6) victims killed from November 2002 to September 2003 were pregnant at the time of their murder;[186] and
- There is a serious shortage of shelter beds available to domestic violence victims.[187]

Policy Recommendations

The SCDVDRT's policy recommendations, which were presented to the Sacramento County Board of Supervisors and the Sacramento County Domestic Violence Coordinating Council, included the following:

- The County should seek outside funding to implement model guidelines for effectively intervening in domestic violence and child maltreatment cases;[188]
- The County should seek ways to raise public awareness about the impact of domestic violence on children;

- The County should seek funds to increase shelter bed capacity;[189]
- The County should encourage all service providers to explore the implementation of lethality assessments to better identify and address the safety needs of families experiencing domestic violence;[190] and
- The County should explore the idea of funding support staff for the SCDVDRT to increase the team's ability to collect and analyze data on domestic violence fatalities.[191]

Contra Costa County Domestic Violence Death Review Team

The Contra Costa County Domestic Violence Death Review Team ("CCDVDRT") was established in 1998 and issued its first annual report in 2000.[192] The CCDVFRT's most recent annual report bases its analysis on the team's review of 38 deaths occurring from 1997 through 1999, only twenty (20) of which were determined to be domestic violence deaths.[193]

Key Findings

Key findings included, but were not limited to, the following:

- The time of separation is the most dangerous time in the relationship;[194]
- Firearms were used in the majority of homicides and suicides in domestic violence cases;[195]
- Domestic violence deaths are not confined to any specific region or specific ethnic/cultural group in the county;[196]
- Children remain both direct and indirect victims of domestic violence;
- The majority of individuals involved in the reviewed cases were not known to have sought services from public or private domestic violence service agencies; and

- A majority of deaths involved individuals who were neither subject to or protected by restraining orders.[197]

Policy Recommendations

Policy recommendations included, but were not limited to, the following:

- All people working with individuals in violent relationships should be aware of the potential for lethality during separation and promote the development of safety plans in such situations;
- When restraining orders are in place and/or arrests occur, firearms should be confiscated whenever possible;
- Community outreach, education and services must reflect the cultural/ethnic diversity of the County;
- The safety and welfare of children should be assessed and documented in all domestic violence incidents;
- Government and private agencies must continue to develop and implement methods for identifying and coding cases involving domestic violence; and
- Public and private agencies that provide domestic violence-related services should be provided with ongoing fiscal and political support.[198]

The fact that various DVDRT annual reports make the same findings and recommendations for improving legal and community responses to domestic violence underscores the need for improved statewide coordination of data collected by the local DVDRTs, as well as collaborations aimed at implementing county recommendations on a regional and/or statewide level.

Independent Domestic Violence Death Reviews

Independent domestic violence death reviews are conducted by private individuals or grassroots advocacy groups that have no connection to government supervision or funding. Independent reviews typically do not operate within a team setting or have the benefit of open communication and cooperation with government agencies, such as local police departments and prosecutor's offices. Rather, these reviews tend to involve more individualized investigative work, including combing through public records and conducting interviews with the families and friends of the victim and perpetrator.[199]

Independent reviews were developed largely in response to the belief among victim's advocates that government-sponsored reviews fail to promote open and meaningful evaluations of domestic violence deaths.

Independent reviews were developed largely in response to the belief among victim's advocates that government-sponsored reviews fail to promote open and meaningful evaluations of domestic violence deaths. Because government-sponsored reviews are conducted primarily by the very agencies that may have, in fact, contributed to the victim's risk of murder, some advocates believe that such reviews involve inherent biases and conflicts that inhibit true agency assessment and reform. In fact, independent death reviews are often conducted as a form of grassroots advocacy when local criminal justice agencies have failed to take action or make adequate reforms after a particularly egregious intimate murder occurs in a community.

Independent reviews of domestic violence homicides by grassroots advocacy groups began to surface as counties first experimented with DVDRTs in the mid-1990s. Two organizations that were responsible for conducting some of the first independent reviews of domestic violence homicides in California are the Purple Berets and the Women's Justice Center. Over the past decade, these organizations have worked together and separately to produce more than a dozen independent reviews of domestic violence deaths in Northern California.[200]

The Purple Berets and the Women's Justice Center describe the two primary goals of conducting an independent review as: (1) humanizing the victim and (2) exposing the ineffectiveness of local agency responses to domestic violence.[201] Unlike DVDRTs, these organizations do not keep the detailed information that they gather about a case confidential. To the contrary, they publicize this information in order to incite public outrage and action by directly and unabashedly pointing out problems with how specific agencies respond to domestic violence.[202] In fact, the Purple Berets and Women's Justice Center have advocated for reforms in local agency responses to domestic violence by using case information to organize media campaigns, lobby for local and statewide policy changes, make direct pleas for reforms to public officials and offending agencies, and stage public demonstrations.[203]

The most noted campaign conducted by the Purple Berets and Women's Justice Center involved the murder of Maria Teresa Macias by her husband, Avelino Macias. On April 15, 1996, Teresa was shot in the head and killed by Avelino as she and her mother arrived for work. Avelino then shot and seriously injured Teresa's mother before shooting and killing himself.[204] Advocates from the Purple Berets and Women's Justice Center became interested in the case after reading about the murder-suicide in a local newspaper.[205] Within a few days, they began a month-long investigation into the history of Teresa's case.

The Purple Berets and Women's Justice Center searched court documents and conducted interviews with family members, friends, and other witnesses to produce a detailed chronology of events leading up to Teresa's murder.[206] The chronology documented Teresa's repeated attempts to seek help from government and community agencies for domestic violence by Avelino. In the year prior to her murder, Teresa fled to a battered women's shelter with her children, solicited the help of family members, friends and counselors, obtained a restraining order against Avelino, and contacted law enforcement more than 20 times to report stalking, violence and restraining order violations by Avelino.[207]

The Purple Berets and Women's Justice Center organized a memorial vigil for Teresa where they announced the results of their investigation, including detailing the history of law enforcement's failure to protect Teresa.[208] This event ignited a public campaign aimed at putting pressure on local law enforcement and prosecutors to institute reforms addressing the failures evidenced by Teresa's case.[209] In addition, the organizations used the information gathered through their investigation to point out inaccuracies in law enforcement and prosecutor's accounts of their prior contacts with Teresa. For example, when then Country Sheriff Mark Ihde told the media that his office had no records of Teresa's restraining order, the Purple Berets published an article countering this statement with information from witnesses who confirmed that Teresa delivered a copy of her restraining order to the Sheriff's substation soon after it was issued and that she would always show a copy of her order to sheriff deputies when they responded to her calls for assistance.[210]

Ultimately, the organizations used their information on the Macias case to file a federal civil rights lawsuit against the Sonoma County Sheriff's Department for failing to adequately respond to Teresa's complaints of domestic violence by Avelino. The lawsuit resulted in a landmark Ninth Circuit Court of Appeal decision recognizing that domestic violence victims have a constitutional right to non-discriminatory police services, as well as a $1 million settlement for Teresa's family.[211]

In addition to conducting their own investigations, both the Purple Berets and the Women's Justice Center also encourage private individuals to conduct independent reviews of domestic violence murders involving women they know or women in their community. Both organizations have even developed step-by-step investigation guides for conducting an independent review.[212] These guides include information on how to research public documents, strategies for conducting personal interviews, and tips for documenting findings from the investigation.[213] Further, the organizations advise individuals on how to publicize and advocate for reforms concerning their findings.[214]

Independent domestic violence death reviews are a valuable complement to the reviews performed by county DVDRTs.

Independent reviews are a valuable complement to the reviews performed by county DVDRTs. As mentioned above, because county DVDRTs are government agency-driven, much of the information discovered and shared during team meetings is confidential, not to be shared with the general public. Independent reviews empower communities and individuals to take matters into their own hands by investigating and publicizing what went wrong in a particular case. In fact, even the National Domestic Violence Fatality Review Initiative has recognized the value of, and need for, more grassroots investigations of domestic violence deaths.[215]

Where Are We Now?

CWLC conducted interviews with both county DVDRTs and organizations that conduct independent death reviews to gain insight into the current status of domestic violence death review in California.

Government-Sponsored Domestic Violence Death Review Teams

There are currently 24 county DVDRTs in California.[216] CWLC surveyed ten (10) DVDRTs, covering both urban and rural counties, in order to assess current practices and gather feedback on possible improvements from teams. Questions were posed to the Chairs of the DVDRTs and covered issues such as team organization and structure, areas of strength, suggestions for improvement, and current frustrations.[217]

Team Establishment

- The establishment of county DVDRTs was often community driven. Most teams (9 out of 10) established their DVDRT due to the individualized efforts of government agency representatives (i.e.,

prosecutors, health department directors, etc.) and/or advocates who were currently working in the domestic violence field, or in response to community events, such as the establishment of a county domestic violence council or the occurrence of an egregious intimate partner murder. Only one team formed solely due to the 1995 Authorizing Legislation.

The establishment of county DVDRTs was often community driven.

- All teams had a written protocol, with the majority of teams (6 out of 10) copying the statewide protocol or another county's protocol.

Team Membership

- The number of team members on each DVDRT depends largely on the size of the county that the team represents. Smaller counties reported having anywhere from 7 to 12 team members, while larger counties reported having as many as 27 members.

- Agencies represented on the 10 surveyed DVDRTs include the following: law enforcement (i.e., local police, county sheriffs and state highway patrol officers), district attorneys, city attorneys, county counsel, coroners, probation officers, family court personnel, family law attorneys, criminal defense attorneys, victim-witness assistance representatives, child protective services representatives, public health workers, mental health professionals, military personnel, battered women advocates and shelter workers, sexual assault advocates, and community advocates specializing in public policy, immigration and gay/lesbian issues.

- Most DVDRTs teams (7 out of 10) feel that all relevant agencies were adequately represented on their team. Only 3 teams identified a need for greater depth and diversity of involvement on

the team, particularly with regard to family members of the victim, medical professionals (e.g., representatives from local hospitals, health care workers, etc.) and community advocates who represent marginalized groups, such as the gay/lesbian, disabled and immigrant communities.

Most DVDRTs do not have any source of funding to suppport their work.

- Almost all of the teams (9 out of 10) feel that the DVDRT functions well in bringing in new domestic violence agencies as team members and guests, when needed. Five (5) of the teams attributed their success in this area to the fact that there are generally strong working relationships among all local domestic violence-related agencies in their community.

Team Funding

- Most (7 out of 10) DVDRTs do not have any source of funding to support their work. Rather, team members participate on a volunteer basis as part of, or in addition to, their regular job duties. Two (2) teams have their costs absorbed by the county, and one team has a coordinator who is funded to spend up to 5 percent of his/her time on team activities pursuant to a federal grant.

Case Selection

- A majority of teams (6 out of 10) identify cases by having local agencies (i.e., law enforcement, coroners offices, district attorney offices, and probation departments) flag suspected domestic violence deaths for review by the team. Four (4) teams review all deaths that have occurred in the county to see whether they qualify as a domestic violence death, without utilizing any initial screening process. One of these teams has reviewed all county deaths dating

back 18 years. Having an initial screening process for selecting cases was especially critical for teams from large counties where, due to their large populations, it would be impossible for these teams to review every domestic violence death, let alone every death, in their county.

- The types of domestic violence deaths reviewed by each team varied among counties. With regard to domestic violence homicides, half of the teams (5 out of 10) have a policy of only reviewing "closed cases" in which all the parties have died (i.e., murder-suicides) or all civil and criminal proceedings involving the case are completed, though some teams do not wait until all criminal appeals are exhausted before starting their review. Two (2) teams have more flexible "closed case" policies that allow them to review deaths in pending criminal cases, if needed, and 3 teams have no policy one way or the other. Only 3 teams also review individual suicides where there has been a history of domestic violence, and only one team reviews blue suicides[218] and domestic violence-related fatal accidents in addition to the above deaths.

- Four (4) out of 10 teams are planning to expand the range of domestic violence deaths that they review to include cases such as suicides with a history of domestic violence, attempted domestic violence homicides, and domestic violence-related fatal accidents.

The range of domestic violence deaths reviewed by each DVDRT varies among counties.

Case Review Process

- Most teams meet on a monthly basis. Only one team met less often due to the fact that their county only experienced a few domestic violence deaths each year. Teams reported that participation at any given meeting tends to fluctuate due to the fact that many members participate on the team in addition to their other job functions.

Most teams make it a point to consider and quantify cultural factors, race and sexual orientation in their analysis of cases.

- All 10 teams use a confidentiality agreement which they have members and guests sign before each meeting. All teams feel that the use of confidentiality agreements is beneficial to the review process.

- A majority of teams (6 out of 10) gather case information by having team members bring relevant information and research from their respective agencies to team meetings that relates to the case subject to review, as well as contacting non-member agencies for information, when needed. Two (2) teams designate a specific person on the team to collect information from agencies on cases. One team had members review and give input on the coroner's report during a case review meeting. For 4 of the teams, the DVDRT Chair was responsible for doing the majority of work and research for case reviews. Finally, two (2) teams had the person who investigated or prosecuted the case present the case to the team for review.

- Although no agency may be compelled to produce case-related information, all teams reported that they generally function well in obtaining information for their reviews. They attributed this success to good working relationships between agencies, coupled with guarantees of confidentiality. However, several (3 out of 10) teams identified difficulties in getting access to shelter information and information from family members of victims and perpetrators.

- Eight (8) of the 10 teams made it a point to consider and quantify cultural factors, race and sexual orientation in their analysis of cases. However, one of the teams that did not consider these factors has only experienced cases of domestic violence murder between white husbands and wives in their county.

- Teams reported the following trends from their recent case reviews:

  Increase in the involvement of children in domestic violence homicides and murder-suicides; increase in extremely heinous and brutal murders;

  Increase in domestic violence deaths among immigrant communities;

  Several teams reported that murder-suicides were the most common form of domestic violence deaths in their county;

  Noticeable connections between intimate murders and elder abuse; and

  Some teams reported overall decreases, while others reported increases, in the number of domestic violence deaths in their county.

Most teams use a standard data collection form to gather and document case information and issue annual or bi-annual reports assessing this data.

Data Collection and Reporting

- Nine (9) of the 10 teams use a data collection form for gathering and documenting case information. One team documents its data in a timeline format, and another team uses meeting notes to compile information.

- Four (4) of the teams felt that having standardized data collection forms for DVDRTs would be beneficial for ensuring consistent and accurate data and reporting among teams. Only one team strongly felt that each county should have their own unique, specialized data collection forms that reflect what is most important and relevant to that particular community.

- Almost all of the teams (9 out of 10) compile and assess their data in an annual (or bi-annual) report.

- Only 3 out of 10 teams are either currently using or developing a local a database for their DVDRT data.

- Three (3) of the teams conduct community education and outreach regarding data, findings and recommendations from their case reviews.

DVDRT Successes

Teams identified the following major successes:

- Noticeable decreases in the number of domestic violence homicides in their county;

- Increased dedication and accountability among county agencies in examining their own practices for responding to domestic violence;

- Improvements in how individual team members carry out their duties in the field, based upon what they learn during team meetings;

- Increased outreach among county agencies to Native American and Latino groups;

- Improved working relationships among county agencies;

- Successful implementation of DVDRT recommendations; and

- Increased community awareness about the complexity of domestic violence relationships.

DVDRT Frustrations and Recommendations for Improving DVDRT Operations

- Teams identified the following frustrations concerning the operation of the DVDRT:

  Lack of sufficient funding;

  Lack of sufficient time to dedicate to each case review;

  Difficulties in accessing family court and shelter information, and lack of involvement by victim/perpetrator family members in the review process;

  High turnover of team members resulting in more inexperience and less dedication among team members;

  Difficulties in scheduling regular meetings due to schedules and workloads of team members; and

  Team members lacking the full support and commitment from the leaders of their agencies.

- Most teams (8 out of 10) felt that it would be beneficial to local prevention efforts if the data collected by county DVDRTs is centralized on a statewide basis. Some of the reasons for centralizing DVDRT data included using the information to support local or legislative reforms and gaining additional insight into "risk factors" for domestic violence deaths. However, teams stressed the importance of ensuring that counties have the freedom to tailor their data collection practices and responses to meet their community's unique needs. Teams also stressed the importance of analyzing, rather than merely collecting, statewide data and making both county and statewide data accessible to the public.

Most teams felt that it would be beneficial to centralize the data collected by county DVDRTs on a statewide basis.

- Seven (7) out of 10 teams felt that regular regional and/or state meetings would be the most important way to improve DVDRT communication and information-sharing among teams, particularly if funding was available for teams to participate in these meetings. Four (4) teams felt that electronic list servs and/or newsletters would also be beneficial and more cost-effective.

- Teams felt that the actual implementation of DVDRT recommendations was one of their biggest challenges and that significant improvements could be made concerning DVDRT follow-up on recommendations, as well as concerning the willingness among the leaders of member agencies to cooperate in implementation.

DVDRT Recommendations for Improving Legal and Community Responses to Domestic Violence

Teams made the following recommendations for improving legal and community responses to domestic violence:

- Increase domestic violence intervention and education for elementary, middle and high school aged youth, including additional services for children who have been exposed to domestic violence;

- Increase anger management services and resources for youth;

- Increase community education on domestic violence, including education aimed at increasing reporting by informing family, neighbors, friends, employers and co-workers, etc. about the risk factors for domestic violence homicide;

- Increase training on domestic violence for law enforcement and judges;

- Transform the language concerning domestic violence from being a "woman's issue" to a "human rights" issue;

- Improve "first response" to domestic violence calls by local agencies, including reports of child abuse;

- Improve policies and procedures within hospitals for screening for domestic violence, and increase training on domestic violence for emergency medical personnel;

- Develop protocols for law enforcement and child welfare agencies concerning the co-occurrence of domestic violence and child abuse;

- Increased outreach to communities with language and other barriers to accessing services; and

- Establish more proactive policies and practices aimed at removing firearms from domestic violence offenders.

Independent Domestic Violence Homicide Reviews

CWLC surveyed the directors of the two primary organizations that currently conduct independent domestic violence death reviews in California (the Purple Berets and Women's Justice Center) to assess the current practices and concerns of organizations and individuals involved in independent reviews.

Establishment of Independent Review

- Both organizations began conducting grassroots, independent reviews of domestic violence murders in response to a particularly

heinous case that occurred in their county that involved a long history of reported domestic violence by the victim. At the time of this murder, there was also no established DVDRT in their county.

- Prior to their review of this murder, both organizations had completed numerous investigations of non-fatal domestic violence cases involving faulty law enforcement and prosecutor responses.

Independent domestic violence death reviews are not supported by government funding or resources.

Funding of Independent Reviews

- Both organizations are funded purely by private donations and grants. Neither organization receives any local, state or federal government funding.

- Both organizations cite their lack of financial and other ties to government as contributing to a more advocacy-based, and less government-biased, review of domestic violence deaths.

Case Selection

- Independent reviews are conducted on an ad hoc basis, and the decision about whether a case will be subject to review is motivated by the personal choice of the reviewer.

- Independent reviews primarily involve domestic violence homicides and murder-suicides, as opposed to individual suicides and domestic violence-related fatal accidents.

- Most often, reviewers have a personal connection to the case (i.e., are a friend or relative of the victim) or have read news articles about a case that highlights a history of agency inaction concerning domestic violence.

- Like government-sponsored reviews, the number of cases that an organization or individual is able to independently review depends largely on their available time and financial resources.

Case Review

- Independent reviews are conducted on an individual, rather than a team, basis. Sometimes the person conducting the review will have the help of other people, but no formalized team structure exists for conducting such reviews.

- Both organizations provide written protocols and guidelines for conducting independent reviews on their websites, and use these protocols/guidelines in conducting their own reviews. The protocol/guidelines were composed from the personal experience of the organizations' directors in investigating domestic violence homicides.

- Reviews often start with a search of public records. Although there is generally no "closed case" policy for conducting an independent review, a search of public records is typically more effective after a criminal trial has been completed.

- Independent reviewers use confidentiality agreements in conducting interviews with witnesses, agency representatives and public officials in order to ensure that they are getting complete information about the case, as well as to maintain their credibility and working relationships with those involved in the case.

Like DVDRTs, independent reviewers utilize written protocols and confidentiality agreements to conduct their domestic violence death reviews.

Independent reviewers use the data gathered from their case reviews to advocate for systemic reforms.

Data Collection and Reporting

- The information gathered from an independent review is typically documented in a written narrative and/or chronology detailing events leading up to the murder/murder-suicide.

- Both organizations have used the information gathered from their reviews to advocate for systemic reforms by organizing public demonstrations, conducting media campaigns about the case, filing complaints with offending agencies, and filing civil rights lawsuits.

- Due to the relatively small number of independent reviews, as well as individualized styles of reporting, centralizing the data collected from these reviews is not a major concern of independent reviewers. However, one organization suggested that centralizing government data on these murders would be beneficial assuming that these deaths are being accurately identified by law enforcement and the coroner's office.

Independent Review Successes

- Both organizations identify the major benefits of conducting independent reviews to include the ability to gather and report case information in a way that humanizes the victim, contributes an advocacy-based perspective to domestic violence murders, and exposes specific system and agency failures.

- The organizations' efforts have led to a substantial increase in media coverage on intimate partner murder.

- The organizations used information gathered in one of their

case reviews to file a federal civil rights lawsuit against a local law enforcement agency for failing to adequately respond to domestic violence complaints by the victim, resulting in a $1 million settlement.

- Independent reviewers have been more successful than government-sponsored review teams in working with the families of victims and perpetrators to investigate and publicize cases, particularly with regard to cases involving immigrant families.

- Although the organizations cited no fewer domestic violence homicides and no greater enforcement of domestic violence restraining orders in their area, they reported having improved relationships with local agencies and positive policy changes, such as the creation of law enforcement domestic violence units, as a result of local attention to domestic violence issues.

Independent reviewers reported being more successful than DVDRTs in working with the families of victims and perpetrators to investigate and publicize cases.

Independent Review Frustrations

The organizations identified the following frustrations associated with conducting an independent domestic violence homicide review:

- Lack of sufficient funding and resources, including the inability to hire an investigator and support staff;

- Lack of sufficient staff time to review cases;

- Minimal support and cooperation among local government agencies for grassroots reviews;

- Not enough advocacy organizations and individuals engaging in independent reviews; and

- Negative impact of political backlash against their organizations from local government officials and agencies that are criticized in their reviews.

Recommendations for Improving Legal and Community Responses to Domestic Violence by Independent Reviewers

- Both organizations stated that education is not the solution for improving responses to domestic violence. Thus, in this regard, they differed significantly from government-sponsored review teams which placed a strong emphasis on increasing community education on domestic violence. Rather, the organizations believed that change is best achieved by ensuring that there are effective, sensitive people in positions of leadership and service within all agencies responsible for handling domestic violence cases. Their recommendations include promoting agency leaders who are clearly committed to addressing domestic violence, placing more well-trained, dedicated officers in law enforcement domestic violence units, and increasing the number of women who work in criminal justice agencies.

Where Do We Go From Here?

CWLC makes the following recommendations for improving the domestic violence death review in California:

• **Every county in California should engage in some form of regular domestic violence death review**. Death review can provide valuable information on how to better prevent domestic violence deaths from occurring. Yet, while virtually every county in California has a formal, government-sponsored child fatality review team, less than half of the counties have a DVDRT. Counties that are able to establish formal DVDRTs should do so. However, even counties that lack the agency support and resources needed to establish a formal DVDRT should, at a minimum, engage in some informal process (e.g., ad hoc meetings among local advocates and agency representatives when a particularly egregious death occurs) to assess systemic problems concerning domestic violence deaths in their community.

• **DVDRTs should engage in strategic planning and regular evaluations of their case selection and review process to identify ways to improve the focus and efficiency of their operations**. Although some DVDRTs have been in existence for more than a decade, DVDRTs are still a relatively new phenomenon and many teams are still experimenting with different strategies for selecting and reviewing cases. It is important that all teams constantly evolve and identify ways to improve the effectiveness of their membership, protocols and practices. To this end, DVDRTs should set long-term goals and regularly assess team practices to ensure that their reviews are developing in a way that best promotes efficiency, reflects community needs, and produces accurate and useful information about domestic violence deaths.

• **DVDRTs should engage in community outreach and education regarding their findings, recommendations and general domestic violence prevention**. DVDRT Chairs and team members are uniquely positioned to conduct community outreach and education on domestic violence prevention. DVDRTs are responsible for performing some of the most detailed reviews of domestic violence deaths that have ever occurred to date. Moreover, because DVDRTs are government-sponsored, team leaders have a high level of access to, and credibility among, the general community, government officials and political bodies. Nevertheless, only a few DVDRTs currently engage in active outreach and education regarding their findings and recommendations. DVDRTs can take a lesson from grassroots reviewers by placing a greater emphasis on serving as activists and educators on domestic violence prevention in their communities.

• **Increase government funding and resources to support the establishment and development of DVDRTs**. It was not enough to merely pass the 1995 legislation authorizing the establishment of DVDRTs. The work of existing death review teams suffers from insufficient funding and resources. A lack of funding and resources is certainly a reason that other counties have been slow to establish local DVDRTs. The successful growth and operation of DVDRTs requires an increased commitment from state and local government agencies to support the critical work performed by DVDRTS, whether that support comes in the form of actual financial aid or making participation in death review an ongoing and significant job responsibility of agency representatives who work on domestic violence cases.

• **Counties and municipalities should consider utilizing independent consultants to perform domestic violence death reviews**. One way that cities and counties can maximize the objectivity of their domestic violence death review process is to hire independent consultants to conduct these reviews instead of establishing a formal DVDRT. Independent consultants should be knowledgeable about domestic violence issues, the various roles that government and community agencies play in addressing domestic violence, and fatality review standards and procedures.

• **The state should continue to encourage and facilitate collaboration and information sharing among local DVDRTs**. County teams have benefited from state and federal meetings and resources aimed at fostering the development of DVDRTs. Statewide and/or regional DVDRT meetings should be held annually to discuss team trends and strategies. In addition, teams should continue to be encouraged and provided with funding, when needed, to take advantage of national domestic violence death review meetings and resources. The establishment of statewide DVDRT listservs and newsletters are also an important and possibly more cost-effective way to enhance communication and information sharing among teams.

• **The state should establish a system for collecting and analyzing minimum standard data from local DVDRTs**. DVDRTs are able to collect much more detailed information about domestic violence deaths than that which is currently collected through criminal justice data collection systems. For example, DVDRTs can track the number of prior contacts a victim and/or perpetrator had with community agencies and resources, including social service agencies and hospitals. Standardizing and collecting a basic level of data from DVDRT reviews on a statewide level can help the public and policymakers reach a deeper understanding of the dynamics and risk factors of domestic violence death. This data can also be used to support legislative and policy reforms aimed at improving local and statewide responses. The state should examine whether tools such as a standard, statewide

data collection form for DVDRTs would be useful and efficient for collecting death review data. In order to preserve flexibility and autonomy among counties, DVDRTs should still have discretion to collect supplemental information about cases and develop their own data collection forms so long as these forms include the information tracked by the state.

• **Victim advocates and private individuals should be more proactive in conducting independent domestic violence death reviews**. Independent reviews are an empowering way for community members to gain a clear picture of the different agency dynamics and failures that are contributing to the incidence of domestic violence deaths in their county, rather than simply relying on the highly confidential review and recommendation process of local DVDRTs. Indeed, as independent reviews allow for a more transparent evaluation of local agency response, individuals can use these reviews to organize their communities and place significant pressure on local agencies to improve their practices. While grassroots women's organizations have made great strides in conducting and promoting independent reviews of domestic violence fatalities, it is important to strengthen the impact of these reviews by increasing the number independent reviews across the state.

• **Increase financial support and resources for grassroots organizations that conduct independent reviews**. Grassroots organizations that conduct independent reviews experience the same financial and staffing difficulties as county DVDRTs. Because their ability to conduct open and candid case reviews requires that they do not receive any government funding, these organizations need ongoing support from private foundations and individuals in order to continue their work.

• **Communities must ensure that their local government institutions and leaders have strong, ongoing commitments to domestic violence prevention**. The biggest challenge faced by DVDRTs and independent reviewers is securing the implementation of recommendations and reforms identified as a result of their case reviews. Such change is only possible if government agencies, and those who lead them, are truly committed to addressing domestic violence in their communities. Community members and professionals who work in the domestic violence field must be vigilant in ensuring that their elected and appointed public officials have a clear and actual commitment to addressing domestic violence issues, including taking action to hold these agencies and leaders accountable for making domestic violence a priority.

(Footnotes)

1. Scott Martin, *San Francisco Works to Cure Its Domestic Violence Epidemic*, CNS News & Features, *available at* http://www.coastnews.com/dv1main.htm; Ilene Lelchuk, *Brown Proposes System to Track Domestic Abuse: S.F. Woman's Life Might Have Been Saved*, San Francisco Chronicle (May 16, 2001) at A15; Elizabeth Fernandez, *Fatal Flaw in S.F. Justice: Domestic Violence Blamed on the System*, San Francisco Chronicle (March 27, 2002) at A1; Elizabeth Fernandez, *S.F. Takes Tougher Approach to Domestic Violence Cases; Woman's Slaying Becomes Catalyst for New Guidelines*, San Francisco Chronicle (March 28, 2002); Neil Websdale, et al., *Reviewing Domestic Violence Fatalities: Summarizing National Developments*, Violence Against Women Online Resources, *available at* http://www.vaw.umn.edu/documents/fatality/fatality.html#id2634549 at 5-6.

2. Websdale, *supra* note 1 at 23-4.

3. *Id.* at 21-22.

4. Neil Websdale, *Researching Domestic Homicide*, in Understanding Domestic Homicide, (Northeastern University Press, Boston, MA. 1999) at 19-23.

5. *Domestic and Sexual Violence Data Collection: A Report to Congress Under the Violence Against Women Act*, National Institute of Justice, and U.S. Department of Justice, Bureau of Justice Statistics, July 1996 at 6. The report argues that: "[t]he availability of comprehensive and reliable statistical data on domestic and sexual violence is a critical imperative because decision-makers at the State and local levels are confronting questions concerning appropriate policies and effective procedures for addressing this problem, and they need more information to guide their thinking."

6. Websdale, *supra* note 4 at 2.

7. *Id.* "Like packaged frozen vegetables that have long since lost touch with a field or the earth, homicide statistics and the data sets they become a part of are convenient but usually bereft of flavor. In short, the use of abstracted empiricism to understand homicide produces accounts and explanations that are about as far removed from social life and historical changes as the dead bodies that generated those statistics in the first place."

8. *Id.*

9. *Crime in the United States*, U.S. Department of Justice, Federal Bureau of Investigation (2003) at p. 3.

10. *Id.*

11. James Fox and Marianne Zawitz, *Homicide Trends in the U.S.: Intimate Homicide*, Bureau of Justice Statistics (last updated on September 28, 2004), *available at* http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm (accessed August 30, 2005).

12. *Id.*

13. *Domestic and Sexual Violence Data Collection, supra* note 5 at 3-4. This study reports that, as of 1996, 25% of states and territories were not collecting data on domestic violence.

14. Title IV, Violence Against Women Act of the Violence Crime Control and Law Enforcement Act, 42 U.S.C. § 40292(a) (1994); Eve Buzawa & Carl Buzawa, *Domestic Violence: The Criminal Justice Response,* (Sage Publications, Thousand Oaks: California 2003) at 123.

15. 42 U.S.C. § 40292(a); Buzawa, *supra* note 14 at 123. The U.S. Attorney General was also required to report on the feasibility of tracking the victim-offender relationship in federal records of aggravated assault, rape and violent crimes.

16. The Bureau of Justice Statistics is a branch of the USDOJ's Office of Justice Programs. It was established in 1979 to collect, analyze and disseminate information on crime, criminal offenders, victims and criminal justice system operations. About the Bureau of Justice Statistics, Bureau of Justice Statistics, *available at* http://www.ojp.usdoj.gov/bjs/aboutbjs.htm (accessed August 30, 2005).

17. The National Institute of Justice is an agency of the USDOJ that conducts research and development on crime control and justice issues, and evaluates existing programs and responses to crime. *What is NIJ?,* National Institute of Justice, *available at* http://www.ojp.usdoj.gov/nij/about.htm at 1 (accessed August 30, 2005).

18. *Domestic and Sexual Violence Data Collection, supra* note 5 at 1.

19. *Id.* at 3.

20. *Id.* at 3-4.

21. *Id.*

22. *Id.*; Ramona Rantala, *Effects of NIBRS on Crime Statistics,* National Institute of Justice, and Bureau of Justice Statistics (July 2000) at 1-4.

23. *Id.*

24. *Id.*

25. *Id.*; *Domestic and Sexual Violence Data Collection, supra* note 5 at 4;

26. *Id.*; Rantala, *supra* note 22 at 1-4.

27. California has not fully converted to NIBRS reporting as of August 2005.

28. *See Uniform Crime Reporting, National Incident-Based Reporting System, Volume II, Data Submission Specifications,* National Institute of Justice, Bureau of Justice Statistics, *available at* http://www.fbi.gov/ucr/nibrs/manuals/v2all.pdf (accessed August 30, 2005)

29. *See NIBRS Manual, Conversion of NIBRS Data to Summary Data,* National Institute of Justice, Bureau of Justice Statistics, *available at* http://www.fbi.gov/ucr/nibrs/manuals/conversion.pdf (accessed August 30, 2005).

30. *Id.*

31. *Domestic and Sexual Violence Data Collection, supra* note 5 at 4.

32. *Id.*

33. The National Crime Victimization Survey is administered by the U.S. Census Bureau on behalf of the BJS. *The Nation's Two Crime Measures,* U.S. Department of Justice (October 2004), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/ntcm.pdf (accessed August 30, 2005).

34. *Id.*

35. Households remain in the nationally representative sample for three years and are rotated on an ongoing basis. *Id.*

36. *See* Charles Kindermann, Ph.D., et al., *Effects of the Redesign on Victimization Estimates,* U.S. Department of Justice, Bureau of Justice Statistics, NCJ 164381 (April 1997) at p. 2.

37. *Id.*

38. Callie Marie Rennison, Ph.D., et al., *Special Report: Intimate Partner Violence,* U.S. Department of Justice, Bureau of Justice Statistics, NCJ 178247 (May 2000), p. 1.

39. *Id.* at p. 3.

40. *Id.*

41. *Id.*

42. *Id.*

43. Callie Marie Rennison, *Special Report: Intimate Partner Violence and Age of Victim, 1993-99,* U.S. Department of Justice, Bureau of Justice Statistics, (October 2001).

44. *Id.* at p. 1.

45. *Id.* at p. 3.

46. *Id.*

47. *When Men Murder Women: An Analysis of 2001 Homicide Data,* Violence Policy Center (2003), *available at* http://www.vpc.org/graphics/WMMW03.pdf (accessed June 28, 2005) at 2. The Violence Policy Center is a national non-profit educational organization that researches and educates on firearm violence and provides analysis for policy makers. The Violence Policy Center used FBI Supplementary Homicide Report as their source of data.

48. *Id.* at 5-8. The 2001 report found that: the homicide rate among female victims murdered by males in single victim/single offender incidents was 1.35 per 100,000; the average age of female homicide victims was 37 years old, 88 percent where race was known were intra-racial relationships; African American women were murdered at a rate over 3 times higher than Caucasian women; women are more likely to be killed by an intimate acquaintance; firearms were the most common weapon used by males to murder females; and most often women are killed by men in the course of an argument.

49. *Id.*

50. *Id.* at 13.

51. *Id.* at 5 and 14.

52. *See Exposure Reduction or Backlash? The Effect of Domestic Violence Resources on Intimate Partner Homicide,* National Institute of Justice, (January 2001), *available at* http://www.ncjrs.org/pdffiles1/nij/grants/186194.pdf (accessed August 30, 2005).

53. Jane Koziol-McLain, et al., *Femicide Risk: Reconciling Attempted and Actual Models, Address at the 2001 Annual Meeting of the Homicide Research Work Group, Orlando, Florida* (2001). Study included 11 cities and involved 132 actual femicides, 108 attempted femicides, 328 abused controls, and 407 not abused controls.

54. Attempted murder is generally characterized by the victim's survival of either injury to a major body organ (e.g. head, chest), loss of consciousness, or injury to a minor body area (e.g. arms, legs), coupled with a clear intent to kill on the part of the perpetrator. *Id.* at 17.

55. *Id.* at 21.

56. C. Nicolaidis, *Could We Have Known? A Qualitative Analysis of Data From Women Who Survived an Attempted Homicide by an Intimate Partner,* 18 J. Gen. Intern. Med (2003) at 788-794.

57. *Id.* at 789.

58. *Id.* at 792-793.

59. *Id.* at 791.

60. *Id.*

61. *Id.* at 793.

62. *Id.*

63. This method of examining attempted murder cases has also been used to study the dynamics and risk factors of female-perpetrated intimate femicide. *See* Nancy Glass, Jane Koziol-McLain, Jacquelyn Campbell, Carolyn Block, *Female-Perpetrated Femicide and Attempted Femicide,* 10 Violence Against Women 6 (2004) at 606-625.

64. *Homicide in California, 2002,* Attorney General of California (2002), *available at* http://caag.state.ca.us/cjsc/pubs.htm (accessed August 30, 2005) at 11-22; *see* Cal. Pen. Code § 13020(a)-(c) (2005). Some of the agencies charged with this duty are: chief of police, city marshal, sheriff, coroner, district attorney, city attorney, city prosecutor, probation officer, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents.

65. *Id.* at 11-22; *Willful Homicide Crimes 2003, Precipitating Event: Domestic Violence, County By Victim To Offender Relationship* from California Department of Justice, Criminal Justice

Statistics Center, (2003) (print out of *Precipitating Event: Domestic Violence by Relationship information*, dated July12, 2004) (on file with author).

66. December 6, 2004 communication with the Special Requests Section of the California Department of Justice's Criminal Justice Statistics Center (on file with author).

67. In addition, the CADOJ's Criminal Justice Statistics Center tracks the number of murders where domestic violence was a precipitating event and is very responsive to community requests for information relating to these murders (e.g., race of victims, weapons used, location of murder, etc.).

68. However, federal researchers have conducted more in-depth analyses of California intimate partner homicide data. *See* William Wells and William DeLeon-Granados, *Intimate Partner Homicide Project, available at* http://safestate.org/documents/dh-ca%20iph%20graphs4.pdf (accessed August 8, 2005). The report notes that rates of victimization have declined steadily for men and women since 1987, with dramatic declines in victimizations of African American men, and that as of 2000, rates of intimate partner murder were significantly higher for African American and Latina women than for Caucasian women.

69. Cal. Pen. Code §11163.5 (2005).

70. *Id.*

71. California State Senate, Senate Criminal Procedure Committee, Senate Appropriations Committee, Senate Bill 1230, (Cal. 1995) at 3; *see* Cal. Pen. Code §11166.7 (2005).

72. *Id.* at 3-4. This statute was introduced and adopted shortly after VAWA was passed and around the time of the O.J. Simpson trial for the murder of Nicole Brown Simpson and Ron Goldman. There is no mention in the historical legislative materials of the Simpson trial or VAWA as the motivation of this bill. *NOW Says That Despite Not Guilty Verdict, Simpson Trial Brings Important Public Scrutiny to Domestic Violence* (Oct. 3, 1995), *available at* http://www.now.org/press/10-95/10-03-95.html (accessed August 30, 2005); Buzawa, *supra* note 14, at 123.

73. Cal. Pen. Code §13731 (2005).

74. Legislative Counsel's Digest. Assembly Bill 2448 (Cal. 1996), *available at* http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_2401-2450/ab_2448_bill_960819_chaptered.html (accessed August 8, 2005).

75. *Id.*

76. *The Nature and Scope of Violence Against Women in San Diego*, San Diego Association of Governments, Criminal Justice Research Division (March 2000) at 103, Appendix A.

77. *Id.* at 13.

78. *Id.*

79. *Id.* at 37-76.

80. *Id.* at 79-92.

81. *See National Incident-Based Reporting System (NIBRS), General Information*, Federal Bureau of Investigation, *available at* http://www.fbi.gov/ucr/faqs.htm (accessed August 30, 2005).

82. *Special Report: Intimate Partner Violence*, *supra* note 38 at p. 8.

83. *See National Incident Based Reporting System and Uniform Crime Reporting System Reference Guide*, State of Rhode Island and Providence Plantations, Division of State Police Executive Department (2000) p. 12; *NIBRS Incident Report – Long Form*, State of South Dakota (revised July 2002) p. 4.

84. Jacquelyn Campbell, et al., *Assessing Risk Factors for Intimate Partner Homicide*, 250 NIJ Journal 14 (Nov. 2003) at 18.

85. Telephone interview with Robin Umash, Criminal Justice Statistics Center, Office of the Attorney General, in Los Angeles, California (January 21, 2005)(summary on file with author); CJSC Data Bases (A brief description of 16 databases), Office of the Attorney General, *available at* http://caag.state.ca.us/cjsc/statisticsdatatabs/databss.htm (accessed August 30, 2005).

86. Incident-based reporting sends individual reports on each crime to the statistics center. *Information Bulletin, Subject: California Crime Statistics Reporting*, Office of the Attorney General (2003) No. 03-01-BCIA.

87. Interview with Robin Umash, *supra* note 85.

88. *Id.*

89. *Id.*

90. *Id.*

91. Electronic mail from Sandra Gaarder, Crime and Violence Prevention Center, California Department of Justice, to Emily Austin, CWLC Intern (July 23, 2004) (on file with author).

92. *Id.*

93. *Willful Homicide Crimes 2003, Precipitating Event: Domestic Violence, County By Victim To Offender Relationship*, California Department of Justice, Criminal Justice Statistics Center (2003) (print out of *Precipitating Event: Domestic Violence by Relationship information*, dated July 12, 2004) (on file with author).

94. *Report to the California Attorney General from the Task Force on Local Criminal Justice Response to Domestic Violence*, Attorney General's Task Force on Criminal Justice Response to Domestic Violence (June 2005), p. 86 (The task force recommended that the following key data elements be submitted by local agencies to the state: crime data; age, race and gender of the victim; relationship of victim to the offender; contributing circumstances; presence of weapons;

weapons seized from the abuser; arrest information; filing and prosecution information; issuance of restraining orders; disposition of the case; and whether a batterer intervention program was ordered and successfully completed).

95. *Id.*; *Homicide in California, 2003*, Office of the Attorney General (1995), *available at* http://caag.state.ca.us/cjsc/publications/homicide/hm03/cr1.pdf (accessed August 30, 2005).

96. 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.

97. *Willful Homicide Crimes, 1999; Precipitating Event: Domestic Violence; County by Victim to Offender Relationship*, California Department of Justice, Criminal Justice Statistics Center (on file with author).

98. Gregg Mansfield, L*awyer Seeks Lesser Charge in Murder Case; Stabbing Death: Attorney for Man Accused of Killing Live-in Girlfriend Argues for Voluntary Manslaughter*, Ventura County Star (June 2, 2000); Amy Bentley, *Witness: Soto Repeatedly Slammed Car into Van; Trial Under Way: Ventura Woman Faces Charges of Killing Her Husband of 15 Years*, Ventura County Star (November 17, 1999); Philippe Shepnick, *Murder-Suicide Suspected in Fire*, Ventura County Star (December 1, 2000) (lists domestic violence murder-suicides occurring in Ventura County from August 1999 through December 2000).

99. *See* California Department of Justice, *supra* note 97; Bentley, *supra* note 98.

100. 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 August 30, 2005) at 2. The study was based on 100 cases of strangulation in domestic violence conducted at Sharp Grossmont Hospital emergency room and the San Diego City Attorney's Domestic Violence Unit.

101. Police officers reported no visible injuries in 62 percent of the cases and reported only minor visible injuries in 22 percent of the cases. *Id.* at 2.

102. *Id.* at 2-3.

103. *Id.* at 2.

104. Strangulation accounts for 10 percent of the violent deaths in the United States, and six females are strangled for every male that dies of strangulation. *Id.* at 3.

105. *Id.* at 13.

106. *Id.* at 7-16.

107. *Id.*

108. *County Offices: Sheriff-Coroner-Marshal*, California State Association of Counties, *available at* http://www.csac.counties.org/default.asp?id=143 (accessed August 30, 2005).

109. Julie Lynem, et al., *Husband Jailed in Slaying*, San Francisco Chronicle (May 20,

2000) at A1; Alan Gathright, *Police Handling of Clues Criticized*, San Francisco Chronicle (June 24, 2000) at A17.

110. *Transcripts from the Central California Roundtable Discussion*, California Women's Law Center, Murder at Home Project (June 20, 2003) at 17-18 (on file with author).

111. *Id.*

112. *Id.*

113. Seymour Moskowitz, *Golden Age in the Golden State: Contemporary Legal Developments in Elder Abuse and Neglect*, 36 Loy. L.A. L. Rev. 589, 604 (2003).

114. Evan Stark, Anne Flitcraft, *Killing the Beast Within: Woman Battering and Female Suicidality*, 25(1) International Journal of Health Services(1995) at 43-64.

115. *See Key Questions: What are the products of fatality reviews?* U.S. Department of Justice, Office of Justice Programs, National Domestic Violence Fatality Review Initiative, *available at* http://www.ndvfri.org/ (accessed July 15, 2005); *California's Domestic Violence Death Review Team Protocol*, (2000) California Attorney General's Office, Crime and Violence Prevention Center, *available at* http://safestate.org/documents/dvdrt_protocol.pdf (accessed July 15, 2005), pp. 5-6.

116. Neil Websdale, et al., *Domestic Violence Fatality Reviews: From a Culture of Blame to a Culture of Safety*, Juvenile and Family Court Journal 61 (Spring 1999) at 62.

117. *Domestic Violence Death Review Interview Summary*, California Women's Law Center, Murder at Home Project (July 2004) (on file with author).

118. Websdale, *supra* note 116 at 61.

119. *Id.*; Websdale, *supra* note 1 at 21.

120. *Contra Costa County Domestic Violence Death Review Team Report* (March 2003), *available at* http://www.cchealth.org/special/pdf/dvdrt_report_2003.pdf at 3 (accessed August 30, 2005).

121. *See California's Domestic Violence Death Review Team Protocol, supra* note 115 at 2; *Senate Rules Committee Analysis of Senate Bill 1230*, California State Senate, Office of Senate Floor Analyses (September 14, 1995).

122. *Violence Against Women Programs: A Strategic Plan for Twenty-First Century San Francisco*, San Francisco Commission on the Status of Women, (November 1997), *available at* http://www.sfgov.org/site/dosw_page.asp?id=20177 (accessed August 30, 2005).

123. *Justice and Courage: A Blueprint for San Francisco's Response to Domestic Violence*, San Francisco Commission and Department on the Status of Women, *available at* http://www.sfgov.org/site/dosw_page.asp?id=19835 (accessed August 30, 2005).

124. *Id.*

125. Martin, *supra* note 1.

126. Websdale, *supra* note 1.

127. *Justice and Courage*, *supra* note 123.

128. *Id.*; *Violence Against Women Programs*, *supra* note 122.

129. Rolanda Pierre Dixon, *Final Report, January 1, 2001 – December 31, 2001*, Santa Clara County Domestic Violence Death Review Committee (February 2002) p. 13.

130. *Id.* at p. 3.

131. California Assembly Bill 1230 (Solis), Chaptered on October 10, 1995.

132. Cal. Pen. Code §11163.3, et seq. (2005).

133. Cal. Pen. Code §11163.3(a) (2005).

134. Cal. Pen. Code §11163.3(d) (2005).

135. Cal. Pen. Code §11163.3(c) (2005).

136. *California Domestic Violence Death Review Teams*, California Attorney General's Office, Crime and Violence Prevention Center, *available at* http://www.safestate.org/index-print.cfm?navid=352 (accessed August 30, 2005).

137. Cal. Pen. Code §11163.4 (2005).

138. *California's Domestic Violence Death Review Team Protocol*, *supra* note 115 at p. 3.

139. The Domestic Violence Death Review Advisory Committee consisted of members of existing domestic violence death review teams and representatives of statewide domestic violence coalitions. *Id.*

140. *California's Domestic Violence Death Review Team Protocol*, *supra* note 115.

141. *Id.* at pp. 7-8.

142. *Id.* at Appendix A – E.

143. *Id.* at p. 3.

144. Correspondence with Sandra Gaarder, *supra* note 91; California Attorney General Bill Lockyer, *Working Together to Eliminate Domestic Violence*, California Attorney General's Office, Crime and Violence Prevention Center, *available at* http://www.safestate.org/index.cfm?navid=219 (accessed August 30, 2005).

145. *Id.*; Correspondence with Sandra Gaarder, *supra* note 91.

146. *Id.*

147. Correspondence with Sandra Gaarder, *supra* note 91.

148. *About NDVFRI*, National Domestic Violence Fatality Review Initiative, *available at* http://www.ndvfri.org/ (accessed July 15, 2005).

149. *Id.*

150. Correspondence with Sandra Gaarder, *supra* note 91.

151. Cal. Pen. Code §11163.5(a) (2005); California Assembly Bill 1230, *supra* note 131.

152. Cal. Pen. Code §11163.5(c)(1) (2005).

153. Cal. Pen. Code §11163.5(c)(2)(B) (2005).

154. *California's Domestic Violence Death Review Team Protocol, supra* note 115 at p. 18.

155. Cal. Pen. Code §11163.6 (2005).

156. For purposes of Penal Code §11163.6, intimate partner includes a current or former spouse, fiancé or dating partner. Cal. Pen. Code §11163.6 (2005).

157. California Women's Law Center, *supra* note117.

158. *California's Domestic Violence Death Review Team Protocol, supra* note 115 at p. 15.

159. *Id.*

160. *Id.*

161. Cal. Pen. Code § 11163.3(e) (2005).

162. Cal. Pen. Code § 11163.3(e) (2005).

163. Cal. Pen. Code § 11163.3(e) (2005).

164. California Senate Bill 218 (Solis), Chaptered on October 10, 1999.

165. Cal. Pen. Code §11163.3(g)(3): "The disclosure of written and oral information authorized under this subdivision shall apply notwithstanding Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code, or the lawyer-client privilege . . . the physician-patient privilege . . . the psychotherapist-patient privilege . . . the sexual assault victim-counselor privilege . . . and the domestic violence victim-counselor privilege . . . . "

166. Robin H. Thompson, Esq., *Confidentiality and Fatality Review,* Fatality Review Bulletin, National Domestic Violence Fatality Review Initiative (2002) p. 105.

167. *California's Domestic Violence Death Review Team Protocol, supra* note 115 at p. 15.

168. *Id.*

169. *Id.* at p. 16.

170. In addition to being removed from the team, a member's breach of confidentiality may involve acts that would also subject the member to civil or criminal penalties, as well as negative employment actions, under state and federal law.

171. *Id.*

172. *Speak Up – Save Lives, Santa Clara County Domestic Violence Council Death Review Committee Final Report, January 1 – December 31, 2004,* Santa Clara County Domestic Violence Council (2005).

173. *Id.* at pp. 15-17.

174. *Id.* at pp. 18-19.

175. *County of San Diego Domestic Violence Fatality Review Team, 2004 Report,* County

of San Diego Health and Human Services Agency, Office of Violence Prevention (2004).

176. *Id.* at p. 11.

177. *Id.*

178. *Id.* at p. 9.

179. *Id.* at p. 10.

180. *Id.* at p. iii.

181. *Id.* at 12.

182. *Sacramento County Domestic Violence Death Review Team, Annual Report* (December 2003), *available at* http://www.da.saccounty.netdvDVRT%20Final%

202003.pdf (accessed July 10, 2005).

183. *Id.* at p. 3.

184. *Id.*

185. *Id.* at p. 2.

186. *Id.*

187. *Id.* at p. 3.

188. *Id.* at p. 4 [citing *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice (Recommendations from the National Council of Juvenile and Family Court Judges Family Violence Department)*].

189. *Id.* at p. 4.

190. *Id.* at pp. 4-5.

191. *Id.* at p. 5.

192. *Contra Costa County Domestic Violence Death Review Team Report, supra* note 120.

193. *Id.* at pp. 5-10.

194. *Id.* at p. 10.

195. *Id.*

196. *Id.* at p. 11.

197. *Id.*

198. *Id.* at p. 11.

199. California Women's Law Center, *supra* note 117.

200. *Id.*

201. Tanya Brannan, *Investigating Domestic Violence Homicide: A Guide For Women's Rights Activists & Journalists* (January 2003) Purple Berets, *available at* http://www.purpleberets.org/violence_investigatingdv.htm (accessed August 30, 2005); Marie De Santis, *How to Investigate Domestic Violence Homicide, A Guide for Investigating the Path Leading Up to Domestic Violence Homicides – For Friends, Activists, Journalists, and All Who Care*, Women's

Justice Center, *available at* http://www. justicewomen.com/cj_investigate_guide.html (accessed August 30, 2005).

202. *Id.*

203. California Women's Law Center, *supra* note 117.

204. Tanya Brannan, *Historic Victory in Macias Case*, Purple Berets (Fall 2002), pp. 1-2.

205. *Id.*

206. Marie De Santis, *The Maria Teresa Macias Case, Instead of Helping Me . . .* , Women's Justice Center, *available at* http://www.justicewomen.com/macias_story.html (accessed August 30, 2005).

207. *Id.*

208. Tanya Brannan, *The Legacy of Teresa Macias . . . Women's 14th Amendment Right to Equal Protection Established,* Purple Berets (July 2000), *available at* http://www.purpleberets.org/macias_legacy.html (accessed August 30, 2005).

209. *Id.*

210. Tanya Brannan, *Law Enforcement Lies! Cutting Through the Disinformation on the Macias Case*, Purple Berets (2001), *available at* http://www.purpleberets.org/macias_lawlies.html (accessed August 30, 2005).

211. *Macias v. Ihde*, 219 F.3d 1018 (2000); Marie De Santis, *supra* note 1. The Macias case is discussed in further detail in the section of this report entitled, *Legal Liability of Law Enforcement.*

212. *How to Investigate Domestic Violence Homicide, supra* note 201.

213. *Investigating Domestic Violence Homicide, supra* note 201.

214. *Id.*; *How to Investigate Domestic Violence Homicide, supra* note 201.

215. *Key Questions, Is There A Need For Grassroots Reviews Rather Than Top Down Models?* National Domestic Violence Fatality Review Initiative, *available at* http://www.ndvfri.org/ (accessed August 30, 2005).

216. *California Domestic Violence Death Review Teams, supra* note 136.

217. California Women's Law Center, *supra* note117.

218. "Blue suicides" are cases in which a victim commits suicide by intentionally confronting and/or threatening law enforcement in order to provoke them to react by shooting him/her.

SURVEY OF 100 MURDERS OF WOMEN AT THE HANDS OF THEIR MALE INTIMATE PARTNERS

In order to better understand the dynamics that cause women's most intimate relationships to erupt into violence and murder, CWLC's Murder at Home Project conducted a survey of 100 homicide cases in California, occurring from 1998-2002, where a woman was killed by a male intimate partner. The results from our 100-Case Survey reveal disturbing and dangerous similarities in the lives and deaths of women murdered by their intimate partners.

Methodology

CWLC's case study is based on 100 cases where a woman was killed by her male intimate partner in California during a five-year period (1998 through 2002). CWLC identified cases through media searches and interviews with advocates. Data on each case was gathered from media reports, court documents, and interviews with prosecutors and advocates involved with the case.

CWLC then used California Department of Justice statistics to determine the proportionate number of women killed by male intimate partners in each California county during the five-year period. The final 100 cases included in the survey reflect these proportionate numbers. For example, if 5 percent of the total number of murders during the five-year period occurred in Alameda County, CWLC selected 5 of the 100 surveyed cases from Alameda County.

The number of cases from each county was then adjusted slightly to account for geographic and urban/rural diversity among cases. For example, although Yolo County did not have a statistically significant number of intimate femicides during the five-year period, CWLC reduced the number of cases from a heavily represented urban county, such as Los

Angeles County, in order to include a case from Yolo County. CWLC was unable to track factors such as race and socioeconomic status because there was insufficient information about these factors for all 100 cases.

The 100-Case Survey is an informal study of homicide cases and is not intended to be a scientific examination of intimate femicide in California. However, the results from the 100-Case Survey are nevertheless significant and highlight important similarities and patterns in the circumstances of these murders.

In 76% of the cases involving a history of domestic violence, family members, friends, neighbors and/or co-workers were aware of abuse in the relationship.

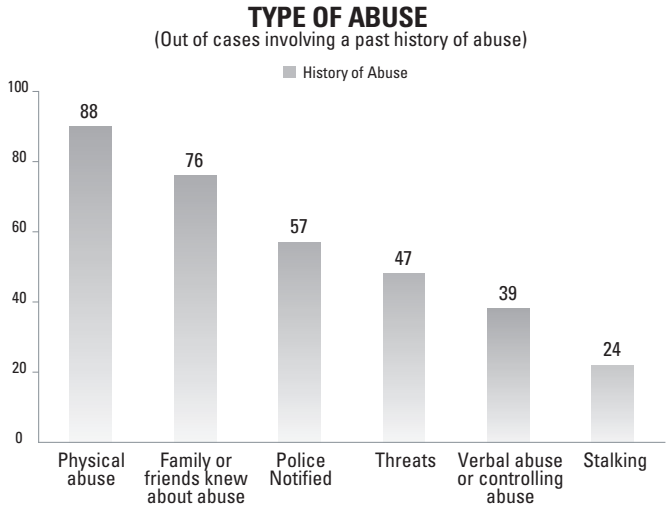
Trends Among Women Murdered by Their Male Partners

History of Abuse

In most cases, the murder of the woman by her intimate partner was not the first episode of abuse in the relationship. In 59% of the surveyed cases, there was a confirmed history of abuse[1] by the perpetrator against the victim prior to the murder. Of the cases with a history of abuse, 88% had a history of physical abuse[2] in the relationship. A history of threats to the victims' life by the perpetrator was present in 47% of these cases. In 39% of the cases, there was a confirmed history of verbal abuse and/or highly controlling behavior by the perpetrator toward the victim. Twenty-four (24) percent of the cases involved the perpetrator stalking the victim. In 10% of the cases, the perpetrator had previously abused a child of the relationship.

Seeking Help

Most homicide victims who were abused by their partners never directly sought help from legal or community resources for domestic



Nearly 70% of abused murder victims never obtained, or attempted to obtain, a protective order against their abusive partner.

violence. Sixty-eight (68) percent of abused murder victims never obtained, or attempted to obtain, a protective order against their abusive partner, and only 20% had an active restraining order against their abuser at the time of the murder. Further, only 14% of victims who were abused sought domestic violence-related services from hospitals, shelters, and/or community-based organizations prior to their murders. These findings suggest that obtaining a restraining order or simply seeking domestic violence services may significantly increase a victim's safety, and that additional outreach is needed to ensure increased access to such protections and services for domestic violence victims.

Community Awareness of Abuse

Despite the fact that only a few women actively sought domestic violence-related services or restraining orders, there were many cases in which government agencies, community agencies or third parties were aware of abuse in the relationship. In 76% of the cases involving a history of abuse, family members, friends, neighbors and/or co-workers were aware of domestic violence in the relationship. Fourteen (14) percent of the victims had even voiced explicit concerns to third parties that they feared for their safety or thought the perpetrator would try to kill them.

14% of abused victims were killed within a month of leaving, or threatening to leave, their abuser.

In 56% of the cases involving a history of abuse, law enforcement had been called to the house for acts of domestic violence. The victim and/or perpetrator had multiple contacts with law enforcement in 22% of the cases. Moreover, law enforcement was the only agency to have contact with either the victim or perpetrator in 24% of the cases. The perpetrator was actually arrested for domestic violence in 36% of the cases. Further, in 40% of the cases, either the victim or the perpetrator had prior contact with civil and/or criminal courts because of domestic violence in the relationship.

Moreover, as stated above, community systems, such as domestic violence shelters, hospitals and/or advocacy groups were aware of domestic violence occurring in the relationships because of prior contact with the victim in 14% of the cases. Two (2) of the victims were living at domestic violence shelters at the time they were murdered. In total, the parties had prior contact with police, courts or community service providers regarding incidents of domestic violence and/or family and friends had prior knowledge of abuse in the couple's relationship in 92% of cases with a confirmed history of abuse.

Victim's Relationship to the Perpetrator

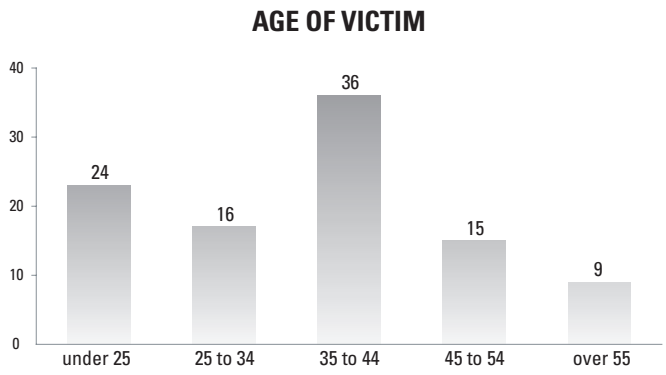
At the time that the murder took place, 29% of the victims were married to the perpetrator; 30% were married to, but separated from, the perpetrator; 4% were divorced; 14% were dating the perpetrator; 9% were dating and living with the perpetrator; and 14% were former girlfriends of the perpetrator. In 4% of the cases, the victim and perpetrator were also co-workers, in addition to having an intimate partner relationship.

Tragically, victims with a history of abuse by the perpetrator were just as likely to be killed after they had taken steps to leave the relationship. Fifty-one (51) percent of the couples with a prior history of abuse were either separated or in the process of separating at the time of the murder. Additionally, regardless

of whether there was a history of abuse against the victim, 45% of the couples in our case study were separated or in the process of separating at the time of the murder. Fourteen (14) percent of the victims were killed within a month of leaving, or threatening to leave, the relationship.

Age of Victim at Death

Our case study indicates that women between the ages of 35 and 44 may face a heightened risk of intimate partner murder. Twenty-four (24) percent of the victims were under 25 years of age when they were murdered; 16% of the victims were between the ages of 25 and 34; 36% of the victims were between 35 and 44 years of age; 15% of the victims were between the ages of 45 and 54; and, 9% of the victims were 55 years old or over. Overall, most victims (76%) were 44 years old or younger at the time the murder took place.



Trends Among Men Who Murdered Their Female Partners

Nearly 60% of perpetrators with prior arrest records had been arrested for domsetic violence against the victim they ultimately killed.

Perpetrators' Prior Arrests and Convictions

A significant number of perpetrators had come into contact with the criminal justice system prior to killing their intimate partners. Overall, 41% of the perpetrators had been arrested previously for domestic violence or some other crime. Of that group, 73% had prior arrests for domestic violence, and 80% of these arrests were for domestic violence against the victim the perpetrator later murdered. More specifically, 59% of perpetrators with prior arrest records had been arrested for domestic violence against the victim they ultimately killed. Forty-nine (49) percent had prior arrests for crimes other than domestic violence, and 70% of these arrests were for violent crimes such as murder, manslaughter, rape, molestation, assault, and battery.

Recidivism was also common among perpetrators. Twenty-nine (29) percent of the perpetrators in our survey had been convicted previously for domestic violence or some other crime. Nineteen (19) percent of the perpetrators had a prior conviction for domestic violence, and 84% of these perpetrators had prior convictions for domestic violence against the victim they later murdered. More specifically, 26% of the perpetrators who had prior criminal convictions had been convicted of domestic violence against the woman they ultimately killed. Fifteen (15) percent had prior convictions for other crimes, and 80% of these convictions for other crimes were for violent crimes such as murder, manslaughter, rape, molestation, assault, and battery.

These statistics demonstrate the degree to which perpetrators had contact with law enforcement officers prior to murdering their intimate partners. A large number of perpetrators had been arrested and even convicted for domestic violence or other violent crimes, putting both the courts and law enforcement on notice of the potential risk these perpetrators posed to their intimate partner.

Probation

Twenty-five (25) percent of the perpetrators in our study were either on probation at the time of the murder or had been on probation at some point in the past. Specifically, 15% of the perpetrators were on probation at the time of the murder, and 53% of these perpetrators were on probation for committing domestic violence against the victim they murdered. Thirteen (13) percent of these perpetrators were on probation for domestic violence against a different intimate partner (not the murder victim) and 34% were on probation for a crime other than domestic violence (e.g., drug convictions, child molestation, etc.). Moreover, 8% of the perpetrators were attending a batterer's treatment program at the time of the murder.

1 in 4 perpetrators were either on probation at the time of the murder or had been on probation at some point in the past.

Case study:

On June 29, 2001, Ronnie Martin pulled out a butcher knife and repeatedly stabbed his ex-wife, Dawn Norris, over 40 times in front of Dawn's niece and nephew. The two met in 1992, and, by 1996, Martin had physically abused and threatened Dawn numerous times. Martin threatened to kill Dawn and her two children, kicked in her bedroom and car doors, and vandalized her home and car. In July 1999, Martin was charged with misdemeanor domestic abuse and sentenced to 30 days in custody. In December 1999, Martin punched Dawn in the nose at a night club, and was again sentenced to 30 days in custody, was placed on three years' probation, and was ordered to enroll in a domestic violence batterers program. Again, in March 2001, Martin was convicted of a domestic violence charge against his ex-wife, was placed on probation, and ordered to have no contact with Dawn. Three months later, Dawn was murdered.

A perpetrator's history of mental illness or substance abuse were contributing factors to many intimate partner homicides.

Perpetrators' History of Mental Illness and Substance Abuse

A perpetrator's history of mental illness or substance abuse were contributing factors to many intimate partner homicides. One (1) in 5 perpetrators was either suffering from mental illness at the time of the murder, or had a history of mental illness. Common conditions among the perpetrators include depression, suicidal tendencies, paranoia, and psychotic episodes.

Substance abuse was more difficult to uncover, and there was ambiguity in 13 of the cases as to the substance abuse status of the perpetrator at the time of the murder.[3] However, 22% of the perpetrators had a confirmed history of substance and/or alcohol abuse. Thirteen (13) percent of the perpetrators were on a substance at the time of the murder. The most common substances abused by perpetrators were alcohol at 68% and methamphetamine at 32%. Sixteen (16) percent of the perpetrators had a history of either crack or cocaine use prior to murdering their intimate partners.

Case study:

After years of broken noses, bruises, and threats on her life, Tisha Nieto made up her mind to end her relationship with her abusive husband, Norbert Nieto, once and for all. Tisha spent her last nights alive filling out a restraining order that she planned to have served on Nieto. On Christmas Eve, Tisha went out to make copies of holiday photos and agreed to meet up with Nieto. Nieto had told friends he was going to kill his wife for leaving him, and after smoking methamphetamine on December 24, 2001, Nieto met up with Tisha, and strangled her with a shoelace.

Additional Contributing Factors

Child custody and support disputes, financial difficulties and jealousy over new relationships caused rising tensions that contributed to victims' risk of intimate murder. In 8% of the cases, the perpetrator and victim had been engaged in a personal or court-related dispute over child custody and/or child support issues shortly before the murder took place. In 12% of the cases, the perpetrator had been experiencing financial difficulties immediately prior to the murder. The most common financial issues were unemployment, legal concerns, paying rent, and paying for day-to-day needs such as food, clothing, and transportation. In 12% of the cases, the perpetrator either suspected the victim was having an affair or was jealous that she had started a new intimate relationship with someone else at the time the murder took place.

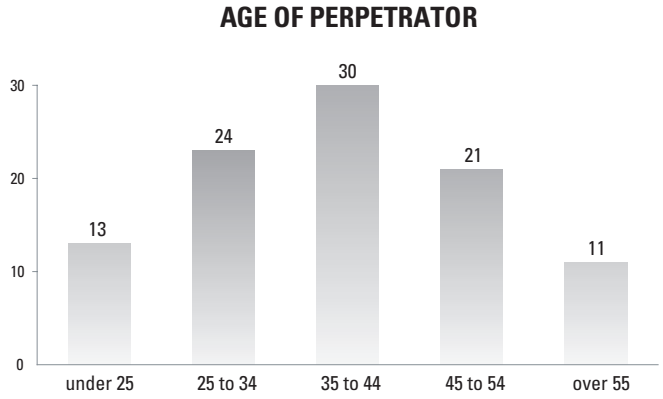
Case study:

On November 14, 2002, Kam Lee shot his wife, Jenny, their two children, and himself in their family home. After the murders, a family friend said that Jenny had voiced some concern three weeks prior to the murders about their family's finances, her husband's work, and the slumping economy. Another friend mentioned that Kam had been laid off from his previous job, so their family was always worried about the possibility of it happening again. The police never discovered any other possible motive for the multiple murders and suicide, other than financial difficulties.

In 1 out of every 5 cases, a person other than the intended victim was seriously injured or killed at the time that the murder took place.

Age of Perpetrator at Time of Murder

Our study indicates that perpetrators between the ages of 35 and 44 may face a greater propensity to commit intimate partner murder. Thirteen (13) percent of the perpetrators were under the age of 25 when they committed the murder; 24% of the perpetrators were between the ages of 25 and 34; 30% of the perpetrators aged between 35 and 44; 21% of the perpetrators were between 45 and 55 years of age; and 11% of the perpetrators who committed intimate partner murder were over the age of 55.[4] Most of the perpetrators (67%) were 44 years old or younger at the time they committed murder.



Circumstances of the Murders

Location of Murder

Most typically, intimate partner murders occur at home. Over two-thirds (71%) of the victims in our case study were murdered by their perpetrators in their homes or directly outside their homes. The second most common location was on the street, freeway, or in a car (10%). Other locations where women

were murdered were at a friend, relative, or new boyfriend's home (6%), the victim or perpetrator's workplace (4%), a public place (3%), and one woman was murdered in a hotel room.[5]

Weapons

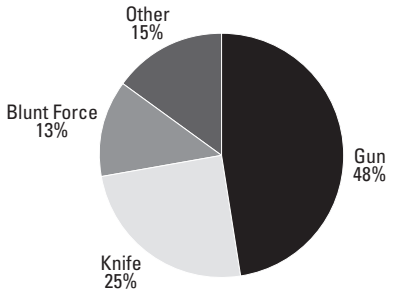
Perpetrators used guns in almost half the cases (48%). In 25% of the cases, knives were used. Blunt force with a baseball bat, a steam iron, an axe, a fire poker, or a screwdriver was used in 13% of the intimate partner murders in our survey. Hanging, smothering, strangling, or suffocation was used in 4% of the cases. Three (3) percent of the cases involved arson.

Most intimate partner murders occur in the home.

Multiple Murders

The violence inflicted by perpetrators is often not limited to the intended victim of domestic violence. In one out of every five cases (20%), a person other than the victim was either killed or injured at the time the murder took place. A total of 16 children and 11 adults were killed in addition to the 100 victims in our study. The children ranged from the victim and/or perpetrators' children, to cousins, nieces, and nephews. The adults killed included co-workers, neighbors, family members, new intimate partners, friends, and bystanders. Moreover, children were present at the time of the murder in 29% of the cases – almost one-third of the time.

WEAPON USED



A gun was the weapon that was most commonly used by perpetrators to kill their intimate partner.

These statistics demonstrate that, despite the common view that intimate partner murder is an individual "family tragedy," intimate partner murder is in reality a very serious public safety concern. Intimate partner violence and murder threatens the lives of many children and adults who are disconnected from the abusive intimate relationship. Accordingly, law enforcement officers and courts can no longer treat intimate partner violence as a private issue that only affects the targeted victim of the violence.

Perpetrators were significantly more likely to be convicted of first-degree murder if their case went to trial than if they pled guilty to the murder.

Case study:

When Nina Susu ended her relationship with her boyfriend and co-worker, Joseph Ferguson, in September 2001 he attacked her car with an axe. A week later, Joseph showed up at their workplace and shot and killed Nina and another female co-worker with a 9 mm semiautomatic pistol. He then drove to a nearby marina where he shot and killed another co-worker and a bystander with a semiautomatic rifle. After this incident, Joseph abducted a fourth co-worker who was later found alive. Joseph evaded police and was discovered a few days later, at which time he wounded a California Highway Patrol officer and critically wounded a nearby motorist before shooting and killing himself. When it was all over, Ferguson's uncle stated, "It doesn't surprise me. I full expected him to be one of those snipers on a rooftop someday."

Murder-Suicides

One-third (33%) of the cases in our study were murder-suicides, where the perpetrator killed himself immediately after killing his intimate partner, or within a short time after her murder. Seven (7) percent of the perpetrators died from committing suicide after being chased by the police or being charged with murder. Three (3) percent of the perpetrators unsuccessfully attempted suicide after they murdered their intimate partners. All three perpetrators who failed to commit suicide attempted to stab themselves to death. Overall, considering all post-homicide suicides and attempted suicides, the percentage of perpetrators with suicidal tendencies rose to 43%.

Legal Consequences of the Intimate Partner Murder

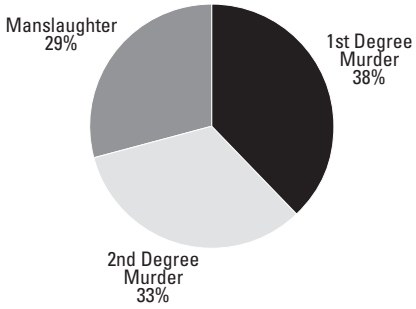
Prosecuting the Perpetrators

In our 100-case survey, 58% of the perpetrators were charged with murdering their intimate partners.[6] Thirty-eight (38) percent of the perpetrators charged with murder pled guilty to the crime. Of those who pled guilty, 38% of the perpetrators were convicted of first-degree murder, 33% were convicted of second-degree murder, and 29% were convicted of manslaughter.

Fifty-seven (57) percent of the perpetrators charged with murdering their intimate partners pled not guilty to the crime. Seven (7) percent of these perpetrators pled not guilty by reason of insanity. Of the cases that went to trial, 62% were convicted of first-degree murder, 28% were convicted of second-degree murder, and 3% were convicted of manslaughter.[7]

Finally, of the 5% of perpetrators charged with murdering their intimate partners pled no contest.

CONVICTIONS OF PERPETRATORS
Who Pled Guilty

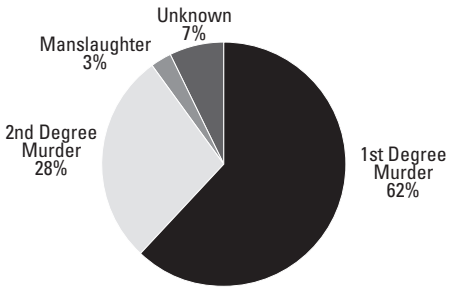


Sentencing

The perpetrators' sentences in our case study generally appeared to follow California sentencing guidelines. Thus, the common sentence for those who committed first-degree murder was a minimum of 25 years to life. Most convicted of second-degree murder received a sentence of 15 years to life, at minimum. Those who were convicted of manslaughter received sentences that ranged between 4 and 21 years.

However, many defendants had time added to their sentences for "special circumstances" because their crimes involved factors warranting the imposition of a sentence enhancement. Out of the 56% of perpetrators who were charged with and convicted of murder, 61% had heightened sentences for special

CONVICTIONS OF PERPETRATORS
Who Pled Not Guilty



circumstances. The most common special circumstances in our case study were: multiple murders, rape, use of a firearm, use of a knife, torture, lying in wait, murder for financial gain, assault, kidnapping, and child endangerment.

None of the perpetrators who were convicted of murder received the death penalty.

(Footnotes)

1. "Abuse" includes physical abuse, sexual abuse, stalking, threats, and verbal abuse and/or a pattern of highly controlling behavior.

2. "Physical abuse" includes any physical force and contact, whether the incident involved a push or a severe beating, and sexual abuse.

3. Reporting on victims' substance abuse and mental health issues was too inconsistent and ambiguous to develop concrete statistics on these factors in our study. For information on substance abuse and mental health issues for domestic violence victims, *see* Statewide California Coalition for Battered Women at http://www.sccbw.org/links3.htm?qx=34100up1311e19o432 (accessed August 30, 2005) and New York State Office for the Prevention of Domestic Violence at http://www.opdv.state.ny.us/coordination/model_policy/alcohol.html (accessed August 30, 2005).

4. In one case, the age of the perpetrator was unknown.

5. In 6 cases, the exact location of the victim's murder was unknown.

6. Thirty-three (33) percent of the cases in the survey were murder-suicides and, in 9 percent of the cases, the perpetrator either died, committed suicide, or fled prior to criminal charges being filed.

7. Seven (7) percent of those who pled not guilty committed suicide before their trial date.

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