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# Commission on Domestic Violence Fatalities

Report to the Governor  
October 1997

State of New York



George E. Pataki  
Governor

Jeanine Ferris Pirro  
Westchester County District Attorney  
Commission Chairperson

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# Commission on Domestic Violence Fatalities

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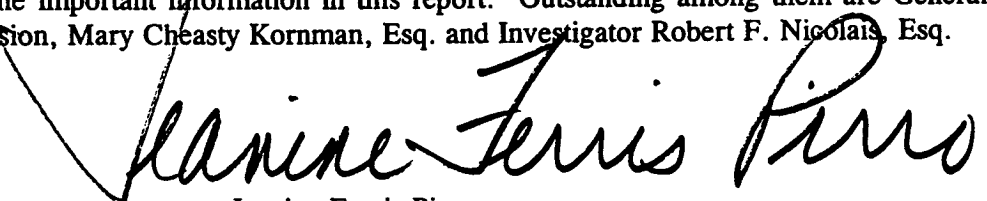
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Jeanine Ferris Pirro  
Westchester County District Attorney  
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## I. INTRODUCTION

The Commission on Domestic Violence Fatalities was appointed by Executive Order of Governor George Pataki on October 1, 1996. In that year, several high profile domestic violence homicides focused attention on the necessity to determine what more could be done to protect victims of domestic violence from violent offenders. The Commission was therefore charged with responsibility to "investigate select domestic violence fatalities to determine whether the deaths were associated with any deficiencies in the social service system, law enforcement, the courts, or any other public or private entity."<sup>1</sup>

The Governor instructed the Commission to report to him in October 1997. The Commission was instructed to: recommend preventive and protective strategies, guidelines and legislation to reduce domestic violence; recommend improvements in services to victims of domestic violence and their families; and assess whether a Fatality Review Board should be created to examine domestic violence fatalities.

The Governor appointed Westchester County District Attorney Jeanine Ferris Pirro to Chair the Commission. Commission Vice Chairs are: Justice Juanita Bing Newton, New York State Supreme Court; Carol J. Johnston, Executive Director, New York State Office for the Prevention of Domestic Violence; and John F. Timoney, First Deputy Commissioner, New York Police Department (Ret.). The members are: Jonathan L. Arden, M.D., First Deputy Chief Medical Examiner, New York City; Susan Barbour, Deputy Attorney General; Chief Raymond L. Crawford, Nassau County Police Department; Judge Marjory D. Fields, Family Court, Bronx County; Sherry Frohman, C.S.W., Executive Director, New York State Coalition Against Domestic Violence; Vernon J. Geberth, M.S., M.P.S., Lt. Commander, New York Police Department (Ret.); Christina Hernandez, Commissioner, New York State Crime Victims Board; Charles D. W. Houper, Sheriff, Chemung County; Jane A. Petro, M.D., Associate Professor of

Surgery, New York Medical College; Charlotte Watson, Executive Director, My Sister's Place; and Brian Wing, Commissioner, New York State Office of Temporary and Disability Assistance.

The Commission sought comments from a wide range of individuals and groups familiar with the problem of domestic violence. From November 1996 through January 1997, the Commission conducted public hearings around the State in Buffalo, Syracuse, Mineola, Brooklyn, the Bronx and Albany. Any individual who was interested in testifying, but was unable to attend the hearings, was invited to submit testimony. The Commission heard from domestic violence victims, advocates for victims, shelter operators, members of the judiciary, probation officers, counselors with batterers' programs, doctors, hospital administrators, a workplace security expert, and representatives of District Attorneys' offices, police, sheriff's departments, and social service agencies. The Commission's final hearing was conducted at the Bedford Hills Correctional Facility. There, the Commission heard the testimony of women who were victims of physical or sexual abuse and are now incarcerated for crimes that include the killings of physically abusive partners.

For the investigations of individual fatalities, the Commission requested referrals of recent domestic violence homicides from the District Attorneys' offices in all counties in New York State. In addition, some cases were brought to the attention of the Commission during its public hearings. The Commission staff investigated 57 domestic violence fatality cases. In most of the cases, the process involved reviewing files at the agency that investigated or prosecuted the case, and interviewing investigators and witnesses familiar with the case. The Commission staff analyzed the cases in terms of specific, uniform features. For example, statistics were assembled on each case regarding



any history of domestic violence, any past criminal record, and the presence of a child at the time of the homicide. This analysis involved follow-up with various law enforcement and social service agencies. In conducting these investigations, the Commission staff received the assistance of the New York State Police, the New York State Department of Social Services, District Attorneys' offices and local police departments.

## **II. STATEMENT OF THE PROBLEM**

Governor Pataki's appointment of the Commission came in response to a series of domestic violence homicides in 1996 that received a great deal of attention from law enforcement agencies, domestic violence advocacy groups and the media. Not only was there an appearance that the systems designed to protect victims were not working, but these homicides took place against a backdrop of a steady five-year decrease in the rate of violent crimes in general.

According to estimates of the New York State Division of Criminal Justice Services ("DCJS"), during the years 1991 through 1995 in New York State, the rate of violent crimes decreased every year. Violent crimes are defined as murder, forcible rape, robbery and aggravated assault. The rates of decrease varied from .9% to 13.3%. In New York City, where most of these crimes were committed, the rates of decrease exceeded those in the rest of the State in murder, robbery and aggravated assault. There was a similar pattern in property crimes, defined as burglary, larceny and motor vehicle theft, with rates of decrease varying from .1% to 9.2%.

During those same years, however, the DCJS estimated rate of domestic violence offenses did not follow the same pattern of decreases. The categories of crime in the domestic violence estimates include assaults, sex offenses and violations of protective orders; the categories of relationships are husband/wife, common law husband/wife, child/parent and other family relationships. The numbers do not include dating relationships, which in some studies account for over half the domestic violence offenses or same-sex relationships. The rate of domestic violence offenses fluctuated in the years 1990 through 1995, with increases in three of these years and decreases in three of these

years. The highest rate of decrease was 10.2%, in 1991. The highest rate of increase was 7.6%, in 1993. It would appear that whatever factors, from policing strategies to demographic changes, were responsible for the decreases in violent crime generally, those factors did not produce the same effect on crimes among family members and intimate partners.

Essentially the same thing can be said of the rate of domestic violence homicide. DCJS estimates of reported homicides identified as "possible domestic violence" in the four years 1992 through 1995 do not follow the pattern of decreasing rates that appear in cases of homicide in general in the same period. The annual estimate of reported domestic violence homicides fluctuated, with a low of 62 in 1995 and a high of 87 in 1993. These estimates must be viewed as under-inclusive, however, for several reasons. First, as in the case of the non-homicide domestic violence offenses, they do not include estimates for homicides in dating or same-sex relationships. Second, they do not include an estimate of the number of domestic violence homicides that were included in the category of unknown relationships between victim and offender. While the precise number of domestic violence homicides is difficult to determine with available statistics, it is clear that the number of these cases is not declining along with the number of murders generally.

The focus of the Commission's inquiry is the identification of those policies that have the potential to reduce domestic violence in general, and domestic violence homicides in particular. Through review of a group of recent New York State domestic violence homicides, as well as examination of the ways in which domestic violence cases are currently being handled and any suggestions for improving these approaches, the Commission has sought to identify the features of a more effective strategy to combat these crimes.

### **III. DEFINITION OF DOMESTIC VIOLENCE**

Domestic violence is defined as a pattern of behaviors involving physical, sexual, economic and emotional abuse, alone or in combination, by an intimate partner often for the purpose of establishing and maintaining power and control over the other partner. The origins of domestic violence are in social, legal and cultural norms, some historical and some current, including acceptance of violent behavior by men as the heads of households. While domestic violence occurs in all types of intimate relationships, it is overwhelmingly a problem of violence perpetrated by men against women.

The primary focus of the Commission's work has been domestic violence homicides. In these cases, the domestic violence behaviors preceding the murders have included patterns of both unlawful conduct, such as assaulting the victim physically and sexually, and lawful conduct, such as isolating and coercing the victim verbally or financially. The Commission's recommendations for policy and legislative change focus on unlawful domestic violence behaviors because these can be made the subject of legal sanctions against the perpetrator. The lawful kinds of domestic violence behaviors, however, have potentially lethal outcomes as well. These must be addressed by an increase in public awareness of the seriousness of domestic violence, and the articulation of a broadly shared public attitude that domestic violence is unacceptable.

#### IV. SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Commission's findings are:

- While the rate of violent crimes in New York decreased steadily in the years 1991 through 1995, the rates of domestic violence offenses and domestic violence homicides have not followed the same pattern.
- In most of the cases reviewed by the Commission, a pattern of domestic violence preceded the homicide; in half of the cases, a prior criminal record preceded the homicide as well. In 40 (70%) of the 57 cases reviewed, the offender had a history of physical abuse of the victim. In 26 (65%) of these 40 cases, the offender also had a prior criminal record of one or more arrests. In 22 (85%) of these 26 cases, the offenders had prior arrests for incidents of domestic violence. Of the 57 cases, however, there were 6 with no history of abuse and 11 with a history of non-physical abuse only, giving a combined total of 17 (30%) of the cases with no known violent behavior prior to the homicide.
- In 21 of the 57 domestic violence homicide cases reviewed by the Commission, there was at least one current order of protection; in 17 (81%) of these 21 cases, there had been a violation of a current order prior to the homicide. In 10 of the 57 cases, there had been a prior order of protection granted to the victim against the same offender; in 7 (70%) of these 10 cases, there had been a violation of that prior order.

- Of the 57 victims, 43 (75%) had terminated, or had indicated an intention to terminate, the relationship at the time of the homicide.

The Commission's recommendations are:

- That coordinated safety strategies be developed by victims with the assistance of domestic violence service providers, prosecutors and police, utilizing all options to prevent the offender from threatening, harassing, stalking or gaining access to the victim; the safety strategy must take into account the victim's special needs, including any issues of health, language, culture or sexual orientation.
- That medical practitioners be required to report to the local police any case in which the victim has suffered serious physical injury, as that term is defined in the New York Penal Law, that was actually or apparently the result of assaultive behavior of another.
- That current requirements that hospitals and diagnostic treatment facilities take steps to identify, document and offer referrals to victims of domestic violence be extended to all medical practitioners; and that records of confirmed or suspected domestic violence currently required to be noted in a patient's chart by medical staff be reported on an anonymous basis to the New York State Department of Health to provide data for research and policy development.
- That the New York Criminal Procedure Law and Family Court Act be amended to expand the current statutory definition of family or household, which now covers persons related by blood or marriage, former spouses, and unmarried persons with

a child in common, to include co-habiting couples, same-sex couples and dating couples.

- That two rebuttable presumptions be adopted regarding custody and visitation of children in domestic violence cases: that sole or joint custody of a child not be granted to a perpetrator of domestic violence, and that visitation, if granted at all, be supervised.
- That the New York Penal Law be amended to provided that the commission of acts of violence against another adult or child in the family or household, by a parent or person legally responsible for the care and custody of the child, is sufficient for a charge and conviction for Endangering the Welfare of a Child.
- That, in cases where a child is endangered by the domestic violence perpetrated by one parent or adult partner on the other, protective services for the child be closely coordinated with those for the adult victim of domestic violence.
- That New York Criminal Procedure Law be amended to provide that prosecutors can appeal bail determinations and lenient sentences; and that the criteria for bail determinations be expanded to include: the issuance of prior orders of protection against the defendant; the violation of any court order by the defendant; the defendant's history, if any, or prior domestic violence or threats of violence; and other circumstances that would show a propensity on the part of the defendant to harm the victim or others.

- That the New York Penal Law be amended to provide that the definition of physical injury reflect the common sense understanding of the term, to include the bruising and swelling common to punches and kicks in physical attacks.
- That the New York Criminal Procedure Law be amended to permit the introduction of a witness's prior testimony as direct evidence, if it is inconsistent with the witness's testimony at trial and if the declarant is subject to cross-examination; and to broaden the exceptions to the hearsay rule in New York for present sense impressions and excited utterances.
- That police departments statewide adopt the procedure of the New York Police Department and the Nassau County Police Department requiring officers responding to domestic violence calls to confiscate any unlawfully possessed hand guns and long guns; to confiscate or accept the surrender of any lawfully possessed hand guns and long guns if the owner is arrested, or an order of protection is issued against the owner, or if the incident involves the use or threatened use of physical force; and to confiscate or accept surrender of weapons in all cases where the officer reasonably believes that the presence of a weapon at the scene creates imminent risk of violence or serious physical injury.
- That police departments screen applicants for any history of domestic violence, and that they develop appropriate procedures to follow in cases of domestic violence complaints against officers.
- That sentences in domestic violence cases reflect the criminal nature of the offense, and consist of incarceration, probation, restitution or a fine, or a combination of



## V. ANALYSIS OF HOMICIDE CASES AND LETHALITY PREDICTION

The Executive Order establishing the Commission instructed that "it investigate select domestic violence fatalities to determine whether the deaths were associated with any deficiencies in the social services system, law enforcement, the courts, or any other public or private entity." Pursuant to this instruction, the Commission solicited referrals and investigated and analyzed 57 domestic violence homicides that were committed in New York State from 1990 to 1997. Because laws and policies for handling cases of domestic violence have changed substantially in the past four years, recent cases were selected: of the 57 cases, 53 took place from 1993 to 1997. In order to prevent any possible interference with ongoing criminal investigations, the Executive Order instructed the Commission to review closed cases only.

In response to a Commission request, cases were referred by District Attorneys' offices throughout the State. In addition, specific cases were brought to the attention of the Commission by witnesses at the Commission's public hearings. Investigations were conducted by Commission staff with the assistance of District Attorneys' offices, local police departments and the State Police. The group of cases investigated is neither all the domestic violence homicides committed within a certain time frame, nor a randomly selected group of such cases. While some caution is therefore appropriate in interpreting the statistical findings, the analysis of the cases provides important information on the nature and pattern of domestic violence homicides and the offenders who commit them.

## A. Analysis of Homicide Cases

The Commission requested referrals of any recent, closed cases of domestic violence homicide, without regard to whether a man or woman committed the homicide, or whether the homicide took place in a heterosexual or same-sex relationship. Although supplemental requests were made for referral of cases involving female offenders and gay or lesbian relationships, all of the victims in the cases referred for review were female, and all of the relationships in which the domestic violence occurred were heterosexual. Perhaps because of the reality that women are the victims and men the offenders in more than 90% of domestic violence cases, or because domestic violence among gay or lesbian partners is often not recognized or characterized as such, the Commission's homicide cases do not reflect all of the contexts in which such violence occurs.<sup>2</sup>

In addition to the homicide victims who were the targets of the underlying domestic violence, there were 5 additional victims, whose relationships to the domestic violence victims were as follows: 2 mothers, 2 children, and one grandmother. Although these additional victims illustrate the lethal reach of domestic violence, they are not included in the statistical analysis of the cases, and, unless specifically noted, the term "victim" refers to the target of the underlying domestic violence. One case involved the homicide of the mother of the target of the domestic violence, along with the near-fatal stabbing of the target. Because the homicide was an integral part of an incident of domestic violence, the case was included in the Commission's review. In that case, the statistical analysis focuses on the relationship between the offender and the target, rather than that between the offender and the homicide victim.

The ages of the victims were: 5 under the age of 20; 17 between the ages of 21 and 30; 22 between the ages of 31 and 40; 7 between the ages of 41 and 50; and 6 over the age of 51. The offenders' ages were: none under the age of 20; 12 between the ages of 21 and 30; 27 between the ages of 31 and 40; 11 between the ages of 41 and 50; and 7 over the age of 51. The victims' racial breakdown was as follows: 28 white; 15 black; 12 Hispanic; and 2 Asian. The offenders' racial breakdown was: 24 white; 18 black; 13 Hispanic; and 2 Asian.

At the time of the homicides, 32 (56%) of the 57 victims were married to the offender, one had been divorced from the offender and 25 (44%) were unmarried. Of the 32 married victims, 24 (75%) had children in common with the offender; the one divorced victim had no children in common with the offender. Of the 25 unmarried victims, 7 (28%) had children in common with the offender. Of the 57 victims, 43 (75%) had terminated, or had indicated an intention to terminate, the relationship at the time of the homicide. The cases confirm what observers of domestic violence cases have known: for a victim of domestic violence, terminating the relationship is a potentially lethal event.

The cases show the direct and immediate effect of domestic violence homicides upon children. Of the 57 victims, 36 (63%) had children, including children from relationships other than that with the offender. In one case, a husband killed his wife and their 2 children, ages 5 and 2. In each of 3 of the remaining 35 cases, one child was physically injured during the commission of the homicide. In addition, in 24 (67%) of the 36 cases involving victims with children, at least one child was physically present at the time of the homicide. Disputes regarding custody or visitation were involved in 3 of the homicides. In 2 of these 3 cases, the homicide was committed in connection with pick-up or drop-off of the children. In one case, the homicide was committed after the offender's

visitation with the child in the victim's home. In all 3 of these cases, the child was present during the commission of the homicide.

> The investigations revealed that, in a substantial number of the cases, there were indications of domestic violence that were perceived, or could have been perceived, by those who came in contact with the victim. In 44 (77%) of the 57 cases, individuals had knowledge or suspicion of the domestic violence, and/or institutions had contact with the victim, and thus an opportunity to inquire into the domestic violence. The investigations show that in 39 cases, family members knew or suspected; in 24 cases, friends knew or suspected; in 14 cases, a neighbor knew or suspected; and in 13 cases, co-workers knew or suspected. In addition, the victim sought medical treatment in at least 14 of the cases; the victim sought or received domestic violence service or social service intervention in at least 7 of the cases; and there was police intervention in 27 of the cases. With the information available, it was not possible in all cases to determine whether those with knowledge or suspicion offered help, or whether medical or social service professionals inquired about domestic violence. Nor is there reliable information in all cases on the victims' responses to offers or inquiries that may have been made.

The homicides were committed in all regions of the State. Of the 57 cases, 35 were committed in urban areas; 15 in suburban areas; and 7 in rural areas. Most of the homicides took place at home. Of the 57 homicides, 43 (75%) were committed at home; 5 (9%) at the victim's workplace; 6 (11%) in a public area; and 3 (5%) in other locations, such as a medical office. Of the 6 homicides that were committed in public places, 2 were on the victim's way to or from work, with the result that 7 (11%) of the homicides took place in a work-related context.

Weapons were used in the commission of 51 (89%) of the 57 cases. Handguns were used in 20 (35%) of the cases; long guns in 9 (16%) of the cases; edged weapons, ranging from knives to swords, in 18 (32%) of the cases; and blunt instruments in 4 (7%) of the cases. The remaining 6 (10%) cases involved the use of physical force by the offender. Although complete information was not available, it appears that no more than 4 of the 20 handguns were lawfully possessed.

At the time of the homicides, there was at least one current order of protection in 21 of the 57 cases. In 17 (81%) of these 21 cases, there had been a violation of a current order prior to the homicide. In 10 of the 57 cases, there had been a prior order of protection granted to the victim against the same offender. In 7 (70%) of these 10 cases, there had been a violation of that prior order.

Full information regarding prior acts of violence and abuse by the offender was not in all cases available. The information was limited because of such factors as the limited investigations conducted in some cases of murder-suicide, the lack of witnesses to the acts of violence and abuse, and the prevalence of unreported acts of violence and abuse. Thus, the available information should be viewed as potentially less than the actual history of acts of violence and abuse committed by the offender in each case.

➤The prior records did establish, however, a record of prior abuse of the victim by the offender in a substantial number of the cases. There were indications of prior abuse in 51 (89%) of the 57 cases; only 6 (11%) cases had no evidence of prior abuse. Of these 51 cases with indications of prior abuse, 11 (22%) included indications of prior non-physical abuse, such as stalking, telephone harassment, and threats; 40 (78%) included indications of prior physical abuse, as well as prior non-physical abuse. Of the 11 cases

in which there were indications of prior non-physical abuse, there were 4 (36%) offenders with a prior criminal record of one or more arrests. Of the 40 cases in which there were indications of prior physical abuse, there were 26 (65%) offenders with a prior criminal record of one or more arrests. Of these 26 offenders with indications of prior physical abuse and prior criminal records, 22 (85%) had prior arrests related to incidents of domestic violence. The charges against the 22 include rape, sodomy, sexual abuse, incest, assault, menacing, unlawful imprisonment, tampering with a witness and criminal contempt.

With respect to the criminal histories of the offenders generally, 29 of the 57 offenders had records of prior arrests. A greater level of detail was available in 20 of these 29 cases, and these were therefore selected for detailed analysis. Of the 20 offenders, 19 (95%) had been charged with violent acts against other persons. Of these 19, 14 (74%) had prior arrests related to incidents of domestic violence. These 14 offenders are included in the 22 offenders noted above, whose histories contain both indications of prior physical abuse and prior criminal records.

➤ Substance abuse was found to be prevalent among the offenders. Of the 57 offenders, 27 (47%) had indications of a history of alcohol abuse, and 17 (30%) had indications of a history of drug abuse. These 44 offenders with a history of substance abuse included 12 with a history of both alcohol and drug abuse.

➤ While recognizing that there are limitations because of the nature of the database, there are valid observations to be made about the cases reviewed by the Commission. The first is that, in most of the cases, a pattern of domestic violence preceded the homicide; in half of the cases, a prior criminal record preceded the homicide as well. In 40 (70%)

of the 57 cases reviewed, the offender had a history of physical abuse of the victim. In 26 (65%) of these 40 cases, the offender also had a prior criminal record of one or more arrests. In 22 (85%) of these 26 cases, the offenders had prior arrests for incidents of domestic violence. Thus, past violence, particularly past domestic violence, is highly associated with homicide in the cases reviewed. At the same time, however, a second pattern is evident in a smaller number of the cases reviewed. Of the 57 cases, 6 had no known history of prior abuse and 11 had a history of non-physical abuse only, giving a combined total of 17 (30%) of the cases with no known violent behavior prior to the homicide.

#### B. Lethality Prediction

The Commission has considered the efficacy of lethality indicators in predicting the cases at highest risk for increased violence or lethality. The existence in the reviewed cases of at least two very different behavior patterns by the offender prior to the homicides illustrates the difficulty of predicting the risk of homicide in cases of domestic violence generally. It is not difficult to predict that a person with a long history of violent criminal behavior is a threat. It is, however, not possible to predict whether a person without such a long history is a threat, and it is dangerous to attempt to do so in the context of domestic violence. Based upon the 30% of cases reviewed in which there was no record of prior physical abuse, it cannot be concluded that the absence of prior violence is a reliable indicator of low risk.

The factors associated with heightened risk in some of the lethality indices proposed by analysts of violent behavior are too broad to be of predictive value. For example, one such index is a checklist prepared for use with domestic violence victims by nurses,

advocates and counselors. It lists acts of violence, including slapping, pushing, punching, and choking, and threats to use, or use of, weapons.<sup>3</sup> This would be informative in cases where there is a substantial history of violence. In the cases typified by the 30% with no history of violence, however, there would be no indication of risk to the victim.> Other factors included in lethality indicators are whether the offender is unemployed, uses drugs at least once a year, has a different religious background from the victim's, or is not married to the victim.<sup>4</sup> The extent to which these broad risk factors would overstate the risk posed by offenders is another obvious problem.

The available literature concerning the prediction of dangerousness and the propensity for violence shows that there is not a simple, reliable formula capable of making these predictions with acceptable accuracy.<sup>5</sup> If the prediction of homicide is difficult because homicide is rarer than other forms of violence, the prediction of spousal homicide is more difficult because it is even rarer than homicide generally.<sup>6</sup>

The Commission recommends that lethality indices, particularly in the form of checklists or forms to be filled out, not be relied upon to predict whether or not a particular domestic violence offender is likely to become more violent or commit murder. Rather, the police, prosecutors and domestic violence counselors who are advising victims on such issues as safety planning must rely on a case by case analysis with the victim, and look carefully for signs that a particular offender is at a point where heightened security is called for. At the same time, the absence of indicators of heightened risk should not be interpreted to mean that there is no risk. The risk factors commonly associated with dangerousness among domestic violence offenders can prove helpful, but are not conclusive.



### C. Coordinated Safety Planning

The factor that was present in most (75%) of the cases, in addition to indications of prior abuse, was the victim's termination, or victim's indication of an intent to terminate, the relationship. This event is a widely recognized trigger of an escalation of violence on the part of domestic violence offenders. The Commission recommends focusing resources on the development or enhancement of services designed to improve victim safety at this dangerous time. Thus, police, prosecutors, courts and counselors should give priority to assisting victims in developing and implementing a safe exit strategy. All options to limit the offender's access to the victim and children should be utilized in a coordinated fashion. These include orders of protection; arrest for any criminal behavior including violation of the order; setting of appropriate bail in view of the offender's prior criminal behavior or disregard of prior court orders; reports of any violations of the terms of probation or parole; and notifying as many members of the victim's community -- family members, co-workers, neighbors, friends -- of the need to be alert to the victim's danger.

Perhaps most important, this is the time when the agencies charged with protecting victims of domestic violence must coordinate their efforts closely and effectively. Thus, counselors must not only assist victims to develop safety plans that make use of all available sources of help, but also ensure that any barriers to a victim's receiving help be addressed. Victims should be offered services appropriate to their needs, which may include treatment of physical or mental illness, translators for non-English speaking victims, special dietary requirements, awareness of cultural issues, and services for gay and lesbian victims. Prosecutors, police and probation must work together to make arrests promptly, to provide full background information at the time of arraignment to support bail

applications, to provide enhanced security measures such as alarms and increased surveillance where appropriate, and to notify victims of the intended release of offenders from custody.

Careful attention has been paid by the public to cases in which there has been a system failure, that is, a failure of one or more components of a social service, law enforcement, judicial or other system designed to offer protection to the victim. In fact, these cases include several in which most of the components of the system were working in close, effective coordination, but one or more components failed. In addition, most of these system failure cases involve offenders with substantial criminal records and histories of domestic violence. These homicides can be viewed as having resulted from a combination of increased risk of escalating violence and a system failure that provided the offender access to the victim.

In a 1996 Kings County double-homicide/suicide, a particularly violent criminal history, including acts of domestic violence, on the part of the offender had led the District Attorney's office to coordinate with the New York City Police Department to provide round-the-clock protection to the victim and her family at their home. In addition, an alarm system was put in place, including a pendant alarm for the victim. The protection was arranged in response to the offender's threats, which continued while the police sought to arrest him. The police protection had been removed three days prior to the date of the homicide, without notification to the District Attorney's office. The offender broke into the victim's home, held the victim and her family hostage, and ultimately killed the victim, her grandmother and himself, and wounded two other members of the family.

This case illustrates the need for continuing close communication between law enforcement agencies. Here, police and prosecutors had identified a high risk of violence during the time that the police sought to arrest the offender. The commendable effort in identifying the increased risk and offering protection at the victim's home was vitiated, however, by the failure to communicate the discontinuation of police protection.

In another 1996 homicide in Queens County, an offender with a lengthy history of violent crimes, including domestic violence, was being held on charges relating to a succession of attacks on the victim, his prior girlfriend. While in jail, he threatened the victim in the violation of the order of protection issued following the attacks. The offender posted the \$2,000 bail that had been set by the arraigning judge on the underlying charges. Through close coordination among the Kings County District Attorney's office, the New York City Corrections Department and the New York City Police Department, the offender was arrested immediately upon his release, on charges of violating the order of protection. On the new charges, the offender appeared before a different arraigning judge, who increased bail to \$5,000 in light of the offender's criminal record. The offender was remanded, and, at a subsequent hearing, the original judge restored the \$2,000 bail he had previously set. The judge then released the offender on the basis of the bail the offender had previously posted. Three weeks later, the offender shot and killed the victim at her workplace in Queens.

In this case, again, police and prosecutors had correctly identified the offender as one who presented a high risk of increased violence. The judge who reduced the bail, however, disregarded both the prosecutor's objections, as well as the bail determination by another judge sitting in the same court. This judge's disregard of the indications of danger had tragic consequences, particularly because the prosecutor could not appeal or

otherwise challenge the bail decision. This case clearly illustrates the need to amend the Criminal Procedure Law to provide prosecutors with the ability to appeal low bail decisions. Such an amendment is included in Governor Pataki's Sexual Assault Reform Act of 1997, and is supported by the Commission.<sup>7</sup>

In a 1996 Erie County case, the victim had entered a residential domestic violence shelter with her two children following the offender's arrest for an attack on her and her son. The offender, a drug and alcohol abuser, had a criminal history of charges related to a series of prior incidents of domestic violence. There were indications that the victim, also a drug and alcohol abuser, was offered drug treatment by a counselor at the domestic violence shelter. The victim was ultimately required to leave the shelter after repeatedly violating shelter rules. Although efforts were made to find alternate housing for her, she returned to the offender at the time she left the shelter. One week later, the victim was murdered.

Although there are indications that the domestic violence shelter staff attempted to offer drug or alcohol counseling to the victim, this appears to be a case of a victim with special needs that could not be met in a domestic violence shelter. The special needs of domestic violence victims who have problems such as mental illness or drug or alcohol addiction, must be addressed in appropriate facilities. The failure to address the condition effectively can only undermine any strategy to deal effectively with domestic violence.

A 1993 Westchester County case involved the murder of a victim by her husband, who had physically abused her in the past. While these episodes of prior physical abuse had resulted in the police being called to the home on several occasions, no arrests had been made. The victim had an order of protection from Family Court and sought, on the

day before the murder, to have the order modified to bar the offender from their home. The modification was sought on December 29, 1993. The victim was erroneously informed that, because of vacation and holiday schedules, she would have to return to seek the modification after New Year's Day, on January 3, 1994. At some time the following evening, the victim was bludgeoned to death in their home by her husband, who committed suicide shortly thereafter.

In this case, at the time the victim perceived that she was in need of additional protection from violence by her husband, she was unable to obtain help from Family Court. The law provides that, when Family Court is not in session, a victim can obtain an order of protection, a modification of an existing order, or a Family Court arrest warrant from the local criminal court acting as a Family Court. Certain features of this procedure have recently been clarified. Had Family Court provided a clear means of referring victims either to an open Family Court or to a local criminal court, the victim could have requested a modification of the order of protection to bar her husband from the home.

These cases show that the danger of a system failure is that it inadvertently permits the offender access to the victim. When this access is permitted at a time of heightened risk, such as at the time of termination of the relationship, the result can be fatal. The need for coordinated safety planning, particularly to avoid such failures, is clear from the cases.

## **VI. THE ROLE OF THE MEDICAL PROFESSION IN DOMESTIC VIOLENCE**

The Commission has considered at great length the role the medical profession should play in New York State's effort to prevent domestic violence homicides. Generally, there is agreement that domestic violence has enormous impact on the health of women, in the form of death or injuries directly resulting from assaults, and illnesses indirectly resulting from repeated violence. Nationally, it is estimated that as many as four million women are victims of domestic violence every year. It is estimated that twenty to thirty per cent of women seeking medical treatment in ambulatory care settings are victims of domestic violence.<sup>8</sup> The potential for intervention with victims of domestic violence in a medical setting is considerable.

There have been substantial advances in recognition of the need for medical practitioners to take an active role in recognizing and offering assistance to victims of domestic violence.<sup>9</sup> Despite these advances, however, domestic violence remains often unreported, unnoticed or ignored and opportunities for intervention are missed.<sup>10</sup> Indeed, as few as one in twenty patients who are victims of domestic violence may be identified as such by the medical practitioners consulted.<sup>11</sup> The Commission endorses the goals of the New York State policy, set forth in the Department of Health's protocol "Identifying and Treating Adult Victims of Domestic Violence," that the medical profession take on an expanded role in the identification, treatment and referral of patients who are victims of domestic violence.<sup>12</sup>

A guide for defining this expanded role is the recognition that, when a victim of domestic violence seeks medical advice or treatment for any condition, there is an opportunity to identify the domestic violence and offer assistance. Moreover, when a

victim seeks medical advice or treatment for injuries in a domestic violence assault, it should be recognized that the victim is at serious risk for further injury or death. Thus, the medical treatment facility should be a place of safety and assistance for victims of domestic violence. An example of the simple yet effective help that can be provided was reflected in the testimony of a Schenectady County victim of domestic violence, offered at the Commission's hearing in Albany. She testified that her private physician inquired about bruises he saw, and referred her to a local domestic violence support group which offered her effective help in planning to leave the relationship.<sup>13</sup>

The New York State Department of Health protocol "Identifying and Treating Adult Victims of Domestic Violence" sets forth a series of procedures to be followed to enhance the ability of hospital staff to identify and treat patients who are victims of domestic violence. The protocol includes such recognized approaches as alerting security and intake staff to the procedure in a case of domestic violence, interviewing the patient in privacy, asking the victim directly whether she has been harmed by anyone, providing hotline and shelter information, and preserving physical evidence. The protocol also sets forth the kinds of injuries and illnesses that might indicate that the patient is a victim of domestic violence.

Domestic violence protocols adopted in individual hospitals have gone further in offering assistance to victims. In Millard Fillmore Hospital in Buffalo, either social workers or specially trained domestic violence volunteer counselors are available twenty-four hours a day, seven days a week. In all confirmed or suspected domestic violence cases, the nurse calls these counselors in while the medical work-up is in progress. The nurse informs the patient that a counselor is available to provide information, but the patient is free to decline. Most patients accept this offer. (In cases where the patients

refuse the offer, the nurses, who are also trained to help with safety planning, can assist.) The counselor, who is not given the patient's name, speaks confidentially with the patient about such concerns as shelter, legal rights, and safety of the patient and her children. If it has not already been provided, the counselor gives the Victim's Rights Notice to the patient. After working with the patient to develop a safety plan, the counselor reviews the safety plan with the patient's nurse before discharge, and this plan is documented in the patient's record. The counselor provides referral information for follow-up with a domestic violence program or the hotline after the emergency visit.

Testifying at the Commission's public hearing in Buffalo, Dr. Margo Krasnoff of Millard Fillmore Hospital cited the following outcomes of the program implementing the domestic violence protocol: about 35% of victims have initiated contact through the hotline more than once; 26% have obtained and utilized orders of protection; 25% have linked successfully with other community domestic violence providers regarding such issues as jobs and housing; 33% have participated actively in counseling, either individually, in groups or by phone; and 36% have developed action plans to protect themselves and their children in the event of future violence.<sup>14</sup>

New York City's Metropolitan Hospital has also implemented a domestic violence protocol for its Emergency Room. The protocol contains information on conditions that are associated with domestic violence, and calls for a multidisciplinary team to assist the victim, including nurses, physicians, social work staff, nurse aides, patient escorts, clerical/support staff and hospital police. All personnel are trained to identify the signs of domestic violence. Patients are interviewed in private and asked questions about abuse. If the patient discloses that domestic violence is the cause of the injuries, the doctors note all visible signs of abuse on the chart, and have photographs taken of the injuries if the



patient consents. For patients identified as victims of domestic violence, a nurse screens any phone calls and visitors, offers an opportunity to file a police report, and calls a social worker or domestic violence counselor. The social worker's inquiry includes an evaluation of the safety of the victims' children. Prior to discharge, the social worker gives patients referral information for domestic violence services, and assistance in safety planning.

These and other protocols in use throughout the state offer a patient the assistance of counselors trained in domestic violence. The process of offering a patient help and assisting in making the connection to social services and law enforcement resources is critical to effective intervention. Obviously, the particular staffing arrangements will vary with the size, location and caseload of the hospital. The Commission's recommendation, however, is that trained domestic violence counselors be available to patients in all hospitals in the state.

In addition, the Commission recommends that the appropriate features of the New York State Department of Health protocol be extended to cover, in addition to hospitals, all medical practitioners' offices and treatment facilities. Adherence to this protocol should enhance the ability of medical practitioners to identify their patients who are victims of domestic violence. The requirement that the office or treatment facility have an accessible list of local resources means, in practical terms, that patients will be offered materials containing hotline numbers and domestic violence referral information. Practices such as posting such information in bathrooms or examining rooms, where a domestic violence victim can note the information in privacy, have proven helpful to domestic violence victims. One witness at the Commission's hearing in Mineola, a former victim of domestic violence, remarked on the encouragement she felt at seeing victim referral information posted in the women's bathroom of her local hospital.<sup>15</sup>

New York State's Family Protection and Domestic Violence Intervention Act of 1994 contains important, and more specific, requirements with respect to the role of the medical profession in both assisting patients and documenting domestic violence. The law requires that hospital and diagnostic and treatment facility staff provide a victim's rights notice -- containing, among other things, domestic violence referral information -- to anyone they suspect or have confirmed is a victim of domestic violence. Two other provisions are important as well. The first is the requirement that the staff document in the patient's record the basis of the suspicion or confirmation that the patient is a victim of domestic violence. This documentation can provide important information for diagnosis and treatment and may provide valuable evidence in the event of a future prosecution. The other requirement, that the staff member document the fact that he or she gave the Victim's Rights Notice, and reviewed it with the patient, serves to underscore the importance of compliance.<sup>16</sup>

Because it has only recently been clarified that the law applies to diagnostic and treatment facilities, as well as hospitals, there is insufficient experience to evaluate the full impact of the law. Despite this difficulty, however, the law offers a useful model for disseminating referral information to victims and collecting data on the incidence of domestic violence, two goals the Commission considers very important. As to the dissemination of information, the Commission recommends the extension to private physicians and other private medical practitioners the same requirements of providing a victim's rights notice to those patients they suspect or have confirmed are victims of domestic violence. The Commission recommends extending the documentation requirements to private physicians and other private medical practitioners as well.

The Commission's recommendation as to documentation, however, extends a step further. To appreciate the impact of domestic violence, it is important to provide a more precise count of the number of people -- victims, their children, their family members, their employers -- affected directly and indirectly by domestic violence in New York State. While available statistics reflect the number of cases of domestic violence handled by the criminal justice and shelter systems, collection of complete data reflecting the number of cases handled in hospitals and other medical treatment facilities would provide more accuracy. The Commission therefore recommends that the data now being documented in patients' records be collected statewide, on an anonymous basis, to provide data for research and policy development on domestic violence.<sup>17</sup> Entries documenting a suspicion or confirmation that a patient is a victim of domestic violence, and that the patient was given the Victim's Rights Notice, should be reported to, and maintained by, the New York State Department of Health. This reporting requirement would apply to hospital and diagnostic and treatment center staff, as well as private physicians and other private medical practitioners pursuant to the Commission's recommendation. The same person who is required to document the suspected or confirmed domestic violence should be the person required to report the anonymous information to the Department of Health.

The importance of improved, systematic collection of data regarding domestic violence was underscored by the 1997 Special Report, "Violence-Related Injuries Treated in Hospital Emergency Departments," issued by the Bureau of Justice Statistics of the United States Department of Justice. This article reported on the nationwide "Study of Injured Victims of Violence" ("SIVV"), a survey of hospital emergency department records of patients identified as having been, or possibly having been, injured by interpersonal violence. The study was undertaken to improve estimates of the occurrence of certain crimes, including domestic violence. The study found that the number of

patients seeking emergency department treatment for violence-related injuries was far greater than the previously reported number for the same year. The previous report was the result of the National Crime Victimization Study ("NCVS"), another Department of Justice survey, conducted annually, in which participants are asked, among other things, whether they have been the victim of a crime and whether they have been injured thereby.

The greatest differences between the findings of the two studies appeared in traditionally under-reported crimes such as rape, sexual assault and crimes by intimates and family members. The NCVS reported 25,100 hospital-treated injuries inflicted by a current or former spouse, and 37,700 by a current or former boyfriend or girlfriend. The SIVV reported 103,800 hospital-treated injuries inflicted by a current or former spouse, and 139,600 such injuries inflicted by a current or former boyfriend or girlfriend. The SIVV rate for current or former spouses is more than four times that of the NCVS, and the SIVV rate for current or former boyfriends or girlfriends is more than three times that of the NCVS. The SIVV offers intriguing indications that medical records have the potential for providing neutral, and considerably more, information about victims' injuries than do interviews, such as those conducted for the NCVS, in which victims are called upon to characterize and report past violent conduct against them as a crime. This suggests that data collection from medical records may be a necessary piece of a complete picture of domestic violence.

In addition to reports for purposes of data collection, the Commission has given lengthy consideration to the issue of mandatory reports by medical practitioners to the police, including the identity of the patient. Specifically, the Commission has inquired into the question whether doctors and other medical personnel should be required to report to

the police those cases of injuries known or suspected to have been the result of domestic violence.

The question calls for a careful balancing of important interests. On the one hand, mandatory reporting runs counter to the general rule of adult patient confidentiality and autonomy, and may undermine the trust a patient needs in order to communicate with either medical personnel or a domestic violence counselor at a hospital. A report made by a medical practitioner with incomplete information on the victim's situation may cause intervention at a dangerous or inappropriate moment. Fear of mandatory reporting may also cause a victim not to seek needed medical care, or cause an offender to interfere with the victim's access to medical care. Finally, should an offender seek to retaliate against the victim, police and prosecutors cannot guarantee the victim's safety, or even ensure that the offender will be held without bail.

On the other hand, strong considerations support mandatory reporting. First, it would simply expand existing New York law, under which doctors and hospital officials have long been required to report all wounds inflicted by the discharge of a gun, as well as stab and burn injuries that are "likely to or may result in death."<sup>18</sup> Under the current system, an offender's choice of weapon determines whether the report is mandatory, allowing near-fatal attacks involving hammers or baseball bats to go unreported by the treating doctor or hospital. In cases where a domestic violence offender has injured a patient seriously enough to require medical treatment, there already exists a demonstrable risk of further injury or death. This existing risk should be weighed against the risk that mandatory medical reporting could expose the patient to potential retaliation or interference with future medical care.

Mandatory medical reporting is consistent with both the New York policy of mandatory arrest of domestic violence offenders, and the public interest in seeing that those who commit violent crimes are arrested and prosecuted. As established in the SIVV, as set forth above, hospital records often contain many otherwise unavailable reports of domestic violence. Given the problem of under-reporting in domestic violence cases, this source should be tapped in cases of serious physical injury in order to link law enforcement to victims at risk from violent offenders. To the extent that mandatory medical reporting sets in motion the arrest and prosecution of a domestic violence offender, it enhances such protective measures as referrals to domestic violence programs and safety planning, offered to victims of domestic violence at hospitals and, pursuant to the Commission's recommendation, at other medical practitioners' offices.

Several states have adopted laws calling for reporting of injuries resulting from criminal behavior generally (*e.g.*, Arizona, California, Colorado, Idaho, Pennsylvania),<sup>19</sup> or from domestic violence in particular (*e.g.*, California, Kentucky, New Hampshire, New Mexico, Rhode Island),<sup>20</sup> with differing provisions and results. Among the distinctions are whether the report is made to the police, which is the case in the majority of the states (*e.g.*, California, Alaska, Iowa, Minnesota, Virginia),<sup>21</sup> or a social service agency (*e.g.*, Kentucky, New Mexico, Rhode Island),<sup>22</sup> whether all serious injuries from criminal acts must be reported (*e.g.*, Arizona, Colorado, Idaho, North Carolina, Ohio),<sup>23</sup> and whether the report is required if the patient objects (*e.g.*, New Hampshire). The Connecticut statute requiring mandatory medical reporting was allowed to lapse by its terms because legislators viewed the data reported as inaccurate and incomplete.<sup>24</sup> One difficulty is that there are no reliable data that establish whether or not mandatory medical reporting makes victims more safe. The absence of data establishing improved victim safety was persuasive

to the American Medical Association, which adopted a policy opposing mandatory medical reporting of injuries resulting from domestic violence on June 26, 1997.<sup>25</sup>

The implementation of mandatory medical reporting in California is informative. Some advocates have argued that the system disregards the patient's autonomy and has deterred some victims from seeking help. Although there has been anecdotal support published for this position, there has been no reliable study to confirm it.<sup>26</sup> Advocates for the law argue that mandatory reporting has been beneficial to the majority of victims of domestic violence. The police response to the law has been positive. Cases are assigned to investigative or social work response teams depending on the severity of incident. Anecdotal reports of law enforcement officials in San Diego suggest that mandatory medical reporting helps to obtain convictions because of the documentation of victims' medical conditions, and the persuasive presence of physicians in the courtroom. In conversations with a group of about ten advocates for domestic violence victims and representatives of law enforcement in connection with the Commission's recommendation, it was clear that there is disagreement on the efficacy of the California reporting requirement. A proposed law to override the reporting requirement has been withdrawn pending a full evaluation of the benefits and problems created by mandatory medical reporting.

After careful consideration of the arguments for and against mandatory medical reporting, the Commission recommends the adoption of a limited type of mandatory medical reporting, to be required only in cases in which the victim has suffered life-threatening or serious physical injury. The mandatory medical reporting obligation should be analogous to that applied in the gunshot, stab and burn injury cases: that the physician

or other medical practitioner treating or attending the case, or the person in charge when the case is treated in a hospital, report to the local police any case in which the victim has suffered serious physical injury that was actually or apparently the result of assaultive behavior of another. Logically, there is no reason to limit the application of the reporting requirement to cases of domestic violence.

Serious physical injury is defined in the Penal Law as:

physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or protracted loss or impairment of the function of any bodily organ.<sup>27</sup>

Examples of serious physical injuries are a razor cut requiring stitches from ear to mouth;<sup>28</sup> shooting, requiring surgery for removal of buckshot;<sup>29</sup> knife wound to arm, requiring five days in hospital, thirty days out of work;<sup>30</sup> striking with tire iron over head, fracturing skull<sup>31</sup>; and multiple stab wounds causing collapse of one lung, partial collapse of other.<sup>32</sup> As in the reporting requirement for cases of gunshot, stab and burn injuries, failure to report the case would be a misdemeanor.

The Penal Law definition of serious physical injury will need definitive interpretation in the medical context in order to provide guidelines for consistent application. In addition, training of medical professionals in the application of the reporting requirement will be needed. The serious physical injury standard is an important threshold, however, for mandatory medical reporting because of its significance from the perspectives of victim safety, law enforcement interests, and resource allocation. A victim who has suffered an assault of sufficient severity to inflict a serious physical injury



has already been placed in grave danger by the offender's crime. Mandatory medical reporting of such an incident enables the police to make an arrest in a serious case that they might not otherwise know about.

Moreover, because of the serious physical injury threshold, the case can be charged and prosecuted as a felony, permitting an application, based upon the individual case, for significant bail or denial of bail. Felony treatment not only puts the offender on notice that the prosecution is a serious one, but will permit an opportunity to implement measures to protect the victim against feared retaliation if necessary. Limiting the mandatory medical reporting to cases involving serious physical injury also limits the required commitment of resources by medical practitioners and law enforcement. Finally, complete information should be collected and maintained on all cases in which a mandatory medical report is made, so that the impact of the law can be determined with certainty. Obviously, all positive and negative consequences of mandatory medical reporting should be considered in evaluating the law's effectiveness.

It should be noted that three members of the Commission dissent from this recommendation. Their view is that victims of domestic violence are better served by a combination of domestic violence counseling, safety planning and referral at a hospital, than by mandatory reporting by the hospital or doctor. Moreover, they believe that the potential danger of mandatory medical reporting, in the forms of both retaliation by an offender and impediments to future medical care, outweighs the potential benefits of such a requirement.

## VII. THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

Central to any consideration of the impact of domestic violence is the issue of risk to children in the home. Children in homes where there is domestic violence face risks that they will be killed or injured by the violence, that their emotional, physical and mental development will be adversely affected, and that they will be neglected or abused.<sup>33</sup> Among the victims of the domestic violence homicides reviewed by the Commission were two children. On April 29, 1997 in Hoosick Falls, a man who had a criminal record dating back to 1980 and a documented history of domestic violence of at least five years, murdered his wife and their two children, ages five and two, with a shotgun.

In addition to the risk of death, children are exposed to a risk of physical injury in such incidents. In the cases reviewed by the Commission, three children were injured in the commission of three separate homicides. In a 1994 case, a Niagara County woman was killed by her husband, four days after she had filed for divorce. As a violent incident escalated, the couple's eight-year old son attempted to intervene and protect his mother. The husband, who had a history of domestic violence and threats against his wife, grabbed the child by the throat and threw him to the ground. He then shot and killed both his wife and his mother-in-law.

In a 1995 New York County case, a man attacked his wife in their apartment with a machete, inflicting near-fatal injuries. When he was forced out of the apartment by a grown son, he went to his mother-in-law's apartment in the same building. There, he fatally stabbed her and slashed his two-year old nephew whom she was holding in her arms. In another 1995 case, a Queens man with a history of drug abuse and violent crime, shot and killed his wife and then shot and wounded two adult nephews and a third person.

During the shooting, an 18 year-old nephew of the victim was injured when he was shot in the mouth and forced to flee the apartment by jumping out of the second floor window.

In an Erie County case that ended in the murder of the victim in 1996, the offender injured the victim's nine year-old son during a domestic violence incident a year earlier. When the child intervened by attempting to call 911, the offender smashed his head into a wall. These deaths and injuries raise grave concerns over the effectiveness of the current measures in place to protect children from physical harm from acts of domestic violence committed in their presence.

In addition to death and physical injury, the consequences of domestic violence in terms of emotional and developmental impact on children are serious as well. "Among preschoolers... signs of terror [are] evidenced by the children's yelling, irritable behavior, shaking, and stuttering.... Adolescent boys exposed to domestic violence may use aggression as a predominant form of problem solving... and may exhibit a high degree of anxiety."<sup>34</sup> Studies of children have indicated that children who witness domestic violence at home, compared to those who do not, exhibit more aggressive and antisocial behavior, depression, anxiety, low self-esteem and low cognitive, verbal and motor skills.<sup>35</sup> There are indications that these children may replicate in their own adult lives the domestic violence they witnessed.<sup>36</sup>

There is as well an association between domestic violence and child abuse. In a study of cases of substantiated child abuse where the biological mother was present, researchers in Boston compared the medical records of the mothers of the abused children with medical records of a group of mothers of children who were not found to have been abused, but were of similar age, sex and socioeconomic group. Examining the mothers'

medical records for reports or indications of domestic violence, the researchers found such reports or indications in 59.4% of the mothers of abused children, compared to 12.5% of the control group mothers.<sup>37</sup> The evidence indicates that one likely place to find victims of child abuse is in the homes of victims of domestic violence, and one likely place to find victims of domestic violence is in the homes of victims of child abuse. This association must be reflected in all policies designed to deal with either problem.

The dangers to a child associated with domestic violence are of sufficient seriousness that the Commission recommends changes in three related areas: child neglect, child custody, and child endangerment. These recommendations are intended to reduce the risks of death or injury for children in violent homes. First, the Commission recommends close coordination of services provided to victims of domestic violence and children in the home by Child Protective Services and domestic violence service providers. Second, the Commission recommends the adoption of two rebuttable presumptions regarding custody and visitation: that sole or joint custody of a child not be granted to a perpetrator of domestic violence, and that visitation, if granted at all in light of the safety issues, be supervised. Third, the Commission recommends that a violent partner's commission of acts of domestic violence against another adult or child in the family or household be a sufficient basis for a charge of Endangering the Welfare of a Child.

#### A. Domestic Violence and Child Maltreatment or Neglect

Child Protective Services have long been concerned with the question of how best to protect a child exposed to domestic violence. The Commission has considered the specific group of cases in which the threat of harm to the child is posed by the violence of one parent or adult partner toward the other. In many such cases, where the violence in

the home has continued after initial intervention, one response has been to charge the non-violent parent with failure to protect the child.<sup>38</sup> The theory of such a petition is that a parent so charged has been unable, or has otherwise failed, to stop a violent partner from committing criminal acts which pose a threat to the child. While that approach may result in the removal of a child from physical danger in specific cases, its focus is inappropriate because it implicitly places responsibility for stopping the violence on the victim, rather than on the violent partner who is committing the violent acts. Moreover, even in those cases where removal of a child is necessary because of the immediate physical threat to the child, a sole focus on the child's safety does not effectively address the source or scope of the violence in the child's home. Removing a child to foster or other temporary care merely defers resolution of these issues; they must ultimately be addressed in order for the child's status to be resolved permanently.

The Commission's recommendation in cases in which the threat of harm to the child is posed by the violence of one parent or adult partner toward the other is that the intervention be directed at stopping the violence, or removing the source of the violence. Thus, the appropriate inquiry is not whether the partner who is the victim of domestic violence has prevented the criminal behavior of the other partner, and, in this way, protected the child from the violence of that partner. Rather, the inquiry should be what outside assistance, beginning with arrest and prosecution, can be used either to stop the perpetrator of domestic violence from continuing the criminal behavior or to remove the perpetrator from the home. There is little question that, in cases in which it is the violence of one adult partner toward the other that is the source of harm to the child, making the victims of domestic violence safer will make their children safer.

Focusing official action on the criminal behavior of the domestic violence offender is also the approach consistent with the New York law and policy of encouraging prosecution and criminal penalties for perpetrators of domestic violence. Child Protective Services should in all appropriate cases align their intervention on behalf of the child with the actions of law enforcement and domestic violence service providers on behalf of the victim. The involvement of police and prosecutors, and use of laws providing for mandatory arrest, orders of protection, and criminal contempt for violations of such Orders, increase the likelihood of removing the violent partner from the home. Such a removal allows the non-violent partner to remain in the home and provide continuous care to the child, in many cases eliminating the need to enter a residential domestic violence shelter, and suffer the attendant disruption of family life. Moreover, this alignment of protective services and law enforcement actions places the burden of domestic violence where it belongs, on the violent partner. By subjecting the violent partner to civil and criminal sanctions, and offering protective services to the victim and child, the official response to domestic violence conveys the clear, consistent message.

Instructive models of cooperation between Child Protective Service and domestic violence advocates have been put in place in Massachusetts and in two locations in New York State. The Commission considers such joint advocacy and supportive services to be a desirable model for those cases in which the child is endangered by the acts of domestic violence committed by one parent or adult partner against the other. Project Awake, the earliest model of cooperative, jointly administered, protective services for children and a parent or guardian who is a domestic violence victim, was begun in 1986 at Boston Children's Hospital. The joint approach grew out of the recognition that the problem of children neglect or abuse often occurs in a family or household in which there is adult domestic violence as well.

In two model programs in New York State, domestic violence service providers are working with Child Protective Services to offer coordinated responses. The first, in Washington/Warren Counties, is a joint program designed to identify families in which domestic violence and child abuse or neglect co-exist, and to assist them in taking steps to increase safety for all family members. The Counties employ a Domestic Violence Coordinator to work with Child Protective Services caseworkers in investigating any child protective case which contains a report of domestic violence. When Child Protective Services first responds to the hotline call, or during an investigation of suspected child abuse, the caseworker notifies the Domestic Violence Coordinator of the case to initiate collaboration. Similarly, when allegations of child abuse or maltreatment are identified by the Domestic Violence Project, a hotline report will be made to the State Central Register. Child Protective Services contacts law enforcement agencies as well, to determine whether there is a record of past reports of domestic violence relating to this family.

Where possible, the Domestic Violence Coordinator will accompany the Child Protective Services caseworker on the home visit. During the home visit, the workers interview each parent separately. At this time, the Domestic Violence Coordinator informs the domestic violence victim of available assistance and resources. The worker may also assist the victim in developing a safety plan. The child is also interviewed to determine whether acts of domestic violence have been committed in the home. The Child Protective Services caseworker, in conjunction with the Domestic Violence Coordinator, may assist the child in developing a safety plan as well. The Domestic Violence Coordinator follows up the initial visit with telephone calls and a subsequent visit during Child Protective Services investigation. Thereafter, the Domestic Violence Coordinator will remain available to provide further assistance to the victim of domestic violence if requested.

The second model program in New York State is in Orange County, and it is a similar plan. The County's domestic violence program has an office at Child Protective Services. When a report to the child abuse hotline includes a report of domestic violence in the home, Child Protective Services makes the first determination of the children's safety. If an immediate removal of the child is not necessary, then the Child Protective Services caseworker notifies a domestic violence advocate, who offers services to the domestic violence victim at the same time as the Child Protective Services caseworker investigates the hotline report. When the case requires immediate removal of a child, Child Protective Services contacts the domestic violence advocate to speak with the abused parent about emergency options. The Child Protective Services worker and domestic violence advocate jointly assess the danger of the situation and consider with parent and child various options, including safety planning, preventive services, orders of protection and domestic violence shelters.

In cases where the violence of one adult partner toward the other is the source of harm to the child, the Commission recommends the expansion of cooperative models such as the two in New York State. A cooperative model aligns the protective and preventive services of the community on behalf of victims of domestic violence and their children. The Commission considers it appropriate to coordinate protective services for the adult and child in cases where a report of child abuse or neglect reveals that domestic violence is taking place in the home. Similarly, cases of domestic violence should be evaluated to determine the extent to which the violence poses a threat to a child in the home.

The Commission recommends as well that Child Protective Services maintain a proactive position. In addition to any services offered to, or action taken by, the adult



victim, Child Protective Services should, where appropriate, seek an order of protection in favor of the child. For the child's safety, the order should require the violent adult partner to stay away, have no contact, or refrain from any acts or threats of violence. As appropriate, Child Protective Services should assist in the enforcement of the order of protection by such means as securing alarms to protect children; report to police, probation or the court any violation of the Order; and assist in the prosecution of criminal contempt or other charges. In every case in which it is appropriate, Child Protective Services should be coordinating all its actions on behalf of the child with those of the local domestic violence service provider on behalf of the adult victim. Services such as counseling, safety planning and, if necessary, shelter, should be provided with both the child and victim in mind. To enhance safety and restrict the perpetrator's access to the victim and child, the victim should be encouraged to seek an order of protection and assist in the prosecution of the violent partner.

By coordinating the efforts of domestic violence service providers with those of Child Protective Services in cases where the violence of one adult partner toward the other is the source of harm to the child, it will be possible to make more victims and their children safer in their own homes. This will avoid in many cases the undesirable and often unnecessary step of removing a child from a parent who is a victim of domestic violence, in order to protect the child from the violence of the offender. It will also provide a consistent message of support for the victim and child.

## B. Child Custody and Visitation

The issues of child custody and visitation are related to domestic violence homicides because they are issues on which domestic violence offenders and their victims must often

interact, and over which they are often in disagreement. Offenders have committed further acts of domestic violence when offered the opportunity to do so in the contexts of both disputes over custody and visitation, and repeated contact in picking up and dropping off children. Research supports the conclusion that the forced interaction with the violent partner is dangerous to the victim. As many as 60% of domestic violence victims experience ongoing threats and intimidation in connection with issues regarding children.<sup>39</sup>

Two of the cases investigated by the Commission illustrate the danger posed by custody and visitation issues. In one 1993 case, the triggering event of the Queens County homicide was the insistence of the domestic violence offender that he be allowed to extend his court-ordered visitation to an overnight visit. A 1994 homicide in Erie County illustrates the danger presented when visitation provides a violent offender with access to a victim. The offender was present in the home, in violation of an order of protection, for visitation with their child. The offender not only raped the victim during the visit, but returned and fatally stabbed the victim when his insistence on a reconciliation was refused. The children were present in the home during the commission of both of these homicides.

In addition to the danger to the domestic violence victim, custody and visitation granted to a domestic violence offender also expose the child further to the offender's violent behavior. As set forth above, this danger to the child is a serious issue. These two related concerns support the Commission's conclusion that current law on custody and visitation does not adequately protect domestic violence victims and their children. The Commission recommends that there be two rebuttable presumptions adopted with respect to custody and visitation in the context of domestic violence. First, it should be presumed that the perpetrator of domestic violence not be granted sole or joint custody of a child in the home. Second, it should be presumed that visitation, if granted at all in view of the

safety issues raised by the offender's conduct, be supervised by a third party selected by the Court. These presumptions place appropriate emphasis on the safety of the victim and child. Limiting a violent partner's access to the victim and child by restricting custody, and interposing a third party in any visitation that is deemed appropriate, enhances the safety of both the victim and child. In an appropriate case, moreover, the presumption can be overcome by evidence that the best interest of the child is served by granting custody, or unsupervised visitation, to the offender.

Under a New York law adopted in 1996, judges are required to "consider" domestic violence in determining custody and visitation.<sup>40</sup> The Commission's view is that this law does not go far enough to protect victims of domestic violence and their children. In fact, the memorandum in support of this legislation<sup>41</sup> ("Legislative Memorandum") discussed at length the risks to children exposed to domestic violence. The Legislative Memorandum advocated use of the rebuttable presumption contained in the Model Code on Domestic and Family Violence of the National Council of Juvenile and Family Court Judges ("Model Code"), which provides for "a presumption against custody with the violent parent where the court determines that domestic violence has occurred."<sup>42</sup> The rationale articulated in the Legislative Memorandum is consistent with that of a unanimous Joint Resolution of Congress, adopted in 1990, urging states to adopt the statutory presumption "that it is detrimental to the child to be placed in the custody of the abusive spouse."<sup>43</sup> The Commission's view is that the position expressed in the Legislative Memorandum and the Joint Resolution of Congress is the correct one.

Numerous states have adopted the approach of the Model Code and the recommendation of the Joint Resolution of Congress in enacting a "rebuttable presumption against custody or residence of minor child to perpetrators of domestic violence"<sup>44</sup>

Alabama's Code reflects this view: "where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption by the court that it is detrimental to the children and not in the best interest of the child to be placed in the sole custody, joint legal custody or joint physical custody with the perpetrator of domestic or family violence".<sup>45</sup> Other states have adopted similar presumptions.<sup>46</sup>

In addition, it is recommended that a secure location under the supervision of the Probation Department, be available for supervised visitation. The Commission recommends these expansions of the protection offered by its limited provision that courts consider domestic violence in determinations of custody and visitation. Given the harm done by the criminal conduct of domestic violence offenders, and the demonstrated risk such conduct poses to children as well as domestic violence victims, there is ample support for the presumptions recommended by the Commission.

### C. Endangering the Welfare of a Child

To achieve consistency in the New York policy of holding domestic violence offenders criminally accountable for their actions, the Penal Law section on Endangering the Welfare of a Child should be expanded to cover commission of acts of violence against members of the child's family or household. As set forth above, whether or not a child is physically injured in the attack of one adult on the other, there is strong evidence that the violence is "likely to be injurious to the physical, mental or moral welfare of a child."<sup>47</sup>

Under current law, a charge of Endangering the Welfare of a Child is not generally sufficient if based upon the existence of domestic violence in the home; the child must be

in the physical zone of danger created by the domestic violence. Thus, a defendant who threatened a woman by pointing a gun at her, could be charged with endangering the welfare of the woman's child who was present in the room, seated next to her mother, when the threat was made.<sup>48</sup> An earlier decision, however, reached the conclusion that an attack on a mother whose child was at home, but not shown to have been in physical proximity to the attack, was insufficient for a charge of endangering that child.<sup>49</sup> That court stated as well that "behavior directed towards others, no matter how detrimental the ultimate effect on children of their witnessing violence, dishonesty, or other societal ills might be," does not constitute endangering.<sup>50</sup>

The Commission favors expanding the categories of endangering the welfare of a child in Section 260.10 of the Penal Law to include: "Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years-old, he knowingly injures, attempts to injure, threatens to injure or engages in conduct likely to injure a member of the child's family or household." There should be no requirement that the child physically witness the conduct. This proposal would add to the sanctions available against a domestic violence offender. It would also add to the protection afforded children exposed to domestic violence, particularly in cases where it is not possible to proceed with a prosecution on the underlying acts of domestic violence.

## **VIII. THE RESPONSE OF THE CRIMINAL JUSTICE SYSTEM TO DOMESTIC VIOLENCE**

In the last ten years in law enforcement agencies across New York State, there has been a change in culture with respect to handling cases of domestic violence. The attitude and approach of the law enforcement community have changed from widespread lack of interest and initiative to concern and active commitment. The growth in recognition that domestic violence is a serious crime has led to such significant changes in New York law as mandatory arrest, primary aggressor standards, concurrent jurisdiction in both Family and criminal courts, standardized reporting of domestic violence incidents, victim rights' notices, and felony criminal contempt charges for violations of orders of protection. These laws have expanded the capability of police and prosecutors to deal with domestic violence. In the view of the Commission, the two-pronged development in New York State of the commitment on the part of law enforcement agencies to treat domestic violence crimes seriously, and the enhanced ability to arrest and prosecute domestic violence offenders, is central to preventing homicides. While more reforms will enhance the effectiveness of law enforcement, New York State has taken substantial steps in implementing its policy of zero tolerance of domestic violence.

### **A. Developments in New York State Law Affecting Domestic Violence**

Beginning in 1994, New York State has adopted a series of laws that have substantially changed the handling of domestic violence cases in the State. In 1994, the Family Protection and Domestic Violence Intervention Act ("DVIA") was enacted, providing for mandatory arrest when: a felony, other than certain categories of larceny, has been committed against a member of the same family or household (defined as persons

related by blood or marriage, former spouses and unmarried persons with a child in common; see discussion, *infra*, at pp. 56-57); the stay-away provision of an order of protection has been violated or a family offense has been committed in violation of the order; or a family offense misdemeanor (defined as certain assault, menacing, harassment, and reckless endangerment charges) has been committed against a member of the same household. In addition, in cases of family offense misdemeanors, the responding police officer may not ask whether the victim wants the arrest made; if the victim asks that the arrest not be made, the arrest is not mandatory. The officer may, of course, proceed with the arrest based upon probable cause.

DVIA provides further that a uniform domestic incident report be filed and maintained in all cases, including those not resulting in arrest; that a statement of victim's rights be given to all victims; and that victims be informed that they have the choice of proceeding against the defendant either in criminal or Family Court or both. DVIA requires the Order of Protection Registry to accept and maintain files of orders and arrest warrants. Subsequent amendments have added to the Order of Protection Registry all criminal court orders of protection between family and household members, as well as orders of protection and warrants issued in youthful offender cases, and arrests and bench warrants, with certain exceptions, pertaining to orders or protection.<sup>51</sup>

There have been some weaknesses in implementation. The Order of Protection Registry has problems regarding incomplete victim and offender information. The domestic incident reports must be examined for compliance and for entry in computerized form, so they can readily be used as a source of data. These and other issues are under examination. Notwithstanding such start-up flaws, under DVIA, New York has adopted statewide requirements that will produce more uniformity in arrest practices, systematic

notification to victims of their legal rights, and comprehensive record-keeping for incident reports and orders of protection.

Recent statutory changes have given police and prosecutors greater ability to charge violent and persistent offenders. The assault statute has recently been amended to raise Assault in the First Degree, formerly a C felony, to a B violent felony. In addition, amendments to the criminal contempt statute, which became effective in 1996, have enhanced prosecutions for violations of orders of protection by adding two new felonies. The first is Aggravated Criminal Contempt, defined as recklessly or intentionally injuring a person for whose protection an Order was issued. The second is Criminal Contempt in the First Degree, which applies felony status to conduct which would otherwise constitute menacing or harassment, when the acts are committed in violation of an order of protection.

A preliminary inquiry conducted by the Commission with District Attorneys' offices to determine the impact of the new felony provision, indicates the law's potential for positive effect in prosecutions of domestic violence offenders. Not only have there been felony convictions for violations of orders of protection for the first time, but prosecutors report on an anecdotal basis that they are more successful in reaching plea agreements requiring jail time with defendants facing felony charges. Moreover, there has been no reported drop off in the issuance of orders of protection in domestic violence cases.

This year, legislation amending the Criminal Procedure Law to add primary aggressor standards to the mandatory arrest provisions has been under active consideration in the Legislature and is supported by Governor Pataki. Numerous witnesses



testified at the Commission's hearings regarding the need for primary aggressor standards. The concern arose over cases in which responding police officers had interpreted the mandatory arrest provisions to require the arrest not only of a domestic violence offender, but also of a victim who had fought back physically, injuring an offender in the process. Advocates for domestic violence victims, representatives of police departments and others testified that such dual arrests served as a serious disincentive to victims seeking the help of the police, and that a clarification of the law was needed.

Under the new primary aggressor standards, officers may not threaten the arrest of any person for the purpose of discouraging requests for police intervention. In addition, in cases involving claims that more than one person has committed a family offense, the responding police officer is not required to arrest both persons; rather, the officer shall attempt to determine which person is the primary physical aggressor. This determination shall be based upon such factors as the comparative extent of injuries inflicted; any threats of future harm made by one of the persons; any ascertainable history of domestic violence on the part of either person; and any actions taken by either person to protect himself or herself from injury.<sup>52</sup> These standards are intended to resolve the problem of inappropriate dual arrests.

At the same time, however, certain of the sections of the New York Penal Law applicable to most domestic violence incidents, those dealing with assault and harassment, limit the effectiveness of police and prosecutors and should be reformed. New York has a high standard for the required element of physical injury in assault charges, making arrest and prosecution on misdemeanor and felony assault charges difficult, and limiting many prosecutions to harassment, a violation. Moreover, laws on harassment and assault have been interpreted inconsistently by courts, prosecutors and police. These factors have

produced a series of undesirable results. First, physical attacks resulting in such injuries as black eyes, lacerations, bruising and swelling are most likely charged as harassment, a violation punishable by no more than 15 days in jail.<sup>53</sup> This charge communicates to victim and offender alike that the attack is not taken seriously. It also diminishes the likelihood of an arrest when the police are called to the scene, since a police officer cannot make an arrest without a warrant for a violation not committed in his presence.<sup>54</sup>

In addition, because of inconsistency in the way certain jurisdictions charge the same conduct, the charge may differ based upon where the attack takes place. In a survey of charging practices in cases identified as serious physical attacks, researchers determined that comparable attacks (based upon descriptions in Domestic Incident Reports) were charged as Harassment in two jurisdictions studied, and as Assault in three others<sup>55</sup> ("Interim Evaluation Report"). This inconsistency in the application of a law that is itself inadequate only compounds the difficulty of prosecuting domestic violence offenders effectively.

The Commission heard testimony from numerous witnesses on problems with the current statutory definition of physical injury, and recommends the laws on harassment and misdemeanor assault be reformed. The definition of physical injury, a required element of misdemeanor assault, should reflect the practical understanding of victims, and include the bruising and swelling common to punches and kicks received in physical attacks. One bill that would accomplish this is the amendment to the Penal Law supported by the New York State District Attorneys' Association which would define physical injury as: "physical pain, illness, the presence of a visible or palpable mark .... [P]hysical injury may be established through the testimony of the victim alone, physical pain may be established by evidence of the injuries inflicted in the light of common experience."<sup>56</sup> A

parallel amendment supported by the New York State District Attorneys' Association would lower the threshold for serious physical injury, an element of Assault in the second degree.<sup>57</sup>

An alternate solution would be to elevate those cases involving physical harassment, which is committed when a person "strikes, shoves, kicks or otherwise subjects ...[another] person to physical contact," to a misdemeanor.<sup>58</sup> While this approach does not provide the broader reform that is needed, it would permit the legal basis for the responding police officer to make an arrest in a greater number of cases, and it would provide more serious, appropriate treatment for the physically violent forms of harassment.

The Commission recommends legislation to clarify the application of the Criminal Mischief sections of the Penal Law in cases in which marital or jointly owned property is damaged by a defendant.<sup>59</sup> In a 1997 decision, the New York Supreme Court, Appellate Division, held that the defendant could not be convicted of damaging marital property in which he had an equitable ownership interest.<sup>60</sup> The court appears to have equated marital property for purposes of the distribution between the parties upon divorce, with household property in which a spouse has at least a possessory interest. The explanatory comment published with the Criminal Mischief sections of the Penal Law states: "Property is that of another person ... if anyone, other than the defendant, has a possessory or proprietary interest in such tangible property."<sup>61</sup> Legislative clarification may be necessary to ensure the ability to prosecute cases of this nature.

Finally, the Commission also recommends expanding the category of offenses covered by mandatory arrest. The grand larceny sections not currently covered, as well

as all violations of orders of protection, should be included in the mandatory arrest provisions.

## B. Police Departments

Against the backdrop of these legislative initiatives, New York State's police departments play a critical role in implementing the laws and policies designed to intervene effectively in domestic violence cases and prevent fatalities. The police department is often the first agency to which a domestic violence victim turns for help. The tone, attitude and effectiveness of the responding police officers will often determine whether or not a victim will trust the law enforcement system enough to continue to seek help. In addition, differences in such areas as culture, language and sexual orientation can present difficulties for victims in dealing with police departments. For this reason, the Commission has considered carefully the testimony and suggestions of representatives of police departments, advocates for victims of domestic violence and others on the policies that are succeeding and on those that need improvement. The departments themselves have provided many of the suggestions designed to make police departments more effective against offenders and more attuned to victims' needs.

To begin with, the Commission agrees with the practice followed in police departments serving most of New York's population, that of adopting a comprehensive, written domestic violence policy for dealing with domestic violence cases in that jurisdiction. Model policies have been developed by the New York State Office for the Prevention of Domestic Violence and for the municipal Police Training Council. For departments that have not yet adopted such a policy, it should at a minimum include several important issues. It should provide definitions of domestic incidents and of

domestic relationships, addressing in the definition of domestic relationship the question which relationships and households will be covered by the policy. In addition, the policy should set forth the department's procedures for domestic violence calls, including procedures governing arrest; inquiries regarding orders of protection and warrants; pursuit of offenders who have fled; investigation of the incident; assistance to victims and children; seizure of dangerous weapons; and responsibility within the department for supervision and compliance; and training.

The definitions of domestic incident and domestic relationship are critical to implementation of the policy. The definition of family and household contained in the family offense provisions of the Criminal Procedure Law and the Family Court Act are limited: persons related by blood or marriage, former spouses and unmarried persons with a child in common.<sup>62</sup> As noted in the Interim Evaluation Report, however, this definition could exclude as many as two-thirds of the cases of domestic violence. Many police departments have thus defined family or household more broadly and applied their domestic violence policies to these broader categories of relationships. By 1995, 41% of the reporting departments defined the relationships covered by their domestic violence policies more broadly than the statute, covering offenses committed in such relationships as co-habiting couples, same-sex couples and dating couples. In fact, the Interim Evaluation Report found that, at seven of its ten research sites, at least half of the domestic incidents involved non-family relationships.<sup>63</sup>

A similar result was reflected in a recent study published by the Bureau of Justice Statistics of the United States Department of Justice. The researchers reviewed hospital records of patients with injuries inflicted in incidents of interpersonal violence, 95% of which were characterized as assaults. Of the 954,000 cases in which the relationship

between the victim and offender was known, 103,800 (11%) were current or former spouses. A greater number, however, were current or former girlfriends or boyfriends: 139,600 (15%); there was no information regarding the existence of any children in common. Another 313,400 (33%) were other acquaintances, presumably including some same-sex relationships. Thus, the current definition of family or household would not cover a significant portion of these domestic violence cases.

The current statutory definition of family or household simply does not reflect the reality of police practice: domestic violence is occurring, and police are being called for help, in more kinds of relationships than are covered by the family offense provisions. Moreover, because the limits of the current definition have led some departments to adopt their own expanded definition of family or household, there is also inconsistency among departments in the number and kind of cases being reported as domestic violence incidents. The Commission's recommendation is that the current statutory definition of family or household contained in the Criminal Procedure Law Section 530.11 and Family Court Act Section 812 should be expanded to include co-habiting couples, same-sex couples and dating couples. Such an expansion of the definition of family or household would not only reflect the reality in which law enforcement agencies do their jobs. It would also provide the full protections of New York law, including access to Family Court, to all victims of domestic violence.

Police department domestic violence policy should also address the procedures followed at the scene of a domestic incident. Responding police officers must determine, among other things, what charges are possible and whether an arrest is mandated or otherwise called for. In addition, the officer must ensure the immediate safety of the victim and any children present. In cases in which the offender has fled the scene, the

decision whether to pursue or seek an arrest later must be made. Responding officers must also be responsible for gathering evidence at the scene. Investigation through interviews of the victim, children and any other witnesses, as well as the use of an instant camera to record property damage and disarray caused by the violence, can provide important information for an eventual trial, particularly if the victim declines to testify.

With respect to removing firearms that present a threat to safety at the scene of a domestic incident, the Commission recommends the adoption of the policies of the New York Police Department and the Nassau County Police Department, which together protect more than half of the population of the State. These policies apply to firearms and long guns possessed lawfully. Obviously, any unlawfully possessed firearms and long guns would be seized, either as evidence of a crime or as contraband. Both departments' policies require the responding officers to inquire whether there are firearms or long guns in the home. If there are, and they are lawfully possessed, the firearms or long guns are seized if: the licensed owner is arrested, or an order of protection is issued against the licensed owner, or the incident involves the use or threatened use of physical force. In addition, in cases where the officer reasonably believes that the presence of the weapons at the location creates "imminent risk of violence or serious physical injury," the officer is instructed to confiscate, or accept the voluntary surrender of the weapons.<sup>64</sup>

The policies of these two departments are more restrictive than the license suspension provisions contained in Criminal Procedure Law Section 530.14. That section provides for mandatory suspension of licenses and surrender of firearms in cases where an order of protection is issued against the holder of the license and that person either has a prior violent felony conviction; or a prior violation of an order of protection involving the infliction of serious injury or the use or threatened use of a deadly weapon or

dangerous instrument; or behavior constituting any violent felony. In addition, the court may suspend the license where it finds "a substantial risk" that the offender may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection was issued. The statute provides for a suspension at the time of the issuance of an order of protection. By contrast, the policies of the two police departments provide immediate protection from lethal weapons at the scene of a domestic violence call, in cases where the risk of violent crime appears to be imminent.

In addition, the Commission has considered the use of appearance tickets in arrests of domestic violence offenders. In order to provide the opportunity for appropriate checks of criminal history and prior Domestic Incident Reports involving the defendant, the Commission recommends a policy of holding all defendants in domestic violence cases in custody pending arraignment, and not releasing them on appearance tickets. While this may in some instances require enhancement of the on-call systems of local criminal courts, including those sitting as Family Courts while that court is not in session, the result would be more effective and informed decisions with respect to release and bail. This policy would also benefit victims in important ways. It would allow a victim time to obtain an order of protection, and it would allow a systematic procedure to notify victims of the pending release of offenders.

Enhancement of police effectiveness through technology is an area of great potential. Alarm systems in victims' homes and in pendants worn on the person offer greater security in cases of persistent threats. The Nassau County Police Department, for example, has implemented a system in which its alarms are linked to its dispatch, so that officers responding to an alarm call are given background on the case as they proceed to the scene. Similarly, perimeter alarms in the victim's home and monitors on the offender's



person offer enhanced safety to victims. Other systems for providing computerized information to patrol cars should be expanded. Entering the Domestic Incident Reports into a statewide computerized database would also offer police departments instant access to the history of an offender. Providing instant cameras and film in all responding police cars, while not technologically advanced, would offer broad-based, simple capability to record evidence.

While training of all police officers and supervisors is currently required by the Municipal Police Training Council, the content of the training is not mandated. The Commission recommends that a specific curriculum, such as that already developed by the Office for the Prevention of Domestic Violence, be mandated. This will ensure that all officers throughout the State receive appropriate, uniform training in domestic violence.

Finally, complaints of domestic violence perpetrated by police officers raise particular concerns for the public and police departments. Clearly, screening police applicants for convictions of offenses involving domestic violence, as well as any orders of protection against the applicant, should be part of the evaluation of candidates. Where the law enforcement officer is already on the job, whether with the agency responding to the call or another agency, there is a need for clearly articulated policies to ensure proper investigation and handling of these domestic violence complaints. At a minimum, the policy should include calling a supervisor to the scene to supervise the responding officers. In addition, the department should report an incident involving any of its officers to its internal investigative unit, and report an incident involving any other law enforcement officer to that officer's agency. Similarly, the department should include in its policy a clear statement of the sanctions to be imposed in cases in which the complaint of domestic violence is sustained.

### C. Prosecutors

On the issues related to prosecuting domestic violence offenders, witnesses at the Commission's public hearings, including representatives of several District Attorneys' offices, offered consistent support for several reforms. Their legislative suggestions include: expanding bail criteria to include threats to the victim; permitting People's appeals of low bail and low sentences; and broadening the New York hearsay exceptions for present sense impressions, excited utterances and prior statements of a recanting victim-witness. In addition, there was consistent support for developing strategies of prosecuting without the testimony of a victim, and for coordination between prosecutors and providers of domestic violence services for victims.

Under New York's Criminal Procedure Law, the statutory basis for a bail determination by a criminal court is the court's determination of the "kind and degree of control of restriction that is necessary to secure [the defendant's] court attendance."<sup>65</sup> The factors a court may consider include the defendant's character, reputation, criminal record, family ties and record of responding to required court appearances. These criteria do not address the risk of threats and further violence faced by many victims of domestic violence when offenders are released on bail. The Commission supports inclusion of the following additional factors in the enumeration of bail criteria: the issuance of prior orders of protection against the defendant; the violation of any court order by the defendant; the defendant's history, if any, of prior violence or threats of violence; and other circumstances that would show a propensity on the part of the defendant to harm the victim or others.

The second aspect of the bail issue that can limit prosecutors' effectiveness is the fact that, unlike defendants, the People have no statutory authority to appeal decisions granting low bail or releasing defendants on their own recognizance. This year, the Governor's Sexual Assault Reform Bill of 1997, included proposals that would permit People's appeals not only of inappropriately low bail and recognizance orders, but of inappropriately low sentences as well. The Commission supports the adoption of these provisions as important protections for victims of domestic violence.<sup>66</sup>

In many domestic violence cases, particularly those in which the victim declines to testify against the offender, the admissibility of the victim's prior statements may be critical to the ability to prosecute. Those statements are typically made at the scene to the responding officer, in a 911 call, in grand jury testimony or in other contexts in which they would be excludable as hearsay unless one of the exceptions for prior statements applies. The Commission has considered the limits on effective prosecution posed by certain narrow exceptions to the hearsay rule under New York law, and supports the view that some expansion of these exceptions is necessary.

Statements made at the scene to a responding officer or in a 911 call would be offered into evidence under the hearsay exceptions governing present sense impression and excited utterances. In New York, an out of court statement may be admissible as a present sense impression if the statement is a description of an event made by a person perceiving the event as it is unfolding. In addition to requiring that the statement have been made contemporaneously and spontaneously, the New York rule requires that there be independent corroboration of the content of the statement.<sup>67</sup> Under the hearsay exception for excited utterances, statements made under the influence of shock or excited mental state, and before the declarant has time to reflect, are admissible.<sup>68</sup>

Both rules have been interpreted narrowly by the New York Court of Appeals. In *People v. Vasquez*, the Court of Appeals ruled that a 911 call, made after the caller had run home from a crime scene just outside his apartment building, was inadmissible as a present sense impression because the event had concluded at the time the statement was made.<sup>69</sup> The same call was also held inadmissible as an excited utterance because the caller's actions in giving his mother the gun he held and running home, and his coherent speech in answering the 911 operator, suggested that he was not sufficiently "agitated that he was unable to reflect or fabricate" his statements in the call.<sup>70</sup>

The Commission considers the Court of Appeals' view more restrictive than is necessary, given the probative value of many such statements. The practical reality is that witnesses, and particularly victims, of violent crimes often need to get to safety, or simply to a telephone, to be able to report the crime, thus creating some delay. The passage of a brief period of time should not render these reports inadmissible as present sense impressions. The Commission supports the adoption of two statutory presumptions. The first is that statements made by a crime victim to a responding police officer at the scene are made under the influence of the startling nature of the event, and thus would be presumed to be admissible as excited utterances. The second presumption is that, when a statement is made in a 911 call by a crime victim or witness, immediately following the event, the requirement of contemporaneity is satisfied. Thus, the statement would be presumed to be admissible as a present sense impression. Evidence could be introduced to overcome these presumptions.

The Commission also considered the limited admissibility at trial of prior sworn statements of a recanting witness. Grand jury testimony or corroborating affidavits of victims, though made under oath, are inadmissible as evidence in chief under present New

York law. Such statements are admissible at trial if the witness testifies inconsistently, but their use is limited only to impeachment of the credibility of the witness. Under Section 670.10 of the New York Criminal Procedure Law, generally, for a prior statement to be admissible in the prosecutor's case in chief, the witness must be unavailable, and the statement must have been made at a former trial, or at a hearing of a felony complaint, or in a conditional examination of the witness.<sup>71</sup>

The Commission recommends amending the Criminal Procedure Law to permit introduction of a witness's prior sworn testimony as direct evidence, if it is inconsistent with the declarant's testimony at trial and if the declarant is subject to cross-examination. This approach would be consistent with the Federal Rules of Evidence.<sup>72</sup> Support for the approach this expansion of the admissibility of prior testimony can be found in Section 60.46 of the Criminal Procedure Law, dealing with evidentiary issues relating to family offense proceedings. This section permits introduction, as direct evidence in a criminal proceeding, of the testimony of any party, or evidence derived therefrom, given in a family offense proceeding in Family Court, when the party either was represented by counsel or waived that right on the record.<sup>73</sup>

Finally, the Commission supports the efforts of prosecutors to proceed to trial without the testimony of the victim. This approach recognizes that the decision whether to prosecute properly rests with the District Attorney, not with the victim, because violent crime is an offense against the People of the State of New York. As a practical matter, however, the approach is and must be applied judiciously because of the difficulty of proof and the sensitivity of proceeding against the wishes of the victim. To enable prosecutors to bring such cases to trial, it is essential that police departments investigate the case from the start as one that will proceed without the testimony of the victim. Therefore, the police

should identify all other forms of evidence available, including witness statements and physical evidence.

#### D. Offenders' Programs

The Commission has considered in detail the question of the efficacy of so-called batterers' intervention programs. There are two major concerns with respect to such programs: first, the absence of any data establishing that these programs in fact stop domestic violence; and second, the extent to which they may be inconsistent with current New York law and policy of imposing criminal sanctions for domestic violence offenses.

Numerous articles have considered the efficacy of batterers' programs. Recidivism rates among domestic violence offenders who have participated in batterers' programs have variously been reported as lower than, about the same as, and higher than the rates among offenders who have not participated in such programs.<sup>74</sup> Much of the research itself is of questionable value because of a series of methodological flaws as well. These include short follow-up periods, self-reporting of behavior by offenders, and absence of reliable control groups against which to compare outcomes. These flaws are present in studies reporting both favorable and unfavorable recidivism outcomes for participants in batterers' programs.<sup>75</sup>

The Commission has heard testimony on the efficacy of batterers' programs from a representative of a domestic violence offenders' program in Rockland County. The witness summed up his view after 18 years of experience in working in such programs in the following way:

What batterers intervention programs are able to do, which is a very, very limited role, is to educate men about sexism and about domestic abuse. But outside of a more broadly coordinated and comprehensive community response that involves every sector of society, ... there is no way that batterers intervention can stop men's violence. In fact, we now have a substantial amount of evidence to believe that batterers' programs, however unintentionally, are actually creating more sophisticated batterers.<sup>76</sup>

The testimony underscores the concern that these programs have not had significant or demonstrable success in stopping domestic violence.

The second concern of the Commission deals with the nature of the programs. Batterers' intervention programs have been offered in a variety of forms, including mental health counseling, psychotherapy, anger management, stress management, and communication skill building. While individual offenders may benefit from these or other forms of assistance, including drug or alcohol treatment, this therapeutic approach is not the appropriate response to criminal behavior. In the unanimous view of the Commission members, such approaches have served to excuse or minimize the criminal behavior of the offender. Accordingly, these approaches are inconsistent with the policy of holding offenders accountable within the criminal justice system.

Simply put, offender accountability is accomplished through arrest, prosecution and sentences of incarceration, probation, restitution, fine, or some combination of these. The Commission therefore recommends that sentences in domestic violence cases consist of one or more of these components. There are as well courses for offenders that present material on domestic violence in an effort to educate offenders. Required attendance at such courses provides an opportunity to monitor the offender. Such courses can be consistent with the approach of holding offenders accountable within the criminal justice system, but only if participation in them is part of a coordinated approach, such as a condition of bail,

or a coordinated sentence that also includes incarceration, probation, restitution, or a fine. In general, the Commission recommends against sentencing a domestic violence offender to a course in place of such other components of the sentence because this would negate the criminal nature of the offense.

Finally, the components of any sentence must be coordinated for accountability and effectiveness. If any person with responsibility for a component of the sentence becomes aware of a violation of any term of the sentence, or any new domestic violence offense, that person must be required to report the violation to the sentencing court or Probation Department. Accountability must be the shared responsibility of each component of the sentence. If restitution is not made, or a class not attended, or an order of protection violated, the response must be to report the violation and thus hold the offender accountable.



## **IX. DOMESTIC VIOLENCE IN THE WORKPLACE**

The Commission has considered the particularly difficult challenges posed by domestic violence offenders who intrude into the victim's workplace with physical violence, stalking, threats, harassment and other illegal behavior. When these behaviors extend to the victim's workplace, they have an impact on employers and co-workers, as well as the victims themselves. It has been estimated that 74% of employed battered women are harassed by abusers, either in person or over the telephone, while they are at work. The abuse causes 56% of the victims to be late for work at least five times a month, 28% to leave early at least five days a month, 54% to miss at least three full days of work a month, and as many as 20% to lose their jobs.<sup>77</sup> In fact, it is estimated that domestic violence costs employers between three and five billion dollars a year.<sup>78</sup>

In addition to the economic impact of absences and turnover, there is the more direct impact of acts of violence by domestic violence offenders at the victim's workplace. These attacks endanger the targeted victim as well as co-workers. While most violent attacks at the workplace are related to such violent crimes as robbery, 17% of women killed at work were attacked by current or former husbands or boyfriends.<sup>79</sup> There is a growing recognition of a responsibility on the part of employers to institute precautions designed to prevent workplace violence, including domestic violence.<sup>80</sup>

Because targeted victims can predictably be found at their workplaces, the workplace is likely to continue to attract offenders seeking to commit acts of violence. The role of an employer in enhancing employee safety is likely therefore to grow in importance. The employer's ability to assist varies a great deal depending on the location and nature of the work and workplace. A good example of a comprehensive response by

a large, private sector employer was presented to the Commission at its Brooklyn public hearing by Charles Connolly of Merrill Lynch.<sup>81</sup> The Merrill Lynch policy includes a range of options for employees, and illustrates a variety of ways in which an employer can intervene on behalf of an employee victimized by domestic violence.

To begin with, security and human resources personnel are available to discuss with the victim such issues as safety planning, and legal and social service options. Security personnel can act as a contact with local police. In cases of telephone harassment or threats, the employee's phone number can be changed and calls screened, or the employee's assignment and location might be changed. To minimize risk, security can be increased at a site, including such features as monitoring the employee parking areas and escorting an employee to and from the parking area or public transportation. At sites the firm occupies exclusively, to which access is effectively limited by existing security measures, greater safety can be achieved by notifying security personnel of the problem and providing the name and picture of the person posing the threat. With employees at smaller branch offices, which are open to the public, different pieces of the security strategy need to be designed as they are needed.

In addition to Merrill Lynch, there are examples of other employers that also instituted innovative programs to assist employees who are victims of domestic violence. Liz Claiborne, Inc. has implemented a nationwide Employee Assistance Program available to employees, their spouses and anyone with whom they share a household. The program facilitator is experienced in social work and trained to handle domestic violence cases. In addition, the company's security guards and receptionists are equipped with panic buttons. For employees who request them, the company provides parking spaces near building facilities as well as escorts to and from their cars. Polaroid Corporation also has created

policies to accommodate victims of domestic violence who need time off to resolve legal issues, seek shelter and arrange new housing. The company also offers its employees flexible work hours, short-term paid leaves and long-term unpaid leaves with a guarantee their position will be available when they return.

In New York State, recent laws have called for the development of policies for the State, counties and private employers which will enhance the safety of victims of domestic violence and their co-workers at the workplace.<sup>82</sup> The first is the State policy, being developed for New York State and its agencies in their capacities as employers and as funders or providers of services to victims of domestic violence. The recommendations contained in the "Survey of State Agencies: Assessment of Domestic Violence Response," the January 1997 report to the Governor and Legislature prepared by the New York State Office for the Prevention of Domestic Violence, are instructive for both public and private sector employers.

The suggestions for assisting victims at the workplace include: providing outreach in such forms as trained staff and posted or distributed information; in addition to the legal requirement of not penalizing victims or witnesses who need time off to pursue legal actions related to domestic violence,<sup>83</sup> permitting use of accrued personal or sick time and flexible work schedules so that affected employees can minimize loss of wages from time off; developing workplace security plans such as alerting security personnel and co-workers to threats, offering temporary or permanent relocation, and providing escorts and reassigning parking areas; cooperating in enforcement of court orders; referral to Employee Assistance Programs as well as local domestic violence service providers; training managers, supervisors, Employee Assistance Program professionals, human resource personnel and security staff in domestic violence; and finally, evaluating, and

recommending improvements in, the security of all state-operated computerized databases through which offenders can track the address, phone number and workplace of victims of domestic violence.

Section 575 of the Executive Law required the State Office for the Prevention of Domestic Violence to convene a task force to develop a second policy, a model policy for counties. Its purpose is to provide consistency and coordination by and between county agencies and departments, by municipalities or other jurisdictions within the county, and by other governmental agencies and departments. The goal is to ensure that the best practices, policies, protocols and procedures are used to address the issue of domestic violence. A draft policy was produced by the task force and is currently being revised to reflect solicited public comments.<sup>84</sup>

The third policy is one for private employers. Pursuant to 1997 legislation,<sup>85</sup> the New York State Office for the Prevention of Domestic Violence is instructed to develop, in conjunction with the business community, a model domestic violence assistance and awareness policy for employers. The bill also provides for technical assistance to employers for implementation of the policies.

The homicide cases reviewed by the Commission include five committed at the victim's workplace and two committed while the victim was going to or from work. The cases suggest ways in which security might be enhanced at workplaces. For example, co-workers who are notified of the threat or given the picture of an offender, can be instructed to call 911 should the offender show up at the workplace. In a 1995 New York County case, an offender who had a history of domestic violence that included physical abuse and threats against his wife, went to the subway station where the victim worked. He asked for

her at a token booth, and was directed to the employee changing room, where he shot and killed her. In Nassau County in 1993, a man with a history of stalking went to his former girlfriend's office on the second floor of a health care center. The offender was carrying a manila envelope in which he had a handgun. When a maintenance worker arrived to clean the second floor, the offender locked the victim's office and shot and killed her and himself.

In some cases a threatened employee might be permitted to vary work hours, to use different parking areas or entrances, or to work at a different location. In a 1995 Onondaga case, a man with outstanding criminal charges and an extensive history of violence went to his estranged wife's workplace, a bus terminal, where she worked as a bus driver. He waited for her and, at the end of her shift, confronted and stabbed her with a butcher's knife. Similarly, in Kings County in 1994, a man who had verbalized his intent to kill his wife to her co-workers, stalked her and followed her from her workplace to the subway station, where he shot and killed her as two police officers approached to intervene. It is possible that a different schedule or route might have protected these victims.

Workplaces that are open to the public pose particular dangers to victims who are threatened. In a 1996 Suffolk County case, a husband with a history of violence and threats against his wife and threats against her family, purchased a rifle and went to the convenience store where she worked. The husband entered the store, pointed the rifle at her head and shot and killed her. In Queens County in 1996, an offender with a long history of violent crime and threats against the victim, his former girlfriend, came to her workplace, a car dealership, entered and shot and killed her. It is possible that alerting co-

workers to the need to call 911 should the offender show up, or changing the victim's work schedule, might have offered some protection.

A great deal of safety enhancement can be achieved through the use of systems already in place. For example, an existing security guard at a building can be made more effective when informed of a specific threat, and co-workers can be alerted to screen calls and keep confidential the whereabouts of a threatened domestic violence victim. Employers should recognize as well that there is legal recourse against a domestic violence offender who disrupts the victim's workplace, including possible prosecutions for Criminal Contempt for violation of an order of protection, as well as for Criminal Trespass, Burglary, Aggravated Harassment or Menacing. In appropriate cases, the employer may seek injunctive relief against an offender who disrupts business activities. Finally, while an employer's ability to provide resources to enhance safety may vary with the size, location and nature of the entity, employers can, at a minimum, develop strategies in consultation with local police and domestic violence service providers.

## **X. SOCIAL SERVICES FOR DOMESTIC VIOLENCE VICTIMS**

The Commission has reviewed the delivery of social services to victims of domestic violence. The issues of funding for domestic violence shelters, the adequacy of the number of residential shelter beds, the ability of shelters to meet special needs of victims, and the impact of welfare reform were raised at the Commission's public hearings. In addition, the Commission has considered the special problems of delivery of services in rural communities and the availability of such other sources of assistance to victims and their families as the New York State Crime Victims Board. Social services to a victim in the forms of shelter and financial assistance are often the means through which a victim terminates a relationship with a violent partner. Because these services are sought at the potentially dangerous time when the victim is considering terminating the relationship, the services must be viewed as part of a coordinated strategy to protect victims.

### **A. Funding and Capacity of Domestic Violence Shelters**

There have been reports in large cities such as New York City and Buffalo that victims have been turned away from residential domestic violence shelters, or referred to shelters in counties that may be a distance away, because these local shelters have reached capacity.<sup>86</sup> At the same time, there have been reports that residential shelters in smaller communities are underutilized, and consequently reimbursements received for sheltering victims do not cover the shelter's fixed costs. These shelters are experiencing difficulty in funding their programs. A third facet of the shelter occupancy issue is the fact that, when residential shelters at capacity in areas such as New York City refer victims to underutilized shelters in other counties, the shelters who receive these victims also receive reimbursements for these victims, thus providing a source of needed revenue.

The issue of funding is closely related to the questions of adequate numbers and geographic distribution of shelter beds throughout New York State. Until 1997, most domestic violence shelters in the State have been funded primarily by a combination of State, local and federal funds, in the form of per diem reimbursements for residential clients who qualified for public assistance. Non-residential services have been paid for by a combination of State and local funds. This year, the State has opted to provide some of the funding for residential domestic violence shelters in the form of flat grants, through the federal Family Violence Prevention and Services Act. In addition, the 1997-98 State budget includes \$13.75 million for additional shelter beds in New York City.

Federal and State welfare reform legislation contains restrictions on eligibility for public assistance for non-citizens. Emergency services to crime victims, however, including shelter for victims of domestic violence, will be provided without regard to immigration status. It is not yet possible to determine the full impact of these changes in funding formulas and eligibility for public assistance on victims of domestic violence and the shelters that assist them.

The Commission recommends that a thorough assessment of shelter needs be done by the New York State Office for the Prevention of Domestic Violence, the New York State Office of Children and Family Services and the New York Coalition Against Domestic Violence. This review should determine whether the current capacity of residential shelters is adequate; whether some services of residential shelters might better be provided in a non-residential setting; whether the current funding formula is the most effective; whether victims from counties with shelters at capacity should be referred to counties with underutilized shelters; if so, how services to the victim, such as assistance with housing and employment, can best be coordinated; if not, what are the financial and



other implications of discontinuing the system of referring victims to counties with available shelter space.

The related issues of transitional and permanent housing for victims who no longer need emergency shelter should be examined as well. Victims who remain in domestic violence shelters because of difficulty in finding transitional or permanent housing are in need of housing, but not in need of emergency shelter. Only with full information can the adequacy of the current number of shelter beds and the funding for them be assessed.

An additional important source of financial assistance to victims of domestic violence is the New York State Crime Victims Board, which provides funds to cover some of the costs incurred by victims as a result of reported crimes. In cases of domestic violence, the Crime Victims Board may cover the costs of a domestic violence shelter and transportation to and from court. In addition, a victim may be eligible to have the costs of counseling covered. Children who have witnessed or been injured by the domestic violence may also have their counseling costs covered. When a victim is required to move for reasons of safety, the Crime Victims Board may provide funds for the cost of moving. Funds from the Crime Victims Board as well as free services for victims from programs funded by the Crime Victims Board, are among the sources of emergency assistance to victims of domestic violence in New York State.

#### **B. Services and Facilities Provided by Shelters**

A broad range of domestic violence services has been provided for victims at shelters. The shelters have grown in response to the needs of their local communities. There are state standards that establish minimum requirements for residential and non-

residential domestic violence programs. The Commission recommends that these be reviewed by the New York State Office for the Prevention of Domestic Violence, the New York State Office of Children and Family Services and the New York Coalition Against Domestic Violence.

The review should focus on the adequacy and effectiveness of standards with respect to the nature and content of services to be provided; levels of staffing; qualifications and training for staff; requirements as to physical facilities; and strategies to ensure availability of appropriate services for victims with diverse and special needs. In addition, the review should examine the issue of coordinating social services with law enforcement agencies, to achieve the most effective safety plan for the victim, and the adequacy of resources provided to domestic violence programs to meet these victims various needs.

One of the issues considered by the Commission is making shelters more accessible to victims with special needs. In some cases, greater accessibility requires physical changes, while in others it requires only identification of resources that can be utilized as needed. Many shelters have not yet made necessary physical adaptations for victims in wheelchairs. Special safety and lighting modifications may be necessary for elderly victims. Assistance with communication is necessary for many victims as well. Translators for a wide selection of languages must be available to non-English speaking victims. Hearing-impaired victims may need sign interpreters as well as access to a TTY/TDD machine to facilitate telephone communications. In these cases, interpreters and translators should be individuals other than family members of the victim. Assistance for victims with visual impairments should be available as well.

Services that meet the special needs of gay and lesbian victims are necessary. Meals for victims with special dietary restrictions, whether based upon religion or medical condition, should be provided. Referrals to resources within ethnic or religious communities should be available to victims. Appropriate referrals and support must be made available by shelters for victims diagnosed with mental illness. Victims who are addicted to drugs or alcohol must also be provided with support and referrals for treatment. The Commission recommends that the review of state standards include examination of the effectiveness of the current requirements in the areas of special needs of victims of domestic violence.

There are particular needs related to distance and isolation in rural communities of the State that present barriers to domestic violence victims in need of assistance. The first and most serious is that of transportation. Hamilton County District Attorney James Curry testified at the Commission's public hearing in Albany that victims of domestic violence in his county, in which there is no public transportation, must travel as much as 75 miles to receive domestic violence services such as counseling.<sup>87</sup> One suggestion considered by the Commission is the possibility of providing transportation, either by a vehicle owned by the domestic violence service provider, or through an arrangement to share a vehicle such as that already providing transportation for the elderly in the community. Another approach might be to provide space for service providers in local facilities such as medical clinics.

Communication between service providers and their clients is also made more difficult by the distances in rural communities. Telephone calls to service providers in rural communities are often not local calls. As such, not only do they represent an expense to a victim, but they may appear on telephone bills, thus potentially endangering

a victim who has been warned by an offender not to seek assistance. In addition, there are domestic violence victims who do not have telephones in their homes. One approach to this problem is an arrangement through which local domestic violence shelters can accept collect calls, or use an 800 number.

Other considerations for rural communities include expanding the role of emergency medical technicians and the staffs of local volunteer fire departments and ambulance corps. With training, they could be alerted to screen their calls for domestic violence and offer assistance in transporting a victim to a hospital or shelter for safety. The Commission recommends including consideration of these and other special issues that present barriers to victims seeking assistance in rural communities, in the review of the statewide standards for domestic violence shelters and service providers.

## **XII. COMMUNITY AWARENESS OF DOMESTIC VIOLENCE**

The New York State goal of zero tolerance of domestic violence can only be achieved through a coordinated community approach to the problem. This requires that all elements of the community respond with a consistent, clear message that domestic violence is not tolerable. Law enforcement agencies alone cannot eliminate domestic violence. Schools must educate children on the existence and danger of domestic violence; members of the clergy must send an unequivocal message from the pulpit that domestic violence is unacceptable; and neighbors, friends and co-workers of domestic violence victims must be alert to the potential danger and supportive of the victim. Finally, family and community members who are aware that an offender commits acts of domestic violence must not ignore what they know, but rather, must impose negative social consequences on the offender as a result of the behavior. Tacit approval from members of the community serves to reinforce the pattern of violence and control.

Education on the existence and dangers of domestic violence is critical to eradication the behavior. Throughout New York State, domestic violence service providers have offered educational programs at various grade levels to inform and advise children on domestic violence. Workshops, films and discussion groups are used to stress the importance of non-violence, mutual respect and independence within relationships. The issue of violence in dating couples is also addressed in these programs. Numerous witnesses at the Commission's public hearings urged the expansion of these educational programs as a means of preventing domestic violence.

The Commission recommends broader use of educational programs to educate young children on the non-violent resolution of conflict. At later ages, the education

should focus on domestic violence in intimate relationships. Teenagers need ways to identify coercive or abusive behaviors in themselves and others. They may also need guidance in avoiding or terminating relationships with individuals who behave in abusive and coercive ways. Schools must support these concepts by articulating and enforcing policies against violence and sexual harassment by students, and by cooperating with police investigations into allegations of violence involving their students.

At the Commission's hearing at the Bedford Hills Correctional Facility, witnesses described their lack of knowledge about domestic violence, and their inability to realize that violent acts were part of a pattern of domestic violence. As one witness observed:

In my community, the strongest base of information is the church. It was through the annual health fair. . . did I learn about AIDS, heart disease, hypertension, diabetes. . . . I would pick up the pamphlets. . . . I hid the salt from my grandmother and flushed my mother's cigarettes down the toilet. . . . I ask that we somehow get to the community leaders, the church leaders, and begin to educate them on domestic violence. To begin to reach that outlet of information is vital.<sup>88</sup>

Members of the clergy can play a very important role in expressing condemnation of domestic violence from their pulpits. The consistent message that domestic violence is unacceptable should be articulated in communications to congregations, whether in classes for children or programs for adults. In addition, because they are so often consulted on matters involving marital difficulties, members of the clergy should seek information and training on the dynamics of domestic violence. Particular concern has been expressed over the danger that an offender will attempt to misuse counseling in an attempt to coerce a victim to remain in the relationship. Domestic violence training will enable members of the clergy to recognize those relationships in which there is threatened or actual violence

and coercion against one partner. The appropriate response in such cases is to refer the victim to a domestic violence program for assistance, and to express clear disapproval of the violent and coercive behavior.

Members of the community have an important role in a coordinated community response to domestic violence. Family members must not ignore signs of domestic violence, but should look for opportunities to offer support and assistance to the victim, and to express disapproval of the offender. Neighbors, friends and co-workers can also offer help and support to victims. Of equal importance, however, is their conveying the message to victim and offender alike, that domestic violence is a crime and must be treated as such.

These examples suggest some of the ways in which a coordinated response by members of the community can have an impact on domestic violence. The attitude necessary for that impact cannot, however, be created by legislative fiat. It requires a greater awareness on the part of all members of a community of the existence of domestic violence in that community. An analogy is frequently drawn to the change in attitude surrounding the issue of drinking and driving. When the attention of the public was drawn to the human toll of driving while intoxicated, the attitude that had tolerated the behavior and minimized its seriousness changed dramatically. The fundamental change in attitude on the part of the community was the driving force behind the effectiveness of the tougher laws and policies on drinking and driving. Similarly, if we are to achieve zero tolerance of domestic violence, it will require a change in the attitude that ignores or minimizes the human toll of the offender's behavior.

### **XIII. RECOMMENDATIONS ON FATALITY REVIEW BOARD**

In his Executive Order, Governor Pataki instructed the Commission to assess whether a Fatality Review Board should be created to examine domestic violence fatalities. The Commission has considered the issue and suggests that there not be a permanent State Fatality Review Board at this time. Instead, the findings and recommendations of the Commission, which were based upon detailed investigations and analysis of cases as well as input from knowledgeable individuals and groups, should be considered and implemented on appropriate State and local levels. Communities can review fatalities on the local level, where familiarity with the services and responses in domestic violence cases is greatest. The need for a State Fatality Review Board can be reconsidered in light of the experience with this local review process.



#### **XIV. SUPPLEMENTARY LEGISLATIVE RECOMMENDATIONS**

The Commission has reviewed several additional proposals and recommends, in addition to the recommendation set forth above, the following:

- An amendment to Domestic Relations Law Section 252 to provide for the mandatory or permissive suspension or revocation of a firearm license, and the surrender of any or all firearms owned or possessed by the offender, in an action for divorce, separation, annulment, or a declaration to nullify a void marriage, in cases where an order of protection or a temporary order of protection is issued. This amendment would be consistent with the provisions of Criminal Procedure Law Section 530.14 and Family Court Act Section 842-a.
- An amendment to Sections 828 of the Family Court Act and Section 530.12 of the Criminal Procedure Law regarding temporary orders of protection and visitation, to provide that a court issuing a temporary order of protection has the power to modify or suspend the visitation provisions of a prior order issued by the same or another court, based upon acts of the respondent or defendant committed subsequent to the prior order.
- Amendments to Penal Law Sections 215.50 and 215.51 and Criminal Procedure Law Sections 530.11 and 530.12 regarding criminal contempt for violation of a temporary order of protection or an order of protection, to provide that service by mail of the order or is sufficient notice to a defendant who was personally served with a summons and petition in connection with

the underlying order of protection proceeding. This amendment makes clear that a defendant who was personally served in connection with the order of protection proceeding, and who fails to appear on the return date, cannot escape prosecution for violating the order of protection or any order extending it, on the basis of his absence from court on the date when the order or extension was issued.

- An amendment to Penal Law Section 215.51 regarding prosecutions for criminal contempt in the first degree, which would substitute a reasonable person standard for the present requirement that the person for whose protection an order of protection was issued be placed in reasonable fear of physical injury, serious physical injury or death. This standard would be objective and would permit the offender's conduct to be evaluated at trial without requiring testimony from the person for whose protection the order of protection was issued.
- Amendments to Penal Law Sections 215.50 and 215.51 expressly including orders of protection issued by other states, to clarify the statutory basis to prosecute for criminal contempt for violations of such orders.
- An amendment to Criminal Procedure Law Section 160.55 regarding an order sealing the record of arrest in cases terminated by conviction for noncriminal offense such as a violation, to exclude those domestic violence cases in which there was a misdemeanor charge and a plea of guilty to a noncriminal offense. This measure will permit the tracking of offenders who

commit a felony or misdemeanor domestic violence offense and plead to a violation.

- Amendments to the Criminal Procedure Law and the Family Court Act to extend the duration of an order of protection from the current maximum of three years (misdemeanors, Family Court orders) or five years (felonies), to such longer duration, up to the lifetime of the victim, as is needed to protect the victim in view of the danger presented.
- An amendment to the Penal Law to create the separate crime of stalking, and to enhance the penalties currently contained in the Harassment and Menacing sections of the Penal Law.
- Require the Office of Court Administration to develop standards for content of its domestic violence training for matrimonial attorneys, including court appointed or assigned counsel, law guardians and pro bono attorneys.
- Require the Office of Court Administration to create and maintain a list of attorneys who have received domestic violence training and who are qualified as assigned counsel under Section 18B of the County Law.
- Require the Office of Court Administration to develop a screening process to ensure that matrimonial and custody cases involving domestic violence are identified and not diverted to mediation.

## XV. NOTES

1. Executive Order No. 46 (Appendix at A1).
2. The Commission sought to investigate the November 1, 1996 New York County murder/suicide case in which Pasquale Coppola killed his wife Helen Coppola at her workplace. Because the case was the subject of an ongoing investigation it was not available for review.
3. Jacquelyn C. Campbell, ed., *Assessing Dangerousness: Violence by Sexual Offenders, Batterers, and Child Abusers* (London: Sage Publications, 1995), p. 105.
4. Domestic Violence: Sixth public hearing on domestic violence before the Governor's Commission on Domestic Violence, Albany, New York, January 28, 1997 (Appendix at A1643-A1649) (Statement of Doris Meagher, C.S.W.).
5. Campbell, p. 101.
6. Ibid.
7. Commission Vice Chair Justice Juanita Bing Newton took no part in the discussion or drafting of the preceding two paragraphs.
8. Ariella Hyman, Dean Schillinger, Bernard Lo, "Laws Mandating Reporting of Domestic Violence: Do They Promote Patient Well-Being?," *The Journal of the American Medical Association*, 273:22, p. 1781, June 14, 1995.
9. See, e.g., *Diagnostic and Treatment Guidelines on Domestic Violence*, prepared by the American Medical Association, 1992.
10. "Domestic Violence Intervention Calls For More than Treating Injuries," *Journal of the American Medical Association*, 264:8, August 22, 1990.
11. Hyman et al.
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18. N.Y. Penal Law § 265.26 (Consol. 1997).
19. Ariz. Rev. Stat. Ann. § 13-3806 (1996); Cal. Penal Code § 11160 (Deering 1996); Colo. Rev. Stat. § 12-36-135 (1996); Idaho Code § 39-1390 (1997); 18 Pa. Cons. Stat. § 5106 (1997).
20. KY Rev. Stat. Ann. § 209.030 (Michie 1996); NH Rev. Stat. Ann. § 631:6 (1996); N.M. Stat. Ann. § 27-7-30 (1989); R.I. Gen. Laws § 12-29-9 (1996).
21. Cal. Penal Code § 11160 (Deering 1996); Alaska Stat. § 08.64.369 (1996); Iowa Code § 147.111 (1996); VA Code Ann. § 54.1-2967 (1997); Minn. Stat. § 626.52 (1996).
22. KY Rev. Stat. Ann. § 209.030 (Michie 1996); N.M. Stat. Ann. § 27-7-30 (1989); R.I. Gen. Laws § 12-29-9 (1996). In New York, companion bills proposing mandatory reporting to the Commissioner of Social Services were introduced in the New York State Senate and Assembly, and have been referred to legislative committees. See N.Y. A. 4586, 220th Leg., 1997-1998 Sess. (1997).
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