

# FINAL REPORT

of the  
Supreme Court Task Force on  
Courts' and Communities'  
Response to Domestic Abuse



*State of Iowa*



Submitted to the Supreme Court of Iowa  
August 1994

# ACKNOWLEDGMENTS

The Supreme Court Task Force on Courts' and Communities' Response to Domestic Abuse is pleased to present its final report and recommendations to the Iowa Supreme Court. The Task Force is hopeful its report will contribute to new and better ways for courts and communities to respond to domestic abuse and inspire others to work together to eliminate family violence.

The Task Force operated for 12 months without a special budget or staff. We were intimately dependent upon the assistance of others, and were richly rewarded with devoted contributions of many throughout the state. We express our endless gratitude to all who participated in the process which led to the completion of our report and impelled us in our work.

The Task Force specially acknowledges the leadership of the Iowa Supreme Court and Chief Justice Arthur A. McGiverin. Chief Justice McGiverin conscientiously responded to the call made at the first national conference on domestic abuse held in San Francisco in March 1993 for each state in the nation to establish a comprehensive plan to confront family violence. We are grateful for his vision and the opportunity to serve on the Task Force.

We acknowledge and specially thank all those who testified at the Task Force hearings held in Des Moines and those who appeared before the Task Force to offer suggestions and input. We especially express our appreciation to the official court reporters, Robert Day, Pam Day, and Nancy Draper. We also extend our deep gratitude to Carl V. Nielsen, Executive Director of The Iowa State Bar Association, and his entire staff, including Mary Lehman for graciously providing the accommodations for the Task Force meetings and hearings.

The final draft of the report has been an immense task. We are extremely thankful for the diligent clerical assistance in the completion of the report by Jane Elben of the State Court Administrator's Office and Sandy Cosgrove of the University of Iowa College of Law. We also extend deep appreciation to Task Force members Linda McGuire, Kelley Rice, and Mary Tabor who served as the primary authors of this Report. We also recognize the helpful research assistance by University of Iowa law students Rob Millimet, Andrea Kutz, and Laura Wassmuth.

Finally, a word of thanks is extended to each member of the Task Force, including Amy Anderson who had to resign as a Task Force Member prior to the completion of the report. Their devotion, competence, professionalism, and helpful thoughts are evident throughout this report. We have been enriched by the experience and complete our work with a mutual friendship and hope for the future. While we have painfully learned how domestic abuse tragically and profoundly touches so much of humanity, and, almost imperceptibly, breeds violence as a way of life for the next generation, we also realize, with abundant clarity, what it would truly mean to stop domestic violence.

Honorable Mark S. Cady  
Co-Chair  
Supreme Court Task Force  
on Courts' and Communities'  
Response to Domestic Abuse

*Submitted by the*

**SUPREME COURT TASK FORCE  
ON COURTS' AND COMMUNITIES' RESPONSE TO  
DOMESTIC ABUSE**

**August 1994**

**Iowa Court of Appeals Judge Mark S. Cady, Co-Chair  
Fort Dodge**

**Linda A. McGuire, Esq., Co-Chair  
Iowa City**

**Chief Judge Richard D. Morr  
District 5  
Des Moines**

**Jerry K. Beatty  
State Court Administrator's Office  
Des Moines**

**District Associate Judge John G. Mullen  
District 7  
Davenport**

**Robert Downer, Esq.  
Iowa State Bar Association  
Iowa City**

**Laurie Schipper, Director  
Iowa Coalition against Domestic Violence  
Des Moines**

**Anne Hills  
Department of Corrections  
Des Moines**

**Mary Tabor, Esq.  
Assistant Attorney General  
Des Moines**

**James Koll, Esq.  
Webster County Attorney  
Fort Dodge**

**Marti Anderson  
Crime Victim Assistance Division  
Des Moines**

**Kelley Rice, Esq.  
Legal Services Corporation of Iowa  
Des Moines**

# Contents

## PART I - INTRODUCTION

WOMEN KILLED DURING TENURE OF TASK FORCE .....	3
--	---

## PART II - SCOPE OF DOMESTIC ABUSE

A. Overview .....	5
1. Historical and Legal Support .....	5
2. Incidence .....	6
B. The Dynamics of Domestic Violence .....	8
1. Power and Control .....	8
2. Sexual Abuse .....	9
3. Why Women Don't Leave .....	10
C. Effect of Domestic Violence on Special Populations .....	11
1. Rural Women .....	11
2. Teenaged and Dating Women .....	12
3. Older Women .....	13
4. Battered Women in Prison .....	14
5. Same Sex Battering .....	15
6. Women of Color .....	15
7. Immigrant Battered Women .....	16
8. Battered Women with Disabilities .....	17
9. Prostitution .....	17
10. Pregnant Battered Women .....	17
THE NUMBER OF DOMESTIC ABUSE CIVIL FILINGS IN IOWA BY COUNTY - 1990-1993 .....	20
NUMBER OF DOMESTIC ABUSE CIVIL FILINGS IN IOWA BY COUNTY PER THOUSAND .....	21

## PART III - THE LEADERSHIP ROLE OF THE COURT IN ENDING DOMESTIC ABUSE

CURRENT RESPONSE .....	22
EFFORTS TO ADDRESS DOMESTIC ABUSE IN IOWA .....	22
RECOMMENDATIONS .....	25

## PART IV - THE JUSTICE SYSTEM RESPONSE

A. Criminal Justice System: Current Response and Recommendations .....	30
1. Police Response .....	30
Mandatory arrests .....	30
Primary physical aggressor and dual arrests .....	31
Misunderstanding of police obligation to enforce civil protection orders .....	31
Victim rights .....	32
Police training .....	32
RECOMMENDATIONS FOR POLICE .....	32
MODEL PROTOCOL FOR POLICE RESPONSE TO DOMESTIC ABUSE CALLS .....	35
2. Prosecutor Response .....	39
Lack of communication with victims .....	39
Interaction with victim advocates .....	39
Specializing .....	39
Uncooperative victims and prosecution policy .....	40

Charging .....	4
RECOMMENDATIONS FOR COUNTY ATTORNEYS .....	4
3. Corrections Response .....	4
Referrals to Batterers' Education Program .....	4
Programs Offering Batterers' Education Program .....	4
RECOMMENDATIONS REGARDING BATTERERS' EDUCATION PROGRAMS .....	4
B. Civil Response and Recommendations .....	46
Overview .....	46
1. The Clerk of Court's Role .....	46
Office Hours .....	47
Signs .....	47
Availability of a Judge .....	47
Safety concerns .....	48
Written Protocols for Pro Se Filings .....	48
Domestic abuse specialist .....	49
Screening petitions .....	49
Miscellaneous services .....	49
Perceived abuse of pro se process .....	49
Resources .....	50
Filing Fees .....	50
Training .....	50
Victim-service providers .....	51
Representation for Victims .....	51
Clerk Resources to Handle Domestic Abuse Litigants .....	51
RECOMMENDATIONS FOR CLERKS OF COURT .....	52
MODEL PROTOCOL FOR PROCESSING PRO SE PETITIONS .....	53
2. After Hours Access to Temporary Protection Orders .....	58
RECOMMENDATION .....	58
MODEL PROTOCOL FOR FILING PETITIONS SEEKING IMMEDIATE RELIEF WHILE COURTHOUSE IS	
CLOSED .....	58
3. Mutual Protection Orders .....	59
RECOMMENDATION .....	60
4. Entry and Enforcement of Protection Orders .....	60
The Temporary Order and the Defendant's Rights .....	60
Entering the Temporary Protection Order .....	61
System Abuses .....	61
Registration of Foreign Orders .....	62
RECOMMENDATIONS .....	63
5. Criminalizing Contempt of Protection Orders .....	64
Benefits of criminalizing order violations .....	65
Disadvantages to criminalizing order violations .....	65
RECOMMENDATION .....	66
6. The Role of the Private Bar and Publicly Funded Attorneys .....	66
The Pro Se Process .....	66
Pro Se Domestic Abuse Project .....	67
Attorney Representation in Chapter 236 Cases .....	67
The Private Bar .....	70
Legal Services Corporation of Iowa and Legal Aid Societies .....	72
Volunteer Lawyers Projects .....	74
Legal Services Corporation of Iowa and Legal Aid Societies .....	76
RECOMMENDATIONS FOR THE PRIVATE BAR AND PUBLICLY FUNDED ATTORNEYS .....	76
7. Attorney Fees .....	77
8. Expanding Jurisdiction to Sign Temporary Protection Orders .....	79
RECOMMENDATIONS .....	81
9. Confidentiality .....	82
RECOMMENDATION .....	82
10. Expanding Protection to Victims of Dating Violence and Juveniles .....	82

C. Mediation .....	83
Background .....	84
Protection-from-abuse Cases .....	85
Domestic Relations Case .....	85
RECOMMENDATIONS .....	86

**PART V - THE FORGOTTEN VICTIMS: CHILDREN AND DOMESTIC ABUSE**

A. Child Protective Services .....	91
Local indicators of overlapping abuse .....	91
Need to tie child abuse issues with domestic abuse issues .....	92
RECOMMENDATIONS .....	93
B. CUSTODY .....	93
1. Research review .....	93
2. Testimony .....	94
RECOMMENDATIONS .....	96
C. Failure to Protect .....	97
RECOMMENDATION .....	97

**PART VI - THE ROLE OF COMMUNITY AND COURT-RELATED AGENCIES**

A. Victim Advocates .....	100
RECOMMENDATIONS .....	102
B. The Medical Community .....	102
RECOMMENDATIONS .....	103
C. The Religious Community .....	103
RECOMMENDATIONS .....	105
D. Business and Industry .....	106
RECOMMENDATIONS .....	107
E. Schools and Youth groups .....	108
RECOMMENDATIONS .....	109

**PART VII - LEGISLATIVE RECOMMENDATIONS**

RECOMMENDATIONS .....	111
-----------------------	-----

**PART VIII - STATEWIDE IMPLEMENTATION PLAN**

NARRATIVE .....	113
-----------------	-----

## PART I

### INTRODUCTION

On August 3, 1993, the Chief Justice of the Iowa Supreme Court, Arthur A. McGiverin, established the Supreme Court Task Force on Courts' and Communities' Response to Domestic Abuse.<sup>1</sup> The Chief Justice noted that domestic violence is a widespread social problem with vast consequences and that the Iowa courts need to consider new policies and practices to respond to the rapidly increasing number of domestic abuse cases. The Chief Justice also recognized the need for communities and the courts to work collectively to address violence in families.

The Task Force consisted of 12 persons (eight attorneys and four non-attorneys) with varying backgrounds in domestic abuse issues. Representation on the Task Force included the judiciary, The Iowa State Bar Association, the Iowa County Attorneys Association, crime victim programs, the Iowa Coalition against Domestic Violence, the Iowa Department of Corrections, state court administration, the Attorney General's office, and the Legal Services Corporation of Iowa.

The Task Force received a five-pronged charge:

1. **Investigate how the Iowa court system is currently responding to increased numbers of domestic abuse cases.**
2. **Examine ways in which the Iowa courts can work in concert with other community resources to address the widespread problem of domestic violence.**
3. **Make recommendations to the Iowa Supreme Court for improving judicial access and treatment of domestic abuse cases while efficiently and fairly administering increasing case loads.**
4. **Propose possible legislative reform.**
5. **Propose a statewide plan for implementation of the recommendations and findings.**

The Task Force took the Chief Justice's Order very seriously and accepted its charge with enthusiasm. The Task Force saw its mission as one of how can the court system, in cooperation with community resources, improve the response to domestic violence so as to provide consistency and fairness to all players? The members strived for consensus on all issues and recommendations contained in this report. In a few instances, the members could not arrive at a unanimous recommendation and that will be noted in the appropriate portion of the report. By and large, however, all 12 members support the findings and recommendations contained in this report.

On one matter, there existed unequivocal agreement: domestic violence presents hard and complex issues with which courts and communities must grapple, and no single, discreet solution exists. To halt, or at a minimum reduce, domestic violence, courts and communities -- society -- must be willing to view domestic violence as a crime which will not be allowed to go unrecognized or unpunished.

The Task Force met 16 times in Des Moines. Preparation of this report is based on surveys, testimony given before the Task Force, research and literature on domestic abuse, and the individual experiences of the Task Force members. The Supreme Court purposely sought to keep the Task Force small. For that reason, the Task Force decided that the soliciting of information from other sources could best be facilitated by the use of surveys and the taking of testimony.

Surveys were sent to offenders taking part in batterers' education programs, partners of participants in batterers' education programs, domestic abuse shelter and service providers, district court clerks, court administrators, and county attorneys.<sup>2</sup> The Task Force received testimony from victim advocates, survivors of domestic violence, batterers' education program facilitators, the Citizens Aide/Ombudsman's Office, the deputy attorney general for criminal justice, county attorneys, a public defender, a family law attorney, clerks of court, judges, a magistrate, a legal aide attorney, law enforcement officers, the director of the Iowa Coalition against Sexual Assault, and child protective service workers with the Iowa Department of Human Services. The Task Force invited four batterers who had agreed to testify but none showed up nor did they provide any written testimony.

In addition to the survey results and testimony, the Task Force consulted with the Honorable Michael Town, a circuit court judge in Hawaii, and a member of the Family Violence Committee of the National Council of Juvenile and Family Court Judges' Family Violence Project. Much of Judge Town's material assisted the Task Force in its work. The Task Force also relied extensively on the Model Code on Domestic and Family Violence developed by the Family Violence Project, a copy of the Model Code is contained in the Appendix. The National Council of Juvenile and Family Court Judges adopted the model code this year. This product was a cooperative effort between judges, the American Bar Association, and American Medical Association, state legislators, advocates, attorneys, mediators, prosecutors, and the defense bar, all of whom are national experts on domestic violence and many of whom practice in jurisdictions where mediation of family law matters occur.

Domestic abuse is a gender-based crime. Although victims of domestic abuse can be women or men, the vast majority, 96 percent, are women. Domestic violence does not just happen to poor and uneducated women, or women of color, or young women. Domestic abuse is criminal behavior which is committed against rich and poor women, white and minority women, heterosexuals and gays and lesbians, teenagers and seniors. The direct victims of domestic abuse are primarily women. The indirect victims of domestic abuse, indeed, the invisible victims, as the Task Force members knew and heard repeatedly throughout their work, are the children. Domestic violence transcends all social groups regardless of age, race, nationality, religion, sexual orientation, or financial status.

From the time of the creation of the Task Force until August 3, 1994, six women in Iowa were killed, apparently by their current or former boyfriends or partners. The American Medical Association has found domestic abuse to be the leading cause of emergency room treatment for women. The Surgeon General has described domestic violence as one of the leading threats to the health of women. More women are injured each year by a man with whom they had an intimate relationship than by auto accidents, muggings, and rapes combined. The magnitude of the problem of violence against women

cannot be underestimated. Regrettably, domestic violence continues to be viewed as less serious than stranger violence. Although Iowa has made great strides in helping victims since enactment of the Domestic Abuse Law in 1980, there are many other ways in which the Iowa court system and communities can assist in responding to and stopping domestic violence. Those recommendations are contained throughout this Report.

#### WOMEN KILLED DURING TENURE OF TASK FORCE

- |                           |  |
|---------------------------|--|
| <b>September 22, 1993</b> | <b>Kimberly Peterson, 19</b><br>Suffocated to death by a man she lived with in Mason City. She was found in a sleeping bag in a closet of their apartment.   |
| <b>January 14, 1994</b>   | <b>Gloria Heising, 40</b><br>Shot to death by a man she had dated in Cedar Rapids. Both she and the murderer were postal workers. He had been convicted of harassment and terminated from his job for threatening her. He allegedly sent a certified letter to his son's house on her route, broke into the house, and attacked her when she delivered the letter. She is survived by two children, 13 and 10 years old. |
| <b>January 27, 1994</b>   | <b>Rita Young, 39</b><br>Allegedly tortured and beat to death by a man she had lived with for five years in Des Moines. Her body was hidden behind the furnace of the home until found by police alerted by her daughter that she was missing. She is survived by a 17-year-old daughter and a grown daughter.   |
| <b>April 20, 1994</b>     | <b>Julie Wacht, 16</b><br>Allegedly strangled and suffocated by her boyfriend with whom she had lived for three years in Des Moines. At the time of the murder, her partner was on probation for domestic abuse.   |
| <b>May 2, 1994</b>        | <b>Tammi Ann Wilson, 33</b><br>Allegedly shot to death by a man she was living with in Cedar Rapids. She had two daughters under 10 years old. She was shot in front of one girl and the other girl was in her room and came out when she heard the shot.  |

Although this Report seeks to use gender neutral language as much as possible, at times the victim will be referred to as a woman and the batterer will be referred to as a man. The Task Force acknowledges, though, that men too can be victims of domestic abuse. The Report also uses "victim" and "survivor" interchangeably. As the Task Force learned, persons who have been subjected to domestic violence prefer to view themselves as survivors rather than victims.

This Report addresses the five charges by first looking at the scope of the domestic violence problem. The leadership role of the Supreme Court is then examined. The judiciary's response to domestic abuse is broken into criminal and civil sections. The role of community and court-related agencies is explored. The Task Force makes specific recommendations throughout the Report including legislative recommendations. The Report concludes with a statewide plan for responding to, deterring, and ending domestic violence in Iowa.

All materials referred to in the Report as being contained in the Appendix are on file in the Iowa Supreme Court, Statehouse, Des Moines. These include transcripts of testimony, survey instruments and results, and other documents or helpful articles which the Task Force hopes will serve as background.

---

<sup>1</sup>In the Matter of the Appointment of the Supreme Court Task Force on Courts' and Communities' Response to Domestic Abuse, Order, Supreme Court of Iowa, August 3, 1993. A copy of the order is included in the Appendix.

<sup>2</sup>The surveys are included in the Appendix.

## PART II

### SCOPE OF DOMESTIC ABUSE

*Shirley Oberg, an organizer from Duluth, Minnesota, asks us to imagine the Battered Women's Movement as a fast moving stream with a bully at its source who is pushing women in the water. Domestic violence advocates are along the sides of the stream frantically trying to pull women out, only to find that they can't keep up; women are coming downstream faster and faster, many are drowning. In fact, as advocates continue trying to rescue the women, many are becoming exhausted and falling in the stream as well.*

*At some point, Oberg challenges, we must decide whether to continue the band-aid effort of trying to rescue women from the stream, while watching as more and more do not survive, or do we end this exhaustive effort and choose to go upstream and push the bully in the water. It will take a comprehensive effort on the part of communities and the criminal justice system to achieve this goal.*

#### A. Overview

The Iowa Supreme Court Task Force on Courts' and Communities' Response to Domestic Abuse had a mandate to explore ways in which the courts, in concert with our communities, can better address the crime of domestic abuse. We began our task by looking at the scope of this extremely complex problem. It is difficult to reduce to simple statistics and social paradigms.

#### 1. Historical and Legal Support

Violence against women has been socially sanctioned within relationships for centuries. The purpose of threat and violence in a relationship is to maintain control over a woman as articulated in the following passage written by a 15th century Christian scholar in the "Rules of Marriage":

**Violence against women has been socially sanctioned within relationships for centuries.**

*When you see your wife commit an offense, don't rush at her with insults and violent blows [but rather] scold her sharply, bully and terrify her. And if this doesn't work, take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body. Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good.*

The law has also sanctioned the use of violence. British common law aimed to limit the use of violence in a marriage through the "rule of thumb," this permitted a man to beat his wife with a "rod not thicker than his thumb."

Modern expressions reflect the historically ingrained prerogative that a man can use violence to control a woman for "her own good." Common phrases like, she needs a good slap in the face, she is cruising for a bruising, she is asking for it, and she needs to be put in her place are common in our society. The character Ralph Cramdon in the 1950's television show "The Honeymooners" often quelled disagreement from his wife Alice by threatening her with, "Pow, Alice ... straight to the moon!" while raising his fist.

**The Task Force holds the uncompromising position that abuse and violence in relationships and families is never acceptable.**

These well-ingrained attitudes hold that the appropriate power balance in a relationship is meant to meet the needs and desires of men. It is assumed it is acceptable to use violence and threats of violence to achieve that balance.

The Task Force holds the uncompromising position that abuse and violence in relationships and families is never acceptable. We further hold that lawmakers, criminal justice professionals, the courts, and communities must invoke any and all reasonable measures to assure the safety of all citizens within their homes and relationships.

## 2. Incidence

In this country, between 1.8 million and 4 million women are violently assaulted by their husband or boyfriend in their homes every year. In Iowa, that means that between 20,000 and 44,000 women suffer abuse in their homes every year.

For 1990 the Department of Public Safety shows 6,194 incidents of domestic abuse reported to law enforcement. This means that, based on national statistics, only 14 percent to 31 percent of domestic assaults were reported to Iowa law enforcement that year. The Iowa Judicial Department reports that the number of domestic abuse civil filings rose from 188 in 1990 to 2,677 in 1993. For a county-by-county breakdown, see tables at the end of this part.

The National Crime Victimization Survey (NCVS) conducted by the U.S. Department of Justice obtains information about crimes, including those not reported to police, from a continuous nationally representative sample of U.S. households. The 1994 NCVS report includes data collected from 1987 through 1991. Results of the survey show:

- ◆ Annually, females suffer 10 times as many incidents of violence by an intimate as do men.
- ◆ Family-related violence accounts for 33 percent of all violence committed against women and 5 percent of all violence committed against men.
- ◆ Black and white women experience equivalent rates of violence committed by intimates and other relatives.
- ◆ Living in suburban and rural areas does not decrease a woman's risk of violence by an intimate. Women living in central cities, suburban areas, and rural areas experience similar rates of violence by intimates.

- ◆ 18 percent of women victimized by partners face an armed offender.
- ◆ 59 percent of women victimized by intimates are injured.
- ◆ 27 percent of women victimized require medical care for their injuries.
- ◆ Police were more likely to respond within five minutes if the offender was a stranger than if the offender was known to the female victim.

The FBI reports that in 1991 28 percent of all female murder victims were killed by a husband or boyfriend. The Iowa Department of Public Safety reports 19 women murdered in Iowa in 1990. Seventy-four percent of those women were killed by a husband or a boyfriend.

**The Iowa Department of Public Safety reports 19 women murdered in Iowa in 1990. Seventy-four percent of those women were killed by a husband or a boyfriend.**

In the first three years of this decade, 41.6 percent of Iowa Crime Victim Compensation claims for murdered women were for women killed by their male partner. Between January 1990 and January 1994, the Attorney General's Office received 33 applications for Crime Victim Compensation from survivors of women killed by their male partners. In that same time, three applications were received from the survivors of men killed by their female partner.

**Of the 33 women murdered in Iowa since 1990 by a husband or boyfriend:**

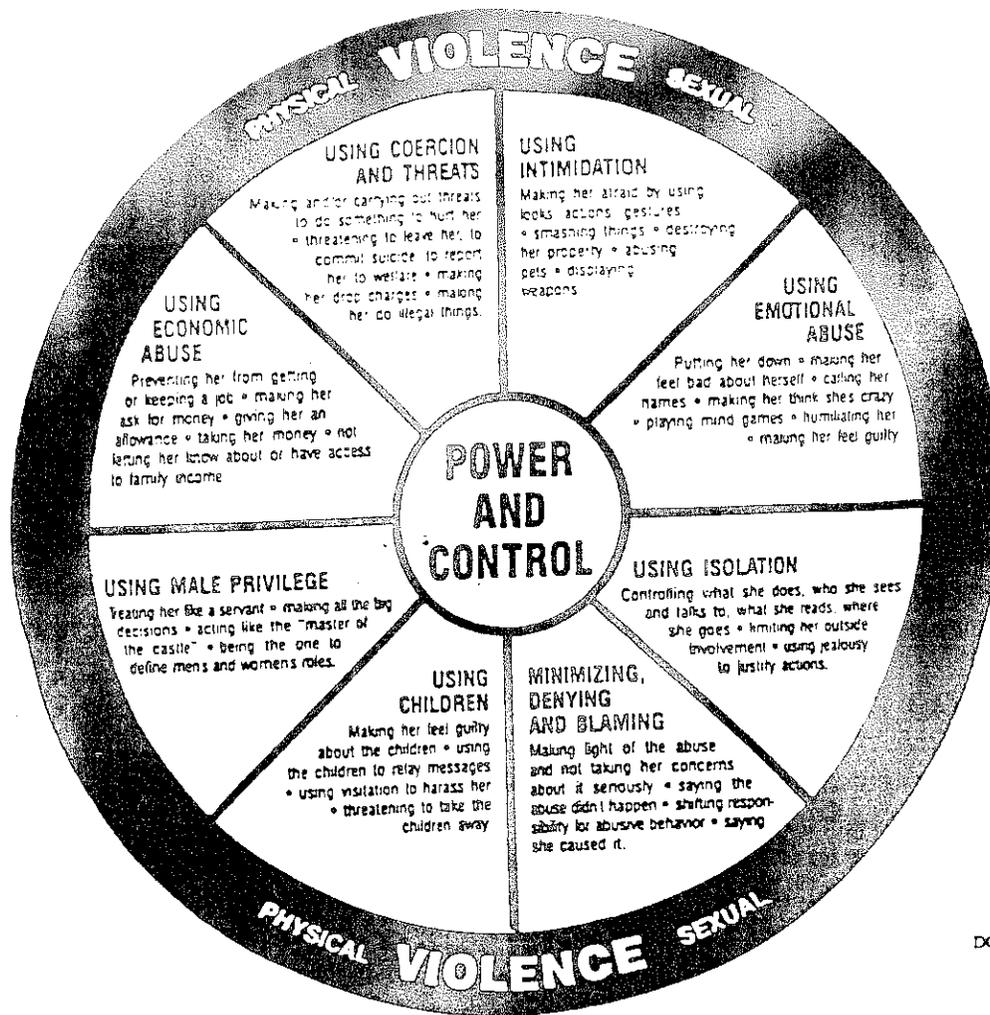
- ◆ 16 women were killed by husbands.
- ◆ 13 women were known to have left or to be leaving the partner.
- ◆ three women were killed while moving their belongings.
- ◆ two women were killed in child visitation exchanges (one across the street from a police station).
- ◆ two women were killed in front of police officers.

**Of the 33 men who committed the murder:**

- ◆ ten of the men attempted suicide at the time of the murder.
- ◆ eight of the men succeeded in committing suicide.

**The murdered women were survived by children:**

- ◆ 51 sons and daughters survived the murder of their mother.
- ◆ 41 of the surviving children were minors.
- ◆ three children of one woman and two non-related children were also murdered.
- ◆ 18 children witnessed the murder of their mother.



DOMESTIC ABUSE INTERVENTION PROJECT  
 206 West Fourth Street  
 Duluth, Minnesota 55806  
 218-722-4134

## B. The Dynamics of Domestic Violence

### 1. Power and Control

The "power and control" theory of domestic abuse was created by Ellen Pence of Duluth, Minnesota to describe the dynamics of an abusive and/or violent relationship. The premise is simple. People use violence to maintain power and control over others. The use of violence is reinforced when it works every time it is used.

Traditional theories of the causes of domestic abuse are based on personal characteristics and life experiences like stress, unemployment, poverty, substance abuse, past child abuse, and depression. Theories centered on these characteristics fall short of explaining the phenomenon that the majority of persons with those problems do not batter their intimate partner or children. Observation has also shown that the amelioration of life problems like substance abuse, stress, and unemployment does not effectively stop domestic abuse in a relationship.

The "power and control" model, widely adopted by those who work with both perpetrators and survivors of domestic abuse, challenges all the other explanations for violence in a relationship. The model contends that the use of violence is always a choice, and that in our society it is a choice that can be made in order to meet one's needs with little or no consequence.

A variety of techniques are used in a deliberate and systematic manner to gain power and control:

**Physical violence:** The abuser uses physical violence to achieve power and to maintain control. Women know they are in the most imminent danger when they try to leave a relationship. Abusers use physical violence to keep the partner from leaving and use the following abusive techniques to maintain control.

**Isolation:** The abuser decides what the partner does, where she goes, and with whom she has contact. He may limit or deny her access to a car or telephone. She loses her relationships with friends and family.

**Intimidation:** The abuser uses threatening looks, voice, gestures and actions to keep the partner in constant fear. He may punch holes in the wall, damage valued objects, or hurt pets, to signify what he could do to her. A constant threat that violence can happen again at any time.

**Threats:** The abuser threatens to commit suicide, take the children, hurt a pet, hurt or lie to her family or friends, or seriously injure her. Threats effectively control the partner because the perpetrator usually has the means to carry them out and may have carried out some of threats during the relationship.

**Using the children:** The abuser may threaten or use violence against the children, undermine the partner's parenting, or convince the children she's a bad mother. He will use visitation as an opportunity to harass, scare or continue to batter her.

**Economics:** The abuser may control all of the economic resources in the family. He will take any money she earns if he allows her to work outside the home, give her an inadequate "allowance" to meet the family needs, and force her to ask for money for basics like food and household items.

**Male privilege:** The abuser makes all major decisions in the relationship and family. He may treat the partner like a servant and force her to wait on him at all hours.

**Sexual:** The abuser may make his partner engage in sexual practices she is uncomfortable with or force her to have sex against her will. He may regularly force her to engage in sex after a fight or when he's intoxicated. He may sexually abuse the children and blame or threaten her to keep the abuse a secret.

## 2. Sexual Abuse

Battering can often involve a substantial amount of sexual abuse, including marital rape and sexual mutilation. Marital rape is rarely discussed with others or reported to law enforcement authorities, and of those reported a few are prosecuted. It is common for battered women to have sexual intercourse with their husbands to avoid being battered. While this type of coercive sexual activity would be spousal sexual assault as defined by the Model Act, many women may not consider it to be so and would fear disbelief if they reported it.<sup>1</sup>

Marital rape has been reported in relationships in which no other forms of physical abuse occur. However, it seems to be most frequent as a form of aggression in relationships in which other violent behaviors are ongoing.<sup>2</sup> Sexual assault is reported by 33 percent to 46 percent of women victims who are physically assaulted by their partners.<sup>3</sup>

One out of ten wives has been sexually assaulted at least once by her husband and between 50 percent to 87 percent of women who have experienced rape in an intimate relationship, such as marriage, indicate that they had been sexually assaulted at least twenty times by their partners.<sup>4</sup>

The frequency and impact of marital rape is devastating and far reaching. It has been estimated that 30 percent of all rape victims are battered women and among rape victims over 30 years of age, 58 percent are battered women.<sup>5</sup>

Sexual violence is also frequent in dating relationships. It has been estimated that over 50 percent of rapes are perpetrated against adolescents, with the vast majority taking place between individuals who are acquaintances or in a dating situation.<sup>6</sup> Christine Courtois (1988) tells us that these young women are victims of "an endemic societal manifestation of the power imbalance between the sexes" where "men are conditioned into roles of power and domination . . . and females . . . are conditioned to be passive and dependent." It is clear by overwhelming statistics we live in a culture that condones sexual violence toward women.

In summary, men batter women because it gets them what they want or need and keeps control over their partner. Whether the underlying emotion is frustration, jealousy, anxiety, or low self-esteem battering men use violence to get or regain power and control.

**. . . . men batter women because it gets them what they want or need and keeps control over their partner.**

### **3. Why Women Don't Leave**

The fear that battered women feel cannot be minimized. A non-abused person cannot imagine waking up and going to sleep afraid every day. Each decision is a potential life and death determination. Any matter, the way she cooks, who is on the phone, what she wears, or how the baby cries can be the "reason" that leaves her children motherless.

At the point where a woman realizes the violence is getting more frequent and more severe she will often experience more fear than during any single beating. It is often at this point that she also becomes aware of the danger in leaving.

Leaving is often a process. It involves testing the abusers responses and gathering resources to survive outside the relationship. A woman cannot assume the violence will end when she leaves. Many abusive men stalk and harass their former partners for years. Many kill them. Women are at the greatest risk of injury or murder at the time they end a relationship.

**Leaving an abusive relationship is an act of bravery that most in the justice system take for granted.**

Leaving an abusive relationship is an act of bravery that most in the justice system take for granted. Victims of domestic abuse are at great risk for intimidation and retaliation if they turn to the justice system for help. They have suffered numerous attacks by the abuser in the past, experienced terrifying threats against themselves and their families, may have been held hostage in their own homes and, better than anyone, understand the terrifying potential of the abuser to hurt them.

We must understand that a common characteristic of abusers is the difference between their public and private face. What you see in public is not always what the victim is dealing with at home. Without effective intervention, violence grows more severe and frequent until, as in many families each year, someone dies.

### **C. Effect of Domestic Violence on Special Populations**

#### **1. Rural Women**

Batterers commonly isolate their victims to prevent detection of their crimes and their victims' escape from the terror. This method of abuse is even more intensified by the distances between farms and towns in rural Iowa.

A multitude of factors heighten the danger faced by rural women in abusive relationships.<sup>7</sup> For example, public transportation is nonexistent. Batterers often deny their partner access to family vehicles or do not allow her to get a driver's licence, thereby making it virtually impossible for her to leave on her own. Graveled roads often become impassible during Iowa's snowy winters and muddy springs, adding to the desperation of living with abuse.

Phone service is not always available and even when it is, emergency response may be a long time in arriving. Moreover, those who respond may be a volunteer force of emergency medical technicians comprised of neighbors and acquaintances to whom she is ashamed to reveal the abuse. In fact, the victim often risks the abuser finding out about any efforts to seek help in the fishbowl of small town life.

Moreover, the seasonal nature of farm work often leaves men with months of unemployment, resulting in women being trapped in the house with an abusive partner for long stretches of time. To make matters worse, hunting weapons are common in rural homes, as are everyday tools with deadly possibilities.<sup>8</sup> In addition, a woman living in the country may not see a neighbor for days on end; by then gashes will heal, bruises will fade, and no signs of abuse will be detected. Even if injuries are evident, they can easily be attributed to working with farm equipment and livestock. Emotional ties to the land and animals, economic ties to the farming business, and the distant prospect of finding safety in a "big city," all add to the difficulty in pulling up stakes.

**. . . a woman living in the country may not see a neighbor for days on end; by then gashes will heal, bruises will fade, and no signs of abuse will be detected. Even if injuries are evident, they can easily be attributed to working with farm equipment and livestock.**

Once the decision is made to seek protection, it is clear rural areas of the state do not offer the same level of services available in urban areas. While all classes of rural litigants are affected by this limited access, domestic abuse petitioners face a greater problem because of the emergency need for protective orders. Traveling to another county for an order is often not a reasonable option. When victims do have a car, they may not have gas money or may risk further abuse for an “unexplained” absence of two or three hours.<sup>9</sup> The Task Force addresses these rural access problems in Part IV.B. with recommendations for revising the civil process.

## 2. Teenaged and Dating Women

Surveys show that abuse in dating relationships is prevalent; about one in three females will experience violence at the hands of their boyfriends before they reach adulthood.<sup>10</sup> A resource center in Des Moines reported having contact with more than 500 young women in a recent six-month period: 60 percent of them were involved in an ongoing abusive relationship and virtually all of them had experienced violence in a dating relationship.<sup>11</sup>

**Surveys show that abuse in dating relationships is prevalent; about one in three females will experience violence at the hands of their boyfriends before they reach adulthood.**

One of the reasons lawmakers are slow to enact safeguards for the victims of dating violence is the difficulty in defining “dating.” Some scholars have defined dating partners as “any romantically involved, unmarried couple;” others emphasize that dating is the process of “mate selection.”<sup>12</sup> Other jurisdictions have extended their domestic violence protections to people who have a “significant relationship,” apparently applying to “amorous and/or sexually intimate relationships.”<sup>13</sup> The California Code extends the definition of domestic abuse to those in “a dating, courtship, or engagement relationship.”

On the one hand, dating violence is remarkably similar to marital violence.<sup>14</sup> Victims dating their batterers experience the same patterns of power and control as their counterparts in abusive marriages or cohabitations, and clearly dating violence can be just as lethal.<sup>15</sup> This point was poignantly emphasized by Rebecca Bettin, a counselor at the Young Women’s Resource Center in Des Moines, in her testimony to a 1992 Iowa legislative hearing on dating violence:

*The way that Chapter 236 is currently written, we are led to believe that violence – thus power and control – only happens in relationships where people are married or living together. Are we then so naive that we believe that people wait until they are married or move in together before they start showing patterns of power and control and start being abusive?*

**Are we . . . so naive that we believe that people wait until they are married or move in together before they start showing patterns of power and control and start being abusive?**

On the other hand, dating violence differs from what has been more traditionally considered domestic abuse in at least two significant ways. First, dating relationships may lack the financial, property and custody entanglements common to people who are married, live together or have a child in common. People in a dating relationship typically have no legal connections that would distinguish them from persons in a non-dating relationship. This suggests that the procedures of Chapter 236 may not be one-size-fits-all and may need to be tailored to the particular needs of people who seek relief from violence in a dating relationship.

Second, while Iowans are beginning to recognize domestic violence as a serious social problem, many people maintain an alarmingly casual attitude toward dating violence. Researchers report "an apparent lack of social stigma attached to the behavior by participants."<sup>16</sup> Young men admit to abusing their young partners in order to intimidate them into giving into their demands, while violent husbands more commonly blame their aggression on reasons out of their control, such as drinking, drugs, anger, and stress.<sup>17</sup> Vicki Crompton, whose teenage daughter Jenny was killed by a former boyfriend in Bettendorf, Iowa, recounts how Jenny's friends testified at the murder trial that "it happens all the time at school, boyfriends hitting girlfriends, so they didn't think anything of it."<sup>18</sup>

Mrs. Crompton reports that schools in her community now include curricula on the dangers of abusive dating relations.<sup>19</sup> Most high schools may not be so enlightened. Case studies have shown that principals and guidance counselors tend to minimize verbal and physical abuse between students who are dating.<sup>20</sup> Researchers stress the prevalence of this problem along with the indifferent attitude toward its occurrence, point to a need for a massive education effort.<sup>21</sup> For further discussion of the need for prevention, see Part V, which includes Task Force recommendations involving educators and other community leaders. For the Task Force's recommendations concerning dating violence and juveniles, see Part IV.B.

### 3. Older Women

Iowa's population trends suggest that victims of spouse abuse in this state frequently may be older women.<sup>22</sup> Although research has taught us that domestic abuse is common to women of all age groups, battered older women have been virtually invisible in the battered women's movement.<sup>23</sup> Despite the attention elder abuse received in the late 1970's and a random sample survey on elder abuse that suggested the majority of the projected 701,000 to 1,093,560 abused elders in the United States were victims of spouse abuse, the difficulties and barriers suffered by the abused older woman and the commonality shared with the younger battered woman has rarely been discussed.<sup>24</sup> Rather, elder abuse has been much more frequently compared to child abuse than spouse abuse.<sup>25</sup>

**... elder abuse has been much more frequently compared to child abuse than spouse abuse.**

These trends have led to making abused older women invisible victims and to viewing them as childlike victims of family violence. Both tendencies have serious ramifications in terms of how older battered women will view themselves and their situations. The labeling of violence affects the victim's evaluation of specific episodes and may be a critical prerequisite to help-seeking.<sup>26</sup> Additionally, the way in which policy makers and practitio-

**Prisons across this country are filled with battered women . . .**

ners label a problem influences the types of interventions that are planned for, and utilized with, victims.<sup>27</sup>

It appears that the only significant difference between the young battered woman and the older battered woman is how communities intervene. In spite of similarities in the dynamics of family violence across all ages, and evidence that abused elders are not significantly more dependent or physically limited than non-abused, services to older abused women have taken the form of medical treatment and are, for the most part, protective in nature. While some women may be in need of such services, the general response to elder abuse has been a paternalistic one which fails to recognize that most elderly are competent to make their own decisions.<sup>28</sup>

#### **4. Battered Women in Prison**

Prisons across this country are filled with battered women, many serving time for defending themselves against their abusers or because they were coerced into some criminal activity by their abusers. Others are incarcerated because they "failed to protect" their children from their abuser's violence. The vast majority of incarcerated women were abused as children and/or as adults. Battered women defendants have the least extensive criminal records of any offenders, yet comprise a surprisingly high percentage of incarcerated women.

**The vast majority were abused as children and/or as adults. Battered women defendants have the least extensive criminal records of any offenders, yet comprise a surprisingly high percentage of incarcerated women.**

Studies show that only 20 percent of battered women who are charged with killing their partner are acquitted; the rest are convicted, or they plea-bargain to avoid a trial.<sup>29</sup> For many offenses women and men seem to receive the same sentences, but for offenses traditionally considered to be "masculine"—such as armed robbery and felony murder—women tend to receive heavier sentences than men.<sup>30</sup>

The extremely long sentences women serve raise serious questions about the fairness of our criminal justice system. Women testifying before the Committee on Domestic Violence and Incarcerated Women averaged sentences of 15 years.<sup>31</sup>

Ewing reported that almost half (47 percent) of the convicted women in his study received sentences of over 10 years and 20 percent of the women were sentenced to life in prison.<sup>32</sup> Abusive men who kill their partners serve an average of two-to-six year terms. Women who kill their partners, usually in self-defense, serve an average of fifteen years.<sup>33</sup>

**Abusive men who kill their partners serve an average of two-to-six year terms. Women who kill their partners, usually in self-defense, serve an average of fifteen years.**

Although one-third of the women in one study were women of color, they only account for 25 percent of those who were found not guilty. Black women made up 21 percent of the sample but only 19 percent of those who were acquitted. Thus, a Black battered woman who kills her partner in self defense is two times more likely to be convicted and go to prison for a longer time than her white Anglo counterpart.<sup>34</sup>

## 5. Same Sex Battering

Lesbians experience physical and psychological violence not only because they are female, but also because of their affectional orientation. Battered lesbians have few resources available – frequently encountering homophobia from service providers and denial within the lesbian community. Lesbians who are battered are the most under-served population of battered women in the nation.

Two myths appear to justify the lack of attention and service provision to lesbian battered women: (1) Lesbian abuse is usually mutual and, therefore, both parties consent to the violence; and (2) Lesbian abuse is never as violent as man-to-woman abuse. The fact is that lesbian abuse is almost never mutual and can be every bit as lethal as when men batter women.<sup>35</sup>

It is important to acknowledge that violence also exists in gay male relationships. Domestic violence in gay men's relationships is the third largest health problem for gay men in America today.<sup>36</sup> It is estimated that violence is as prevalent in gay-lesbian relationships as in heterosexual relationships.

**... lesbian abuse is almost never mutual and can be every bit as lethal as when men batter women.**

**Domestic violence in gay men's relationships is the third largest health problem for gay men in America today.**

## 6. Women of Color

There is inadequate information available about violence against women of color. Criminal justice studies about race generally focus on the defendant. Statistics that reflect the race or ethnicity of the victims of crime are rarely kept.

The National Crime Victim Survey conducted by the U.S. Department of Justice shows that Hispanic, African-American, and white women experience equivalent rates of violence committed by intimates. The NCVS information is collected from a continuous nationally representative sample of households and includes information on crimes not reported to law enforcement.

From January 1, 1990 through December 31, 1993, the Crime Victim Compensation Program in the Iowa Attorney General's Office received 674 applications for assistance from women who were victims of domestic abuse. Of those applications, 89 percent were from Caucasian women, 7 percent were from African-American women, 2 percent were from Latino women, 1 percent were from Asian women, .7 percent were from American Indian women, and .4% were unidentified.

These raw statistics correspond generally to the racial makeup of the Iowa population. The figures corroborate the data collected for the National Crime Victim Survey. Domestic abuse is not a racially defined crime; it occurs at the same rate in minority populations as in the majority population.

Iowa's population of minority and people of color is small. Minority citizens may have slight trust in the government of the majority to protect and serve them. Culture and language should never be barriers to justice. It is critical that courts and communities strive to assure culturally aware access and services to Iowa's citizens of color.

#### 7. Immigrant Battered Women

On March 30, 1989, a Brooklyn Supreme Court Judge sentenced a batterer to five years probation for second-degree manslaughter in the hammer-beating death of his wife. Relying on the use of a "cultural defense," his lawyer successfully argued that traditional Chinese values accounted for his extreme reaction to his wife's alleged infidelity. The ruling sent shock waves through the Asian community and a simple, but clear message: the law will not protect Asian women from domestic violence, even unto death.<sup>37</sup>

This example may suggest that women's lives, especially third world women's lives, are not valued. Among Asian, African-American, American Indian, and Latina victims of violence, there are similarities based on common experiences with racism and poverty. But given the different cultures, tribes, languages, and histories, there are also some marked distinctions.

The rigors of immigrant life put battered women from many of these communities in a particularly vulnerable position. Language barriers make it difficult for the immigrant battered woman to communicate with the police, city agencies, hospitals, and courts. These institutions are not structured to accommodate language and cultural differences, a reality which alienates and isolates many immigrant women.

For the undocumented battered woman, the isolation is even more severe. Thousands of Latina and Asian women have immigrated, many of them sponsored by husbands who came years before them to find work. These women, together with their husbands, must file for permanent residency after having lived together for 21 months.

Batterers invariably use the threat of deportation as another weapon in the abuse of their wives. Lacking English skills and money, and frightened by the police and hospitals, an immigrant woman is unlikely to press charges against a husband who holds the key to her citizenship. Women with children are fearful that they may lose their children if deported.

## 8. Battered Women with Disabilities

Few shelters and services are accessible to women with disabilities, or have staff educated and sensitive to their needs. Women with disabilities are victimized by violence as well as by an often unresponsive "helping" system.

**Few shelters and services are accessible to women with disabilities, or have staff educated and sensitive to their needs.**

Many of these women find themselves isolated by their disability and often further isolated by their own community who does not trust the non-disabled public to intervene effectively. This puts battered women with disabilities at increased risk. The perpetrator may also have a greater ability to control the victim's access to outside information and may be able to physically prevent her escape.

Outreach efforts are beginning in this area by service providers. For example, brochures printed in braille are now available for battered women who are blind. However, efforts to reach battered women with disabilities have been slow and are scarce in Iowa.

## 9. Prostitution

Women attempting to escape prostitution have the same needs as "traditionally battered women." Most will need shelter for themselves and their children. The great majority will have fled from brutal pimps with only the clothes on their backs. Like traditional battered wives, few of these women will have viable job skills. A great many have never completed high school. Not unlike their "housewife" counterparts, most of these women have had little experience controlling and managing their own finances.

All prostitutes seeking services will have experienced some combination of rape, battery and sexual abuse. In addition, the vast majority of women used in prostitution have been sexually abused as children. These are not new issues for service providers and victim advocates. Adequate resources may be available to empower women in overcoming the traumatizing effects of these abuses. Such resources are not always available to prostitutes seeking assistance. Because of their controversial nature, groups providing services for prostitutes and education about pornography struggle to stay alive.

## 10. Pregnant Battered Women

**... between 25-45 percent of all battered women are abused during pregnancy, thereby increasing the risk of birth defects and low birth-weight babies.**

The March of Dimes reports that between 25 percent and 45 percent of all battered women are abused during pregnancy, thereby increasing the risk of birth defects and low birth-weight babies. Mere notification of pregnancy is frequently a flash point for battering and violence within the family. The number of battering incidents is high during pregnancy and often the worst abuse can be associated with pregnancy.<sup>38</sup>

Dr. Lenore Walker and others have frequently noted the propensity of battering husbands to punch and kick their pregnant partners in the stomach, with resultant miscarriages and injuries to their reproductive organs. The Stacey and Shupe study revealed 42 percent of the women reported being beaten while pregnant.<sup>39</sup>

Although family pressures, including the number of children, are frequently cited risk factors for battering, battered women, on average, have no more children than non-battered women. Still, they are pregnant nearly twice as often, significantly more likely to have a miscarriage or abortion, and more likely to be pregnant at the time of their injury, again highlighting the prevalence of sexual assault.<sup>40</sup>

---

<sup>1</sup>Planned Parenthood v. Casey, \_\_\_ US \_\_\_, 112 S.Ct. 2791, 120 L.Ed.2d 674, 723 (1992).

<sup>2</sup>Angela Browne, Remarks by William Scott for the Report of the Council on Scientific Affairs, 1991

<sup>3</sup>Irene Hanson Frieze and Angela Brownne, "Violence in Marriage," Family Violence: Crime and Justice.

<sup>4</sup>Finkelhor, David, and Yllo, Kersti, License to Rape: Sexual Abuse of Wives, Free Press, p. 22 (1985).

<sup>5</sup>Evan Stark and Anne Flitcraft, Spouse Abuse, Surgeon General's Workshop on Violence and Public Health Source Book presented at the Surgeon General's Workshop on Violence and Public Health, Leesburg, VA, October, 1985, p. 16.

<sup>6</sup>Levy, Barbara, Dating Violence: Young Women in Danger (1991).

<sup>7</sup>"Rural Battered Women: Isolation," Networker, 2d quarter, 1989 Networker (Committee Against Domestic Abuse, Mankato, Minn.).

<sup>8</sup>Testimony of Nancy Becker, victim advocate in Atlantic, December 15, 1993, at 128 ("With rural communities we have shotguns, we have rifles very readily accessible. Many times they are not taken away at the time of arrest because the abuser says he's a hunter and he needs his guns to be able to hunt....") See also Part IV.A., including recommendation on seizure of firearms.

<sup>9</sup>Survey responses from clerks of court.

<sup>10</sup>S. Kuehl, Legal Remedies for Teen Dating Violence, in B. Levy, Dating Violence: Young Women in Danger at 73 (1991) [hereinafter B. Levy].

<sup>11</sup>Testimony at Iowa House of Representatives Public Hearing on Dating Violence by Rebecca Bettin, counselor at the Young Women's Resource Center, March 31, 1992.

<sup>12</sup>D. Sugarman & G. Hotaling, Dating Violence: A Review of Contextual and Risk Factors, in B. Levy.

<sup>13</sup>People v. Ballard, 249 Cal.Rptr. 806 (1988) (rejecting defendant's vagueness challenge to domestic abuse statute because the conduct clearly amounted to cohabitation).

<sup>14</sup>L. Rouse, R. Breen & M. Howell, Abuse in Intimate Relationships: A Comparison of Married and Dating College Students, 3 The Journal of Interpersonal Violence at 415 (Dec. 1988).

<sup>15</sup>Kessner, Domination and Control (1988), in B. Levy, at 75 (1991).

<sup>16</sup>D. Sugarman & G. Hotaling, Dating Violence: A Review of Contextual and Risk Factors, in B. Levy.

<sup>17</sup>Id. at 116-17.

<sup>18</sup>V. Crompton, A Parent's Story, in B. Levy.

<sup>19</sup>Id. at 26.

<sup>20</sup>L. Prato & R. Braham, Coordinating a Community Response to Teen Dating Violence, in B. Levy.

<sup>21</sup>D. Sugarman & G. Hotaling, in B. Levy.

<sup>22</sup>A survey by the Iowa Department of Elder Affairs and Iowa State University (1990) showed that between 1980 and 1990 Iowa's total population decreased by nearly 5 percent, while its elderly population (60 years and older) increased by 6.5 percent. The survey also showed that Iowa ranks third in the nation in the number of its citizens over 65 years of age and first in the nation in the population of citizens over 85.

<sup>23</sup>Fields, M.D., Wife beating: The hidden offense. New York Law Journal, 175(83), 1-7 (1976); McKibben, M., Programming Issues Regarding Older Battered Women, Wisconsin Bureau on Aging (1988); Rathbone-McCuan, The Abused Older Woman: A Discussion of Abuses and Rapes (1984).

- <sup>24</sup>Pillemer, K. & Finkelhor, D., The Prevalence of Elder Abuse. The Gerontologist (1988).
- <sup>25</sup>Id.
- <sup>26</sup>Sedlak, A.J., The effects of personal experiences with couple violence on calling it battering and allocating blame in G.T. Hotaling (Ed.) Coping with Family Violence (1988).
- <sup>27</sup>Abused Elders or Older Battered Women? Report on the AARP Forum, October 1992.
- <sup>28</sup>Id.
- <sup>29</sup>Sue Osthoff, Director of National Clearinghouse for the Defense of Battered Women, Violence Against Women: Till Death Do Us Part.
- <sup>30</sup>Ann Jones, Women Who Kill, New York, NY: Fawcett Crest, 1980, p.9.
- <sup>31</sup>Battered Women and Criminal Justice: The Unjust Treatment of Battered Women in a System Controlled by Men, A Report of the Committee on Domestic Violence and Incarcerated Women, June 1987, pp.3A.
- <sup>32</sup>Charles P. Ewing, Battered Women Who Kill: Psychological Self-Defense as Legal Justification, Lexington, MA: Lexington Books, 1987.
- <sup>33</sup>"National Estimates & Facts About Domestic Violence," NCADV Voice, Winter 1989, p.12.
- <sup>34</sup>Lenore E.A. Walker, Legal Self Defense Issues for Women of Color, Unpublished paper, 1988, p.4.
- <sup>35</sup>Pam Elliott, Coordinator, Lesbian Battering Intervention Project of the Minnesota Coalition for Battered Women, Violence Against Women: Lesbian Battering, Breaking the Silence.
- <sup>36</sup>Island, David and Patrick Letellier, Men Who Beat the Men Who Love Them, Harrington Park Press, p.1 (1991).
- <sup>37</sup>Tani Takagi, Grant Program Coordinator, Ms. Foundation for Women, Violence Against Women: Women of Color and Violence Against Women, Spring 1991.
- <sup>38</sup>Planned Parenthood v. Casey, \_\_\_ US \_\_\_, 112 S.Ct. 2791, 120 LEd.2d 674, 723 (1992).
- <sup>39</sup>Cynthia Gillespie, Justifiable Homicide: Battered Women. Self-Defense. and The Law, Columbus, OH: Ohio State University Press, 1989, p. 52.
- <sup>40</sup>Evan Stark and Anne Flitcraft, Spouse Abuse, Surgeon General's Workshop on Violence and Public Health Source Book presented at the Surgeon General's Workshop on Violence and Public Health, Leesburg, VA, October, 1985, p. 16.

**THE NUMBER OF DOMESTIC ABUSE CIVIL FILINGS IN  
IOWA BY COUNTY - 1990-1993**

DISTRICT	COUNTY	1990	1991	1992	1993	DISTRICT	COUNTY	1990	1991	1992	1993
1A	Allamakee	0	3	7	7	4	Audubon	0	0	0	2
	Clayton	2	0	0	5		Cass	0	4	11	6
	Delaware	1	1	8	5		Fremont	0	2	1	1
	Dubuque	1	19	81	93		Harrison	0	1	7	9
	Winneshek	1	0	2	12		Mills	0	0	19	15
1B	Black Hawk	10	12	39	71	Montgomery	2	1	7	20	
	Buchanan	1	0	0	0	Page	0	0	2	9	
	Chickasaw	2	1	1	4	Pottawattamie	2	13	101	133	
	Fayette	0	0	0	10	Shelby	0	0	0	2	
	Grundy	0	0	0	1	5A	Dallas	1	4	7	22
Howard	0	0	2	3	Guthrie		2	2	4	13	
2A	Bremer	0	2	2	3		Jasper	0	2	15	23
	Butler	2	1	2	1		Madison	0	0	7	13
	Cerro Gordo	7	9	14	28		Marion	2	3	16	17
	Floyd	1	3	0	10	Warren	1	1	14	18	
	Franklin	1	0	4	2	5B	Adair	1	4	2	6
Hancock	0	0	1	6	Adams		1	0	3	0	
Mitchell	0	2	1	2	Clarke		1	3	11	3	
Winnebago	0	0	1	0	Decatur		0	1	11	5	
Worth	0	0	1	0	Lucas		1	2	0	2	
2B	Boone	0	0	9	20	Ringgold	0	0	0	3	
	Calhoun	1	0	6	3	Taylor	0	0	1	5	
	Carroll	0	0	4	26	Union	1	2	17	7	
	Greene	0	1	5	4	Wayne	1	0	3	6	
	Hamilton	0	2	4	3	5C	Polk	2	44	281	411
Hardin	0	0	7	7	6		Benton	0	0	0	7
Humboldt	0	0	2	6	Iowa		1	0	8	10	
Marshall	1	7	37	58	Johnson		5	4	57	72	
Pocahontas	2	1	3	2	Jones		0	0	6	20	
3A	Sac	0	3	0	2	Linn	12	23	119	284	
	Story	0	2	19	28	Tama	0	0	1	16	
	Webster	5	2	14	17	7	Cedar	1	1	4	7
	Wright	0	0	0	4		Clinton	1	16	39	83
	3B	Buena Vista	0	0	2		0	Jackson	0	5	7
Cherokee		0	3	15	8		Muscatine	2	6	7	14
Clay		3	4	18	23		Scott	12	100	296	501
Dickinson		5	12	14	12	8A	Appanoose	3	3	7	3
Emmet		0	3	7	2		Davis	2	3	1	0
Kossuth	0	0	6	3	Jefferson		2	7	6	6	
Lyon	2	2	0	5	Keokuk		1	3	0	1	
O'Brien	1	0	2	5	Mahaska		7	4	16	20	
3B	Osceola	1	2	2	1	Monroe	0	6	8	8	
	Palo Alto	0	0	4	7	Poweshiek	0	3	12	22	
	Crawford	0	1	6	10	Van Buren	1	0	2	4	
	Ida	0	0	0	0	Wapello	42	19	15	38	
	Monona	0	0	3	4	Washington	0	2	1	3	
3B	Plymouth	0	0	3	6	8B	Des Moines	2	20	53	79
	Sioux	1	2	9	4		Henry	0	1	2	9
	Woodbury	23	44	90	142		Lee	3	10	12	25
							Louisa	0	1	2	6
							Statewide	188	470	1,678	2,677

From January through April 1994, domestic abuse civil filings increased 72.8 percent (692 to 1,196) over the same period in 1993.  
Source: Iowa Judicial Department

NUMBER OF DOMESTIC ABUSE CIVIL FILINGS IN IOWA BY COUNTY PER THOUSAND

	County	1992 Population	1993 DA Civil Filings	Per Thousand		County	1992 Population	1993 DA Civil Filings	Per Thousand		
1A	Allamakee	13,814	7	0.51		Fremont	8,141	1	0.12		
	Clayton	18,735	5	0.27		Harrison	14,652	9	0.61		
	Delaware	18,310	5	0.27		Mills	13,386	15	1.12		
	Dubuque	87,215	93	1.07		Montgomery	11,780	20	1.70		
	Winneshiek	21,050	12	0.57		Page	16,544	9	0.54		
1B	Black Hawk	125,395	71	0.57		Potawattamie	83,777	133	1.59		
	Buchanan	20,940	0	0.00		Shelby	13,181	2	0.15		
	Chickasaw	13,208	4	0.30		5A Dallas	30,865	22	0.71		
	Fayette	21,755	10	0.46		Guthrie	11,130	13	1.17		
	Grundy	12,013	1	0.08		Jasper	34,926	23	0.66		
2A	Howard	9,346	3	0.30		Madison	12,709	13	1.02		
	Bremer	22,813	3	0.13		Marion	20,171	17	0.56		
	Butler	15,678	1	0.06		Warren	37,278	18	0.48		
	Cerro Gordo	46,812	28	0.60		5B Adair	8,283	6	0.72		
	Floyd	16,887	10	0.59		Adams	4,637	0	0.00		
2B	Franklin	11,146	2	0.18		Clarke	8,318	3	0.36		
	Hancock	12,301	6	0.49		Decatur	8,106	5	0.62		
	Mitchell	10,783	2	0.19		Lucas	9,040	2	0.22		
	Winnebago	11,902	0	0.00		Ringgold	5,318	3	0.56		
	Worth	7,860	0	0.00		Taylor	6,970	5	0.72		
	Boone	25,210	20	0.79		Union	12,465	7	0.56		
	Calhoun	11,396	3	0.26		Wayne	6,914	6	0.87		
	Carroll	21,388	26	1.22		5C Polk	338,261	411	1.22		
	Greene	10,024	4	0.40		6 Benton	22,686	7	0.31		
	Hamilton	16,092	3	0.19		Iowa	14,690	10	0.68		
	Hardin	18,744	7	0.37		Johnson	97,546	72	0.74		
	Humboldt	10,505	6	0.57		Jones	19,730	20	1.01		
	Marshall	37,698	58	1.54		Linn	172,892	284	1.64		
	Pocahontas	9,241	2	0.22		Tama	17,329	16	0.92		
	Sac	12,065	2	0.17		7 Cedar	17,567	7	0.40		
Story	74,329	28	0.38	Clinton	51,152	83	1.62				
Webster	39,991	17	0.43	Jackson	19,983	13	0.65				
Wright	14,210	4	0.28	muscatine	40,838	14	0.34				
3A	Buena Vista	19,995	0	0.00		Scott	155,210	501	3.23		
	Cherokee	13,949	8	0.57		8A Appanoose	13,726	3	0.22		
	Clay	17,728	23	1.30		Davis	8,290	0	0.00		
	Dickinson	15,233	12	0.79		Jefferson	16,450	6	0.36		
	Emmet	11,625	2	0.17		Keokuk	11,563	1	0.09		
	Kossuth	18,123	3	0.17		Mahaska	21,399	20	0.93		
	Lyon	11,906	5	0.42		Monroe	8,187	8	0.98		
	O'Brien	15,366	5	0.33		Poweshiek	18,950	22	1.16		
	Osceola	7,193	1	0.14		Van Buren	7,715	4	0.52		
	Palo Alto	10,471	7	0.67		Wapello	35,758	38	1.06		
	3B	Crawford	16,588	10		0.60		Washington	20,056	3	0.15
		Ida	8,278	0		0.00		8B Des Moines	42,842	79	1.84
Monona		9,915	4	0.40	Henry	19,465		9	0.46		
Plymouth		23,658	6	0.25	Lee	38,952		25	0.64		
Sioux		30,331	4	0.13	Louisa	11,400		6	0.53		
4	Woodbury	99,958	142	1.42		Statewide					
	Audubon	7,095	2	0.28			2,802,944	2,677	0.96		
	Cass	14,948	6	0.40							

Source: Iowa Judicial Department

## PART III

# THE LEADERSHIP ROLE OF THE COURT IN ENDING DOMESTIC ABUSE

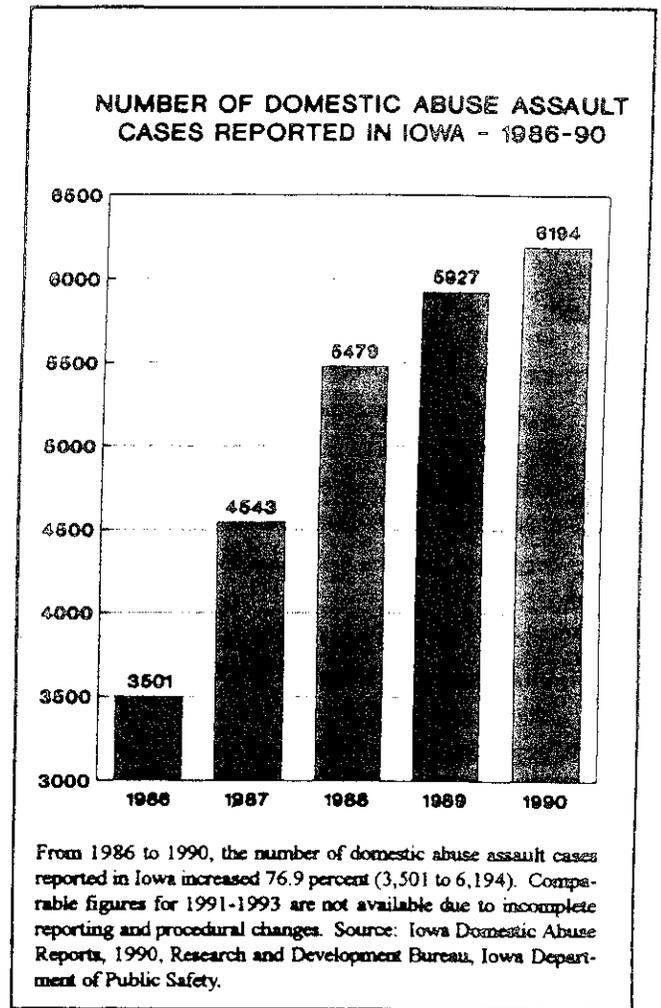
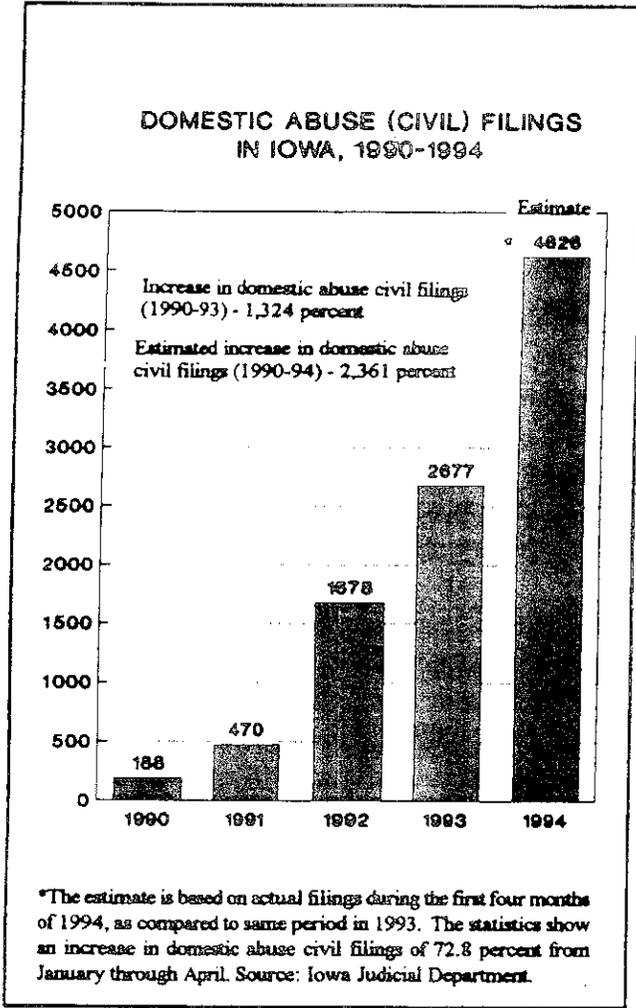
### CURRENT RESPONSE

In the last decade, advocates for victims of domestic abuse have increasingly viewed legal remedies as an appropriate vehicle to end domestic violence. Starting in 1979 with the enactment of the first protective order legislation, Iowa has been among the country's leaders in passing progressive legislation mandating an increased role for the court and peace officers in criminal and civil domestic abuse cases. Some of the statutes, activities, and other developments to address domestic violence in Iowa are listed below.

#### EFFORTS TO ADDRESS DOMESTIC ABUSE IN IOWA

- 1979 ♦ Iowa Domestic Abuse law enacted, effective January 1, 1980
- 1985 ♦ Iowa Coalition against Domestic Violence established
- 1986 ♦ "Warrantless" arrest mandated in domestic abuse cases
- 1987 ♦ Mandatory initial appearance before magistrate prior to release
  - ♦ No contact order to protect victim and victim's family
- 1990 ♦ Prosecution of Domestic Abuse in Iowa: A Prosecution Manual prepared
- 1991 ♦ Two-day minimum jail sentence for conviction of domestic abuse
  - ♦ Seven-day minimum jail sentence for violation of protection order
  - ♦ Second deferred judgment or deferred sentence for domestic abuse prohibited
  - ♦ Batterers' education program mandated - multidisciplinary state steering committee established to develop and provide oversight
  - ♦ Pro se petitions for protection orders authorized
  - ♦ Domestic abuse community forums held - Iowa Department of Justice
  - ♦ Iowa Domestic Abuse Hotline established
  - ♦ Law enforcement certification required to include training on domestic abuse
  - ♦ Hospitals required to establish domestic abuse protocols
- 1992 ♦ Stalking law
  - ♦ 36 batterers' education programs established to serve Iowa's 99 counties
  - ♦ Domestic abuse forms promulgated - Iowa Department of Justice
  - ♦ Domestic abuse presentation at Iowa Judges Conference
- 1993 ♦ Final Report of the Equality in the Courts Task Force submitted to the Supreme Court of Iowa. The Report included findings and recommendations on domestic abuse.
  - ♦ Six-member Iowa team appointed by Chief Justice to attend a national program in San Francisco, "Courts and Communities: Confronting Violence in the Family"
  - ♦ Two one-day programs for judges on domestic abuse held in Des Moines
  - ♦ Booklet for domestic abuse victims - How to Protect Yourself From Domestic Abuse Without a Lawyer - prepared and disseminated
  - ♦ Program on domestic abuse at Magistrate Conference and District Court Clerks Conference
  - ♦ New chapter on domestic abuse prepared for the Manual for District Court Clerks
  - ♦ Definition of "domestic abuse" expanded
  - ♦ Batterers' education groups operational at three correctional institutions: Iowa State Penitentiary, Iowa Men's Reformatory, and Iowa Medical and Classification Center
  - ♦ Supreme Court Task Force on Courts' and Communities' Response to Domestic Abuse established
  - ♦ 12-member Domestic Abuse Task Force begins hearings
- 1994 ♦ Special appropriation of up to \$100,000 to aid the judicial department in handling domestic abuse cases
  - ♦ One-day program on domestic abuse sponsored by the Iowa County Attorneys Association
  - ♦ Definition of harassment and stalking expanded
  - ♦ Iowa Domestic Abuse Benchbook for judges and magistrates prepared
  - ♦ Final Report of the Domestic Abuse Task Force submitted to the Supreme Court of Iowa

By increasing the role for the courts and law enforcement, the public has sent a strong message that domestic abuse is a crime and that citizens are willing to spend critically short court resources toward its eradication.



Our experience in this state demonstrates that the emphasis on legal reform has accomplished many things. First, legislative reform has succeeded in bringing domestic abuse "out of the closet." As illustrated in the bar charts above, the number of both civil and criminal domestic abuse cases increased dramatically in recent years. Domestic abuse is no longer a private, family matter. By increasing the role for the courts and law enforcement, the public has sent a strong message that domestic abuse is a crime and that citizens are willing to spend critically short court resources toward its eradication. Just as the public's view of drinking and driving has changed through vigorous prosecution, we are in the midst of a seachange of public awareness and discussion regarding the unacceptability of violent behavior in intimate relationships. Second, legal reform has provided the opportunity for many individual victims of domestic violence to use the law to break free of abusive relationships.

The Task Force affirms the importance of the existing legal remedies for victims of domestic violence, and recommends in other portions of the report ways in which the existing laws can be expanded or fine tuned and executed more consistently and fairly.

While legal reform has produced these and other positive outcomes, it has not progressed without creating new challenges. Foremost among these has been the need to accommodate a greater number of cases on shrinking judicial, prosecution, law enforcement, corrections, and service programs budgets.

Another challenge lies in adapting the judicial system's response to accommodate the complexity and persistence of domestic violence. The Task Force heard testimony from judges and clerks about a dismissal rate of pro se petitions for protection orders as high as 50 percent in some jurisdictions; this rate makes court personnel wonder whether the court is an appropriate forum for these cases. Likewise, magistrates, police and prosecutors reported to us their frustration when they face victims of domestic violence who insist that their cases be dismissed, only to see another case involving the same perpetrator or victim later on.

The Task Force, for reasons of philosophy and resources, recognizes that the courts cannot be the exclusive vehicle to end violence. As the Task Force analyzed the information received and developed its recommendations, we recognized that much of our commentary and suggestions go beyond the operation of Iowa's Judicial Department. Because of our charge to consider ways in which the courts could work with communities, we have suggested action which would be inappropriate for the Judicial Department to undertake. For example, we suggest legislation which does not concern the operation of the courts, and would not likely be part of the Judicial Department's legislative agenda.

The Task Force believes, however, that it is appropriate for the Iowa Supreme Court to initiate discussion because of the expanded expectations the public has placed on the courts to deal with domestic abuse. Following the lead of the National Council of Juvenile and Family Court Judges,<sup>1</sup> we believe that an appropriate response can be for the Chief Justice to challenge the rest of the state -- the public and private sector -- to study this report and to respond as those sectors deem appropriate. The Court took a similar approach to the Equality in the Courts Task Force Report in 1993.

In the end, the Task Force recommends in this report that the Supreme Court embrace a broader leadership role for the Judicial Department and for the community at large in addressing domestic abuse. The Court's direction to the Task Force that it identify ways in which courts and communities can work together to address family violence is an excellent example of this proactive approach. Recommendations in this section and throughout the report suggest ways in which the Court can build on this beginning. The Task Force acknowledges that any efforts the courts make in this area, beyond their traditional adjudicatory function, must be consistent with the requirement that judges and court staff remain neutral and impartial in individual cases and avoid taking on as a cause the remediation of social ills. Knowing this, the Task Force nonetheless makes the following recommendations.

**The Task Force recommend . . . the Supreme Court embrace a broader leadership role for the Judicial Department and for the community at large in addressing domestic abuse.**

## RECOMMENDATIONS

1. **Judges and court administration staff can set an example for the rest of the community by recognizing and communicating the importance of ending domestic abuse through readily available legal remedies.**

Domestic abuse laws reflect the community value that the courthouse is a "community resource center." Judges both reflect this attitude and set an example for the 1,850 members of the Judicial Department when they apply the domestic abuse laws as the General Assembly intended. If they communicate, by word or deed, a rejection of or ambivalence about the laws, no one else will care about the laws or the persons they are intended to protect. To the extent that judges and court personnel are unaware of the benefits of a wide array of legal remedies to ending violence, training programs should emphasize this point. To the extent that attitude, not lack of information, is the problem, the Supreme Court should continue to set an example (as it did by appointing the Task Force) for the rest of the justice system in its personnel, administrative, and supervisory capacities.

2. **The Supreme Court can review the adequacy of the existing mechanisms for receiving and resolving complaints from citizens who believe that judges or court staff mishandled their domestic abuse cases, and for communicating to the public how such complaints can be made and how they will be resolved.**

During its tenure the Task Force learned of incidents in which judicial system employees are reported to have treated domestic abuse victims poorly<sup>2</sup> or have instituted judicial administration policies which appear to be contrary to the intent of the General Assembly.<sup>3</sup> While these incidents should not overshadow the dedicated and responsible manner most Iowa judges are handling the large number of domestic abuse cases, we believe it is important to describe the types of problems that have been observed. The Task Force heard of a judge who regularly brings plaintiffs to tears during the ex parte proceeding, telling them they have no business representing themselves just as they would not perform surgery on themselves. Another judge, after finding the defendant not guilty, told him, "Hell hath no fury like that of a woman scorned." Testimony and other information indicated that judicial administration policies have been implemented which appear to be contrary to the intent of the General Assembly. For example, one judge has required that the address of the local domestic abuse shelter be included on the petition and protection order served on the defendant. Another judge requires that domestic abuse victims, but not other victims, appear at the alleged offender's initial appearance to recite for the judge the probable cause that an assault occurred.

Some incidents result from unclear statutes or lack of familiarity with the laws. When this is the source of ill treatment, education programs for judges and others can address the problem. However, other problems are caused by an apparent bias or attitude against domestic abuse cases or victims. It is important to emphasize that these incidents appear to be isolated and contrast sharply with the sincere efforts taken by many other Judicial Department officers and employees to implement Iowa's domestic abuse laws. Public confidence in the fairness of the judicial system is essential; this confidence is bolstered when members of the public know that systems exist through which public employees are held accountable to fairly execute their responsibilities. The Task Force believes that a significant number of persons do not know about

or how to use the existing complaint mechanisms for clerks of court, judges, and other Judicial Department employees. The Task Force heard concerns that persons -- victims of domestic abuse and their advocates -- do not use the Judicial Qualifications Commission complaint process for fear that their complaints will have a negative impact in other domestic abuse cases.<sup>4</sup> The Task Force recommends that the Supreme Court review the current processes for dealing with complaints and communicate to the public at large and to advocates the ways in which complaints will be processed.

**3. Judges can ensure that the court system is "user friendly" and fair to both victims and perpetrators of domestic abuse. Toward that end, the Supreme Court can advise district court judges that they may participate in coalitions or councils in each judicial district or county as long as their obligation to remain neutral in individual cases is not compromised.**

Family violence councils or coalitions have been convened nationwide to address ways in which domestic abuse cases can be processed expeditiously, fairly, and consistently with legislative purpose. The purpose of the councils is to effectuate coordination between the various components of the justice system for fair and efficient handling of domestic abuse cases. For example, agenda items can include methods to enforce sentencing orders where defendants are sent to Batterers' Educational Programming. Council members may include judges, law enforcement, members of the bar, corrections, lay advocates, and court administrative staff. By participating in these councils or coalitions, judges can learn from others who view the court's handling of these cases -- prosecutors and defense counsel, police and correctional officers, defense attorneys, and victim advocates -- about how these cases are being processed and take corrective action when necessary. Judges can learn about non-judicial resources for victims and perpetrators of domestic violence. Judicial participation in councils is consistent with the Iowa Canons of Judicial Conduct<sup>5</sup> which allow judges to work to improve the administration of justice. The decision to participate in the councils should be left to the judgment of the individual judge that he or she can remain neutral and detached from specific cases or parties and can direct the energy of the court toward system-improvement.

Many Iowa counties and districts already have councils in place, under the leadership of the eight judicial district Departments of Correctional Services. By maintaining a local focus, these coalitions can address the court administration concerns peculiar to that district, they also can incorporate community resources and agencies unique to the area. The coalition in Scott County is a particularly good example of the ways in which the court can take an appropriate leadership role. A description of the formation of that coalition and its workings is contained in the Appendix. For a helpful discussion about the importance of judicial leadership, see the article by Judge Leonard Edwards, "Reducing Family Violence: The Role of the Family Violence Council," 1992, Juvenile and Family Court Journal 1, contained in the Appendix.

**4. The Supreme Court can acknowledge the appropriateness of judges speaking out in the community about the courts' and communities' partnership in eradicating domestic abuse.**

The Canons of Judicial Ethics state that judges, as with all lawyers, should educate the public about the law.

**. . . the Supreme Court can support efforts by individual judges to raise public awareness about domestic abuse consistent with the Code of Judicial Conduct.**

Of course, each judge should decide how he or she will perform that duty. The Task Force assumes that some judges may wish to speak to the law's role in responding to domestic abuse, but are uncertain about the appropriateness of doing so. The Task Force recommends, therefore, that the Supreme Court provides guidance about the how that can be done without giving the appearance the judicial system is biased against abusers or that judges have developed a preordained response to individual cases. Likewise, the Supreme Court can support efforts by individual judges to raise public awareness about domestic abuse consistent with the Code of Judicial Conduct.

Judges, of course, must respect the ethical boundaries between appropriate and inappropriate public commentary about domestic abuse. For example, if a judge has been asked by a local service club to give a luncheon speech about a current judicial administration topic of the judge's choice, he or she may speak about the incidence of domestic violence and its causes and effects. The judge could report how Iowa laws are designed to provide remedies and could suggest possible areas for legislative reform. The judge could further say that by applying these laws to individual cases according to general principles of fairness, the judicial system is part of a community-wide response to address this serious social problem. In urging the community to respond to domestic abuse, the judge could identify projects and efforts the community and its organizations could undertake, such as supporting neutral visitation centers, raising money for domestic abuse shelter and services programs, and working with youth on domestic abuse prevention projects. It would not be appropriate, however, for the judge to solicit contributions for building projects, or to say "we will throw abusers in jail," or similar statements which display a bias, or that the court has any predisposition toward a class of cases.

**5. Judges and other Judicial Department employees can receive annual training on domestic abuse at the regular training programs or conferences.<sup>7</sup>**

**. . . on-going training is necessary to address the problems identified during our tenure.**

Over the past three years, the Judicial Department has sponsored educational programs on domestic violence for clerks of court, magistrates, and judges. A new benchbook on domestic abuse was distributed at the June 1994 judicial conferences; a chapter on domestic abuse was added to the clerks of court manual in 1993. This is a commendable start, but the Task Force believes that on-going training is necessary to address the problems identified during our tenure. While some Judicial Department employees may react by saying "we did that last year," the Task

Force notes that there is a wide array of topics from which to select programs: dynamics of domestic violence; its effects (including on children); pro se case party assistance; how to deal with expert witnesses; battered woman syndrome; programs and treatments for batterers and victims; cultural and ethnic variations; relationship between domestic abuse and substance abuse; multigenerational dysfunction; emergency protection order procedures; local domestic violence service programs; judicial attitude and orders that help; why victims seek to dismiss orders; domestic violence in juvenile court; supervising the domestic violence offender; lethality in violent families; and use of creative technologies to increase court access in rural areas.<sup>8</sup>

In addition to programs at statewide conferences, programs should be held for Judicial Department personnel at the district level. Interdisciplinary training programs are especially effective and should be considered.

6. **The Judicial Department should collect case statistics for both civil and criminal domestic abuse cases.**

**Keeping accurate statistics will help planning, budgeting, and training; it also will assist the Judicial Department in evaluating the accessibility of the courts for pro se domestic abuse litigants.**

As noted on the bar charts in this section, the Judicial Department currently collects statistical information on the number of domestic abuse (civil) filings; however, comparative data are not available for domestic abuse criminal assaults. Since the Iowa Department of Public Safety for various reasons does not have complete data on the number of reported domestic abuse crimes from 1991-94,<sup>9</sup> the Task Force suggests the number of domestic abuse assault cases be collected by the Judicial Department. Implementation of a statewide criminal justice computer information system will make the task

of reporting complete and accurate statistics easier for both departments. Keeping accurate statistics will help planning, budgeting, and training; it also will assist the Judicial Department in evaluating the accessibility of the courts for pro se domestic abuse litigants.

7. **The Supreme Court can include in its budget requests sufficient financial resources to handle increasing domestic abuse case loads.**

As noted above, domestic abuse civil case filings have increased over 1,300 percent (188 to 2,677) in the past four years. During this time, the Judicial Department budget has not kept pace with the staggering work load which also has seen civil, criminal, and juvenile cases jump by 31, 24, and 7 percent, respectively. The Task Force commends the efforts that Judicial Department employees have made to absorb the increased demands on existing resources. At the same time, the Task Force notes that processing these cases is very time-consuming and that adding department personnel at all levels is necessary to meet the demand which increased court access has created.

**. . . adding department personnel at all levels is necessary to meet the demand which increased court access has created.**

8. **The Supreme Court should consider creating a domestic abuse coordinator position in the State Court Administrators Office.<sup>10</sup>**

In order to follow through with any recommendations and plans the Supreme Court adopts, creation of a new position is necessary. The coordinator would engage justice system personnel, as well as persons from existing public and private agencies, to find more efficient and effective ways to handle these cases. The coordinator would provide the guidance, information, and technical expertise to integrate the diverse groups and coalitions which work with domestic abuse. This type of technical assistance specific to the Judicial Department is currently not available elsewhere.<sup>11</sup> For more specifics, see Part VIII of this Report, Implementation.

9. The Supreme Court can issue a challenge to others both inside and outside of government to respond to domestic abuse.

This report identifies only some starting points for those in the public and private sectors who want to join with the rest of the community, including the court, in ending domestic abuse.

---

<sup>1</sup>The National Council of Juvenile and Family Court Judges and the State Justice Institute took a leadership role in calling a national conference on Courts' and Communities' Response to Domestic Violence in 1993 and a follow-up conference on the Model Code in 1994.

<sup>2</sup>These examples are taken from various sources: letter from Legal Services attorney Jeanette Keller to Task Force, dated February 7, 1994; testimony of Mary Ortega, victim advocate, before the Task Force, pages 134 - 137; testimony of victim advocate Carrie Fitzgerald, pages 137 - 138; testimony of victim advocate Nancy Becker, pages 138 - 140; written testimony of Ruth Cooperrider and Connie Bencke, Citizens' Aide/Ombudsman, pages 5 - 7.

<sup>3</sup>For example, the practice of requiring all victims of domestic abuse assault (but not other violent crimes) to appear at initial appearances and dismissing the charges if they do not.

<sup>4</sup>New Canon 3A(8) of the Iowa Code of Judicial Conduct prohibiting discriminatory practices by judges may alleviate some of the hesitation.

<sup>5</sup>Code of Judicial Conduct, Canon 4, Iowa Supreme Court Rule 119.

<sup>6</sup>See Canons 3 and 5, requiring impartiality.

<sup>7</sup>The Equality in the Courts Task Force made a similar recommendation.

<sup>8</sup>List adapted from State Justice Institute, Judicial Education Program Summary.

<sup>9</sup>John Carlson "Incomplete Crime Data From Iowa are Forwarded to Federal Officials" The Des Moines Register, July 20, 1994, p. 1. The article suggests the incomplete figures are due to a change in the method of compiling statistical information under a new computer system which is not operational across the state.

<sup>10</sup>The State Court Administrator's Office has submitted a grant application to the State Justice Institute for this purpose.

<sup>11</sup>By contrast, the Iowa Coalition against Domestic Violence coordinates services for victims, training for lay advocates, legislative lobbying, and other activities which advocate for victims and survivors of domestic abuse.

## PART IV

### THE JUSTICE SYSTEM RESPONSE

#### A. Criminal Justice System: Current Response and Recommendations

From testimony and other sources, the Task Force identified an uneven response to domestic violence from Iowa's criminal justice system. Each local law enforcement agency and county attorney's office exercises its discretion differently, which sometimes results in conscientious investigation and prosecution of domestic assaults, but other times results in neglect or mistreatment of the survivors of such violence.

##### 1. Police Response

The Task Force heard testimony that, in some areas of the state, and among some officers in nearly all areas, negative attitudes about battered women and the effectiveness of criminal justice system intervention persist. This results in officers avoiding or ignoring their legal obligations under Chapters 236 and 708. The Office of Citizens Aide/Ombudsman regularly receives and investigates such reports.

**Each local law enforcement agency and county attorney's office exercises its discretion differently, which sometimes results in conscientious investigation and prosecution of domestic assaults, but other times results in neglect or mistreatment of the survivors of such violence.**

On the other hand, the Task Force heard testimony that some officers take their obligations very seriously and genuinely want to "do their part" to end domestic violence in their communities. Officers are active in public speaking about domestic abuse, in conducting in-service training for other officers, and participating in community coordinating councils.<sup>1</sup> We commend the efforts of those officers and departments who have placed a high priority on enforcing domestic abuse laws.

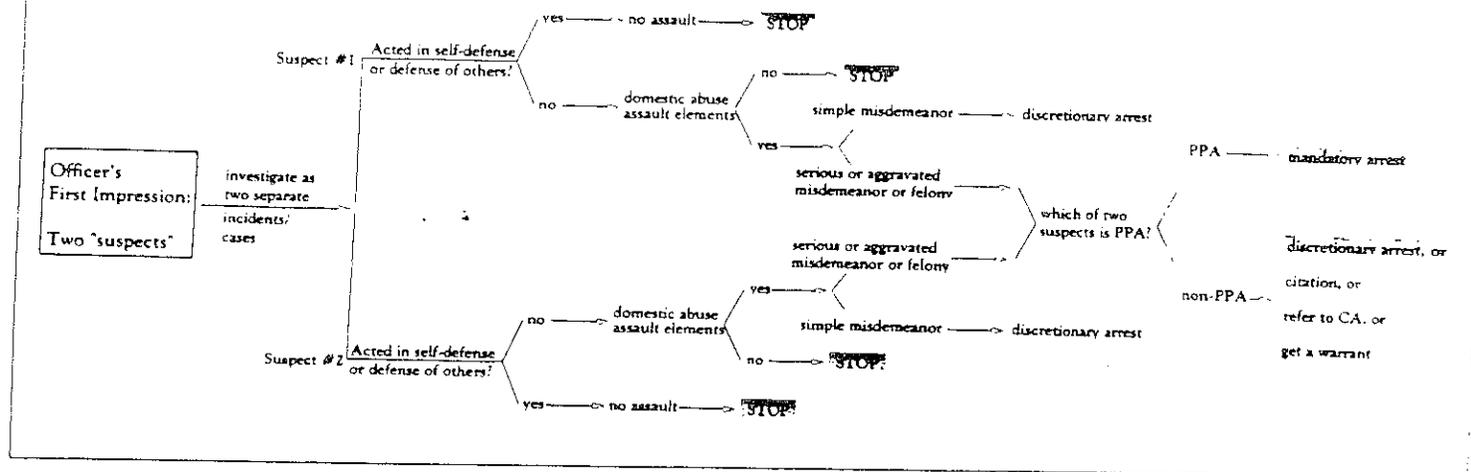
On the other hand, the Task Force heard testimony that some officers take their obligations very seriously and genuinely want to "do their part" to end domestic violence in their communities. Officers are active in public speaking about domestic abuse, in conducting in-service training for other officers, and participating in community coordinating councils.<sup>1</sup> We commend the efforts of those officers and departments who have placed a high priority on enforcing domestic abuse laws.

##### Mandatory arrests

Iowa law has required police officers to make mandatory arrests since 1986.<sup>2</sup> However, the Task Force gathered evidence that this compulsory practice is sometimes ignored or circumvented by recalcitrant officers. A representative of the state Citizens Aide/Ombudsman's office testified:

*[W]e've had numerous complaints of law enforcement failing to make mandatory arrests for domestic abuse assault. In some cases they have claimed they were unable to locate the alleged perpetrator but would seek a warrant for possible future arrest. In one of the worst cases we investigated, the injured victim was removed from the home and her young children, along with the weapons alleged to have been used to inflict the injuries on her, were left in the home with the alleged perpetrator, who was under the influence of alcohol.<sup>3</sup>*

## Primary Physical Aggressor and Mandatory Arrest



### Primary physical aggressor and dual arrests

In the same vein, many officers still misunderstand what is meant by “primary physical aggressor” in §236.12. “We often hear officers state that the primary physical aggressor is the party who hit first. We found double arrests occur because there is no attempt to identify the primary physical aggressor.”<sup>4</sup>

... many officers still misunderstand what is meant by “primary physical aggressor” in §236.12.

Incomplete investigation and misunderstanding of mandatory arrest, self-defense and primary physical aggressor has led to a high percentage of “dual arrests” in some locations.

### Misunderstanding of police obligation to enforce civil protection orders

... many police either misunderstand their obligations under §236.11 to take into custody alleged violators of protection orders issued under Chapters 236 and 598, or they understand the obligation but refuse to become involved in a “civil matter.” Potential liability issues are obvious in such a response.

Both the Ombudsman's office and the victim advocates noted that many police either misunderstand their obligations under §236.11 to take into custody alleged violators of protection orders issued under Chapters 236 and 598, or they understand the obligation but refuse to become involved in a “civil matter.” Potential liability issues are obvious in such a response. The Task Force believes that this issue should be dealt with in law enforcement training, for both line officers and policy makers in law enforcement agencies.

## Victim rights

Iowa law also mandates that officers notify an abused person of her rights at the scene.<sup>5</sup> Many police officers, however, have become lax about fulfilling this duty to the victim.<sup>6</sup> The Task Force believes that complying with the statutory mandate imposes little or no burden on officers, especially since the Iowa Coalition against Domestic Violence makes available to all law enforcement agencies in the state cards that can be left with victims with a statement of victim's rights in both English and Spanish.

## Police training

Any peace officer training presents formidable challenges, given the following: 1) at present, there are 5,647 peace officers in the state;<sup>7</sup> 2) the mandatory arrest, primary physical aggressor, and enhancement schemes under Chapters 236 and 708 are difficult to understand; 3) attitudes are very difficult to change; and 4) while law enforcement training in domestic abuse is mandated under Iowa law, little or no funding has been made available to carry out that mandate.

Under Iowa Code §80B.11, the Iowa Law Enforcement Academy is required to set forth requirements for the state's law enforcement training schools.<sup>8</sup> In amendments to that section in 1991, the General Assembly required that the minimum course of study for these schools include a "separate domestic abuse curriculum, which may, but is not limited to, outside speakers from domestic abuse shelters and crime victim assistance organizations."<sup>9</sup> Another amendment in 1991 required that the Law Enforcement Academy mandate training devoted to the topic of domestic abuse in the basic training programs throughout the state.<sup>10</sup>

Currently, according to the Director of the Iowa Law Enforcement Academy (ILEA), two to four hours are spent on domestic abuse during their ten week basic training course.<sup>11</sup> In addition to basic training, the Iowa Law Enforcement Academy must promulgate rules regarding "categories or classifications of advanced in-service training programs and minimum courses of study and attendance requirements for such categories or classifications."<sup>12</sup>

Two years ago, the ILEA produced and distributed statewide (to all law enforcement agencies, county attorney's offices, and domestic abuse shelters) a videotape training program for domestic abuse in conjunction with the Prosecuting Attorneys Training Council and the Iowa Coalition against Domestic Violence.<sup>13</sup> Once it distributed the tape, the Academy has been unable to ascertain whether or how the tape is currently being used. Therefore, it appears as if the primary responsibility for in-service training is done on an agency-by-agency basis.

## RECOMMENDATIONS FOR POLICE

**10. Law enforcement agencies should develop a working relationship with the domestic abuse service program (or programs) which serves the area, including instituting an early intervention program with victim advocates as part of the first law enforcement/victim contact.<sup>14</sup>**

The Task Force believes that, when financial resources permit such participation by victim advocates, this "team work" can reduce victim reluctance to testify and enhance victim safety. The General Assembly should place high priority for funding victim service agencies which provide this service.

11. **The General Assembly should fine-tune the current training requirements for law enforcement agencies by requiring that a minimum of 12 hours be spent on domestic abuse dynamics and law for new officers, and that an additional four hours per year be required as in-service training for all officers.**

Training programs should include, but not be limited to, primary physical aggressor and self-defense in domestic abuse cases; police enforcement of no-contact and civil protection orders; providing victims with their rights; evidence collection. Training curricula should be developed with and programs presented by persons in other disciplines, such as prosecutors, victim advocates, probation officers and batterers' program facilitators. Basic curricula already developed by others nationwide<sup>15</sup> can serve as models. The Task Force believes legislative appropriation for police training should be given high priority, as a law enforcement officer is often the first public agency to intervene in families where violence is present. Alternative sources for funding, including federal grants,<sup>16</sup> should be explored.

12. **Law enforcement agencies should participate in community coalitions or task forces which are designed to improve the justice system and community-wide response to domestic abuse.**

The Task Force concluded that such participation enhances the working relationship among all players.

13. **The General Assembly should clarify police duties in situations where both parties accuse the other of assaultive behavior.**

More explicit legislative requirements would address testimony which concerned the Task Force: that police are not adequately investigating dual complaints before making arrests; that gender bias against men or women appears to motivate some officers to arrest; and that officers do not understand "primary physical aggressor" or self defense. Model Code §205 would accomplish this by requiring that 1) police evaluate each complaint separately to determine who was the primary physical aggressor and 2) police who arrest two or more persons during the same investigation for a crime involving domestic violence submit a written report setting forth the grounds for arresting both parties.

14. **The General Assembly should adopt legislation which explicitly requires law enforcement to seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence, and authorizes law enforcement to seize a weapon that is in plain view of the officer or was discovered pursuant to a search authorized by a person entitled to consent to the search.**

Weapons seizure is both evidence collection and crime prevention. The prevention element may be higher in crimes of domestic violence because the recidivism rate is greater for these perpetrators and the risk of lethal recidivism is highest for victims in the context of domestic violence. The seizure of weapons is required when there is evidence that they were connected to the alleged crime. The seizure of weapons not apparently connected to the alleged crime is authorized when they are in plain view or when they are located by a person who is legally authorized to consent to a search. The Task Force believes that Iowa Code Chapter 809 provides safe-

guards to guide and govern seized and forfeited property. See Model Code §207 (The rationale which appears in this recommendation is taken from the commentary to section 207.).

15. **Each law enforcement agency in the state should implement a written protocol for responding to domestic abuse cases.**

The legal requirements for law enforcement response under Chapter 236 is often difficult to understand. Reducing these requirements to one written statement will simplify them for line officers and promote equal application of the laws in every jurisdiction of the state. A protocol will also promote accountability, and, by streamlining procedures, save time and valuable resources. The Task Force developed the following model protocol.

## MODEL PROTOCOL FOR POLICE RESPONSE TO DOMESTIC ABUSE CALLS

### Policy

It is the policy of this law enforcement agency to respond appropriately to every call involving domestic violence. Domestic abuse is a crime in Iowa and every effort will be made to cease and deter such criminal behavior pursuant to Iowa Code Chapter 236 (1993), Iowa's criminal laws, and this protocol.

### Factors Which Shall Not Impact on the Responding Officer's Actions

Domestic violence is a prevalent societal ill. It is not exclusively a problem for law enforcement or the courts or domestic abuse shelters. Addressing domestic violence calls for a community-wide response. As a part of this community, this department will treat domestic violence as any other crime.

Certain factors are unique to domestic abuse crimes. The parties are always related or know each other. The victim does not always want police intervention. But as a crime, this department is obligated to respond in a manner appropriate to the crime. The following factors may not influence the responding officer's actions in a domestic abuse case:

- ◆ The relationship or marital status of the parties
- ◆ Whether or not the suspect lives with the complainant
- ◆ Assurances from the suspect that further violence will not occur
- ◆ Absence of visible injuries to the complainant
- ◆ Location of the incident, i.e. public or private
- ◆ Speculation that the complainant will not follow through with the criminal process
- ◆ Speculation that an arrest will not result in a conviction
- ◆ Potential financial consequence to either party of arrest
- ◆ The fact that both parties are of the same gender

The dispatcher is to assess the emergency nature of the call and to dispatch an officer to the location of the incident. If warranted, the dispatcher shall treat the call like any other life-threatening call and determine whether more than one officer should be dispatched.

The dispatcher shall determine whether there is a civil protection order or criminal no-contact order on file involving the same parties. This information is to be ascertained as soon as possible, and no later than the time the officer(s) arrives on the scene. The dispatcher shall radio the officer(s) as soon as the existence or nonexistence of an order is ascertained.

The dispatcher shall stay on the line with the caller if safety permits or if the caller requests.

The dispatcher is not to inquire of the caller whether she intends to press charges or obtain a protection order and shall not lead the caller to believe that police response is contingent upon her agreeing to take further action against the alleged perpetrator.

### Responding officer arrives at the scene

The officer shall initially assess the present threat of danger to either party or the officer and determine whether any weapons are present. The officer shall then determine the extent of any injuries and determine whether medical attention is necessary. If medical attention of one of the parties appears necessary or is requested, the officer shall call for an ambulance. The officer shall assure that the parties are physically separated.

#### ☞ Interpreters

If either party does not speak English, the officer shall seek to determine what language the party does speak and shall try to locate an interpreter as quickly as possible.

#### ☞ Existence of a civil protection order or criminal no-contact order

If the dispatcher has verified the existence of such an order or if the alleged victim produces a copy of an order and if the suspect is still on the scene, the officer shall arrest the alleged perpetrator for violation of the order. The order may be from any county in Iowa and does not have to be an order filed in the county in which the parties are presently located. Out-of-state protection orders which have been registered with the state of Iowa shall also be enforced pursuant to Iowa Code Chapter 236 and the terms of this protocol.

If an order exists and the suspect is no longer on the scene, the officer shall notify the dispatcher of these facts and that the alleged perpetrator is to be taken into custody and arrested if located by any other officer. If the suspect cannot be arrested within 24 hours of the responding officers determine action that an arrest is authorized, then the officer shall either request a magistrate to make a determination as to whether a rule to show cause or arrest warrant should be issued, or refer the matter to the county attorney for further action.

#### ☞ No civil or criminal domestic abuse order

The lack of a domestic abuse order does not mean that the officer cannot arrest the alleged perpetrator. The officer may make an arrest if the officer has probable cause to believe that a domestic abuse assault has been committed which did not result in any injury to the alleged victim. Such an assault may include a threat to injure or kill the alleged victim, pushing, or throwing an object at the alleged victim which does not hit the victim. Visible injuries to the alleged victim are never necessary in order to make an arrest. Evidence of an assault may include, but is not limited to, torn clothing, disarray in the home, smeared makeup, or verbal complaints of pain by the victim.

The officer has a mandatory duty to arrest the alleged perpetrator in certain circumstances. These circumstances require an arrest and no discretion lies with the officer to determine whether or not to arrest. The officer shall arrest the suspect where a domestic abuse assault has been committed which resulted in the alleged victim's suffering a bodily injury. The charge shall be made pursuant to §708.2A(2)(b).

The officer shall arrest the alleged perpetrator 1) where a domestic abuse assault has been committed with the intent to inflict a serious injury; or 2) where a domestic abuse assault has been committed and the suspect used or displayed a dangerous weapon. The charge shall be made pursuant to §708.2A(2)(c).

#### ☞ Weapons

Regardless of whether or not a civil protection order or criminal no contact order exists, if the responding officers determine that an arrest of the perpetrator is warranted, then the officers shall seize all weapons including firearms and knives which were allegedly used in the assault and those weapons in plain view of the officers.

#### ☞ Medical Attention

The responding officers shall determine whether the alleged victim is in need of medical attention by assessing the assault and by requesting whether the victim wishes to receive medical attention. An officer shall either call for an ambulance or shall offer to drive the alleged victim to the hospital. If the alleged victim declines medical treatment, the officer shall not force the alleged victim to obtain treatment.

#### ☞ Domestic Violence Programs

The victim shall be verbally informed of the domestic violence program and/or shelter which serves the victim's area. A responding officer shall offer to contact the program/shelter for the victim if the victim desires. No officer shall lead a victim to believe that present or future police intervention is contingent upon the victim making contact with, or receiving services from, a domestic violence program or shelter.

#### ☞ Obtaining a Domestic Abuse Protection Order

The responding officer shall inform the victim that the victim may seek a court order of protection by filing for one at the county courthouse. The officer shall inform the victim that the domestic violence program serving the victim's area can provide more information on obtaining a protection order as can the clerk of district court in the courthouse.

#### ☞ Notice of Rights

Before leaving the scene, the responding officers shall provide the victim written notice of the victim's rights. The notice is available at roll call and shall be carried in all units at all times. Officers shall hand the victim the notice of rights even if the victim has received the information in the past.

#### Determination of Primary Physical Aggressor

It is the policy of this department to ascertain as accurately as possible the primary physical aggressor in domestic abuse situations, and not to engage in "double arrests" (arresting of both parties).

In what may appear to be a "mutual combat" situation, the responding officers shall consider, among other things, the following in attempting to ascertain the primary physical aggressor:

- ◆ Was one of the parties actually fearful of the actions or threatened actions of the other party?
- ◆ Did one of the parties escalate the violence; for example, did one party react to a slap by striking the other party with a weapon or other object?
- ◆ Is one party physically larger and stronger than the other party?
- ◆ Has there been a history of violence by one of the parties against the other? Against other people?
- ◆ Do any of the injuries appear to be obtained in defending against the other party?

The responding officers shall conduct the investigation in such a manner that only the primary physical aggressor is arrested.

### Investigation of Domestic Abuse Cases

Investigation of a domestic abuse case begins once the officer(s) arrives on the scene. After assuring that the procedures laid out above have been followed (e.g., determination of condition of victim, determination of presence of weapons, etc.), the officer shall take the following investigatory steps:

#### ☛ Preliminary Investigation

The officer shall interview all witnesses separately, including the victim, suspect, children, neighbors, etc. If the victim has no visible injuries, the officer shall ask if the victim has pain anywhere and shall document the presence of pain.

The officer shall document the parties' condition and demeanor, including torn clothing, smeared makeup, and evidence of injury. The officer shall note the size of the victim in relation to the size of the suspect. The officer shall also record the condition of the scene (e.g., have things been thrown about, is furniture broken, are curtains ripped).

If the suspect is taken into custody, the officer shall document spontaneous statements made by the suspect. The officer shall keep the suspect and victim separated. Miranda rights will be read to the suspect.

If medical treatment is indicated, the officer, after assuring that such treatment is or soon will be provided, shall obtain a release of information from the victim in order to obtain the medical records. The officer shall document the extent of the injuries and if the injuries are visible, the officer shall assure that photographs of the injuries are taken as soon as possible. The officer shall record the name(s) of all medical personnel who will be treating the victim.

#### Domestic Abuse Incident Report

The responding officer(s) shall complete and file a domestic abuse incident report by the end of the officer's shift.

## 2. Prosecutor Response

The Task Force recognizes that county attorneys in Iowa have been in the forefront of the justice system's response to domestic violence for more than a decade. Since 1986, when mandatory arrest for certain domestic abuse assaults was implemented, county attorneys have handled a sharp increase in domestic abuse cases, an increase seen only recently in civil filings for protection orders. The Task Force commends the efforts of the many county attorneys throughout the state who have accepted the challenge that these difficult cases present. We note, for example, that some victim advocates surveyed during our tenure commented that several county attorneys were well educated about the complex dynamics of domestic violence, worked hard, and were "available, receptive, and willing."<sup>17</sup>

**... county attorneys in Iowa have been in the forefront of the justice system's response to domestic violence for more than a decade.**

We also note that county attorneys, like all other participants in Iowa's justice system, are struggling to find the appropriate response to an increasing case load of very challenging cases. There is a wide variance in prosecutors' response to domestic abuse throughout the state. Those who testified before the Task Force identified some problems which some county attorneys are having with these cases.

### **Lack of communication with victims**

The most common complaint lodged with the Citizens Aide/Ombudsman's office concerning county attorneys' handling of domestic abuse cases is their lack of communication with victims.<sup>18</sup> Victims complained that prosecutors would not return their phone calls, often had no idea how serious their injuries were, and would reach a plea bargain or dismiss a case without conferring with or informing the victim.<sup>19</sup>

At the same time, county attorneys in some areas of the state report that the defense bar attempts to establish early contact with the victim, often, they believe, resulting in the victim recanting the reported violence.<sup>20</sup>

### **Interaction with victim advocates**

About one in ten of those prosecutors responding to the Task Force survey had no contact with a local shelter or domestic abuse advocates. More than one-third of the county attorneys had never participated in a domestic abuse coalition.<sup>21</sup> The state Ombudsman's office has received complaints about prosecutors refusing to work with domestic abuse programs in forming community coalitions.<sup>22</sup>

### **Specializing**

About two-thirds of county attorney offices do not have special prosecutors or other personnel assigned to handle domestic abuse cases. Such specialization has been cited as key to successful prosecution.<sup>23</sup>

## Uncooperative victims and prosecution policy

In the survey of prosecutors conducted by the Task Force, nearly eight of ten prosecutors found the majority of domestic abuse victims to be uncooperative. More than 80 percent of the county attorneys surveyed always or almost always subpoenaed the victims to testify. If the victims failed to appear, about one-third of the prosecutors would initiate a show cause contempt proceeding against the victim in at least some of their cases.

Some victims and their advocates expressed a different view about "lack of cooperation." They urge prosecutors to recognize the special character of domestic abuse cases while mandatory arrest is a positive step toward getting the justice system to treat domestic violence as a crime; it inevitably results in victim/witnesses who, unlike other crime victims, have not urged that prosecution commence. Some victims and advocates felt that prosecutors do not understand the ways in which domestic assaults differ from other crimes. For example, the assailants may be the fathers of the victim's children and the victim's sole basis of financial support, or the assailants may have a unique ability to control the victim. Others felt that prosecutors' increasing frustration with the complexity of domestic abuse case loads is resulting in new forms of victim-blaming and backlash.<sup>24</sup> For example, some prosecutors are now charging victims with false reports when they recant their earlier statements to police during their plea to have the charge dismissed.<sup>25</sup> Other prosecutors are seeking to hold victims in contempt of court for not testifying or for violating the no-contact order.

A 1994 research study of Linn County domestic abuse cases suggests a possible reason for the current perception that victim hostility to prosecution is high.<sup>26</sup> This study suggests that the 1991 law which mandated a minimum two day jail sentence and batterers' educational programming upon conviction for domestic abuse assault had an unintended result -- a decreased incentive for defendants to plead guilty, and, consequently, a lower conviction rate. Without a guilty plea, prosecutors look to victim testimony to prove their cases. The researchers suggest that additional steps may be necessary to increase the cooperation of victims, such as early communication between prosecutor and victim.<sup>27</sup> The Task Force also notes that prosecution has been successful without victim cooperation in jurisdictions where prosecutors and police build their cases without victim testimony.<sup>28</sup>

In the Task Force survey, 40 percent of prosecutors reported refusing to dismiss domestic abuse charges or deferring prosecution upon the request of the complaining witness. The majority, however, have a less stringent drop policy, agreeing to dismiss under certain conditions. About ten percent of the counties require the domestic abuse victim to attend the initial appearance to establish probable cause.

### Charging

County attorneys often reduce domestic abuse charges to simple assaults, thus avoiding referral of defendants to batterers' education programs and precluding the filing of enhancements on subsequent charges.

**Without a guilty plea, prosecutors look to victim testimony to prove their cases. . . additional steps may be necessary to increase the cooperation of victims, such as early communication between prosecutor and victim.**

## RECOMMENDATIONS FOR COUNTY ATTORNEYS

- 16. County attorneys, like judges, should use their official position in the community to provide leadership in developing a community-wide response to domestic violence.**

Just as we have of judges, we urge county attorneys to use their high profile as community leaders to take a more active role in facilitating a comprehensive response to domestic abuse beyond that which happens in their offices and the courtrooms. The most obvious role is as the lead law enforcement officer in the county. Tough policies against domestic violence set a tone throughout the community, and the potential for influence extends far beyond the police station or courtroom. Through all public contacts -- to jurors, judges, perpetrators, defense counsel, victims -- in the courtroom, the media, or during personal contacts in the community -- the county attorney can send a clear message that domestic violence is a crime and that prosecution will be used to mobilize community resources to reduce its incidence and protect and provide for its victims.<sup>29</sup>

- 17. County attorneys should actively participate in community coordinating councils in order to maintain an effective and accountable justice system response to domestic violence and to encourage community-wide efforts to end the problem.**

It is particularly appropriate for county attorneys to exert leadership on developing the community's coordinated response, especially in the batterers' program and communications with victims.

- 18. County attorneys should work with law enforcement to develop ways in which cases supported by probable cause can be prosecuted, whether or not the victim is available to testify.**

The Task Force notes that the Iowa County Attorneys Association publication, Prosecution of Domestic Violence in Iowa: A Prosecution Manual, published by the Iowa Department of Justice, Prosecuting Attorneys Training Council, focuses on use of thorough police investigation and evidence law to prosecute without victim testimony. Joint training programs for prosecutors and law enforcement may be an appropriate vehicle to develop this approach.

- 19. The General Assembly should require that county attorneys develop written policies to be followed by attorneys who prosecute domestic abuse assault cases.**

Each statement should contain, but not be limited to, the following areas: methods of effective prosecution with and without victim testimony; the dynamics of power and control in the abusive relationship, and what impact these dynamics have on prosecution; standards for communicating with victims; factors to be used in deciding whether to seek lifting of no-contact orders and to dismiss or plea bargain charges; coordination and training of law enforcement; and procedures to be followed in enforcing court orders to complete batterers' educational programming. See Model Code §210. Such a written statement serves to make the response of the office more consistent, and to communicate to the legal and general community (including the defense bar, the bench, the victims and their advocates) what to expect from the office.<sup>30</sup> A list of the elements of a model prosecution policy approved by the Task Force is contained in the Appendix.

20. The Supreme Court can urge by court rule that prosecutors, public defenders, and court-appointed criminal defense attorneys attend specialized domestic violence continuing education programs every two years. In addition, the Iowa State Bar Association annually can offer continuing education in domestic violence.<sup>31</sup>

The Task Force found that a key to addressing domestic violence effectively lies in training attorneys who represent either party.

21. The General Assembly should remove simple misdemeanor domestic abuse assaults from Iowa Code §331.756(4), which permits county attorneys to decline to prosecute misdemeanors when “otherwise engaged in the performance of their official duties.”

While the Task Force recognizes the fact that most Iowa county attorneys are part-time, and affirms the practice of prosecutorial discretion in individual cases, its members believe that the proposed legislative action would send a strong message that county attorneys treat these cases more seriously than other misdemeanor offenses.

22. When resources permit, county attorney offices should create specialized units, including prosecutors, investigators, and victim advocates, for prosecution of domestic violence cases; alternatively, individual prosecutors can be identified and trained to handle this specialized case load. The Task Force further recommends that entry-level prosecutors not be those who are assigned to domestic violence cases.

These cases are among the most complex and difficult faced by Iowa prosecutors today, requiring special skills and experience.

23. County attorneys should establish formal working relationships with domestic violence victim advocates.

Victim advocates can provide important information and support services to victims, freeing prosecutors to focus on the legal aspects of the cases. For example, advocates can tell victims about the criminal justice system and about available community resources. The Task Force, however, cautions against arrangements between prosecutors and victim advocates wherein victims are “required” to visit with victim advocates as a condition of charges or no-contact orders being dropped. While the prosecutor’s motivation in making such a policy is commendable, the practice may discourage victims from using victim advocacy programs if those programs are seen as an adjunct to the prosecutor’s office.

24. Prosecutors should review charges of domestic abuse assault filed by law enforcement as early as possible after an arrest, for example, at initial appearances.

The purpose of such a review is to ensure that domestic abuse assault is charged where appropriate and that enhanced offenses are charged when supported by prior convictions.<sup>32</sup> While criminal history data may not be available when officers write the charge,<sup>33</sup> it may be discovered by pretrial release investigators by the time of initial appearances.

25. The appropriate funding bodies – state, city and county governments -- should recognize that increased funding is necessary if the criminal justice system is to execute properly its responsibility under law to address domestic abuse.

Criminal domestic abuse law reform has placed enormous demands on police, prosecutors, victim advocacy programs, and the court. Case numbers have soared since 1986, when mandatory arrest was implemented. More importantly, domestic abuse cases require more intense attention by law enforcement and prosecutors than do other cases, and demand unprecedented amounts of time and investigation. In order to give individual cases their proper treatment, and to establish the preferred community coordinated approach, more funding is required for specialized law enforcement and prosecution units, for victim/witness advocates, for magistrates and district associate judges, and for training programs for all involved.

### 3. Corrections Response

Iowa Code §708.2B requires defendants convicted of, or receiving a deferred judgment for, domestic abuse assault to participate in a batterers' education program. In 1991, the General Assembly specifically required the Judicial District Departments of Correctional Services to provide, or contract for, the provision of batterers' education programs for domestic abuse offenders. To provide expertise, along with state and local coordination, the Department of Corrections has established a steering committee comprised of personnel from corrections, judicial districts, the Iowa Coalition against Domestic Violence, local domestic abuse projects, county attorneys' offices, and mental health and social service agencies. This committee has developed program standards and continues to meet quarterly to provide program oversight and to insure program integrity.

Twenty-four agencies throughout the state have responded to the need for batterer's education programs by contracting with the District Department of Correctional Services in their area to provide programming for court-ordered offenders in one or more counties so that all 99 counties receive batterers' education program services. Service providers include community colleges, mental health centers, domestic violence shelters, District Department of Correctional services, and a variety of social service agencies.

Court referrals to the batterers' education program have continued to rise dramatically since July of 1991. The following data reflects the increased number of clients in the eight judicial districts for fiscal years 1991 through 1993. For further information, see fiscal year 1993 BEP statistics contained in the Appendix. This data represents unprecedented program growth.

**Court referrals to the batterers' education program have continued to rise dramatically since July 1, 1991.**

### Referrals to Batterers' Education Program

District	FY 1991	FY 1992	FY 1993
First .....	5	149	407
Second .....	22	319	336
Third .....	9	71	190
Fourth .....	30	63	261
Fifth .....	180	553	788
Sixth .....	36	260	634
Seventh .....	45	31	445
Eighth .....	12	105	320
<b>Total .....</b>	<b>339</b>	<b>1,551</b>	<b>3,381</b>

### Programs Offering Batterers' Education Program

District	July 1991	July 1992	July 1993
First .....	0	2	4
Second .....	3	5	6
Third .....	1	3	5
Fourth .....	1	2	2
Fifth .....	1	4	4
Sixth .....	2	2	4
Seventh .....	2	2	3
Eighth .....	1	4	5
<b>Total .....</b>	<b>11</b>	<b>24</b>	<b>33</b>

Batterers' education programs are not intended to stand alone. Effectively integrating the criminal justice system response is critical to the success of these programs. To simply offer abusers an education group without the support of the system, will in many cases further endanger battered women. Batterers' education programs work closely with local domestic violence projects, contacting survivors and offering services. They have also developed active community coalitions in each judicial district. For a summary of the development of local domestic violence coalitions, see the Appendix.

**Effectively integrating the criminal justice system response is critical to the success of these programs. To simply offer abusers an education group without the support of the system, will in many cases further endanger battered women. Batterers' education programs work closely with local domestic violence projects, contacting survivors and offering services.**

In some parts of the state, the system response to domestic violence is well-defined, understood and implemented by each component. In those counties, batterers' education programs run more efficiently and revocations are pursued by county attorneys and supported by the courts.

However, the results of a BEP coordinator survey reflect that the following situations are frequently occurring across Iowa:

- ◆ Domestic abuse charges are being plea bargained to simple assaults, sometimes to preclude the offender's attendance in the batterer's education program. In other cases, the program is ordered by the court, but charges are reduced to preclude further penalty enhancements.
- ◆ Enhanced penalties are not pursued.
- ◆ Probation revocation or contempts of court are not pursued.
- ◆ Courts are excusing offenders from participation in batterers' education programs or allowing them to participate in alternative programs, such as couples' counseling.
- ◆ Cases are dismissed, allowing batterers to gain more power in their relationship with the victim.
- ◆ In several instances, judges have waived batterers' education program fees. Programs already are donating a large amount of in-kind support and cannot afford to provide services at no cost to the batterers.

## **RECOMMENDATIONS REGARDING BATTERERS' EDUCATION PROGRAMS**

**26. Sentencing judges should not deviate from the legislative<sup>34</sup> and judicial<sup>35</sup> directive that all defendants convicted of, or receiving a deferred judgment for, domestic abuse assault complete the batterers' program approved by the Judicial District Department of Correctional Services.**

To the extent that participants in the criminal justice system still see couples' counseling as a viable alternative, the Task Force recommends elsewhere in this report further training on the dynamics of domestic abuse for both attorneys and judges. A related discussion on the inappropriateness of mediation in domestic abuse situations can be found in Part IV.C.

27. The General Assembly should amend Iowa Code §22.7(5) to allow facilitators of Batterers' Education Programs to receive police reports without waiving the confidentiality of the documents as to other requestors.

The Task Force heard from facilitators that they would be able to conduct education programs for abusers much more effectively with ready reference to the details of the crime.<sup>36</sup> Without these police reports, facilitators have nothing but the batterer's version of the incident, which almost always minimizes the abuse and shifts the blame to the victim.

28. County attorneys should actively pursue revocations so that batterers face swift consequences for failure to comply with the initial court order or program requirements.

Batterers are not likely to change their behavior until they are held accountable for the abuse. If they can avoid Batterers' Education Program requirements with impunity, batterers will be reinforced in their belief that they can go on beating their partners.

## B. Civil Response and Recommendations

### Overview

As in the criminal area, the Task Force learned that there exists an uneven response across the state to persons seeking civil protection from domestic violence. Succinctly put, some victims of abuse have a much easier time obtaining the ex parte temporary protection order and final order than others. The Task Force has sought to identify those areas and issues which affect the pro se plaintiff and process and how the system can be improved to enhance access to protection under Chapter 236.

The Task Force received testimony from survivors of domestic violence, a legal aide lawyer who represents plaintiffs, a family law private attorney, district court judges, an associate district court judge, a magistrate, clerks of court, domestic violence advocates, a deputy state attorney general, and a representative from the Citizens' Aide/Ombudsman's office. The varying experiences and backgrounds of each of these individuals, woven together, revealed a critical thesis: all the players in domestic abuse situations must work in concert if the goal of reducing and eradicating domestic violence is to be realized.

... there exists an uneven response across the state to persons seeking civil protection from domestic violence.

#### 1. The Clerk of Court's Role

The role the clerk of court plays in the pro se process cannot be understated. The clerk's office is the entry point to the pro se protection order process. All 99 clerks of court received a survey to provide the Task Force input on their role in the pro se process.<sup>37</sup> The responses were elucidating and extremely helpful to the Task Force's work.

**Office Hours.** Most clerk of court offices report being open from 8:00 a.m. to 4:30 p.m.<sup>38</sup> Clerks who testified before the Task Force recognized that these hours often fail to meet the needs of pro se domestic abuse petitioners. "Many stores are open 24 hours a day. Contrast that with our clerk that is open only till 2:30 p.m. every day, although domestic abuse and mental health commitments are processed until 4:30 p.m."<sup>39</sup> Clerks testified that victims seek help both before and after regular office hours: "Frequently we find petitioners with children waiting in the hall for us in the morning." and "[I]nvariably these people come in the door at 4:15 p.m."<sup>40</sup> A number of clerks stated that they opened up specially or stayed late to allow plaintiffs to file a domestic abuse petition. One urban county clerk's office has familiarized its criminal division with the pro se petition process so that victims may file on weekends or holidays in the courtroom at the jail.<sup>41</sup>

**"Many stores are open 24 hours a day. Contrast that with our clerk that is open only till 2:30 p.m. every day. . ."**

**"Frequently we find petitioners with children waiting in the hall for us in the morning."**

**"The main problem in rural counties is that a judge is not always available. Then they have to travel to another county to see a judge. They might not have transportation or funds for gas. Also, if they have their children with them, it's not always convenient to travel."**

**Signs.** More than one-third of the clerks who responded to the survey did not have any signs in the courthouse directing pro se litigants to the clerk's office. One clerk testified that she viewed signs directing pro se petitioners to a designated area in the clerk's office as an important part of overall accessibility.<sup>42</sup> If the sign is not prominent, this urban county clerk said victims are forced to "keep telling their story over and over again" before finding the appropriate location for filing.<sup>43</sup>

**Availability of a Judge.** All players in domestic abuse situations indicated that the lack of judges in the rural areas to sign the temporary protection order provided a significant barrier to use of the system. A rural clerk testified, "As yet, I've never had a judge on board when I had an applicant come in."<sup>44</sup> "[W]ith staff reductions and unavailability of district court judges, every applicant creates turmoil," she stated in her survey response. Another clerk summarized the practical difficulties presented for litigants who live outside metropolitan areas: "The main problem in rural counties is that a judge is not always available. Then they have to travel to another county to see a judge. They might not have transportation or funds for gas. Also, if they have their children with them, it's not always convenient to travel."

Several counties reported sending facsimiles back and forth to judges in another county. For those clerk's offices with a fax machine, this procedure helped ameliorate the access problem. This is not a uniformly available remedy, however. Most clerks indicated that they had to use a fax machine in the sheriff's office or another county office; only two clerks reported having their own fax machine. Other clerks contact judges by telephone on behalf of the pro se litigants, and sign the order with the judge's name and clerk's initials. In rare instances, when a judge was not present, a clerk would hold the petition until the next court day.

**Many clerks expressed concern about the safety of domestic abuse litigants in the courthouse. "We've had times when a defendant has searched the entire building for the plaintiff" . . . .**

**Safety concerns.** More than one-third of county clerks lack a private and safe area designated for pro se litigants to fill out their forms, according to survey responses. Crowded conditions or simply the clerk's policy sometimes relegate petitioners to filling out forms at the counter or in the courthouse lobby, posing a possible safety concern for the petitioner. Many clerks expressed concern about the safety of domestic abuse litigants in the courthouse. "We've had times when a defendant has searched the entire building for the plaintiff," one clerk responded. Another clerk testified: "Some-

times our batterers have followed the victim to the courthouse all the way upstairs to the judge's chambers and back down, and they're served in the clerk's office."<sup>45</sup> The majority of clerks, however, disagreed that litigants were at risk in the courthouse, though several of these did fear for petitioners after they went home.

**Some clerks expressed concern about their staff's safety.**

Some clerks expressed concern about their staff's safety. Their role in volatile domestic abuse situations has caused several clerks of court to fear violence against their own offices. Defendants have called and threatened clerks for allowing the plaintiff to file against them.<sup>46</sup> Some clerks recounted calling the county sheriff and searching defendants for weapons in relation to pro se filings. One clerk testified that the potential for violence against clerks should not be overlooked: "I think there is a lot of talk and a lot of concern, and no disrespect for the judges here, but everybody is concerned about a judge getting killed. When was the last time anybody said anything about a clerk getting killed?"<sup>47</sup>

**Clerks described. . . the correlation they started to notice between parties involved in domestic abuse cases and suicides recorded in their office.**

In dramatic testimony, two clerks from an urban office described the correlation they started to notice between parties involved in domestic abuse cases and suicides recorded in their office.<sup>48</sup> "To realize that a woman who you personally escorted

to the judge and assisted in the paperwork that was so victimized and in such despair that led to her to that final demise, was totally shocking, very overwhelming . . ." a clerk told the Task Force.<sup>49</sup>

Rural counties are not immune from such fatal results. "I'd like to recall an incident just last week when our sheriff's department served a gentleman with a no-contact order, and after the sheriff left the place he took a gun and shot himself. And that's the seriousness of some of these," a rural clerk related.<sup>50</sup>

**Written Protocols for Pro Se Filings.** Two-thirds of the clerks responding to the survey do not operate under a written protocol. On the other extreme, at least one clerk's office began developing a protocol in collaboration with the court administration office, district court judges, and the sheriff's office immediately after the enactment of Chapter 236 in 1991.<sup>51</sup>

**Domestic abuse specialist.** A majority of clerks' offices have designated one or more people to be responsible for the pro se filings under Chapter 236. Clerks testifying before the Task Force debated the pros and cons of having such a specialist. One urban county clerk testified to selecting "a staff member with inherent ability to deal with people in crisis" to process the pro se petitions.<sup>52</sup> Such a specialist can point out flaws in the system and help fine-tune it, the clerk stated.<sup>53</sup>

Another urban county clerk testified to training as many as 43 staff members to process these petitions.<sup>54</sup> This clerk stressed the need for backup and feared that clerks who specialized in the domestic abuse process would suffer a quick burnout from assisting the same petitioners in filing again and again.<sup>55</sup>

**Screening petitions.** More than one-third of the clerks reported screening pro se petitions in some manner before presenting them to the judge. Many of them, however, explained that they only checked to be sure all the questions were answered and everything was filled out completely. Nevertheless, several clerks stated that they checked to be sure petitioners met the criteria for filing or to make sure "they really are legit."

**Miscellaneous services.** Almost all clerks provide notary service to the pro se petitioners. Fewer than one-third provide petitioners with scratch paper and encourage them to write a rough draft before transferring answers to the petition. At least two clerks objected to their staffs being forced to entertain a petitioner's children while she completed her paperwork. Another clerk shared her simple method for dealing with this situation:

*The children are bewildered, tired, scared, and sometimes hungry. They display anxiety from a strange environment, memory of a frightful incident, or anticipation that something else is about to happen that they have no control over. We have a plastic laundry basket filled with cast-off Fisher Price toys in our office. We try to provide efficiency and compassion, a smile to a sad child, a cookie or a cracker, and cheerful directions to the toy basket. These simple things divert the child's attention long enough for the victim to prepare her petition.*

*Can you imagine preparing your first petition at law with little children around you crying, hungry, all upset? It's impossible.<sup>56</sup>*

**Perceived abuse of pro se process.** A common response from clerks bemoaned the use of Chapter 236 "to fight petty battles and get even." They believe that misuse trivializes the situations of those who really need protection. One clerk opined: "I feel that less than one-third are true cases."

**Responsive filings.** "We're seeing an increase in males coming in and wanting to file in response, feeling that's the only way they're going to get their shot at having an appearance before the court," an urban clerk testified.<sup>57</sup> Another clerk stated that she felt when a defendant asked to fill out a petition also, she had no choice but

**Can you imagine preparing your first petition at law with little children around you crying, hungry, all upset?**

to oblige.<sup>58</sup> According to a rural clerk, these cases of double filings inevitably lead to the initial petitioner dismissing the action.<sup>59</sup>

**Resources.** Nearly all clerks find the form orders prepared by the Iowa Attorney General's Office (Petition for Relief from Domestic Abuse, Motion to Dismiss without Prejudice, Request to Cancel and Affidavit to Start Contempt) helpful to the pro se litigants. The booklet entitled "How to Protect Yourself From Domestic Abuse" also received positive reviews from most of the clerks as being a helpful tool to the pro se plaintiff. The Task Force learned, however, that at least one clerk of court in an urban county refuses to use, display, or distribute the booklet.

The booklet entitled "How to Protect Yourself From Domestic Abuse" also received positive reviews from most of the clerks as being a helpful tool to the pro se plaintiff. The Task Force learned, however, that at least one clerk of court in an urban county refuses to use, display, or distribute the booklet.

Clerks responding to the survey were about evenly split over whether it would be helpful to show pro se petitioners a videotape explaining the judicial process and referring them to local victim programs. Clerks opposed to the notion offered many reasons why a videotape would be impractical. Chief among them was that most litigants are in a very emotional state when they come to the courthouse to file a petition for relief from domestic abuse and may be confused by a videotape or even deterred from proceeding with the process. Even clerks favoring the idea of a videotape did not think the clerk's office was the appropriate place to show it; several suggested that local shelters could have such a tape on hand.

**Filing Fees.** Several clerks expressed ongoing confusion over the issue of costs. One clerk suggested that court costs be paid before filing a new action involving the same parties or before entering an order to dismiss. Another clerk testified that the current process discourages litigants from paying the costs: "They believe pro se means free help."<sup>60</sup> Another clerk responded: "[W]e are providing all of this service and not collecting anything for it. With money as tight as it is and understaffing of our offices, we can hardly afford this."

**Training.** According to nearly two-thirds of the clerks responding to the survey, clerk of court personnel lack the necessary training to deal with pro se litigants who may be suffering from emotional and physical trauma. The clerks have seen petitioners in crisis: "the women were traumatized, they were battered, some beaten, bleeding, hurt, embarrassed, and even ashamed."<sup>61</sup> One clerk described pro se filers as "shell-shocked."<sup>62</sup> Even so, several clerks voiced reluctance to act as "crisis intervenors" believing that counseling should be left to local crisis centers. The following statement was representative: "The duties of the Clerk of Court do not include crisis intervention counseling. Our duties in the domestic abuse area include processing of paperwork just as we do in all other areas. While we should be courteous, helpful and understanding, we are not intended to be counselors. Our training is sufficient to enable us to do the required job."<sup>63</sup> Conversely, one clerk testified that clerks' employees are far behind in education and training: "if

According to nearly two-thirds of the clerks responding to the survey, clerk of court personnel lack the necessary training to deal with pro se litigants who may be suffering from emotional and physical trauma.

**Even so, several clerks voiced reluctance to act as "crisis intervenors" . . .**

they're not aware of all the issues, how can they provide the services that you are asking them to provide?"<sup>64</sup>

**Victim-service providers.** The vast majority of clerks responded that they distribute victim-service program information to domestic abuse petitioners. Less than half of the clerks,

however, reported having personal contact with the victim-service providers in their community. In the case of some rural counties, the lack of contact is due to the limited number of victim service programs.<sup>65</sup> With a few isolated exceptions, those clerks that have had contact with the victim-service providers express positive reactions to the work these advocates perform.

In several cases, a positive relationship among victims, advocates, and the clerk's office apparently has been forged after an initial degree of misunderstanding and subsequent "growing pains."<sup>66</sup> Those clerks who remain dubious about victim services believed that the providers were poorly trained and too ready to give legal advice.<sup>67</sup> Only two county clerks participated in a local coalition on domestic abuse.

**. . . a positive relationship among victims, advocates, and the clerk's office apparently has been forged after an initial degree of misunderstanding and subsequent "growing pains."**

One of those clerks testified to the symbiotic relationship which has developed between the clerk's office and the victim service providers in her county: "It became obvious to me that it would be mutually beneficial for the clerk and the Domestic Violence Advocacy Program to have their victim advocate . . . work in our office."<sup>68</sup> This clerk explained that the victim advocate "calms the victim and helps them organize the facts of the matter prior to preparing a petition."<sup>69</sup> The advocate also saves time for clerk's personnel who now spend 15 minutes with a petitioner rather than an hour or more without a victim advocate on hand.<sup>70</sup>

The appearance of impropriety associated with having a victims' advocate housed in the clerk's office troubled another clerk who testified before the task force. This witness believed that such an arrangement could "distort the neutrality" of the clerk's office and prompt other constituency groups to demand space.<sup>71</sup>

**Representation for Victims.** Clerks expressed great discomfort with being required to walk the fine line between helping pro se petitioners fill out the forms without providing what could be construed as legal advice. Several suggested making domestic abuse petitions a volunteer lawyer's project or expanding the role of victim advocates or drawing county attorneys into the process.<sup>72</sup>

**Clerk Resources to Handle Domestic Abuse Litigants.** Clerks unwaveringly noted the need to increase staff resources to properly meet their duties under Chapter 236. The state court administrator's office shows that

**Clerks unwaveringly noted the need to increase staff resources to properly meet their duties under Chapter 236. The state court administrator's office shows that domestic abuse filings increased a staggering 470 percent from 1991 to 1993.**

domestic abuse filings increased a staggering 470 percent from 1991 to 1993. An urban clerk powerfully urged this message:

*I strongly agree with the intent and need for the provisions of Chapter 236. The beef lies with the pure fact that every additional obligation that we get under the chapter creates a burden on the backs of the clerk's staff that we simply cannot afford. Someone needs to recognize that additional duties mean that additional resources are necessary to complete the task. When the additional resources are not forthcoming, priorities have to be established. When that happens some area or task is passed over or completed with less diligence than we would like to see. That fact will affect how well pro se litigants in domestic abuse cases are dealt with to the same extent that all users of the office are affected.*

## RECOMMENDATIONS FOR CLERKS OF COURT

The clerks of court responding to the survey and testifying before the Task Force made sound recommendations for improving the pro se process. Implementation of these recommendations will go far towards improving access to the domestic abuse pro se process and commensurately, enhancing the efficiency and effectiveness of the office of the clerk of court.

29. Training should be provided to all staff of clerks of court offices on the dynamics of domestic abuse and the function of clerk staff in processing pro se domestic abuse petitions under Iowa Code Chapter 236.
30. Clerk of court offices with sufficient staff should consider designating one or more staff members to handle pro se domestic abuse filings under Iowa Code Chapter 236.
31. Clerks of court should examine ways in which they can assure the safety and security of all court personnel and litigants in the pro se process.
32. Clerk of court offices should pursue means necessary to procure greater technological resources including, but not limited to, obtaining fax machines for use in gaining access to judges to sign temporary protection orders.
33. Readable signs should be placed in and around courthouses to direct pro se litigants to the entry point for filing a petition for relief from domestic abuse.
34. The General Assembly should consider ways in which it can increase staff and resources for clerks' offices to facilitate the pro se process.
35. Clerks of court and their staff should be encouraged to join and participate actively in their local domestic violence coalition.
36. Each clerk of court office should develop a protocol for processing pro se domestic abuse cases. The Task Force drafted the following model protocol.

## MODEL PROTOCOL FOR PROCESSING PRO SE PETITIONS

### Before petitioner comes in

1. Clerks and their staff should receive training on domestic abuse issues and safety measures.

### COMMENTARY

The Task Force believes such training would enable clerks to perform the administrative tasks mandated by Iowa Code Chapter 236 to the best of their ability and avoid any subtle discouragement of pro se filings.

### 2. Access issues.

- a. *Signs.* The courthouse directory should list the clerk's office as the location to obtain domestic abuse protective orders.
- b. *Brochure display.* The clerk should make information regarding victim services and other community help agencies available to the public by displaying brochures on the clerk's counter or in a main hallway of the courthouse.
- c. *Language barriers.* Petitioners should not be denied access to the process because they speak another language or have a disability that could hinder their ability to communicate with the judge. Clerks should prepare for the possibility of petitioners with special needs.
- d. *After hours.* Even when the clerk's office is not open, petitioners should be able to seek relief from domestic abuse, for specifics on this procedure see the following section.

### COMMENTARY

While signs may seem a simple step, the Task Force finds them an important first step in overall accessibility of the pro se petition process.

The Task Force encourages clerks to act as purveyors of information for victims of domestic abuse and to communicate the realization that the courts cannot end the abuse alone.

The Task Force believes that preparing for petitioners with special needs entails knowing how to arrange for interpreters for both foreign language speakers and deaf or hard-of-hearing persons. The Task Force also is encouraging efforts to have domestic abuse material translated into braille and other languages. The Scott County Clerk of Court's Office has completed a Spanish version of the petition and is drafting a version in Vietnamese. (Copy is included in Appendix.) A protocol for using these foreign language petitions should be developed with the chief judge of each judicial district.

### When petitioner comes in

1. **Handouts.** Clerks should give pro se filers only the petition and affidavit, not an entire set of forms. Providing the Motion to Dismiss, Request to Cancel, and Affidavit to Start Contempt forms may confuse the pro se litigant and even discourage follow through on the petition.

### COMMENTARY

The Task Force recommends that the clerk provide a copy of the book, *How to Protect Yourself from Domestic Abuse*, and any available information regarding local victim advocate services, with the petition. These handouts can save a good deal of effort on the part of the clerk and help inform the petitioner about how the process works. Providing information about help in the community is also consistent with the Task Force's implementation plan to encourage a zero-tolerance for violence within the family.

2. **Safety.**
  - a. *Ask.* Clerks should inquire whether the petitioner has any immediate safety concerns.
  - b. *Think.* Clerks should consider privacy and safety issues in providing a place for the pro se litigant to fill out the petition.
  - c. *Guide throughout process.* Clerks should assist pro se petitioners from the time the papers are requested through the ex parte proceeding with the judge until the papers are given to the sheriff for service. A victim advocate or court attendant could also accompany the petitioner at various stages of the process.

### COMMENTARY

While the Task Force acknowledges that clerks are not able to promise perfect protection, an initial question such as: "Has the batterer followed you to the courthouse?" may enable the clerk to contact the sheriff's office to provide safety measures for both the petitioner and court personnel from violence.

The Task Force recognizes that extra space is at a premium in most clerks' offices and county courthouses. Nevertheless, the Task Force recommends that clerks acknowledge the dual concerns of privacy and protection when directing the petitioner to a spot to complete the forms.

### Handling petition

1. **Getting process started.**
  - a. *Victim advocates.* If their community is served by a victim advocate program, clerks should provide the petitioner with the program's phone number and access to a telephone in the clerk's office to call an advocate for assistance in filling out the petition or completing the hearing process.

- b. *Contacting judge.* While the petitioner is completing the forms, the clerk should be arranging for a district court judge to review the petition in an ex parte proceeding with the petitioner. If no district court judge is present in the courthouse, the clerk should call the district court administrator for help in locating one. The clerk should then establish phone contact with the judge and inform him or her that a petition is being filed.

#### COMMENTARY

The Task Force believes that early involvement of victim advocates increases the chances that a petitioner will knowledgeably proceed with the case. The presence of an advocate also can take pressure off clerks and judges during the processing of domestic abuse petitions. However, presence of an advocate is clearly not a condition precedent to continuing the pro se process.

2. **Assistance by clerks.** Clerks can provide nonlegal assistance to pro se petitioners. For example, if a petitioner is unable to fill out the form due to disability or illiteracy, the clerk may transcribe the pleading in the petitioner's own words. If language barriers exist, a clerk should contact the district court administrator to arrange for an interpreter.

#### COMMENTARY

The Task Force recommends that clerks check with a district court judge to resolve any doubt about the appropriateness of any assistance.

3. **No screening by clerks.**
  - a. *Eligibility.* Clerks should not prejudge whether a petitioner qualifies for domestic abuse protection. Clerks should not screen petitions before presenting them to a district court judge. A clerk may point out to a petitioner if the petition has not been completely filled out; but the clerk should not refuse to forward the petition to a judge because portions are blank.
  - b. *Finances.* Clerks should inform petitioners of their right under Iowa Code §236.3 (1993) to file an affidavit stating that they do not have sufficient funds to pay the costs of filing and service. Clerks should not request any additional documentation of petitioners' finances. Clerks should not reject petitions for failure of a petitioner to pay fees or fines from a prior filing.
4. **Notarize.** To the extent that clerks notarize other documents for litigants, they should notarize pro se petitions filed pursuant to Chapter 236.
5. **File stamp.** Clerks should file stamp a petition and create a case file before the petition is presented to the district court judge.

### Ex parte proceedings

1. **Timing.** Clerks should promptly notify a judge that a petition is being filed so that he or she may review it at the earliest opportunity. If no judge is available in the courthouse, no more than four hours should elapse between the time that a petition is file stamped and when it is reviewed by a district court judge. Clerks may not hold the petition until the county's next court day.
2. **Use of technology.** Clerks should request that the chief judge in their judicial district endorse or develop a method for contacting district court judges when none are available in the county. One possibility is that a clerk could contact a judge by telephone, and the judge could decide whether to travel to the county where the petition has been filed or receive the petition via facsimile and then hold a telephonic conference with the petitioner. In such cases, faxed orders which are verified by the clerk should be deemed the originals for all purposes.
3. **Setting hearing.** The clerk shall assist the judge in setting a specific hearing date at the ex parte proceeding so that the judge (or clerk at the judge's direction) may hand deliver notice of that date to the petitioner.

### COMMENTARY

The Task Force recognizes that almost no clerk's offices currently have their own facsimile machine; it is recommending that funding be made available for such technological updates. The use of fax machines would be limited to the judicial department's internal communications.

Even under today's restraints, however, the Task Force maintains the importance of timely judicial review of domestic abuse petitions. The Task Force also strongly recommends face-to-face contact between the judge and the petitioner. It may be beneficial to take notes, tape record or use a court reporter if one is available.

The Task Force is recommending that the legislature expand jurisdiction under Chapter 236 so that associate district court judges and law-trained magistrates could conduct the ex parte proceedings as a matter of last resort, i.e., in situations where no district court judge is available, even by telephone or facsimile. If enacted, this change would require clerks to operate under a three-tiered system, first exhausting available technology to contact a district court judge. Associate district court judges will be the second line of defense. Third, clerks may have a law-trained magistrate review the petition if time and distance precluded district and associate district court judges from conducting the ex parte proceeding.

The Task Force also suggests that both parties receive an attachment to the order listing the rights and responsibilities of litigants, including the availability of subpoenas through the clerk's office.

### Processing orders

1. **Documents to petitioner.** After the judge has signed the order, the clerk should provide a copy of the order, the petition, and the affidavit to the petitioner.
2. **Documents to defendant.** The clerk shall compile the following documentation to be served on the defendant before the hearing: notice, petition, temporary protective order, and the order setting hearing.

3. **Serving defendant.** The clerk shall arrange for service of process by the sheriff.
4. **Law Enforcement Notification.** Within six hours of filing the temporary protective order, the clerk shall notify the sheriff and the 24-hour dispatcher by writing, facsimile or other electronic transmission which reproduces the notice. The dispatcher shall notify other appropriate law enforcement agencies of the temporary order.

#### COMMENTARY

The Task Force realizes that procedures for providing the documentation to the sheriff's office may vary from county to county. Preferably, the clerk and sheriff will have established procedures for arranging service of process. In many cases, the sheriff's office will prefer to find out from the petitioner where service can be made. The safety of the petitioner must be considered if directing her to the sheriff's office. The same notification requirements apply to the one-year orders.

## 2. After Hours Access to Temporary Protection Orders

The Task Force recognizes domestic abuse often occurs outside normal business hours and that the need to seek relief from domestic abuse encompasses evening hours and weekends. Iowa law allows petitions under Chapter 236 to be presented and filed before a district judge or designated district associate judge when the court is "unavailable from the close of business at the day or week to the resumption of business at the beginning of the day or week." Iowa Code §236.6.

### RECOMMENDATION

37. Each judicial district should establish a protocol to handle and process after-hour requests to file domestic abuse petitions, in conjunction with a statewide protocol. The procedure should be published and disseminated to the public, law enforcement, and affected community groups. The following is a model developed by the Task Force:

#### MODEL PROTOCOL FOR FILING PETITIONS SEEKING IMMEDIATE RELIEF WHILE COURTHOUSE IS CLOSED

☞ The Iowa Domestic Abuse hotline would inform plaintiffs of the after-hours petitioning process. This number should be posted on the courthouse door, among other places.

☞ The clerk of court would have pro se petition forms available at the county sheriff's office for lawyer and public use during those times the courthouse is closed for business. In addition, plaintiffs could obtain forms at domestic abuse shelters. The sheriff performs numerous important functions for the courts, and would be the natural entity to assist in the after-hours petitioning process. The plaintiff, the plaintiff's lawyer, or the trained victim counselor on behalf of the plaintiff would initiate the after hours petitioning process with the sheriff.

☞ The sheriff would access a procedure to contact a judge to consider the petition once a pro se petition is presented for filing. The chief judge of each district should designate judges to consider after-hour petitions and establish a procedure for these judges to be available. The judge would consider the petition, and the sheriff would assist in obtaining and serving any order signed by the judge, as well as delivering all paper work to the clerk of court on the next business day.

☞ For plaintiffs who want to reduce the likelihood that an investigation and mandatory arrest would occur by this procedure, lawyers or Rule 120.1 victim counselors could be the agent for the sheriff in contacting the designated judges.

☞ Each judicial district should register the protocol developed with the Iowa Domestic Abuse Hotline, c/o Children and Families of Iowa, 1111 University Avenue, Des Moines, IA 50314, so that accurate information can be relayed to callers.

### 3. Mutual Protection Orders

The practice of issuing mutual protective orders following a hearing on a petition for relief from domestic abuse can be justified as an attempt to keep the peace in a highly emotional situation. It can help avoid problems that can result if the nonenjoined party invites contact with

the enjoined party following the issuance of a single protective order. It may also be an understandable judicial response in cases where conflicting and corresponding evidence of violence makes it difficult to determine the primary aggressor. Notwithstanding, it is strongly recommended that courts refrain from issuing mutual protective orders. The practice raises serious concerns over abuse of judicial authority, due process, enforcement and gender bias.

**... it is strongly recommended that courts refrain from issuing mutual protective orders. The practice raises serious concerns over abuse of judicial authority, due process, enforcement and gender bias.**

A court's authority to act in a particular case is generally limited to the scope of the pleadings, unless exercised with the consent of the parties. The inherent powers of a court do not encompass the issuance of an order without an underlying petition or pleading to serve as a vehicle for that order.<sup>73</sup> Conse-

quently courts have held that there is no authority to issue a protective order against a party when no separate petition for relief from domestic abuse is pending against that party.<sup>74</sup>

Due process concerns over mutual protective orders arise from the lack of notice, lack of opportunity to defend the lack of a judicial finding of the statutory grounds predicate to the issuance of a protection order. The plaintiff in a domestic abuse case may leave the hearing confined by a restraining order, issued with no opportunity to properly defend or even consult with an attorney.

Mutual protective orders create substantial and sometimes dangerous problems for law enforcement. Officers responding to a domestic abuse call are often uncertain how to proceed when a mutual order is in place. A mutual order may give a misleading impression of the history of domestic abuse, and make it difficult for the officer to determine who should be arrested.<sup>75</sup> It may also jeopardize the safety of the officer and others. If the response of law enforcement is to arrest both parties, the real victim is only further victimized.

**Mutual orders falsely mislabel parties as abusers, and may make the abuser less accountable for the abuse. Mislabeling the abuser has the tendency to confuse and stigmatize victims, while giving the batterer a false impression that the abuse was excusable, or even provoked.**

Finally, mutual protective orders have been cited in gender bias reports as a sign of bias in the courts' response to domestic abuse.<sup>76</sup> Mutual orders falsely mislabel parties as abusers, and may make the abuser less accountable for the abuse. Mislabeling the abuser has the tendency to confuse and stigmatize victims, while giving the batterer a false impression that the abuse was excusable, or even provoked.<sup>77</sup>

It is essential that each party to a domestic abuse proceeding be judged on a separate petition. Many of the problems associated with single protective orders can be addressed by clearly warning the parties in the protective order that, although only one party is enjoined, the nonenjoined party may be subject to criminal prosecution for aiding and abetting in the event he or she initiates contact with the enjoined party. The protective order should also inform the parties that it may be withdrawn only by the court upon proper application.

## RECOMMENDATION

38. Courts should never enter mutual protection orders.

Due process dictates that protection orders only be entered upon appropriate proof. If the opposing party files a separate petition and meets the burden of proof only then would that party be entitled to a protection order.

**Enforcing protection orders is a serious problem . . . particularly in cases which have been initiated by a pro se plaintiff.**

### 4. Entry and Enforcement of Protection Orders

Law enforcement agencies and clerks of court told the Task Force that enforcing protection orders is complicated by the proliferation and overlapping of various civil and criminal orders.<sup>78</sup>

The Task Force also learned that a number of issues affect the role of the judge in Chapter 236 protection order cases. One of the major areas of concern for the judiciary has to do with entry of the temporary protection order and the order's resultant impact on the defendant's rights.

**The Temporary Order and the Defendant's Rights.** Some judges expressed to the Task Force that they did not like depriving a defendant of his home, children, and car by way of the ex parte temporary protection order. These judges acknowledge that Chapter 236 requires a hearing on a final order to be held no later than 15 days following the filing of the petition, and as soon as five days. §236.4(1), as amended, S.F. 342, sec. 3, 75th General Assembly (1993). Nonetheless, the judges still felt that these safeguards were not sufficient to obviate the perceived, if not real, deprivation of due process via the temporary order.

The Task Force notes that a number of cases from other jurisdictions have considered the issue of whether the defendant is denied due process of law by entry of an ex parte temporary protection order under the state's domestic abuse law. These cases held, among other things, that the entry of an ex parte temporary protection order did not violate the defendant's due process right.<sup>79</sup> The statutes in these cases, while not identical to Iowa's Chapter 236, provide many of the same procedures and safeguards afforded by Iowa's domestic abuse law: a limit on the length of time the temporary order can be in effect and the time within which a postdeprivation hearing must be held; a showing that there is a present threat of danger to the plaintiff; and the filing of a verified petition. These courts conclude that the respective state's domestic abuse laws, similar to Iowa's, provided sufficient procedural protection to the defendant and therefore, an ex parte temporary order affecting the defendant's right of access to his children, home, or car, did not infringe the defendant's constitutional right to due process.

**Entering the Temporary Protection Order.** It was the consensus of the Task Force, as well as the testimony of a judge witness, that whenever feasible, the judge and plaintiff should have face-to-face contact when the petition and application for temporary order are presented.<sup>80</sup> This provides the judge an opportunity to assess the credibility of the plaintiff, to ask questions of the plaintiff, to inform the plaintiff of the pro se procedures, and to assure that the Chapter 236 process is being used as it is intended and not abused. Similarly, upon urging by members of the judiciary, the Task Force also supports the recording of testimony when a judge is considering a petition and decides to sign or not sign the temporary order.<sup>81</sup>

The Task Force learned that some attorneys perceive that some judges appear to "rubber stamp" the temporary orders. The requirements for a temporary order contained in Chapter 236 are specific (§236.4) and should not be taken lightly. The judge has a duty to review the petition carefully, to assure that all of the elements for entry of an order are present, and to sign the order only after being satisfied that the plaintiff has met the requirements of §236.3 and is legally entitled to the order.

**System Abuses.** The Task Force concluded that the pro se availability of protection orders made the court system "user friendly," and therefore much more accessible to victims of domestic violence. Between 1991 and 1993, there was nearly a 500 percent increase in the number of requests for protection orders statewide. Overall, the Task Force believes this increased access is illustrative of the court's responsiveness to domestic violence.

Concerns about the increased access, however, were voiced. Foremost among those concerns was the strain that the additional case load, precipitated by the pro se process, has placed on an already overburdened and under-funded judiciary and court administration staff. The Task Force heard this message repeated by the clerks of court, judges, and survivors. Chief Justice McGiverin, in his State of the Iowa Judiciary Message given January 12, 1994, while discussing domestic abuse cases, summed up the concern bluntly: "Domestic filings are increasing more rapidly than any other."<sup>82</sup>

Another concern raised by witnesses and Task Force members was whether any portion of the increased filings represents an abuse of the judicial process; that is, whether some persons seek a Chapter 236 protection order for reasons other than legal protection from future violence. The Task Force identified four specific issues in this area.

First, the Task Force saw evidence that some attorneys bypass the Chapter 598 (dissolution of marriage) process for getting an injunction or a temporary custody order by sending their clients to get Chapter 236 protection orders pro se. The Chapter 236 order can provide much of the same relief as is provided in a divorce proceeding: temporary custody, visitation, temporary support, and counseling of the parties. Iowa Code §236.5. Some Task Force members felt that, instead of abuse, this practice may simply be good advocacy under current law. A Chapter 236 order can be obtained more easily, because the burden of proof under §236.4 is lighter than in §598.33, and because a temporary order addressing custody, visitation, and support can be obtained in an ex parte proceeding.

The fact that so many temporary protection orders are eventually dismissed (up to 65 percent in some counties) caused concern about a second way in which abuse of the system is possibly occurring. Since the plaintiff controls the Chapter 263 litigation, the plaintiff can ask the court to dismiss the temporary or one-year order at any time. The practice of some judges is to dismiss simply on this request. Other judges speak with the plaintiff before dismissing, to inquire whether the request for dismissal is the result of threats or coercion by the defendant or others. Some believe that the plaintiffs who dismiss (or who do not appear for hearing, resulting in dismissal) are abusing the easy availability of temporary orders.

Task Force members or witnesses expressed a third way in which there was a possible abuse of the pro se/ex parte nature of temporary protection orders. Some sentiment was voiced that judges err on the side of granting the ex parte temporary order in close cases, even though the plaintiff has not met the requisite burden of proof. Judges fear that if they deny an order, the plaintiff may be subject to worse abuse or death.<sup>83</sup> On the other hand, if an order in a close case is granted inappropriately, the defendant may be denied his constitutional due process right to a hearing before deprivation of property and liberty interests.

A study commissioned by the United States Department of Justice addressed the difficulty judges face at the ex parte stage. The study found, based on a survey of judges in different jurisdictions, that judges were divided in their practice of whether they spoke with the plaintiff in person before ruling on the requested relief. A requirement that the judge speak with the plaintiff often resulted in delays of half a day before a case was heard in chambers. On the other hand, judges who spoke with plaintiffs personally felt that there were compelling reasons to do so: to determine what dangers exist and what provisions in the order were necessary to address them; to inform the plaintiff of the importance of appearing at the hearing; to assess the plaintiff's credibility and thereby safeguard the due process rights of the defendant; and to assess the nature of visible injuries and make notations about them on the petition.<sup>84</sup>

A fourth concern was raised about legislative changes which have made orders easier to obtain. Some felt that the courts were being used to achieve a "social agenda or purpose." If judges are too friendly to pro se plaintiffs, the reasoning goes, the plaintiffs may feel that the court system is "on their side." Conversely, defendants may feel that the system is biased against them. In another context, when judges participate in community-based domestic violence coalitions to improve the court system's handling of domestic abuse cases,<sup>85</sup> there may be an appearance that judges are poised to predetermine domestic abuse cases in the plaintiffs' favor. Instead of viewing these circumstances as the judiciary's having adopted a social agenda, some Task Force members firmly believe that these measures are necessary to correct a prior bias in the court system against addressing domestic abuse. In support of this view, members cite the Equality in the Court's Task Force report. That report, among other things, identified domestic abuse as an area in which significant bias existed.<sup>86</sup>

**Registration of Foreign Orders.** The Task Force learned that sometimes plaintiffs have difficulty with police or sheriff departments enforcing the terms of their protection orders which were filed either in another county or another state. Although the protection order may be duly and legally entered, law enforcement personnel hesitate to enforce the order for fear it is only effective in the county or state in which the court entered it.

The problem of enforcing protection orders between counties is a curious anomaly. Law enforcement personnel enforce other court orders between counties, such as execution of liens, garnishment of wages, and execution of warrants. The Task Force believes that training of law enforcement personnel should stress that a domestic abuse protection order properly signed and filed anywhere in Iowa is effective anywhere in Iowa, not solely the county captioned at the top of the order. In addition, the Task Force supports the idea of a central state registry for the registration of all Chapter 236 protection orders. Protection orders entered under Chapter 236 would be logged into the registry within 24 hours of filing, and the information contained in the registry would be available at all times to the court and law enforcement agencies.<sup>87</sup>

The judiciary, law enforcement, and survivors frequently confront this problem in Iowa border communities, where the victim has obtained a protection in another state but lives, works, or otherwise is present in Iowa. It is understandable why a police or sheriff department would be reluctant to enforce the terms of an order filed and entered in, for example, Illinois. A solution to this problem is to establish a registry in Iowa for the entry of certified protection orders from other states, along the lines of the registry described above for Iowa orders.<sup>88</sup> No sound policy reason exists for protecting the survivor only in the state in which she obtained the order. Future violence ought to be constrained in any state in which the victim is located.

## RECOMMENDATIONS

**39. The chief judges from each judicial district should jointly approve form orders to be used statewide for all criminal no-contact orders and civil protective orders issued under Iowa Code Chapters 236 and 598.**

Uniformity would alleviate the current difficulty faced by law enforcement officers in interpreting orders in various forms and styles, many of which do not indicate an exact expiration date or specify what restrictions on contact have been ordered by the court. A similar provision is included in Model Code §302.

**40. The General Assembly should establish a statewide system to allow law enforcement agencies to receive accurate and timely information concerning criminal no-contact orders and civil protective orders issued in other counties.**

The person protected by such an order should not be endangered simply because the risk of violence crosses county lines. See Model Code §315.

**41. The General Assembly should pass legislation that would allow for the registration and enforcement of foreign orders for protection.**

This new provision would allow a certified copy of a protective order issued in another state to be filed with any clerk of court in Iowa. Such an order would have the same effect and must be enforced in the same manner as a protective order issued by an Iowa court. Clerks also would be required to certify and forward copies of orders issued in Iowa at the request of the court of another state or the request of a person who is affected by or has a legitimate interest in the protective order. See Model Code 314.

## 5. Criminalizing Contempt of Protection Orders

A national study concluded that the most serious limitation of civil protection orders is widespread lack of enforcement.<sup>89</sup> Arguably, public interest intensifies at the violation stage of a protection order proceeding because the authority of the court is at stake, in addition to the interests of the private plaintiff.

Enforcing protection orders is a serious problem identified in our study, particularly in cases which have been initiated by a pro se plaintiff. An allegation that a civil protection order has been violated and the contempt action which follows presents a particularly problematic stage of the pro se case.

The Task Force learned about many problems which currently exist:

- a. Many plaintiffs do not know that it is their obligation to "prosecute" the contempt action; in part, the confusion exists because law enforcement may have taken the defendant into custody, and the plaintiff assumes that the prosecutor will be the county attorney; however, the Task Force also learned that many times plaintiffs are not given notice of subsequently scheduled hearings.<sup>90</sup>
- b. Indigent defendants are entitled to court appointed counsel in contempt proceedings, whereas the pro se plaintiff is not. Most plaintiffs cannot get a lawyer. While using legal service, legal aid, and volunteer lawyers for this purpose is a high priority with the Legal Services Corporation of Iowa and The Iowa State Bar Association Volunteer Lawyer Project, the Task Force believes that such programs can not supply enough lawyers.
- c. Pro se plaintiffs have a very difficult time proving the contempt by the required standard -- beyond a reasonable doubt. When the defendant is represented and the plaintiff is not, evidence in the case may well be unbalanced.
- d. Judges who preside over contempt proceedings where the plaintiff is unrepresented are placed in a difficult role. If the judge continues the hearing, for example, to subpoena the police officer who took the alleged order violator into custody, the judge may appear to take sides. Even though judges may have the obligation to decide equity matters on a fully developed record, an appearance of partiality may result if they ask plaintiffs questions.

- e. Double jeopardy problems may arise if the basis for the contempt action is also a criminal offense, and pro se plaintiffs will not know to alert the county attorney of such issues.
- f. The 1993 amendment of Chapter 236<sup>91</sup> to allow for county attorneys to assist pro se plaintiffs has not solved the problem, primarily because of significant conflicts of interest or potential conflicts that are present.<sup>92</sup>

**Judges who preside over contempt proceedings where the plaintiff is unrepresented are placed in a difficult role.**

The Task Force identified a number of measures which would address this problem:

- ☞ court-based programs to provide attorneys for indigent plaintiffs, similar to court-funded criminal defense attorneys.<sup>93</sup>

- ☞ statutory authority for the court to order successful plaintiffs the cost of enforcing orders through an award of reasonable attorney fees. See recommendations in this section of the Report.

- ☞ criminalize violations of civil and criminal domestic abuse case protection orders by making them a simple misdemeanor, in addition to contempt under the court's inherent authority.

While the Task Force was unable to reach unanimous agreement on any one of the possible measures, our discussions primarily centered on criminalizing violations.<sup>94</sup> The Task Force came close to recommending that legislative action be taken to make violations a simple misdemeanor, but significant concerns made us unable to reach a unanimous decision. Instead, our decision was to outline the benefits and disadvantages of this option.

**Benefits of criminalizing order violations.** Removes judge from having to act as prosecutor; greater opportunity for an experienced prosecutor; police may be more active in response, investigation, and testifying; provides an advocate for the plaintiff/victim; prosecutor will be able to spot and deal with double jeopardy concerns; criminal history will reflect prior incidents of violating orders; maintains option for court to treat as contempt even if prosecutor declines prosecution; eliminates conflict of interest for county attorneys to be involved in both (underlying) criminal offense and civil order contempt.

**Disadvantages to criminalizing order violations.** New rights attach to the offense that do not attach to violations of civil or criminal case orders presently (jury trial; discovery; stricter evidence rules); prolongs the proceedings from current 10-15 day time period; prosecutors may treat order violation cases as "de minimus" violations if no assault or injury occurred; cost goes up (court-appointed counsel, judge/bailiff time); prosecutors must proceed with a case they didn't initiate; reduces amount of jail time that can be imposed (from current six months to 30 days); victim/plaintiff loses control over the case (can't force prosecutor to go forward and can't dismiss); higher profile case for victim.

The Task Force notes that 35 states criminalize order violations.<sup>95</sup> The Model Code §202 makes order violations a misdemeanor, but only for certain terms of protection orders – no contact, no assaults or threats, no firearms, and exclusion from the residence. Violations of terms which deal with property and monetary support are not criminalized. The Model Code drafters noted that there were problems with enforcement of penalties for violations of restraining orders in those states that only authorize enforcement of the orders through the court's contempt power.

## RECOMMENDATION

42. **The Iowa State Bar Association, the Supreme Court, and the General Assembly should consider and adopt whatever solutions will best strengthen the court's ability to enforce its protective orders, including, but not limited to: increase private/public sector volunteer lawyer complements to pro se cases; create a simple misdemeanor offense for violations of Chapter 236 orders, which would be in addition to the inherent contempt power of the court; create statutory authority to award successful plaintiffs' attorneys fees in contempt actions; and increase court-ordered and publicly paid attorneys for plaintiffs in contempt actions.**

### 6. The Role of the Private Bar and Publicly Funded Attorneys

#### The Pro Se Process

Prior to 1991, a survivor of domestic abuse had a common law right to seek a protection order pro se. But effective July 1, 1991, the Iowa General Assembly codified this right in Iowa Code §236.3A. Three legislative measures took effect. First, the legislature charged the Iowa Attorney General's office with preparing standardized forms for pro se applicants and judges. Second, the legislation specifically provided that pro se litigants could file for a protection order without prepaying filing fees and service costs. Third, the legislation directed the clerks of court to distribute the pro se forms.

The General Assembly, cognizant of the increase and growing lethality of domestic abuse in Iowa – 23 women in Iowa died at the hands of their current or former partner between 1989 and 1991 – sought to open the courthouse doors wider to survivors seeking judicial protection from further domestic violence. These steps to enhance the availability of protection orders appear to have had their intended effect. In 1991, only 470 Chapter 236 petitions were filed. In 1992, survivors filed 1,678 petitions. In 1993, 2,677 petitions were filed, representing nearly a 500 percent increase over 1991. Current record keeping methods do not allow a breakdown of how many of these petitions were filed pro se or how many were filed seeking to proceed without prepayment of fees and costs. The state court administrator's office, however, estimates that over 90 percent of the 1993 filings fell into both of those categories.

Clearly, the pro se availability of protection orders removes a justice system barrier for survivors of domestic abuse – the inability to obtain court-ordered protection due to lack of funds.

Clearly, the pro se availability of protection orders removes a justice system barrier for survivors of domestic violence -- the inability to obtain court-ordered protection due to lack of funds to pay the filing and service fees and to pay for an attorney. Commendably, it was the testimony of witnesses and the experience of some Task Force members that obtaining an order deferring payment of fees and costs did not impose another barrier to accessing the courts, and that by and large, judges granted the request to defer payment.

### **Pro Se Domestic Abuse Project**

The Pro Se Domestic Abuse Assistance Project eased the Judicial Department's transition into the expected increase of pro se Chapter 236 cases.<sup>96</sup> Between July 1, 1992 and June 30, 1994, the Project:

- ◊ published a guide called "How to Protect Yourself from Domestic Abuse without a Lawyer," written so non-lawyers could proceed in domestic abuse cases; distributed 10,000 copies throughout clerks of court and shelter programs; published Spanish language version in July 1994; revised English language edition due in August 1994.

- ◊ presented ten seminars over two years for over 180 lay domestic violence victim advocates on Chapter 236 and how to assist pro se plaintiffs under Iowa Supreme Court Rule 120.1.

- ◊ coordinated two day-long judicial education seminars (criminal and civil) on the role of the court in domestic abuse cases.

- ◊ published a benchbook for judges on civil and criminal domestic abuse cases, including forms, checklists, and up-to-date legal research.

- ◊ worked with pilot volunteer lawyer projects which act as a complement to pro se litigation in Dubuque (in coordination with Legal Services Corporation of Iowa) and in Des Moines, Muscatine, Davenport, and Cedar Rapids.

- ◊ presented seminars to statewide conferences for clerks of court and magistrates on how to process domestic abuse cases and wrote a chapter for newly revised clerks manual on domestic abuse.

### **Attorney Representation in Chapter 236 Cases**

Pro se, by definition, means by one self. Although the legislature amended Chapter 236 to allow plaintiffs to proceed without an attorney, the Task Force learned that many times a plaintiff simply cannot obtain the full benefits intended by Chapter 236 without an attorney. The Task Force also gleaned, that unfortunately, the availability of attorneys to represent plaintiffs at final hearings or in contempt actions is insufficient to meet the need.

Some women who flee domestic abuse situations leave behind their sole source of financial support. Indeed, controlling the victim's access to money is a common form of domestic abuse. If the victim's spouse or partner is the principal wage earner in the family, then he is much more likely to have the means with which to retain an attorney than the victim. Moreover, the

abusing partner is entitled to court appointed counsel in contempt cases. Without their partner's income, these women have no way to obtain basic necessities for themselves or their children such as food, shelter, and health care, much less pay for an attorney. Sometimes the survivor will be able to stay with family or friends while other times she must seek help at a domestic abuse shelter. It is these victims -- without financial resources -- who are often most in need of an attorney.

The potential for a custody fight over children, abuse of the children in addition to the plaintiff, legal representation of the defendant, language, literacy, or disability challenges are all situations in which the plaintiff is in greater need of an attorney than, for example, the non-disabled, well-educated plaintiff without children who has had prior court experience. Moreover, domestic abuse is inherently dangerous and this factor alone can intimidate some plaintiffs to the point where they feel powerless to proceed without the assistance of an attorney.

A well-recognized national study commissioned by the U.S. Department of Justice concluded that legal representation is critical in order for victims to obtain maximum legal protection from domestic abuse.<sup>97</sup> The majority of judges surveyed reported that even with a simplified petitioning procedure and energetic lay assistance to victims, those victims who are not represented by counsel are less likely to get protection orders -- and, if an order is issued, it is less likely to contain all appropriate provisions regarding exclusion from the residence, temporary custody of children, child support, and protective limitations on visitation rights.<sup>98</sup>

The report cited the climate of emotional crisis and fear which usually precipitates the seeking of a protection order, and the laypersons's lack of knowledge of the law and process as reasons why skilled legal assistance may be crucial in obtaining court-ordered protection.<sup>99</sup> The Task Force learned that the situation in Iowa is really no different from that described in the national study. The Task Force made four specific findings in this area. First, the creation of the pro se legislation has primarily facilitated the granting of the ex parte temporary protection order (which is in effect for a maximum of 15 days), but not the final protection order (which can be in effect for up to one year). Second, some plaintiffs proceed to contested final hearings pro se at great personal risk. Third, some attorneys who represent victims in final hearings may benefit from specific training on the special challenges of advocating for victims, the dynamics of abuse, and the connection between child and mother abuse. Fourth, there are not enough attorneys available to represent plaintiffs who need representation at the final hearing.

**... legal representation is critical in order for victims to obtain maximum legal protection from domestic abuse.**

**... pro se legislation has primarily facilitated the granting of the ex parte temporary protection order (which is in effect for a maximum of 15 days), but not the final protection order (which can be in effect for up to one year).**

On January 1, 1994, Supreme Court Rule 120.1 took effect. That rule provides:

**In all proceedings under Chapter 236 of the Code, a victim counselor, as defined in §236A(1)(b) of the Code, who is affiliated with a member domestic violence program of the Iowa Coalition against Domestic Violence, and whose program has registered with the Iowa Coalition against Domestic Violence as providing services under this rule, shall be allowed:**

- 1. to distribute the pro se forms prescribed by the department of justice pursuant to §236.3A and to assist victims of domestic violence in the preparation of such forms;**
- 2. to describe to victims the proceedings under Chapter 236 and to assist them in their role as witnesses;**
- 3. to accompany them throughout all stages of proceedings under Chapter 236; and**
- 4. to attend all court proceedings, including sitting in chambers and at counsel table, to confer with the plaintiffs, and, at the judge's discretion, to address the court; however, domestic violence victim counselors shall not examine witnesses, make arguments to the court, or otherwise act in a representative capacity for victims of domestic violence.**

**The Iowa Coalition against Domestic Violence shall provide to the State Court Administrator, on an annual basis and more frequently as necessary, an updated list of its member programs which perform the services provided under this rule.**

**When they assist victims of domestic violence as specified in this rule, domestic violence victim counselors are not engaged in the unauthorized practice of law.**

Some might be tempted to think that the creation of this rule palliates against the need for attorney representation at the final hearing. After all, the rule allows properly qualified advocates to sit with the plaintiff at counsel table or in chambers, to consult with her, even to address the court; in essence, to provide her an important measure of support through a challenging, often times frightening process. Yet, as the rule makes clear, the advocate "does not practice law." And that is exactly what some victims are in need of: a trained professional to provide legal representation.

The Task Force learned that cogent factors sometimes mitigate in favor of the plaintiff having legal representation at the final hearing. As the Task Force learned, most plaintiffs face at least one or more of these challenges as they proceed to the final hearing, any one of which may deter some plaintiffs, successful at obtaining the temporary order, from seeking the final order or from continuing with a contempt action. The Task Force has distilled those factors into the following:

- ☛ Presence of a physical or mental disability
- ☛ Illiteracy or marginal literacy
- ☛ Inability to speak English or marginal English
- ☛ Limited education or low I.Q.
- ☛ Inability to pursue the final order due to fear of facing the defendant alone
- ☛ Plaintiff fled the family home for safety, leaving the children behind, thereby raising a custody issue
- ☛ Anticipation of a custody or visitation fight for other reasons
- ☛ Anticipation that the defendant will soon be filing for divorce or the plaintiff wants to file for divorce
- ☛ Anticipation that the defendant will be represented by an attorney
- ☛ The level of violence precipitating the filing of the action (e.g. if the plaintiff received medical treatment following the last act of violence, she will typically have an easier time obtaining the final order than a person who is seeking an order based on verbal threats of violence only)

The Task Force acknowledges that the pro se provisions enacted at §236.3A have helped more plaintiffs access the judicial system for protection from domestic violence.<sup>100</sup> Yet, opening the courthouse doors wider to survivors of domestic violence to file a petition is not the only -- indeed, not even the primary -- purpose of Chapter 236. The goal of Iowa's domestic abuse law is to provide persons assaulted by a current or past partner legal protection from future acts of violence.

A step towards achieving this goal is enhancing the availability of attorneys for plaintiffs needing an attorney at the final hearing or in a contempt proceeding. The reality of the situation, however, is that the entire legal community will never be able to meet the entire need. The legal community, nonetheless, should strive to allocate its limited resources to meet this need as effectively and efficiently as possible. The Task Force applauds the efforts undertaken to date by the various facets of Iowa's legal community as described below.

**Yet, opening the courthouse doors wider to survivors of domestic violence to file a petition is not the only -- indeed, not even the primary -- purpose of Chapter 236. The goal of Iowa's domestic abuse law is to provide persons assaulted by a current or past partner legal protection from future acts of violence.**

#### The Private Bar

Based on its work, the Task Force surmises that much of the private bar is familiar with Chapter 236 and that many judges and family law attorneys have had ex-

perience with it. The Task Force recognizes the contributions that members of the bar have made to represent victims of domestic abuse. Entities such as the Iowa Coalition against Domestic Violence and the Legal Services Corporation of Iowa, as well as local domestic violence projects, annually recognize private attorneys who devote time and talent to the legal needs of survivors.

The Task Force learned that The Iowa State Bar Association has held discussions, upon the invitation of Chief Justice McGivern, to address the Equality in the Courts Task Force recommendations regarding domestic abuse.<sup>101</sup> In response to this letter, President Keith McKinley called a meeting on September 15, 1993, attended by Supreme Court administrative staff, members of The Iowa State Bar Association, the Legal Services Corporation of Iowa Volunteer Lawyers Project, the Attorney General's office, the Iowa County Attorney's Association, the Iowa State Bar Association Young Lawyers Division Domestic Abuse Committee, and the Pro Se Domestic Abuse Assistance Project.

Subsequent to this meeting, The Iowa State Bar Association Volunteer Lawyers Project, in conjunction with the Legal Services Corporation of Iowa, held a series of judicial district planning sessions to address, in part, ways in which to marshal increased attorney representation for domestic abuse victims. These planning sessions were organized by Roger Stetson, Chair of The Iowa State Bar Association Volunteer Lawyers Project, the chief judges of the eight judicial districts, and the Legal Services Corporation of Iowa. A common theme was heard throughout those meetings held so far: there is a need for greater participation in Iowa's volunteer lawyers projects to help domestic abuse clients as well as other low income clients.

The Young Lawyers Division of the Iowa State Bar Association has a Domestic Abuse Committee, currently chaired by Susan Dulek and Shellie Knipfer, staff attorneys with the Legal Services Corporation of Iowa. Among other things, the committee developed a "Domestic Abuse Guide," specific to each of the eight judicial districts, for survivors. The free guide contains the addresses and telephone numbers of the shelters and domestic violence projects, courthouses and department of human services for each county in the judicial district. The guide is available in the courthouses and has recently been translated into Spanish. Members of the committee have also been speakers on domestic abuse at The Iowa State Bar Association's annual traveling seminars.

**. . . there is a need for greater participation in Iowa's volunteer lawyers projects to help domestic abuse clients as well as other low income clients.**

The Iowa State Bar Association Family Law Section is currently rewriting the heavily used, two volume Family Law Manual. An entire section will cover Chapter 236 proceedings and will provide forms for pursuing initial actions and contempt. The manual is expected to be printed this fall.

## Legal Services Corporation of Iowa and Legal Aid Societies

The Legal Services Corporation of Iowa (LSCI), through its ten regional offices, is the primary provider of free, civil legal assistance to low income Iowans. LSCI serves 98 of Iowa's 99 counties. The Polk County Legal Aid Society serves Polk County. The Story County Legal Aid Society and Muscatine County Legal Aid office provide service in their respective counties, in addition to LSCI.

LSCI was established in 1977, largely through the efforts of the private bar, the judiciary, and Iowa's two law schools. Since its founding, LSCI has been active in the provision of civil legal assistance to low income Iowans seeking relief from domestic abuse. Its involvement has taken many forms.

LSCI attorneys frequently represent domestic abuse clients seeking protection orders in district and appellate courts. LSCI has sued a city police department for failure to protect a class of domestic abuse victims as required by Chapter 236.<sup>102</sup> LSCI attorneys respond to requests from legislators seeking information and input on pending domestic abuse legislation, and requests from private attorneys with questions about the Chapter 236 process. LSCI attorneys and paralegals across the state regularly provide community legal education events to survivors and domestic violence project staff about Chapter 236 and issues specific to domestic abuse. LSCI publishes and distributes four family law booklets including one devoted exclusively to domestic abuse, which staff attorneys updated in May, 1994. The LSCI newsletter for clients, the Equal Justice Journal, with more than 8,000 subscribers, has contained two articles within the past year on the pro se process. LSCI staff have performed legal training for city and county law enforcement agencies throughout Iowa and for domestic violence project and shelter staff. LSCI staff have also served on boards of directors for domestic violence programs and local domestic abuse coalitions.

LSCI attorneys have represented domestic abuse survivors in two recent appellate cases. In Smith v. Smith, 513 N.W.2d 728 (Iowa 1994), the Iowa Supreme Court reversed and remanded a Chapter 236 case in which the lower court had dismissed a pro se application for temporary and permanent protection for failure to plead a claim of domestic abuse properly. In reversing the case, the Court wrote: "An inartfully drawn petition hastily dismissed -- as this one was -- could leave the petitioner without any protection from potential violence and resulting injury or possibly death."<sup>103</sup>

In another notice pleading case, Knight v. Knight, an LSCI attorney is representing a pro se petitioner who obtained a final protection order based on an incident of violence not pleaded in her petition. The respondent appealed, arguing that the petitioner may not be granted a protection order based on an act of violence not included in her pro se petition. Briefs have been submitted and the case is pending before the Iowa Supreme Court.

"An inartfully drawn petition hastily dismissed -- as this one was -- could leave the petitioner without any protection from potential violence and resulting injury or possibly death."

In Iowa, there is one attorney for every 457 people.<sup>104</sup> For poor Iowans, there is one advocate (attorney or paralegal) per 9,678 persons.<sup>105</sup> In Iowa, there are fewer than 60 Legal Services or Legal Aid lawyers to serve 307,384 persons living at or below the federal poverty level. By necessity then, limited LSCI resources (and those of other legal aid providers) must be allocated to the most pressing civil legal needs of Iowa's poor. Unfortunately, there is no Gideon decision (the right to an attorney in criminal cases) for poor people with civil legal problems no matter how desperate -- an eviction, a utility disconnection, domestic abuse -- the person's situation may be. For this reason, legal services providers must make difficult priority determinations every day about every case in order to spread their limited resources in the most efficient and effective manner. Neither LSCI nor any other provider of civil legal assistance to low income Iowans can accept every domestic abuse client in need of legal representation.

LSCI, in accord with federal regulations, has engaged in a priority setting process to determine how best to use its scarce resources.<sup>106</sup> This process is overseen by the organization's Board of Directors which consists of representatives of the legal and low income communities. LSCI priorities and case acceptance criteria provide that domestic violence cases constitute a pressing legal need. Usually, but not always, LSCI will provide attorney representation to plaintiffs in domestic abuse cases. The advent of the pro se process has allowed Legal Services' offices to shift their service delivery system to accommodate and complement the process. Specifically, it is LSCI's experience that most plaintiffs are able to obtain the ex parte temporary protection order without the assistance of an attorney. This leaves the Legal Services attorney additional time to concentrate on the final hearing or other cases.

A number of factors will influence the decision of a Legal Services office to provide an attorney to a survivor in a domestic abuse case. The success of the pro se process in the client's particular geographical area impacts significantly on whether the office will provide the client an attorney. As the Task Force has come to learn, operation of the pro se process varies widely across the state. In some areas, for example the fifth judicial district, the pro se process is institutionalized to the point where it generally works as contemplated by the General Assembly. In other parts of the state, successful use of the pro se procedures may be affected by the clerk's office, law enforcement response, availability of judges, or lack of victim advocates. These local considerations, as well as other local factors (e.g. number of staff vacancies, special funding) are taken into account by the LSCI regional office in determining whether attorney representation can be provided to the plaintiff and, if so, in what form.

LSCI closed 1,577 domestic abuse cases in 1992. Despite the fact that LSCI's resources did not increase during this period, the number of closures increased by almost 10 percent in 1993, when LSCI closed 1,694 cases involving domestic violence. Through July 31, 1994, LSCI has closed 869 domestic abuse cases. Of the 1993 number, 69 percent were closed by one of LSCI's ten regional offices and the remaining 31 percent were closed by LSCI's Volunteer Lawyers Project. Those cases closed by the Volunteer Lawyers Project tended to involve violence in the more distant past, as compared to cases closed by LSCI staff where the existence or threat of abuse is more recent. Of all family law cases closed by LSCI in 1993, 33 percent involved domestic abuse.

The survivor of domestic violence seeking help at a local Legal Services office is not always seeking legal representation. The survivor may need and want court-ordered legal protection as well as housing, food, financial assistance, counseling, and medical care for herself and her children. On the other hand, she may simply want to know how to get her child to school now that she is in shelter, or how she can receive her ADC (now known as FIP) and food stamps while in shelter without her abuser knowing where she is, or whether she must give her husband visitation with the children while she is hiding from him. Although Legal Services attorneys routinely inform domestic abuse survivors about their legal rights under Chapter 236, the client does not always choose to obtain a protection order. Despite the fact that Chapter 236 is the exclusive legal remedy for a person seeking a protection order from future violence, it is not always the exclusive remedy that a survivor of domestic abuse seeks.

### Volunteer Lawyers Projects

The principal way in which the private bar has responded to the need for attorneys to represent survivors of domestic abuse (and Iowa's poor in general) is through volunteer lawyers projects. Iowa is fortunate to have volunteer lawyers projects which facilitate the private bar's pro bono response to the civil legal needs of Iowa's low income citizens.

Volunteer lawyers projects are administered by the Legal Services Corporation of Iowa, The Iowa State Bar Association (ISBA), the Scott County Bar Association, and the Polk County Bar Association. The Legal Services Corporation of Iowa organized the first volunteer lawyers project in Iowa in 1982, followed shortly thereafter by similar projects in Scott County and Polk County.

The Legal Services Corporation of Iowa Volunteer Lawyers Project provides a wide range of opportunities for volunteer attorneys to meet their pro bono obligation. Foremost among those opportunities is placement of low income clients with attorneys who will assist with the client's civil legal problem. The attorney does not charge for her or his services. The client may be responsible for costs associated with the representation which are not waived or taxed to the opposing party. These may include filing, service, copying, or telephone charges. The client's case is screened by the local legal services regional office. The office assures that the client meets financial and other eligibility criteria and prepares a referral to the volunteer lawyers project. The project staff then seek to place the case with an attorney who has agreed to accept cases.

The Legal Services Volunteer Lawyers Project currently has 1,250 members, approximately 719 of whom will accept family law cases. The most common area of representation for the family law volunteer attorney is to assist the domestic abuse plaintiff in obtaining a divorce. Because of the exigencies of a domestic abuse situation, a Legal Services attorney will often assist the client in obtaining a protection order, with the case then being referred to a volunteer lawyer to file a dissolution action. Occasionally, the Legal Services office is able to "lateral" the domestic abuse case to a volunteer lawyer. A lateral is a direct referral to a private attorney who agrees to represent the client at the final domestic abuse hearing without having the case referred first to the Volunteer Lawyers' Project. The majority of domestic abuse plaintiffs accepted by a Legal Services office, however, will be represented by a staff attorney in that office.

For the past two years, the Legal Services Corporation of Iowa Volunteer Lawyers Project has sponsored a continuing legal education event devoted to domestic abuse issues. The May, 1993 event, held in three locations across Iowa, dealt entirely with issues pertinent to domestic violence such as the effect of domestic abuse on custody determinations, civil and criminal contempt, and how to present a Chapter 236 case at final hearing. In June, 1994, the Legal Services Corporation of Iowa sponsored two continuing legal education events related to family law issues, including domestic abuse. Surveys sent to members of the Volunteer Lawyers Project indicated a desire for training in these areas. These events not only provide private bar members with substantive knowledge and continuing legal education hours, but they also serve to increase participation in the Volunteer Lawyers Project and ultimately, representation of victims of domestic abuse. The experience of Legal Services' Volunteer Lawyers Project and that of the Polk County Bar Association reveal that more private attorneys are willing to accept domestic abuse cases through a volunteer lawyers project provided they receive adequate training in the area.

Created in 1989, the ISBA Volunteer Lawyers Project recruits attorneys to volunteer for specific areas of need, matched with the attorney's interest and skill. The project's primary mission, aside from recruitment, is to provide technical and program assistance to agencies that provide case intake and lawyer referral services for low income Iowans. The ISBA Volunteer Lawyers Project also works cooperatively with civil legal service providers, the court, and the bar to develop and implement special projects designed to utilize volunteer resources efficiently.

**Iowa is fortunate to have volunteer lawyers projects which facilitate the private bar's pro bono response to the civil legal needs of Iowa's low income citizens.**

One such special project is the Pro Se Domestic Abuse Project. This pilot program is cosponsored by the Polk County Bar Association and the Pro Se Domestic Abuse Assistance Project. The Polk County Bar Association screens requests for volunteer lawyers in domestic abuse cases. Low income Polk County clients who appear unable to obtain the final protection order on their own or who need an attorney in a contempt case, are referred to the pilot program for placement with a volunteer lawyer. The project has been successful in placing clients with attorneys willing to accept such cases at the contempt hearing stage.

The Scott County Bar Association and the Polk County Bar Association run their own volunteer lawyers projects. Each of these projects recruits, refers, and places cases with volunteer attorneys in their respective counties.

As one might assume, the low income clients seeking assistance through a volunteer lawyers project outnumbers the volunteer lawyers available to provide assistance, particularly in the family law and domestic abuse area. The availability of more volunteer attorneys would go far to increasing victims' access to Chapter 236 protection.

## RECOMMENDATIONS FOR THE PRIVATE BAR AND PUBLICLY FUNDED ATTORNEYS

The efforts of many segments of the organized bar reveal a commitment by Iowa attorneys to respond to plaintiffs seeking protection from domestic violence. There remains, however, a real need for lawyers to represent the survivor who, for whatever reason, cannot proceed to the final hearing pro se or whose protection order has been violated. This need can be initiated in part by increased participation in Iowa's Volunteer Lawyer Projects, and also by an increase in funding to provide attorneys in these cases. The Task Force has also concluded that the bench and bar would benefit from greater training and education. Finally, some legislative changes would permit greater use of Chapter 236 as well as enhanced protection to survivors and their children. Below are the recommendations made by the Task Force.

**43. Organizations such as The Iowa State Bar Association, its Young Lawyers Division, and the Legal Services Corporation of Iowa should be encouraged to continue providing continuing legal education programs on domestic violence.**

The topic of "domestic violence" is not a single-faceted issue. As the Task Force has discerned over the past ten months, domestic abuse involves a number of legal issues, all of which would be appropriate topics for continuing legal education. Some of these subjects include the impact of domestic abuse on custody determinations; use of a domestic violence advocate as an expert; interspousal torts for domestic abuse; municipal liability in domestic violence cases; the appropriateness of mediation in domestic abuse cases; and the impact of domestic violence in a failure to protect children case. Increased training of the bar will hopefully enhance the attorneys' understanding of the unique aspects of domestic violence and will enhance the desire and ability of the bar to undertake these cases.

**44. The General Assembly can provide for a surcharge on all marriage licenses to be used to provide representation to victims of domestic abuse seeking a protection order or in a contempt case.**

It became obvious to the Task Force that greater resources for survivors of domestic abuse includes funding. While the Task Force wholeheartedly endorses its prior recommendations for increasing representation of victims, it also views funding as an important part of the plan to address domestic abuse.

**45. State, county, and local bar associations should continue to encourage their members to join a volunteer lawyers project and to accept domestic abuse cases.**

Fewer than half of the licensed lawyers in Iowa are signed up to participate in a volunteer lawyers project. The Iowa State Bar Association, as well as its Young Lawyers Division, should continue to encourage their members to join.

## 7. Attorney Fees

While Task Force members firmly believe that pro se access to civil protection orders should be maintained and strengthened in Iowa, it also became clear that attorneys should be encouraged to become more involved in this litigation. The Task Force commends efforts by the Iowa State Bar Association Volunteer Lawyers Project and Legal Services Corporation which seek to increase volunteer lawyer participation.

However, it is also clear that volunteer lawyers will never come forward in sufficient numbers to provide the necessary complement to pro se representation. As an incentive to more attorney participation, therefore, we recommend that Chapter 236 be amended to authorize the court to award attorney's fees to the plaintiff as part of the relief awarded in a one-year protection order. If Iowa law were changed to authorize attorney's fees for successful plaintiffs, it would join a majority of states which have addressed this question.<sup>107</sup>

**... volunteer lawyers will never come forward in sufficient numbers to provide the necessary complement to pro se representation.**

Of those state laws which authorize the award of attorney fees, the larger number of states authorizes the court to order only the successful plaintiff to recover such fees.<sup>108</sup> Although it considered and rejected a recommendation that both parties be eligible to recover attorney fees,<sup>109</sup> the Task Force believes that Iowa law should be changed to allow only successful plaintiffs such an award. The Task Force believes the following reasons for this unilateral recovery should dispel any perceptions of unfairness.

**Iowa law should be changed to allow only successful plaintiffs such an award.**

*Public policy.* The purposes of chapter 236 is similar to other statutes which authorize only the recovery of attorney fees to successful plaintiffs, not defendants. Two Iowa examples are the Iowa landlord tenant act,<sup>110</sup> and civil rights act.<sup>111</sup> Analogous Federal statutes include civil rights actions under 42 U.S.C. §1988, the equal access to justice act,<sup>112</sup> the equal pay act,<sup>113</sup> the Americans with Disabilities Act,<sup>114</sup> and the age discrimination in employment act.<sup>115</sup> By awarding successful plaintiffs their attorneys fees, society encourages plaintiffs to bring suit to eradicate a social ill. Similarly, prospective defendants are deterred from the prohibited activity by knowing that attorneys fees can be awarded.

*Incentive for attorneys to represent victims.* Time and time again, the Task Force considered ways in which pro se plaintiffs could be assisted through the legal morass of a Chapter 236 action. Such guidance was seen as necessary to the plaintiffs as well as to the judicial system. Throughout the report we suggest ways in which clerks of court, judges, court attendants and victim advocates can help. The potential for awarding plaintiffs' attorney fees will encourage private bar involvement and shrink the number of cases for which volunteer lawyers will be sought.

*Safeguards against misuse of Chapter 236.* The Task Force heard anecdotal evidence that the expedited process of Chapter 236 encourages meritless petitions. Extending the court's authority to award attorney fees to plaintiffs, not defendants, adds two safeguards against this potential abuse of the system. First, the incentive for attorneys to represent plaintiffs means that more attorneys will be in a position to counsel clients about the appropriateness of a Chapter 236 action compared to other options. Attorneys would presumably file only those actions which were based in law and fact. Second, by only authorizing, not requiring,<sup>116</sup> the court to award plaintiffs' attorney fees, judges can hear a defendant's claim that a chapter 236 action was improperly filed and deny the requested award.

*Restitution.* Some states which authorize an award of plaintiffs' attorney fees do so on an apparent restitution theory.<sup>117</sup> The plaintiff is entitled to recover losses incurred as a result of abuse, including attorney fees necessary to obtain court-ordered relief from abuse. While the Iowa law does not currently allow recovery of such losses (including property damage, medical costs, lost wages, etc.), attorneys fees would be an improvement and would benefit the individual as well as the judicial system.

*Even the playing field.* The Task Force discussed that allowing only plaintiffs, not defendants, to recover attorney fees would be perceived as unfair. On the contrary, the Task Force believes that an award for plaintiffs only is necessary to right a "topsy-turvy" system that presently exists. The false symmetry of allowing either party to recover would add to current inequities.

An award for a plaintiff, not a defendant, would correct an economic imbalance in only those cases where the plaintiff has no funds to hire an attorney and the defendant does. Over 90 percent of Iowa domestic abuse plaintiffs file Affidavits of Lack of Funds at the time they file their pro se petitions, requesting to proceed without prepayment of filing fees.<sup>118</sup> The plaintiff's economic position which this reflects is consistent with what is known about domestic abuse: the abusive partner often controls the couple's or family's money.<sup>119</sup> The court is not required to order an indigent defendant to pay attorneys fees, nor would it be likely to do so. Likewise, an attorney would not be likely to take a case, expecting fees to be paid, if recovery were unlikely because the defendant was indigent.

Allowing defendants to collect attorney fees from unsuccessful plaintiffs would deter plaintiffs from filing for protection orders and could otherwise cause unjust results. If defendants could recover attorneys fees, plaintiffs would have to weigh whether they should take that risk before filing. A significant number of plaintiffs with worthy claims would likely decide not to take that risk and forego action. Likewise, defendants could employ an attorney to defend against a pro se plaintiff (who was unable to find an attorney) and succeed in the defense, not necessarily because the plaintiff's claim was lacking in merit, but only because of the imbalance in the presentation of each side's evidence.

## 8. Expanding Jurisdiction to Sign Temporary Protection Orders

Section 236.4 provides that a plaintiff may obtain a temporary protection order ex parte. The order is effective for five to 15 days, after which a hearing must be held to determine if the plaintiff is entitled to a one year protection order. Iowa Code §236.4(1) The intent of the legislature appears to have been to provide immediate legal relief to survivors of domestic violence. The effectiveness of this provision, however, and thus the legislative intent, is thwarted where the plaintiff is unable to obtain the temporary order due to the lack of availability of a judge.

**... many plaintiffs, especially in the rural areas of Iowa, are unable to obtain the temporary protection order as expeditiously as those living in the more populous areas. . . clerk staff indicate to the prospective plaintiff that a judge will not be at the courthouse "until next week," or "until the next motion day."**

The Task Force learned that many plaintiffs, especially in the rural areas of Iowa, are unable to obtain the temporary protection order as expeditiously as those living in the more populous areas. At times, plaintiffs have been deterred from filing the pro se petition because clerk staff indicate to the prospective plaintiff that a judge will not be at the courthouse "until next week," or "until the next motion day." A number of counties in the state have a judge available as little as bi-weekly. Although Iowa maintains courthouses in all 99 counties, the judiciary is becoming more and more urban-based. For example, the Fifth Judicial District has 16 counties and 22 district court judges; 15 of the 22 reside in Des Moines. The Second Judicial District has 22 counties staffed by 17 district court judges; 14 of those judges reside in just five counties. Appropriation cuts have left fewer travel funds for "circuit riding." As a consequence, many rural counties have a court service day only once every two weeks. For these survivors of domestic violence, the doors to the courthouse are effectively shut "until the next court service day."

The Task Force considered at length how to increase the opportunity for rural plaintiffs to gain access to temporary protection orders where that is impeded by the absence of a judge, while at the same time not creating a burden to the judiciary. Some of the recommendations in other parts of this report will enhance that access. The Task Force feels, however, that a resource of last resort to obtain a temporary protection order should be district associate judges and if none are available, law-trained magistrates.

District associate judges already have the authority to accept filings of domestic abuse petitions and to sign temporary protection orders when the clerk of court's office is closed. Iowa Code §236.6. The chief judge of the judicial district must formally designate the district associate judges to exercise this power. Iowa Code §236.6(1). This practice has been in effect in the third and fifth judicial district for some time.<sup>120</sup> The pool of available judges to sign temporary orders for plaintiffs after

**By amending this part of Iowa's domestic abuse law to allow district associate judges to sign temporary protection orders at all times when a district court judge is not available, the rural domestic violence victim will have a greater opportunity to obtain the legal protection which the survivor in the more populous counties is more readily able to gain.**

hours or at other times when the courthouse is closed has increased by seven judges in the third and eight judges in the fifth judicial district. By amending this part of Iowa's domestic abuse law to allow district associate judges to sign temporary protection orders at all times when a district court judge is not available, the rural domestic violence victim will have a greater opportunity to obtain the legal protection which the survivor in the more populous counties is more readily able to gain.

Often times, a law-trained magistrate will be available in a county which does not have a resident district court or district associate judge. The Task Force is sensitive to the fact that Iowa's magistrates currently have jurisdiction over a broad range of civil and criminal areas, including some involving domestic violence.<sup>121</sup> Their jurisdiction has expanded regularly over the past several years.<sup>122</sup> One magistrate testifying before the Task Force stated:

*We have got to realize that the magistrate level of the system is not a dumping ground for everything that the rest of this system isn't able to handle, time-wise or otherwise. The ramifications, I think, of adding this sort of jurisdiction to the magistrate level of the court system would be devastating.*<sup>123</sup>

After much consideration, the Task Force concluded that if magistrates are only authorized to sign temporary protection orders when neither a district court judge nor district associate judge is available to consider the petition in person, by telephone, or by fax machine, within four hours of presentation of the petition, then the work load on magistrates will not increase appreciably.

The Task Force recommends adherence to strict guidelines for expanding the jurisdiction of district associate judges and law-trained magistrates to sign temporary protection orders. The Task Force also contemplates that the four hour limit for processing domestic abuse petitions will be heeded regardless of whether a district court judge, district associate judge, or law-trained magistrate signs the temporary order. While the Task Force advocates face-to-face contact between the judge and the plaintiff, this priority should yield to the higher priority of completing the filing of the petition and signing of the temporary order within four hours of beginning the process.

**The Task Force recommends adherence to strict guidelines for expanding the jurisdiction of district associate judges and law-trained magistrates to sign temporary protection orders.**

**In all instances when a district court judge is available in the courthouse, it is that judge who should enter the temporary order.**

In all instances when a district court judge is available in the courthouse, it is that judge who should enter the temporary order. Sometimes a judge may be on the bench or in chambers with parties to another case. Such a situation does not automatically call for the plaintiff to seek out a district associate judge or law-trained magistrate. The Task Force believes it is reasonable to have the prospective plaintiff wait up to two hours for a district court judge to sign the temporary order before approaching a district associate judge or law-trained magistrate.

If a district court judge is only available by telephone or fax machine, the Task Force believes that judge should be called on to sign the temporary protection order. The Task Force wishes to stress that district associate judges and law-trained magistrates are only to sign temporary orders when personal, telephone, or fax contact cannot be made with a district court judge.

Where a district court judge is not available by any means, then the clerk of court may arrange for a district associate judge to sign the temporary protection order. The same criteria discussed above apply to district associate judges: if a district associate judge is present in the courthouse but on the bench or with parties, then the plaintiff is expected to wait up to two hours for the judge to sign the order. When a district associate judge is not available in person, the plaintiff may seek signing of the temporary protection order by telephone or fax machine.

When there is no reasonable way in which to contact a district court judge or a district associate judge, then, and only then, should a law-trained magistrate have authority to sign a Chapter 236 temporary protection order. The law-trained magistrate should only have the authority to sign temporary orders in person, not via telephone or fax machine.

The Task Force recommends that Chapter 236 be amended to allow the chief judge of the judicial districts to enter an order designating the district associate judges to sign temporary protection orders when a district court judge is not available. In order for law-trained magistrates to sign temporary protection orders, the chief judge must first certify that no district judge or district associate judge is available.

## **RECOMMENDATIONS**

**46. The General Assembly should amend Iowa Code Chapter 236 to allow chief judges to designate district associate judges and law-trained magistrates to sign temporary protection orders only when a district court judge is unavailable in person, by telephone, or by fax machine.**

The amendment would provide that a district associate judge may sign the order if the district court judge is not available, and only when neither of them are available, would the law-trained magistrate be authorized to sign a temporary protection order. The chief judge must specifically certify the unavailability of a judge before a law-trained magistrate could sign a temporary order.

**47. Upon enactment of this provision, the chief judge of each judicial district can establish a procedure with the court administrator and the clerks of court in the judicial district to obtain certification from the chief judge for a law-trained magistrate to sign a temporary order.**

A specific process must be set up to assure that abuses of the expanded jurisdiction do not occur. The procedure should be tailored to the individual needs and characteristics of each judicial district.

**48. Judges are encouraged to have face-to-face contact with plaintiffs seeking a temporary protection order, but this priority shall give way to the goal of processing petitions for relief from domestic abuse within four hours of presentation.**

For survivors of domestic abuse seeking legal protection from further violence, time is of the essence. The Task Force recognizes the demands which all cases place on the judiciary and court personnel. Domestic violence cases, however, must be accorded some degree of preference if the purpose of Chapter 236 is to be achieved.

**49. District associate judges and law-trained magistrates are to be used as a resource of last resort for survivors of domestic abuse seeking a temporary protection order.**

All reasonable, timely, and technological means should be used to obtain the signature of a district court judge.

**50. The General Assembly should amend sections 236.5 and 236.8 of the Iowa Code to allow successful plaintiffs to recover attorneys fees, in the discretion of the trial court. The Task Force specifically recommends that the legislation not allow prevailing defendants to recover attorney fees and prefers that no change be made to the current law rather than impose upon the alleged victim the chilling prospect of paying defendant's attorney fees if guilt is not established. Such a policy also would encourage defendants to fight the accusations in court rather than plead guilty or plea bargain.**

## **9. Confidentiality**

When the General Assembly originally passed Iowa's domestic abuse law in 1979, law-makers included a confidentiality provision directing the clerk of court to seal the file "when it is complete and after the time for appeal has expired." Iowa Code §236.10 More than a decade has passed since then, and domestic violence is no longer the kind of crime that society considers a private vice. Both clerks of courts and judges told the Task Force that the confidentiality provision is confusing and unnecessary.

While sealing a file may have once seemed to benefit the family, the Task Force believes that openness better reflects the need to treat domestic abuse as a public offense and hold batterers accountable for their actions. The only exception would be when the victim of the violence requests that the file be sealed.

## **RECOMMENDATION**

**51. The General Assembly should revise Iowa Code §236.10 to provide that domestic abuse files be sealed only upon application of the petitioner.**

## **10. Expanding Protection to Victims of Dating Violence and Juveniles**

The Task Force recognizes that victims who are dating or have dated their batterers and juveniles in adult relationships need protection comparable to that accorded other victims of domestic violence. While cognizant of the danger of diluting resources strained by the existing demand, the Task Force, nevertheless, concludes that it is unrealistic to believe that domestic violence does not threaten teenagers.

In fact, it was the beating death of 17-year-old Thea Duffek that sparked legislative measures to combat domestic abuse, though she would not have been eligible for protection under the law as it exists. Another shocking example of deadly violence inflicted upon a teenager is the recent suffocation of Julie Wacht, 16 years old, allegedly at the hands of her live-in boyfriend in Des Moines. With these young victims in mind, the Task Force makes the following recommendations to expand Iowa legal remedies against dating and domestic violence among juveniles.

## RECOMMENDATIONS

**52. A separate chapter should be added to the Iowa Code to address the alarming incidence of dating violence.**

The practical problems of defining dating pale compared to the numbers of young victims who need protection. A separate chapter would enable lawmakers to focus directly on this problem and tailor protections to the needs of these victims. While the need for protective orders may be identical to victims who are married to or live with their batterer, property and custody issues will generally not be involved.

**53. The definition of domestic abuse at the Iowa Code §236.2(2) should be expanded to encompass juveniles under 18 who are married, living together, or have children in common.**

A Clerk of court alerted the Task Force to confusion among judges in her county regarding the availability of Chapter 236 protection to juveniles. The Task Force believes that this provision should be revised to explicitly include juveniles, consistent with the trend in the law to treat juveniles who participate in adult activities as adults.

**54. In cases where the petitioner is a juvenile not emancipated through marriage, a provision should be added to Chapter 236 allowing parent, guardian or other representative to file a petition on behalf of a child against a family or household member who commits an act of domestic violence.**

This provision could be patterned after Model Code §301.

### C. Mediation

State courts nationwide are increasingly moving to adopt alternative dispute resolution methods in all litigation, but especially in domestic relations cases. Mediation proponents urge its adoption for two primary reasons: first, cases referred to mediation take less valuable court time; second, mediation potentially allows for more amicable future relations between divorcing spouses, because it reduces the animosity inherent in litigation.

**... it was the beating death of 17-year-old Thea Duffek that sparked legislative measures to combat domestic abuse, though she would not have been eligible for protection under the law as it exists.**

The Task Force acknowledges the increasing popularity of mediation and other forms of alternative dispute resolution (ADR), and welcomes the opportunity to provide some background and perspective about their suitability in domestic relations cases where abuse is present. For the reasons set out below, the Task Force recommends that, as the Iowa Supreme Court inevitably follows the lead of other states in considering or adopting ADR in dissolution of marriage cases, that it proceeds with extreme caution in cases where domestic abuse is present. For any ADR system which is adopted, all dissolution cases should be subject to appropriate screening mechanisms to identify cases where abuse has occurred. When abuse is identified, these cases either should be diverted altogether from any ADR, or should be subject to special procedures to ensure safety of the parties and confidence that the mediation process itself is not tainted by the abusive behavior. The Task Force strongly recommends against any use of mediation in Chapter 236 proceedings, just as the legislature has prohibited mediation in criminal domestic abuse proceedings.<sup>124</sup>

**Task Force strongly recommends against any use of mediation in Chapter 236 proceedings, just as the legislature has prohibited mediation in criminal domestic abuse proceedings.**

**Background.** The goal of mediation is to provide a safe, non-adversarial environment for parties to resolve their differences. For mediation to achieve this goal, the parties must be able to negotiate in a safe, voluntary, and competent manner. Relationships in which domestic violence is present are marked with an imbalance of power and control. Research has shown that even in relationships with minimal physical violence, the batterer maintains control with subtle techniques of dialogue and intimidation.<sup>125</sup> These intricate dynamics of ongoing abuse are difficult, if not impossible, to overcome in mediation.<sup>126</sup> One

example of this power imbalance is that, in mediation, abusers seem dominant, charming, and agreeable compared to the abused party.<sup>127</sup> While some argue that mediation can create a safe space for domestic abuse victims to consider their alternatives, it is highly unlikely to succeed because of the victim's fear of reprisal from the batterer.<sup>128</sup> Some research indicates that many women will even forfeit their legal rights in order to protect themselves from further abuse.<sup>129</sup>

Most importantly, perhaps, mediation in cases where domestic violence has occurred can risk the physical safety of the parties and the mediator. Studies have shown the fallacy of the common perception that separation of the parties will reduce or eliminate domestic violence. In fact, violence is often at its worst at the point of separation, and contact after separation are among the most likely times for a woman to be murdered.<sup>130</sup> Rather than providing a non-adversarial solution to violence, mediation can create the contact and opportunity for further violence.

**Court Use of Mediation.** Recognizing the perils of using mediation in dissolution cases where abuse is present, professional mediators and state courts have both considered how to treat these cases as they increase their use of mediation in family matters.

In its report entitled "Mediation in Cases of Domestic Abuse: Helpful Option or Unacceptable Risk?"<sup>131</sup> the Maine Court Mediation Service convened a team to address the use of mediation in both protection-from-abuse cases and domestic relations matters where abuse has been a factor.

**Protection-from-abuse Cases.** Project members were unable to reach consensus about the usefulness and risk of mediation with respect to protection from abuse order. Half of the members opposed the use of mediation because of safety concerns and the public policy considerations that underlie protection from abuse statutes. An equal number felt that in certain instances and under carefully controlled circumstances supported by well-designed screening protocols, mediation could indeed be safe, appropriate, and helpful.<sup>132</sup> All argued however, that when mediation is used in protection-from-abuse cases, it be conducted only after a judicial determination that abuse has occurred.

The report describes both points of view about protection from abuse order cases and details alternative models to enhance the protection-from-abuse process, from both perspectives.

**Domestic Relations Case.** The Maine Court Mediation Project reached a greater consensus regarding the use of mediation in domestic relations matters when abuse had been a factor.

*[We] recognize the great harm caused by domestic abuse and its potential for lethality. Highlighting, first and foremost, the need for safety and protection [we] strongly recommend the required use of screening protocols, a specialized application of mediation techniques to cases that involve domestic abuse, structured training and cross-training in mediation and domestic abuse for court personnel, mediators, and domestic abuse prevention workers.*

Professional mediation organizations have similarly raised concerns about the suitability of mediation in cases where domestic abuse is a factor. The Toronto Forum on Woman Abuse and Mediation, held in June 1993, brought together four professional organizations to discuss mediation and to devise practice standards, policies and protocols for the safe, fair and specialized practice of mediation in cases involving abuse against women. Central to their report<sup>133</sup> is the affirmation of a rebuttable presumption against the use of mediation in cases of domestic abuse. Participants also agreed that there must be viable, accessible, affordable alternatives to mediation in any community offering mediation so that resource-poor battered women are not forced into mediation to achieve a custody award, alimony or a property settlement. The mediation associations which participated in the forum are each taking action on the document produced at the conference.

The Drake Law School Dispute Resolution Resource Center/Training Center for Public Service Attorneys contacted the Task Force and advised how it could serve the Judicial Department and the bar as an information resource on mediation, particularly as it relates to family issues and domestic abuse matters. Drake's correspondence and attachments indicate a general awareness of the process dangers involved in mediating cases where violence has occurred and possible safeguards. The Center follows an approach taken by the Academy of Family Mediators, which has carefully considered the special challenge of mediating cases where domestic abuse is current. For example, the letter agrees that highly specialized training on the dynamics of abuse, the pitfalls for mediators, and safety planning should be required, as should intensive, on-going screening of cases to determine appropriateness for mediation.<sup>134</sup>

## RECOMMENDATIONS

The Task Force recognizes that ADR will become a more viable means for disposing of Iowa litigation. As discussions take place in Iowa to implement these methods, we strongly urge that domestic abuse experts and mediators committed to accountability to victims of domestic violence be consulted in the process, and that the vast body of literature and research<sup>135</sup> be used to guide the development of ADR.

**55. Mediation should not be used in Iowa Code Chapter 236 cases. Courts should consider the following factors before ordering mediation in a domestic relations/dissolution of marriage case:**

- 1) assessment of the parties in order to measure the risk of violence, including the risk to children and the mediators;**
- 2) the voluntariness and the competence of the parties to engage in mediation;**
- 3) the extent of the power imbalance in the relationship.**

**Mediators should be trained regarding the dynamics of domestic relationships and the issues involved in mediating them.**

Other means of dispute resolution such as negotiation, facilitated settlement conferences, arbitration and adjudication should be considered and may be more appropriate in cases where there is domestic abuse.

---

<sup>1</sup>Testimony of Police Officer Curtis Ruby, January 12, 1994, at 94-95.

<sup>2</sup>Iowa Code §236.12.

<sup>3</sup>Testimony of Connie Bencke, December 15, 1993, at 84-85.

<sup>4</sup>Id. at 87.

<sup>5</sup>Iowa Code §236.12 (1993).

<sup>6</sup>Testimony of Connie Bencke, December 15, 1993, at 86.

<sup>7</sup>According to Gene Shepard, Director, Iowa Law Enforcement Academy.

<sup>8</sup>The Iowa Law Enforcement Academy is but one of the facilities or organizations which conducts basic and in-service training programs for Iowa law enforcement agencies.

<sup>9</sup>Iowa Code §80B.11(1).

<sup>10</sup>Iowa Code §80B.11(2).

<sup>11</sup>Soon to be increased to a 12-week course. Phone conversation with Gene Shepard, Director, Law Enforcement Academy, May 10, 1994. Mr. Shepard remarked that the increase is necessary because of the many topics which must be covered.

<sup>12</sup>Iowa code §80B.11(3). Other than this rule setting, the ILEA only "coordinates" in-service training for the other training schools and various law enforcement agencies.

<sup>13</sup>This training effort was made possible by a federally sponsored grant from the Iowa Governors Alliance on Substance Abuse.

<sup>14</sup>Such a program was set up in Story and Boone County with a high degree of success. When an officer makes a domestic abuse arrest, he or she calls advocates and provides them the name of the victim, the perpetrator, their location and other information related to safety. The victim's advocates then go to the victim's location to meet with her or, at least, provide information.

<sup>15</sup>Such as the Duluth Domestic Abuse Intervention Program; Domestic Assault: One Law Enforcement Response, and the police chiefs of Washington, D.C.

<sup>16</sup>The Violence against Women Act, pending in Congress at the time of this report, would appropriate funds for this purpose.

<sup>17</sup>Task Force survey of victim advocates.

<sup>18</sup>Testimony of Connie Bencke, December 15, 1993, at 91.

<sup>19</sup>Id. at 91-92.

<sup>20</sup>County attorney testimony, January 12, 1994, at 67-68.

<sup>21</sup>This information was from the survey responses provided to the county attorneys.

<sup>22</sup>Testimony of Connie Bencke, December 15, 1993, at 94.

<sup>23</sup>See, for example, United States Attorney General's Task Force on Family Violence, Final Report, 1984 at 28; National Council of Juvenile and Family Court Judges' Family Violence Project, Family Violence: Improving Court Practice, (1990) at 37.

<sup>24</sup>Victim advocate survey is included in Appendix.

<sup>25</sup>Anecdotal evidence supplied by Task Force member Linda McGuire.

<sup>26</sup>"Mandatory Penalties, Victim Cooperation and Judicial Processing of Domestic Abuse Cases," unpublished paper by Professor Chris Carlson, Cornell College, and Attorney Frank Nidey, a copy is contained in the Appendix.

<sup>27</sup>Kurz, D. (1992). Battering and the Criminal Justice System: A Feminist View. In E.S. Buzawa and C.G. Buzawa (eds.) Domestic Violence: The Changing Criminal Justice Response, 21-38.

<sup>28</sup>See Casey G. Gwinn and Anne O'Dell, Stopping the Violence: The Role of the Police Officer and the Prosecutor, 20 W.St.U.L.Rev. 297, 309 (1993) (describing a San Diego prosecutor-police program that has improved conviction rates in domestic abuse assault prosecutions with or without the victim as a witness). A copy is contained in the Appendix. One of the techniques suggested in Gwinn/O'Dell article is to use prior statements of victim/witnesses at trial. Two recent Iowa cases have been seen as limiting the use of these prior statements. State v. Turecek, 456 N.W. 2d 219, 224-25 (Iowa 1990); State v. Tracey, 482 N.W. 2d 675 (Iowa 1992). Turecek and Tracey only prohibit prosecutors from using otherwise inadmissible evidence to discredit an uncooperative or recanting witness's testimony. In other words, prosecutors may not call witnesses who they know will testify at variance with a prior statement, and then impeach them with prior statements which would have no basis for admission except under Iowa Rule of Evidence 613 (Prior Statements of Witnesses). Presumably, even after these two cases, prosecutors may still use prior statements of witnesses if they are admissible under one of the exceptions to the hearsay rule, such as excited utterance, statements made describing a then-current mental, emotional, or physical condition, or statements made for medical diagnosis or treatment.

<sup>29</sup>See testimony of Roxann Ryan, Deputy Attorney General, at pages 13 ff.

<sup>30</sup>Such standards are recommended by the National District Attorneys Association, National Prosecution Standards, Standard 6.1 (1977); and by the National Council of Juvenile and Family Court Judges, Family Violence: Improving Court Practice, 37 (1990). Similarly, the Iowa County Attorneys Association/Prosecuting Attorneys Training Council publication, Prosecution of Domestic Abuse in Iowa, chapter 3, suggests a list of elements of a model prosecution policy and sample standards for prosecution.

<sup>31</sup>This recommendation is consistent with similar recommendations made by the Iowa Supreme Court Task Force on Equality in the Courts, Final Report, at 162.

<sup>32</sup>See Iowa Code §708.2A (1993).

<sup>33</sup>For example, Iowa Code § 692.15 requires that clerks of court send copies of dispositions of criminal charges to charging agencies and the Department of Public Safety; unfortunately, the demands on clerks often preclude compliance.

<sup>34</sup>Iowa Code § 708.2A(6) (1993).

<sup>35</sup>See State v. Tenney, 493 N.W. 2d 824 (1992)(§ 708.2A(6) requires the sentencing court in a domestic abuse assault case to order all defendants to participate in a batterers' education program.

<sup>36</sup>Testimony of Dale Chell, March 9, 1994, at 17.

<sup>37</sup>A copy of the survey instrument is contained in the Appendix.

<sup>38</sup>Citations in this summary will be to the survey of clerks or to the transcript (Tr.) of testimony from clerks of court received on March 8, 1994.

<sup>39</sup>Tr. 23-24

<sup>40</sup>Tr. 10, 26

<sup>41</sup>Tr. 29

<sup>42</sup>Tr. 23  
<sup>43</sup>Tr. 49  
<sup>44</sup>Tr. 56  
<sup>45</sup>Tr. 24  
<sup>46</sup>Tr. 23  
<sup>47</sup>Tr. 58-59  
<sup>48</sup>Tr. 13, 22  
<sup>49</sup>Tr. 22  
<sup>50</sup>Tr. 59  
<sup>51</sup>Tr. 9  
<sup>52</sup>Tr. 9  
<sup>53</sup>Tr. 41  
<sup>54</sup>Tr. 37-38  
<sup>55</sup>Tr. 38-39, 42  
<sup>56</sup>Tr. 10-11.  
<sup>57</sup>Tr. 34.  
<sup>58</sup>Tr. 33.  
<sup>59</sup>Tr. 36.  
<sup>60</sup>Tr. 53.  
<sup>61</sup>Tr. 19.  
<sup>62</sup>Tr. 10.  
<sup>63</sup>Tr. 11.  
<sup>64</sup>Tr. 6, 42.  
<sup>65</sup>Tr. 63.  
<sup>66</sup>Tr. 42.  
<sup>67</sup>Tr. 42.  
<sup>68</sup>Tr. 11.  
<sup>69</sup>Tr. 12.  
<sup>70</sup>Tr. 42.  
<sup>71</sup>Tr. 59-60.  
<sup>72</sup>Tr. 15.

<sup>73</sup>Kobey v. Morton, 278 Cal. Rptr. 530, 532 (Cal. App. 4 Dist. 1991).

<sup>74</sup>See Fitzgerald v. Fitzgerald, 406 N.W.2d 52, 54 (Minn. App. 1987).

<sup>75</sup>Peter Finn and Sarah Colson, "Civil Protection Orders: Legislation, Current Court Practice and Enforcement" U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. (1990), p.47.

<sup>76</sup>"Final Report of the Equality in the Courts Task Force, State of Iowa", p.157." Kuehl, Sheila J., Achieving Equal Justice for Victims of Domestic Violence: The Report of the Judicial Council Advisory Committee on Gender Bias in the Courts on Domestic Violence. Sacramento: 1990. "Report of the New York Task Force on Women in the Courts," Fordham Urban Law Journal, Vol. XV, No.1., 1986-1987; Minnesota Supreme Court Task Force for Gender Fairness in the Courts," William Mitchell Law Review, Vol. 15, No. 4, 1989; and Schafran, Lynn H., "Documenting Gender Bias in the Courts; The Task Force Approach," Judicature, Vol. 70, No.5, Feb-Mar 1987.

<sup>77</sup>"Family Violence: Improving Court Practice, Recommendations from The National Council of Juvenile and Family Court Judges" p.25.

<sup>78</sup>Testimony of Deputy Sheriff Gary Verwers, Jan. 12, 1994, at 91-92; Testimony of Scott County Clerk of Court Marlene Nelson, March 8, 1994, at 16.

<sup>79</sup>Blazel v. Bradley, 698 F.Supp. 756 (W.D. Wis. 1988); State ex rel. Williams v. Marsh, 626 S.W.2d 223 (Mo. en banc 1982); Schramek v. Bohren, 429 N.W.2d 501 (Wis. App. 1988); Sanders v. Shephard, 541 N.E.2d 1150 (Ill. App. Ct. 1989). See also Deacon v. Landers, 587 N.E.2d 395 (Ohio Ct. App. 1990).

<sup>80</sup>Testimony of the Honorable Michael J. Streit, Judge, Fifth Judicial District of Iowa, March 8, 1994, pp. 165-67.

<sup>81</sup>Id.

<sup>82</sup>The State of the Iowa Judiciary Message by the Honorable Arthur A. McGiverin, Chief Justice of the Supreme Court of Iowa, delivered before a joint convention of the 75th General Assembly, January 12, 1994, p. 5.

<sup>83</sup>That fear was expressed recently by Iowa Supreme Court Justice Louis Lavorato in a Chapter 236 case: "An inartfully drawn petition hastily dismissed -- as this one was -- could leave the petitioner without any protection from potential violence and resulting injury or possibly death." Smith v. Smith, 513 N.W.2d 728 (Iowa 1994).

<sup>84</sup>Finn, P. and Colson, S., "Civil Protection Orders: Legislation, Current Court Practice, and Enforcement," U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, March, 1990, pp. 27, 28.

<sup>85</sup>See Part III, The Leadership Role of the Court in Ending Domestic Abuse, of this Report.

<sup>86</sup>Final Report of the Equality in the Courts Task Force, State of Iowa, February, 1993, pp. 141-62

<sup>87</sup>See Model Code on Domestic and Family Violence, Sec. 315, contained in the Appendix.

<sup>88</sup>Id. at Sec. 314.

<sup>89</sup>Peter Finn and Sarah Colson, "Civil Protection Orders: Legislation, Current Court Practice, and Enforcement," U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (1990).

<sup>90</sup>The "paperwork" that police file after they take an alleged order violator into custody under Iowa Code 236.11 may add to this confusion, as it is frequently entitled "State of Iowa vs. [Defendant name] and clerks of court may forward the file to the county attorney.

<sup>91</sup>Iowa Code §236.3B.

<sup>92</sup>See testimony of Roxann Ryan, Deputy Attorney General.

<sup>93</sup>This was the subject of a Iowa County Attorneys Association legislative priority item last session.

<sup>94</sup>County attorneys throughout the state are not in agreement about whether this is a good idea. See testimony of Deputy Attorney General Roxann Ryan.

<sup>95</sup>Barbara J. Hart, "State Codes on Domestic Violence: Analysis, Commentary and Recommendations," 43 Juvenile and Family Court Journal No. 4 at p. 20 (1992).

<sup>96</sup>A two-year effort of the Iowa State Bar Association/Volunteer Lawyers Project funded by the Lawyers Trust Account Commission and conducted under the direction of Linda McGuire.

<sup>97</sup>Finn, Peter and Colson, Sarah, "Civil Protection Orders: Legislation, Current Court Practice, and Enforcement," (U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice, 1990).

<sup>98</sup>Id. at 19.

<sup>99</sup>Id.

<sup>100</sup>Petitions for protection orders increased nearly 500% from 1991 to 1993. State Court Administrator's Office.

<sup>101</sup>Letter to Iowa State Bar Association President Keith McKinley from Chief Justice Arthur McGiverin, June 23, 1993.

<sup>102</sup>Leners and Scott v. City of Sioux City, et al., Civil Action No. C87-4128, U.S. District Court, Northern District of Iowa, Western Division, filed August 10, 1987

<sup>103</sup>Smith v. Smith, 513 N.W. 2d at 731-32.

<sup>104</sup>Source: Iowa State Bar Association.

<sup>105</sup>Source: composite LSCI statistics.

<sup>106</sup>45 C.F.R. Part 1620 (1993).

<sup>107</sup>See Barbara J. Hart, Civil Protection Orders, 43 Juvenile & Family Court Journal, 5, 16, (1992).

<sup>108</sup>Pennsylvania's statutory provision is typical: as a part of the relief that a court may grant in conjunction with a protection order is to "[direct] the defendant to pay the plaintiff for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; and other out-of-pocket losses for injuries sustained. In addition to out-of-pocket losses, the court may direct the court to pay reasonable attorney fees." 23 Pa. Cons. Stat. Ann. § 6108(a)(1). See also Ark. Stat. Ann. § 9-15-205; Cal. Civ. Code § 6344; D.C. Code Ann. § 16-1005; Idaho Code § 39-6306; Me. Rev. Stat. Ann. tit. 19, § 766; Mass. Gen. Laws Ann. ch. 209A, §§ 3, 6; Miss. Code Ann. § 93-21-15; N.Y. Fam. Ct. Act § 842; Nev. Rev. Stat. § 33.030; N.H. Rev. Ann. § 173-B:4; N.D. Cent. Code § 14-07.1-02; Okla. Stat. Ann. tit. 22, § 60.4; Tex. Fam. Code Ann. §§ 71.04, 71.11; Wash. Rev. Code § 26.50.060.

<sup>109</sup>Of those states which explicitly address attorney's fees, the minority allow the court to order either party to pay the prevailing party's fees. Ala. Code § 30-5-6; Ga. Code Ann. § 53-704; Kan. Civ. Proc. Code Ann. § 60-3107; Mo. Rev. Stat. § 455.075; N.C. Gen. Stat. § 50B-3; Ore. Rev. Stat. § 107.716; S.C. Code Ann. § 20-4-60(c); Utah Code Ann. § 30-6-5; Va. Code Ann. § 16.1-279.1(d); Wisc. Stat. Ann. § 767.262. Some of these states only allow such an award to be made after full hearing on the merits of the petition. E.g. Ala. Code § 30-5-6(a). Other states allow the court to assess costs and attorney fees whether or not an order is issued. E.g. Va. Code Ann. § 16.1-279.1(D).

<sup>110</sup>Iowa Code Chapter 562A.35 (1993).

<sup>111</sup>Iowa Code Chapter 216 (1993).

<sup>112</sup>5 U.S.C.A. §§504(c)(1); 504(b)(1).

<sup>113</sup>29 U.S.C.A. §216(b).

<sup>114</sup>42 U.S.C.A. §12205.

<sup>115</sup>29 U.S.C.A. §633(a).

<sup>116</sup>Some states do not simply authorize, they compel the court to award reasonable attorneys fees to successful plaintiffs. See Ill. Ann. Stat. ch. 40, § 2312-14; Tenn. Code Ann. §36-3-605(d).

<sup>117</sup>In New Jersey and Pennsylvania, punitive as well as compensatory damages are allowed. Pa. Cons. Stat. Ann. § 6108(a)(1); N.J. Stat. Ann. § 2C:25-29(b)(4).

<sup>118</sup>State Court Administrators Office. Over 95% of petitions are filed by women.

<sup>119</sup>See power and control wheel, in Part II of the Report. The economic position of Iowa's plaintiffs also reflects what happens to women after divorce -- they can experience up to a 70 percent decline in standard of living, while men's standard rises up to 42 percent. Lenore Weitzman, *The Divorce Revolution*, (1985).

<sup>120</sup>Administrative Order 1993/34, Richard D. Morr, Chief Judge (Oct. 18, 1993)

<sup>121</sup>E.g., domestic abuse assaults (Iowa Code §708.2A(1)); probable cause determinations regarding violations of protection orders and consent agreements (Iowa Code §236.11); issuance of no-contact orders (Iowa Code §236.14(2)).

<sup>122</sup>For example, small claims jurisdictional limits increased to \$3,000 July 1, 1994, and will increase to \$4,000 July 1, 1995. §631.1(1), as amended, 75th General Assembly, H.F. 2286.

<sup>123</sup>Testimony of Magistrate Steven K. Sandblom, March 8, 1994, at 146.

<sup>124</sup>See Iowa Code §236.13.

<sup>125</sup>Barbara J. Hart, Gentle Jeopardy: The Further Endangerment of Battered Women and Children in Custody Mediation, 7 *Mediation Q.* 318, 319 (Summer 1990) (summarizing the current research on mediation which finds that in order to forge a fair arrangement from a mediation agreement the parties must have relatively equal power in the relationship).

<sup>126</sup>Illinois Gender Bias Task Force, at 87; Michigan Gender Bias Task Force at 27 (victims cannot adequately protect their own interests because of the history of manipulation and the threats to their safety and the safety of their children).

<sup>127</sup>Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 *Yale L.J.* 1545, 1583 (1991).

<sup>128</sup>Rowe, at 859. One woman who participated in mediation recounted:

*Mediation does not take into account the fear that I, as a battered woman, have about voicing my needs in the presence of someone who has pushed me and belittled me for expressing any needs at all....I endured two months of weekly meetings with the man who had knocked me to the ground, raped me, and repeatedly violated me. I felt forced to comply, to attend those sessions and thus avoid greater pain....In mediation, if I'd let my ex-husband verbally intimidate me and emotionally abuse me, I wouldn't have to go to court. The trade-off was not a fair one.*

<sup>129</sup>Hart at 319.

<sup>130</sup>The domestic violence homicides in Iowa provide a graphic illustration of this point. According to data kept by the Iowa Department of Justice, Crime Victim's Assistance Division, of the 33 women murdered in Iowa during the last four years, 13 were leaving or had left.

<sup>131</sup>January, 1991, copy on file with the Supreme Court of Iowa, State Capitol, Des Moines.

<sup>132</sup>*Id.* at page viii.

<sup>133</sup>A copy of the report is contained in the Appendix.

<sup>134</sup>The correspondence and attachments are contained in the Appendix, as is a letter by Barbara Hart, commenting favorably upon the AFM approach as a "policy-in-process," making additional suggestions, and citing to Model Code §407 which addresses mediation.

<sup>135</sup>Citations are collected in such publications as Adele Harrell, *A Guide to Research and Family Violence*, The Urban Institute, 2100 M Street, N.W. Washington, D.C. 20037 (1993), contained in the Appendix.

## PART V

### THE FORGOTTEN VICTIMS: CHILDREN AND DOMESTIC ABUSE

*The prevalence of child abuse in homes where mother abuse occurs served as a mandate to the Task Force to include a special section on children and domestic abuse.*

*Chances are about 50 percent that given spouse abuse, there is also child abuse, and, given child abuse, there is also spouse abuse.<sup>1</sup>*

*Seventy percent of batterers grew up in violent homes.<sup>2</sup>*

*Children who grow up in violent homes are four times more likely to engage in illegal acts.<sup>3</sup>*

*A comparison of delinquent and nondelinquent youth found that a history of family violence or abuse was the most significant difference between the two groups.<sup>4</sup>*

**As Iowans struggle to address the growing incidence of both domestic abuse and juvenile crime, it becomes increasingly clear that the two may be very much connected.**

National research studies are brought home by statistics from the Iowa Department of Justice, Crime Victims Assistance Division. From January, 1990, through January, 1994, 33 Iowa women were killed by their partners. Those women were survived by a total of 41 dependent children. Eighteen children witnessed the murder of their mother. Five children were themselves murdered in a domestic abuse homicide.<sup>5</sup>

As Iowans struggle to address the growing incidence of both domestic abuse and juvenile crime, it becomes increasingly clear that the two may be very much connected. Yet, advocates for children and advocates for battered women have not, until recently, joined forces to approach both problems simultaneously.

While the Task Force could not exhaustively address the overlapping problems of child abuse and mother abuse and the effects of parent abuse on children, we did deal with three areas: the role of child protective services, child custody decision-making, and the failure to protect.

#### **A. Child Protective Services**

##### *Local indicators of overlapping abuse*

According to testimony received by the Task Force, in Polk County, 25 percent of each case worker's case load includes domestic abuse issues.<sup>6</sup> Statewide statistics from the Department of Human Services reveal a greater likelihood of founded child abuse reports in homes where domestic abuse is present (founded child abuse increases from the statewide average of 30 percent, to 50 percent when family and environmental stress such as domestic abuse is present.)<sup>7</sup>

Yet, despite these strong indicators of the connection between domestic abuse and child abuse, the current responses of the child protective services agency and the juvenile court system do not adequately embrace domestic abuse issues. For example, the current response by DHS/CPS when child abuse is suspected but not founded (and therefore no formal court intervention is warranted) is to inform the family of the community resources to deal with domestic abuse.<sup>8</sup> However, the response is entirely voluntary.

*Need to tie child abuse issues with domestic abuse issues*

Testimony before the Task Force indicated that historically tension has existed between child advocates and battered women's advocates:

*The mandate for DHS and juvenile court to protect children and provide intervention and treatment services to families often times conflicts with a philosophy of agencies protecting victims of domestic violence. Child protective investigators may find on the batterer for placing a child in imminent danger, and an additional finding on the battered victim for denial of critical care/failure to protect, may occur due to the repeated incidents and continued returning to the environment where the domestic violence has occurred. Advocate groups for battered women would indicate that founding on the battered victim only further victimizes the individual....[W]e need to ask the question — can we provide a coordinated, meaningful intervention service to these families....It is our suggestion and request that efforts be made to use a multidisciplinary approach to these serious issues.<sup>9</sup>*

The Task Force hopes that Iowans concerned about child and domestic abuse will take the lead among those across the country who are working to bridge the gap that has existed between advocates for battered women and advocates for children.

A new national resource center has been funded by the U.S. Department of Health and Human Services which could be an enormous resource to Iowa. The mission of the Resource Center on Domestic Violence: Child Protection and Custody, a project of the National Council of Juvenile and Family Court Judges, is to provide access to the best possible source of information and tangible assistance to those working in the field of domestic violence and child protection and custody. The Center will chart a future in which child protection and custody cases where family violence exists are handled in a manner which recognizes the complexity of the legal and psychological dynamics of the problem and provides protection and relief for all victims in the family.<sup>10</sup>

The federal government is encouraging collaboration between child advocates and battered women's advocates in other ways. The planning process mandated by the Family Preservation and Support Services program<sup>11</sup> provides an opportunity for the two groups to collaborate. Various models for this planning initiative are well under way in several states, including Maryland, Idaho, New Hampshire, and California.<sup>12</sup>

**... Iowans concerned about child and domestic abuse will . . . work to bridge the gap that has existed between advocates for battered women and advocates for children.**

An article contained in the Appendix<sup>13</sup> explores a number of the issues which can inform this discussion, including how CPS caseworkers can make a more thorough assessment of the potential and lingering danger to children in a home by acquiring an overall picture of the family dynamics at work; how CPS workers can assess for family violence; how CPS workers and battered women's advocates can develop collaboration; what battered women's advocates and CPS workers can expect of each other.

## RECOMMENDATIONS

**56. The Iowa Coalition against Domestic Abuse and the appropriate policy level/management personnel of Child Protective Services should engage in a series of meetings to develop methods to conduct cross-training on the relationship of child abuse and domestic abuse.**

**57. The Iowa Department of Human Services and Iowa Coalition against Domestic Abuse can take guidance from national initiatives and engage in mutual planning efforts.**

These efforts would develop policies for both CPS and battered women's service agencies which address woman battering and child abuse simultaneously within a framework of family violence.

## B. CUSTODY

The Task Force heard testimony and reviewed research regarding the effects of domestic abuse on children. This information is important background for our recommendations which follow.

### 1. Research review.

As many as seventy percent of children from violent homes<sup>14</sup> witness their fathers battering their mothers. One study indicated that some fathers actually arranged for the children to witness the abuse.<sup>15</sup> In addition to witnessing violence, children may also become direct victims of violence as from fifty to seventy percent of husbands who batter their wives also batter their children.<sup>16</sup> The connection between child abuse and mother abuse is further underscored by other research that indicates that 50 percent to 70 percent of all child abuse cases involve domestic abuse against mothers.<sup>17</sup>

Children who witness family violence, intervene to stop such violence, or who are themselves abused are at elevated risk for behavioral, somatic, and emotional problems, both immediately and over the course of their childhood and young adult lives.<sup>18</sup> Boys who are abused and who witness violence against their mothers are at great risk of becoming wife and child abusers as adults.<sup>19</sup>

**As many as 70 percent of children from violent homes witness their fathers battering their mothers.**

**The adverse consequences of observing or experiencing abuse can be averted or mitigated if the child is protected against future maltreatment and parental role-modeling of violence.**

Research reveals that the risk of domestic or family violence directed both toward the child and the battered parent is frequently greater after separation than during cohabitation; this elevated risk often continues after legal interventions.<sup>20</sup> The adverse consequences of observing or experiencing abuse can be averted or mitigated if the child is protected against future maltreatment and parental role-modeling of violence.<sup>21</sup> Research also confirms that the post-separation adjustment of a child is facilitated by an award of sole custody to a non-abusive parent who offers the child a warm relationship, provides a predictable routine, imposes consistent, moderate discipline, and who buffers the child against parental conflict and abuse.<sup>22</sup>

## 2. Testimony.

The Task Force heard credible testimony from a variety of sources which convinced us of the following:

**a. Domestic abuse will frequently continue after the marriage is over but safeguards against on-going abuse are not uniformly available.**

In cases where marital abuse has occurred, joint custody requires that the parents maintain close and constant communication and engage in decision-making about the children in the same atmosphere of danger, power, and control as existed during the marriage.<sup>23</sup> Exchanging children for visitation is a particularly dangerous time. During the past three and one-half years, at least two Iowa women have died while exchanging their children with their estranged husbands.<sup>24</sup> Most Iowa communities do not have neutral drop-off and visitation centers, an important service that many communities nationwide are now developing. See the Appendix for a report by the Duluth, Minnesota Domestic Abuse Intervention Report called "The Visitation Center: A Program of the Domestic Abuse Intervention Project," describing the formation and operation of that program.

**b. Iowa's custody statute provides insufficient guidance to judges regarding how to factor domestic abuse into the custody decision.**

*[M]y experience<sup>25</sup> is that courts are not uniformly aware of the interrelationship between custody and domestic abuse.... What's a judge to do if he's facing a custody battle and there is credible evidence of domestic abuse and yet there is absolutely no evidence that the child has been harmed? How does the judge know that they need to factor this into their custody determination?<sup>26</sup>*

Furthermore, the Task Force finds that the presumption for joint custody in cases where marital abuse has occurred is inappropriate because it does not give proper guidance to judges on how to weigh domestic abuse, harm to children, and ongoing safety concerns.

**... the presumption for joint custody in cases where marital abuse has occurred is inappropriate because it does not give proper guidance to judges ...**

While Iowa law currently lists domestic violence as among the factors judges must consider in the "best interests of the child determination,"<sup>27</sup> judicial application of this factor is confusing, unacceptably uneven, at times illogical, and often conflicts with the strong statutory presumption for joint custody and maximum continuing contact.<sup>28</sup>

The language in Chapter 598, whether direct physical harm or significant emotional harm to a child or parent would result from a joint custody decision and whether safety of the child or the parent would be jeopardized by joint custody, does not go far enough. At this point, the safety issue is only one of the factors the court has to consider, and it is in the court's discretion whether to consider it and how much weight to give it. It fails to recognize that children are at risk of emotional harm and physical harm when they are in homes where domestic abuse occurs.<sup>29</sup>

Thirty states and the District of Columbia have enacted custody statutes requiring the courts at least to consider domestic abuse.<sup>30</sup> The current Iowa custody statute<sup>31</sup> falls within the group of states which state or imply that domestic violence may be one factor among many for a court to use in deciding custody.<sup>32</sup> Judges are given no guidance about what weight to give this factor.<sup>33</sup> While the statutory provision may encourage victims to raise the issue of abuse to rebut the presumption of joint custody, Iowa judges have substantial discretion, including disregarding credible evidence of abuse altogether, or awarding joint custody, or awarding custody to the founded abuser.

Other states<sup>34</sup> bar the trial court from awarding joint custody when the court finds family violence has occurred. The Task Force rejected this approach.

As our recommendation below indicates, the Task Force believes that the general presumption in favor of joint custody should not be abandoned. However, belief that abuse of a parent may continue after the marriage is dissolved, and that such abuse is detrimental to the best interests of the child, leads us to recommend a modification of the joint custody presumption which will more clearly guide judges who find that domestic abuse has occurred.

The proposed change would function as follows: If a mother presented credible evidence that she had been the victim of domestic abuse, the present statutory presumption in favor of joint custody would not automatically apply in the case. If the abusive father did not present any evidence that joint custody was in the best interests of the child, notwithstanding the abuse, then the court would be required to award custody to the victim of abuse. However, the father might still succeed in obtaining a joint custody award if he presented evidence that the best interests of the child would be served by joint custody. For example, the father could testify that he successfully completed batterers' educational programming, had lived violence- and abuse-free for the past two years, and would share his insights with his male child. In this case, the court may well decide that the father rebutted the presumption against joint custody created by the past abuse and award joint custody.

**If the abusive father did not present any evidence that joint custody was in the best interests of the child, notwithstanding the abuse, then the court would be required to award custody to the victim of abuse.**

## RECOMMENDATIONS

**58. Judicial education should include programs covering the relationship between mother abuse and custody/best interests of the child.**

**59. The General Assembly should adopt the following amendments to Chapters 598, 236, and 232:**

**(A) Presumptions concerning custody.** Where there is at issue a dispute as to the custody of a child, a determination by the court that domestic abuse, child abuse, or child sexual abuse has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in the sole custody, joint legal custody, or joint physical custody of the perpetrator of family violence. Model Code § 401.<sup>35</sup>

**(B) Factors in determining custody.**

(1) In addition to other factors a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding of domestic or family violence:

(a) the court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic or family violence;

(b) the court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.

(2) If a parent is absent or relocates because of an act of domestic abuse by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation. See Model Code §402.

**(C) Specialized visitation center for victims of domestic abuse.**

(1) The Department of Human Services shall provide for visitation centers throughout the state for victims of domestic abuse and their children to allow court ordered visitation in a manner that protects the safety of all family members. The DHS shall coordinate and cooperate with local governmental agencies in providing the visitation centers.

(2) A visitation center must provide:

(a) A secure setting and specialized procedures for supervised visitation and the transfer of children for visitation; and

(b) Supervision by a[n appropriate] person trained in security and the avoidance of domestic and family violence.

C. Failure to Protect

Under Iowa Code §726.6 (1993), a mother may be held criminally liable for failing to protect her children from abuse perpetrated by her husband or boyfriend.<sup>36</sup> Advocates told the Task Force that mothers face a real quandary whether to leave with the children and appear not to want them to have a relationship with the father or to stay and face possible failure to protect charges.<sup>37</sup> Scholars assert that when faced with these kind of duty to protect situations, courts too often fail to ask how the "web of violence" in a home where the mother is also abused affects her liability.<sup>38</sup>

The Task Force notes with favor that Iowa Code §726.6, Child Endangerment, provides an affirmative defense to a charge that a parent failed to protect a child from on-going abuse that the parent had a reasonable apprehension that any action to stop the abuse would result in substantial bodily harm to the person or the child.<sup>39</sup> This section recognizes that battered parents are often put in an impossible double bind by being forced to choose between an action which is designed to protect their children or themselves but which is also as likely, or more likely, to cause additional harm.

**... battered parents are often put in an impossible double bind by being forced to choose between an action which is designed to protect their children or ... cause additional harm.**

**RECOMMENDATION**

**60. Child protective service workers, other Department of Human Services workers, prosecutors, and judges should consider the purpose of §726.6(3) in all proceedings in which there is a finding that the parent has been abused.**

This could include child in need of assistance actions, termination of parental rights proceedings, criminal actions other than Child Endangerment, where the non-abusing parent is said to have "aided and abetted" the criminal behavior of the abusing parent.

**... courts too often fail to ask how the "web of violence" in a home where the mother is also abused affects her liability."**

<sup>1</sup>Hughes, H.M. (1992). Impact of Spouse Abuse on Children of Battered Women. Violence Update, 2(12), 1-11.

<sup>2</sup>U.S. Department of Health and Human Services. (1991). Family Violence: An Overview. Washington, D.C.: Clearinghouse on Child Abuse and Neglect and Family Violence Information.

<sup>3</sup>Gelles, R.J. (1988). The Impact of Violence. Kingston: University of Rhode Island Department of Sociology.

<sup>4</sup>Miller, G. (1989). "Violence by and against America's Children," Journal of Juvenile Justice Digest, XVII (12), p.6.

<sup>5</sup>Iowa Department of Justice, Crime Victims Assistance Division, Old Historical Building, Des Moines, IA 50319.

<sup>6</sup>Testimony of Colleen Reichardt at page 51.

<sup>7</sup>Id. at 50-51.

<sup>8</sup>Testimony of Mary Ellison, page 65.

<sup>9</sup>Id. at 53.

<sup>10</sup>From "Synergy," The Newsletter of the Resource Center on Domestic Violence: Child Protection and Custody. The Center can be reached at the National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, Nevada 89507, phone (800)527-3223. The first issue of the newsletter is in the Appendix.

<sup>11</sup>Contained in the Omnibus Budget Reconciliation Act of 1993.

<sup>12</sup>Contacts in these states can be obtained from the Resource Center on Domestic Violence: Child Protection and Custody, National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, Nevada 89507, (800)527-3223.

<sup>13</sup>Cummings, Nina and Andrea Mooney, "Child Protective Workers and Battered Women's Advocates: A Strategy for Family Violence Intervention," Response, Vol. 11, No. 2 (1998).

<sup>14</sup>Stark, E. & Flitcraft, A., "Women and Children at Risk: A Feminist Perspective on Child Abuse." International Journal of Health Services, (1988), Vol. 18, No. 1, pp. 97-118 and Schechter, S. & Jones, A., When Love Goes Wrong. (New York: Harper Collins Publishers, Inc., 1992).

<sup>15</sup>Dobash, R.E. & Dobash, R., Ph.D., Violence Against Wives. (New York: New York Free Press, 1991).

<sup>16</sup>Pagelow, "Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Arrangements," Mediation Quarterly 347 (1990).

<sup>17</sup>Schechter, Susan and Mihalay, Lisa, Ending Violence Against Women and Children in Massachusetts Families, Massachusetts Coalition of Battered Women Service Groups, 1992.

<sup>18</sup>Bowker, L. Arbitell, and McFerron, "On the Relationship between Wife Beating and Child Abuse," in Feminist Perspectives on Wife Abuse, Kersti Yllo and Michelle Bograd (eds.), 1988; Rosenburg, M.S. & Rossman, B.B.R., "The child witness to marital violence," Treatment of Family Violence: A Sourcebook. Ammerman, R.T. & Hersen, M. (eds.), New York: Wiley, 1990, pp. 183-210; Rosenbaum, A. and K.D. O'Leary, "Children: The Unintended Victims of Marital Violence," American Journal of Orthopsychiatry, LI, pp. 692-699 (1981).

<sup>19</sup>Hotaling, G.T. and M.A. Straus, with A. Lincoln. (1989). "Intrafamily Violence and Crime and Violence Outside the Family." in Ohlin, L. and M. Tonry (eds.), Family Violence. Chicago: University of Chicago Press, pp. 315-376.

<sup>20</sup>Marsha Mahoney, "Legal Images of Battered Women: Redefining the Issue of Separation," 90 Mich. L. Rev. 1 (1991).

<sup>21</sup>Pagelow, Mildred, "Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements." Mediation Quarterly, 1990, Vol. 7, No. 4.

<sup>22</sup>Kelly, 1992; Furstenberg and Cherlin, 1991; Wallerstein, 1990.

<sup>23</sup>Testimony of Kathy Ryman, Executive Director of Story County Legal Aid, page 65.

<sup>24</sup>Melissa Dawn Ewart, 19 years old, stabbed to death on February 25, 1991 in front of the police station in Keokuk while she was lifting her 18 month old daughter from his car after a visitation with him. Melissa Wemark, 32 years old, stabbed to death on January 19, 1993 in Decorah in front of her 20 month old son during a visitation exchange. Data kept by the Iowa Department of Justice, Crime Victims Assistance Division.

<sup>25</sup>Attorney Kathy Ryman has a masters degree in social work; her caseload is primarily domestic relations law, with approximately 20-25 percent of Story County Legal Aide cases representing victims of domestic abuse.

<sup>26</sup>Kathy Ryman testimony at page 59.

<sup>27</sup>Iowa Code § 598.41(3)(i).

<sup>28</sup>Iowa Code § 598.41(1) and (2).

<sup>29</sup>Testimony of Kathy Ryman, pages 63 - 64.

<sup>30</sup>See Barbara J. Hart, Family Violence and Custody Cases, 43 *Juvenile and Family Court Journal* 29, 32 (1992).

<sup>31</sup>Iowa Code § 598.41.

<sup>32</sup>Iowa Code § 598.41(3)(i).

<sup>33</sup>Cf. Florida law, which provides that joint custody shall be ordered unless "it would be detrimental to the child. The court shall consider evidence of spouse abuse as evidence of detrimental to the child." Fla. Sta. Ann. §61.12(2)(b)

<sup>34</sup>For example, Texas, see Tex. Fam. Code Ann. § 14.021(h); see also Ariz. Rev. Stat. § 25-332; Wyo. Stat. § 20-1-113(b).

<sup>35</sup>This approach has been taken by a number of other states: North Dakota and Oklahoma law create a similar rebuttable presumption against joint custody when there is evidence against domestic abuse. N.D. Cent. Code §14-05-22.3; Okla. Stat. Ann. tit. 43, §112.2; see also La. Rev. Stat. Ann. §9:364A.

<sup>36</sup>Cf. State v. Simmons, 454 N.W.2d 866, 867 (Iowa 1990) (finding that mother's role in aiding and abetting her son's confinement by her husband was documented throughout the record).

<sup>37</sup>Testimony from Kathy Ryman, December 15, 1993, at 77.

<sup>38</sup>Dorothy E. Roberts, *Motherhood and Crime*, 79 *Iowa L. Rev.* 95, 112 (1993).

<sup>39</sup>Iowa Code § 726.6(e).

## PART VI

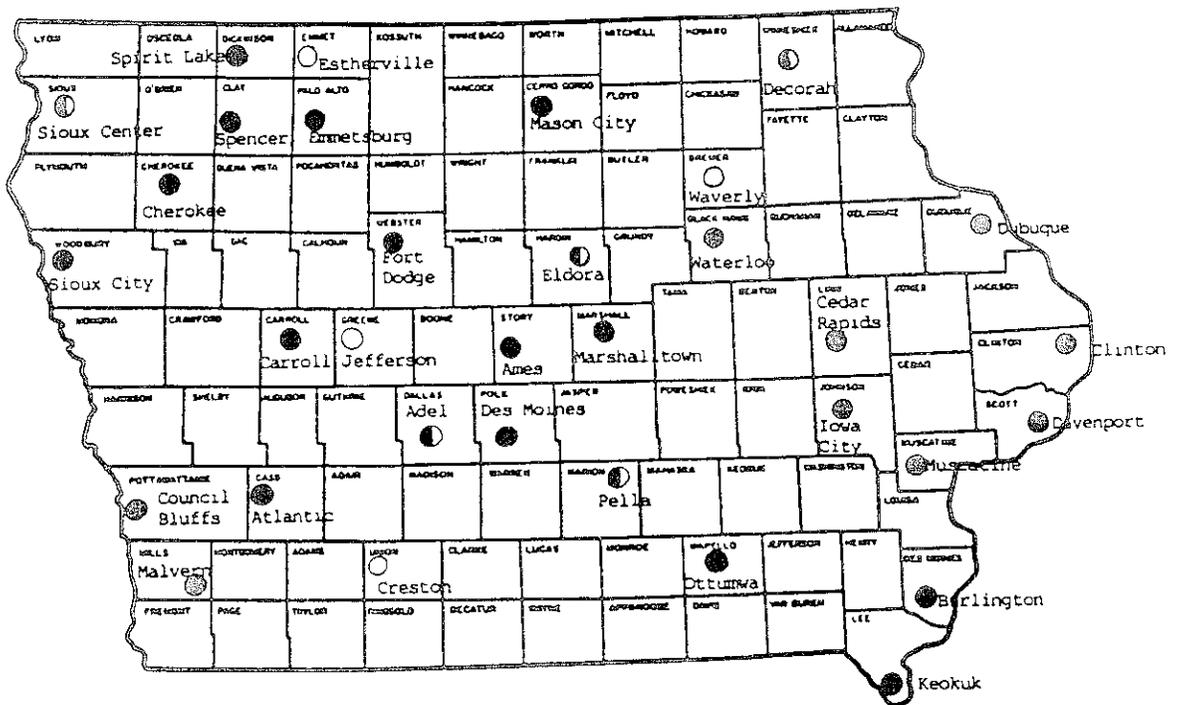
# THE ROLE OF COMMUNITY AND COURT-RELATED AGENCIES

In accord with its charge from the Iowa Supreme Court, the Task Force examined ways in which Iowa courts can work in concert with other community resources to address the widespread problem of domestic violence.

Perhaps the most effective tool against domestic violence is prevention. Many times the Task Force wished that our state could embrace a "zero tolerance" attitude or policy for family violence. We dreamed that individuals would do all in their power to stop violence — by reaching out to someone they suspect is abused or abusing, by teaching nonviolent dispute resolution to young people, by refusing to tell or laugh at "wife beating" jokes. We are fortunate that a national initiative was recently announced which can facilitate such efforts by individuals and communities. "There's No Excuse for Domestic Violence" has produced television, radio and print media ads for public service announcements, and has prepared an Action Kit called "You Can Make A Difference!" filled with inspirational accounts of actions people have taken in their own communities to stop domestic violence.<sup>1</sup>

Recognizing that organized efforts are also necessary to preventing and responding to violence, the Task Force identified the following potential partners in dealing with domestic violence: victim advocates, the medical community, the religious community, business and industry, schools, and youth groups.

### A. Victim Advocates



- SHELTER
- SAFE HOME
- CRISIS LINE

Counties of Iowa

Victim advocates often provide the most critical help needed by victims trying to escape a violent relationship, yet are probably the most overburdened and undercompensated participants in the court and community response system.

The demand is tremendous. Three women seek assistance from domestic abuse programs every hour, according to statewide figures for fiscal year 1993. Every two and one-half hours a woman and her children seek safe shelter from Iowa's domestic abuse programs. Last year, these programs provided counseling and advocacy to 25,089 battered women and their children and provided shelter to 3,531 women and their 4,097 children.

At the same time, domestic abuse programs are severely underfunded and understaffed. Domestic abuse programs require skilled staff and volunteers to be available on crisis lines and work in person 24 hours a day every day of the year. Many programs respond to domestic abuse victims at hospitals and clinics. Iowa's 29 programs operated with only 127 staff and 807 volunteers in fiscal year 1993. That is an average of only 4.5 staff and 28 volunteers per program. Twenty-two of these programs offer safe shelter, requiring personnel to be on the premises at all times.

Furthermore, staff and volunteers often are called upon by law enforcement, prosecutors and the courts to assist victims through the justice system. In a survey conducted by the Task Force, fifteen domestic abuse programs report that in 1993 they assisted 2,931 pro se protection petitioners and 1,512 battered women in criminal court. Without victim advocate intervention, the only information battered women get is what the perpetrator tells them about the system.

In addition to justice system advocacy and shelter, programs provide individual and group counseling sessions, advocacy in employment and housing and help in accessing public assistance. Women with children who stay in safe shelter need assistance with child care and/or school arrangements. Many programs provide special counseling, recreational, and healing services to children in shelter with their parent.

Despite the overwhelming duties, long hours, emotional toll, and very real danger on the job, victim service providers generally earn as little as \$16,000 a year and are rarely provided with medical, life, or disability benefits or pensions.<sup>2</sup>

**Victim advocates... are probably the most overburdened and undercompensated participants in the court and community response system.**

**Three women seek assistance from domestic abuse programs every hour.**

**... fifteen domestic abuse programs report that in 1993 they assisted 2,931 pro se protection petitioners and 1,512 battered women in criminal court.**

**... victim service providers generally earn as little as \$16,000 a year and are rarely provided with medical, life, or disability benefits or pensions.**

While Iowa has seen a substantial increase from four domestic abuse programs operating in 1980, state funding for victim service programs in fiscal year 1993 was still equal to only one percent of the funding for the Department of Corrections Central Office and Correctional Facilities. In the past 16 years, 1,200 shelters for battered women and their children have been established across the country. To keep that in perspective, we have over 2,300 animal shelters in this country.

## RECOMMENDATIONS

61. **Victim advocates should participate in subcommittees established by a statewide implementation council, to help focus the involvement of clergy, health professionals, business leaders, educators, and youth group leaders on the problem of domestic violence.**
62. **Victim advocates should help develop training materials and be included as presenters in educational sessions for judges, lawyers, police, and clerks of courts.**
63. **Domestic violence projects should receive additional state resources commensurate with advocates' increasing duties within the court system.**

### B. The Medical Community

Battering accounts for one-fifth of all medical visits by women and one-third of all emergency room visits by women in the U.S. each year.<sup>3</sup> Battering is the largest single cause of injury among women seen at hospital emergency rooms, more common than rapes, muggings, and car accidents combined.<sup>4</sup> The level of injury resulting from domestic violence is severe: of 218 women presenting at a metropolitan emergency department with injuries due to domestic violence, 28 percent required admission to hospitals for injuries, and 13 percent required major medical treatment. Forty percent had previously required medical care for abuse.<sup>5</sup>

**Battering is the largest single cause of injury among women seen at hospital emergency rooms, more common than rapes, muggings, and car accidents combined.**

Medical injury from domestic violence represents a cost to society as well as to the individual. A study conducted at the Rush Medical Center in Chicago found that the average charge for medical services provided to abused women, children, and older people was \$1,633 per person per year. This would amount to an annual cost of \$857.3 million.<sup>6</sup> The Iowa Crime Victim Compensation Program paid \$24,176 in lost wages, and \$103,591 in out-of-pocket victim medical costs,<sup>7</sup> to domestic abuse victims in calendar year 1993.<sup>8</sup>

While many battered women turn to their health care providers for help, medical education and treatment traditionally has not been geared to identifying or treating domestic violence cases. Fortunately, the medical community is beginning to recognize domestic violence for the medical crisis that it presents. Iowa efforts reflect those being taken nationwide to identify how domestic violence can be treated as a public health problem:

*A national public health objective for the year 2000 is for at least 905 of hospital emergency departments to have protocols for routinely identifying, treating, and referring victims of sexual assault and domestic abuse.<sup>9</sup> Iowa is well underway to developing a model protocol; a copy is provided in the appendix.*

*A national debate is occurring about whether changing state laws to require medical reporting of domestic violence injuries helps battered women or creates greater risks for them.<sup>10</sup> In 1983 the Iowa General Assembly enacted a limited mandatory reporting statute for injury caused by crime. Iowa Code §147.111 mandates medical providers to report to law enforcement any injury treated that is the result of a gunshot or knife wound or an injury which constitutes a serious injury as defined in Iowa Code §702.18. The statute mandates report of such injuries that result from any crime including domestic abuse.*

*A National Health Center on Domestic Violence,<sup>11</sup> a three-year project formed in 1994, will develop and test multidiscipline protocols and training programs designed to improve health care response to domestic violence; develop a comprehensive resource library; develop a model service delivery manual describing state-of-the-art programs in a diversity of health care delivery systems; and develop a national network of experts on health response available for public speaking, training, and consultation.<sup>12</sup>*

## RECOMMENDATIONS

**64. The medical community should participate in statewide and local community efforts to respond to domestic violence.**

**65. Medical providers and public officials who consider mandatory reporting of domestic abuse and similar public policy initiatives should consult with domestic violence advocates and similar national victim networks to enable them to become better informed before making policy decisions.**

### C. The Religious Community

The Task Force recognizes the religious community as an essential actor in the struggle to end domestic violence. In Iowa's small towns and larger cities, churches and synagogues are established, credible institutions providing a network of human resources. The public recognizes clergy as counselors and confidants and often parishioners and passersby alike seek out a church as their first sanctuary from violence in the home. Estimates are that one of every four members of a congregation is a survivor of sexual or domestic violence.<sup>13</sup>

However, religious professionals who are untrained or unaware of the dynamics of violence in the family can exacerbate the problem.<sup>14</sup>

**... religious professionals who are untrained or unaware of the dynamics of violence in the family can exacerbate the problem.**

*Currently the tide of public acceptance runs strongly in the direction of violence in the family as normative. There are significant, although still relatively few, exceptions to this reality. Only now (and slowly) is the voice of the church beginning to be heard to counter this tide. Still too often scriptural and doctrinal legitimation is given to coercion and domination in family relationships, and the priority of "keeping the family together" is touted in the face of family brutality as the "Christian" response. The church has been slow to step into the public arena and lay claim to the issue of violence in the family.<sup>15</sup>*

The Catholic Church in this country has issued a forceful statement denouncing those who would distort scripture to excuse wife beating. "As bishops, we condemn the use of the Bible to condone abusive behavior. A correct reading of the Scriptures leads people to a relationship based on mutuality and love."<sup>16</sup> The bishops were unambiguous in their stand against domestic violence:

*As pastors of the church in the United States, we join bishops in other countries, notably Canada and New Zealand, in stating as clearly and strongly as we can that violence against women, in the home or outside the home, is never justified. Violence in any form — physical, sexual, psychological or verbal — is sinful; many times it is a crime as well.<sup>17</sup>*

Modern Jewish writers also point out that Rabbinic texts deal expressly with situations of wife-beating and include a "surprising amount of support for the victims of domestic violence."<sup>18</sup> Many other denominations have urged their clergy and laity to take action on behalf of domestic violence victims. For example, the United Church of Christ has called upon its congregations to work with ecumenical and secular agencies to develop and support hotlines, rape crisis centers, shelters for abused women and children, and programs for abusers, and to advocate for state legislative changes to address issues of violence against women.<sup>19</sup>

Many Iowa pastors have already made significant commitments to ending violence in the home. A sterling example comes from southwest Iowa, where the Ringgold County Ministerial Association, and especially the Lenox/Mount Ayr Presbyterian Church, has raised some \$14,000 for the Southwest Iowa Family Violence Center and has helped locate a possible shelter location.<sup>20</sup> Given such support from the religious community, that center, which serves victims from a seven-county area, is now able to fund a full-time victim advocate and soon can stop sending battered women as far away as Des Moines and Atlantic to seek shelter.

Another tremendous example of church involvement is being set by the Black Ministerial Alliance of Des Moines, which has helped launch the Union Baptist Outreach Center which works in conjunction with the Des Moines Family Violence Center. Outreach center coordinator Dawn Narcisse explained that her church recognized a need in the minority community for more information on domestic violence issues. The outreach center gives workshops, makes referrals, helps women develop safety plans and provides transportation and other support for victims.<sup>21</sup>

Many Iowa pastors have already made significant commitments to ending violence in the home.

It is also significant when churches pitch in to meet the most basic needs of shelters. For instance, the Rev. Jim Stiles of the Collegiate United Methodist Church in Ames mows the grass and clears away snow for the local shelter. Rev. Stiles also calls upon shelter staff to help educate his congregation on the issue of domestic violence.<sup>22</sup>

The Task Force applauds these efforts and highlights them as models for the religious faithful in other communities trying to make a difference in the lives of victims.<sup>23</sup> Efforts to end the scourge of domestic violence by enlightened and committed churches promises to complement the work of victim advocates and ease the burden on the justice system. After all, the church has long recognized the special anguish caused by violence between intimates:

*My heart is in anguish within me,  
the terrors of death have fallen upon me.  
Fear and trembling come upon me,  
and horror overwhelms me.  
And I say, "Oh that I had wings like a dove!"  
and I would fly away and be at rest;  
I would wander far,  
I would lodge in the wilderness,  
I would haste to find me a shelter  
from the raging wind and tempest.*

*It is not an enemy who taunts me —  
then I could bear it;  
It is not an adversary who deals insolently with me —  
then I could hide from him.  
But it is you, my equal,  
my companion, my familiar friend.  
We used to hold sweet converse together;  
within God's house we walked in fellowship.*

*Psalms 55*

## RECOMMENDATIONS

66. The statewide implementation council should establish a subcommittee comprised of victim advocates and clergy and lay leaders to:

- a. Collect data on how religious groups are currently addressing domestic violence.
- b. Identify those churches that can act as role models for others across Iowa.
- c. Develop a curriculum for training religious leaders how to work with victims and abusers and to make appropriate referrals.
- d. Identify religious leaders who would be available to speak on this issue at conferences and forums.

- e. Identify ways in which the religious community can assist the court process in handling domestic abuse cases.

67. Religious leaders should be encouraged to join local coalitions against domestic violence.

68. Religious leaders should lead by example by addressing domestic violence in sermons and youth classes, and including shelters in the benevolent concerns of the church.

69. Religious leaders should recognize pre-marital counseling as a unique and crucial opportunity to discuss the issue of violence between spouses and set a standard that such abuse is not acceptable.

#### D. Business and Industry

Business and industry have a direct stake in the domestic abuse issue. Studies across the country show the costly impact of battering on the workplace. Employed battered women miss three days of work a month, 64 percent of the women were chronically late to work, and three-quarters of them used work time to deal with the violence because they could not do so at home, according to a report from a New York victim service agency.

A survey from Tulsa, Oklahoma indicated that 70 percent of battered women seeking shelter were employed and nearly all experienced problems on the job as a result of the abuse. The Iowa Crime Victim Compensation Program paid \$24,176 in lost wages to domestic abuse victims in calendar year 1993.

All in all, lost productivity due to absenteeism, worker turnover, and health care expenses due to domestic abuse reach a cost of \$3 billion to \$5 billion annually, according to a 1990 calculation by the Bureau of National Affairs.

. . . lost productivity due to absenteeism, worker turnover, and health care expenses due to domestic abuse reach a cost of \$3-\$5 billion annually. . .

Not only does abuse in the home hinder the effectiveness of victims at work, but the violence itself often spills over into the workplace. Abusive male partners harass 74 percent of employed battered women at work, either in person or by telephone, causing 20 percent to lose their jobs, according to 1991 figures from the Bureau of Justice Statistics. Moreover, Bureau of Labor Statistics for 1993 show that 20 percent of women killed in the work place were murdered by a current or former husband or male partner. This phenomenon became painfully clear to eastern Iowans when a mail carrier was shot to death on her route in Cedar Rapids by a man she had formerly dated.<sup>24</sup>

The Task Force believes that both small businesses and larger companies must recognize that reducing the threat of domestic violence will provide financial benefits, as well as, strengthening their communities. The Task Force envisions companies addressing this issue on several fronts. First, companies should initiate and continue efforts to support personnel confronting violence at home; victims should not lose their jobs because their batterers try to exert control during their hours of employment.

**... companies doing business in Iowa should include domestic violence projects among the charitable causes embraced by their boards of directors.**

Second, companies doing business in Iowa should include domestic violence projects among the charitable causes embraced by their boards of directors. An infusion of private dollars will help keep victim programs afloat and complement requests for increased public funding of domestic abuse programs. Many businesses already are providing help. For example, the Sioux City shelter receives free milk from a local dairy, free bread from a local bakery, and gifts of teddy bears for the children of battered women from a variety of Sioux City businesses.

In addition to these local efforts, larger corporations also are making funds available for community projects. For instance, Target Stores have awarded their "Target the Family" grants to domestic abuse shelters in Iowa and elsewhere with the goal to help direct services to families in need. In addition, corporations are allowing their own lawyers to contribute legal services to victims. One example is Steve Kraft, an attorney with Deere & Co. in Moline, Illinois, who has devoted his time and encouraged other lawyers in his office to volunteer to represent domestic abuse petitioners.

Third, as respected members of their communities, business leaders must communicate the message of zero tolerance for domestic abuse. Both in public appearances and in personal conversations, business leaders must make clear that battering is not acceptable behavior and will not be overlooked as a "family matter."

**... business leaders must communicate the message of zero tolerance for domestic abuse.**

## **RECOMMENDATIONS**

**70. The statewide implementation council should establish an advisory council of business leaders to:**

- a. **Collect data on how businesses are currently addressing domestic violence.**
- b. **Identify those businesses that can act as role models for others across Iowa.**
- c. **Develop a packet for personnel directors on how to deal with the spill-over of domestic violence into the workplace, and specifically how to keep the workplace safe for their employees.**
- d. **Launch a fund-raising campaign which explains to businesses why domestic violence projects need their financial help and how they can contribute.**
- e. **Identify ways in which the business community can assist the court process in handling domestic abuse cases, e.g., encouraging corporate counsel to donate time to handle cases under Chapter 236.**

71. **Business leaders should be encouraged to join local coalitions against domestic violence.**
72. **Business leaders should lead by example and express a zero tolerance for domestic violence in both public and private dealings.**

**E. Schools and Youth groups**

Our schools offer a critical opportunity to educate our youth about domestic violence and help instill critical related concepts, such as mutual respect, that may help deter the development of abusive conduct in future generations. Iowa Code §279.50 requires each school board to provide instruction regarding domestic abuse as a part of the general human growth and development curriculum. This instruction can be expanded to place a greater emphasis on domestic abuse and dating violence, much like many schools have done in the area of drug and alcohol awareness. Specialists in domestic violence should be invited into the schools to help provide this important teaching. Judges and lawyers also can assist in various education programs.

**Youth groups offer hope that the next generation may not inflict or have to endure domestic violence.**

The Task Force heard testimony from facilitators of batterers' education programs that prevention is "the next wave" in addressing domestic abuse.<sup>25</sup> One facilitator told the Task Force that an organized effort must be made to send young people a message about relationships that counters the "MTV . . . objectification of women."<sup>26</sup>

Youth groups also offer hope that the next generation may not inflict or have to endure domestic violence. Thousands of children across Iowa belong to either the Boy Scouts, Girl Scouts, Camp Fire programs, 4-H clubs, or other similar organizations. Many such organizations make community service one of their primary purposes; for example, Girls Scouts promise to help people at all times and 4-H members pledge their hands to greater service and health to better living.

**. . . prevention is "the next wave" in addressing domestic abuse.**

The Task Force notes that some youth groups have already begun to address domestic violence. For example, the Iowa State Extension Service has provided its county 4-H leaders and area youth specialist with a packet of domestic abuse teaching materials, including positive messages for young people on how to develop healthier relationships and how to get help and plan for safety if involved in a violent relationship. Included in the Appendix. The Girl Scouts also include families in crisis and child abuse in their contemporary issue series; these publications provide ideas for girls of all ages on how to address community problems. These are good starting points and serve as examples of what can be done.

The Task Force commends these young people and their leaders for taking time to work for the welfare of their communities. Further, the Task Force believes that these organizations can answer a call by this Task Force not only to help victims in their parents' generation, but to prevent battering among their peers.

The Task Force urges educators and youth group leaders to address the issue of domestic violence on a couple of different levels. First, leaders must recognize that some members of their classes and organizations may be exposed to violence in their own homes. An understanding of the dynamics of abuse and an awareness of available community resources will help teachers/leaders decide how to help these young witnesses to, if not victims of, domestic violence. Second, educators and youth groups can devote some of their talents and energy to victim groups and community education.

## **RECOMMENDATIONS**

- 73. School boards should expand instruction under Iowa Code §279.50 to place a greater emphasis on domestic abuse and dating violence.**
- 74. The statewide implementation council should establish a subcommittee of educators and youth group leaders to:**
- a. Collect data on how schools and youth groups are currently addressing domestic violence.**
  - b. Identify those groups that can act as role models for others across Iowa.**
  - c. Develop a packet for educators and youth group leaders on how to deal with young people who may be dealing with domestic violence in their home or dating relationships.**
  - d. Identify how youth groups may be able to help the court system better handle domestic abuse cases.**
- 75. Educators and youth group leaders should be encouraged to join local coalitions against domestic violence.**
- 76. Schools and youth groups should help raise community awareness of the problem of domestic violence, find out how they can help their local shelters and domestic abuse projects, and help establish the societal and generational expectation of non-violence.**

---

<sup>1</sup>The Kit also provides ideas about actions people can take themselves -- at home, through a church or community group, by donating time or money -- to make a difference. Contact the Family Violence Prevention Fund, 383 Rhode Island Street Suite 304, CA 94103-5133, or the Iowa Coalition against Domestic Violence, Lucas Building, Des Moines, IA 50319 (515)281-7284.

<sup>2</sup>Testimony of victim advocates, December 15, 1993, at 145-50.

<sup>3</sup>Randal, T. (1990). "Domestic Violence Begets Other Problems of Which Physicians Must be Aware to be Effective," *Journal of Personality and Social Psychology* XL. pp. 971-978.

<sup>4</sup>Evan Stark and Ann Flitcraft, "Woman Battering, Child Abuse and Social Heredity: What is the Relationship?" in Johnson, N. (ed.), *Marital Violence, Sociological Review Monograph #31* (1985) London: Rutledge and Kegan Paul; Evan Stark and Ann Flitcraft, "Spouse Abuse," *Surgeon General's Workshop on Violence and Public Health Source Book*, presented at the Surgeon General's Workshop on Violence and Public Health, Leesburg, Va. (1985).

<sup>5</sup>Berrios, D.C. and Grady, D. "Domestic Violence: Risk Factors and Outcomes," *The Western Journal of Medicine*, Vol. 155 (2), August 1991.

<sup>6</sup>Meyer, H. "The Billion Dollar Epidemic," *American Medical News*, January 6, 1992.

<sup>7</sup>The program pays only expenses that are not covered by insurance, medicaid or medicare, or other collateral sources.

<sup>8</sup>Iowa Department of Justice, Crime Victims Assistance Division, Old Historical Building, Des Moines, IA 50319.

<sup>9</sup>Public Health Service. *Healthy People 2000: National Health Promotion and Disease Prevention Objectives--full report, with commentary*. Washington D.C.: U.S. Department of Health and Human Services, Public Health Service, 1991.

<sup>10</sup>For example, see Hyman, Ariella, "Mandatory Reporting of Domestic Violence by Health Care Providers: A Misguided Approach," *Family Violence Prevention Fund* (April 1994). A copy is on file with the Iowa Supreme Court.

<sup>11</sup>The Center is funded by the Conrad N. Hilton Foundation, the U.S. Department of Health and Human Services, and the William Randolph Hearst Foundation and being carried out by the Family Violence Prevention Fund in collaboration with the Pennsylvania Coalition against Domestic Violence. Its address is: 383 Rhode Island St., Suite 304, San Francisco, CA 94103-5133, (800)313-1310/FAX (415)252-8991.

<sup>12</sup>See Emergency Room Protocol for use in Iowa hospitals in Appendix.

<sup>13</sup>Rev. Marie Fortune, Executive Director of the Center for the Prevention of Sexual and Domestic Violence, Seattle, Washington.

<sup>14</sup>Rev. Marie Fortune, *Violence in the Family: A Workshop Curriculum for Clergy and Other Helpers*, 1991, at 4.

<sup>15</sup>M. Fortune, *Ministry in Response to Violence in the Family, Pastoral and Prophetic*, in *Violence in the Family*, at 203.

<sup>16</sup>"When I Call for Help: A Pastoral Response to Domestic Violence Against Women" (Washington, D.C., United States Catholic Conference, Inc. 1992) at 357.

<sup>17</sup>*Id.* at 355.

<sup>18</sup>Julie Ringold Spitzer, *Spousal Abuse in Rabbinic and Contemporary Judaism*, National Federation of Temple Sisterhoods, New York, NY (1985).

<sup>19</sup>Proposal for Action Related to the Pronouncement on Violence in Relation to Women, Fourteenth General Synod of the United Church of Christ (1983).

<sup>20</sup>Telephone conversation with Debby Goble, director of the Southwest Iowa Family Violence Center, June 22, 1994.

<sup>21</sup>Telephone conversation with Dawn Narcisse, June 27, 1994.

<sup>22</sup>Letter from the Rev. Jim Stiles, June 17, 1994.

<sup>23</sup>A useful resource for local churches may be a publication from *Spiritual Dimensions in Victim Services* entitled "Victims: A Manual for Clergy and Congregations" prepared under a grant from the U.S. Department of Justice.

<sup>24</sup>Debora Wiley, Mail carrier shot to death in C.R. street, *D.M. Reg.*, Jan. 5, 1994, at A1.

<sup>25</sup>Testimony of Dale Chell, March 9, 1994, at 43-44.

<sup>26</sup>Testimony of Jeff Kranz, March 9, 1994, at 46.

## PART VII

### LEGISLATIVE RECOMMENDATIONS

Chief Justice McGiverin anticipated the proposal of possible legislative reform in his charge to the Task Force. The Task Force members welcomed the opportunity to review and refine the laws addressing domestic violence.

Since 1979, the General Assembly has enacted numerous provisions to protect survivors and punish perpetrators of abuse in the family. The Task Force believes that Chapter 236 and related statutes provide a solid framework for addressing this widespread problem. Nevertheless, we urge the General Assembly to consider additional progressive measures to increase access and protection. We also encourage lawmakers to respond to the Supreme Court's call to help with implementation of this report.

Our report contains the following 20 recommendations for action by the Iowa General Assembly.

1. The General Assembly should fine-tune the current training requirements for law enforcement agencies by requiring that a minimum of 12 hours be spent on domestic abuse dynamics and law for new officers, and that an additional four hours per year be required as in-service training for all officers.
2. The General Assembly should clarify police duties in situations where both parties accuse the other of assaultive behavior.
3. The General Assembly should adopt legislation which explicitly requires law enforcement to seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence, and authorizes law enforcement to seize a weapon that is in plain view of the officer or was discovered pursuant to a search authorized by a person entitled to consent to the search.
4. The General Assembly should require that county attorneys develop written policies to be followed by attorneys who prosecute domestic abuse assault cases.
5. The General Assembly should remove simple misdemeanor domestic abuse assaults from Iowa Code §331.756(4), which permits county attorneys to decline to prosecute misdemeanors when "otherwise engaged in the performance of their official duties."
6. The appropriate funding bodies -- state, city and county governments -- should recognize that increased funding is necessary if the criminal justice system is to execute properly its responsibility under law to address domestic abuse.
7. The General Assembly should amend Iowa Code §22.7(5) to allow facilitators of Batterers' Education Programs to receive police reports without waiving the confidentiality of the documents as to other requestors.
8. The General Assembly should consider ways in which it can increase staff and resources for clerk of court offices to facilitate the pro se process.

9. The General Assembly should establish a statewide system to allow law enforcement agencies to receive accurate and timely information concerning criminal no-contact orders and civil protective orders issued in other counties.
10. The General Assembly should pass legislation that would allow for the registration and enforcement of foreign orders for protection.
11. The Iowa State Bar Association, the Supreme Court, and the General Assembly should consider and adopt whichever solutions will best strengthen the court's ability to enforce its protective orders, including, but not limited to: increase private/public sector volunteer lawyer complements to pro se cases; create a simple misdemeanor offense for violations of Chapter 236 orders, which would be in addition to the inherent contempt power of the court; create statutory authority to award successful plaintiffs' attorneys fees in contempt actions; and increase court-ordered and publicly paid attorneys for plaintiffs in contempt actions.
12. The General Assembly can provide for a surcharge on all marriage licenses to be used to provide representation to victims of domestic abuse seeking a protection order or in a contempt case.
13. The General Assembly should amend Iowa Code Chapter 236 to allow chief judges to designate district associate judges and law-trained magistrates to sign temporary protection orders only when a district court judge is unavailable in person, by telephone, or by fax machine.
14. The General Assembly should amend §§263.5 and 236.8 of the Iowa Code to allow successful plaintiffs to recover attorneys fees, in the discretion of the trial court. The Task Force specifically recommends that the legislation not allow prevailing defendants to recover attorney fees and prefers that no change be made to the current law rather than impose upon the alleged victim the chilling prospect of paying defendant's attorney fees if guilt is not established. Such a policy also would encourage defendants to fight the accusations in court rather than plead guilty or plea bargain.
15. The General Assembly should revise Iowa Code §236.10 to provide that domestic abuse files be sealed only upon application of the petitioner.
16. A separate chapter should be added to the Iowa Code to address the alarming incidence of dating violence.
17. The definition of domestic abuse at Iowa Code §236.2(2) should be expanded to encompass juveniles under 18 who are married, living together, or have children in common.
18. In cases where the petitioner is a juvenile not emancipated through marriage, a provision should be added to Chapter 236 allowing parent, guardian or other representative to file a petition on behalf of a child against a family or household member who commits an act of domestic violence.
19. The General Assembly should adopt the following amendments to Chapters 598, 236, and 232:
  - a. Presumptions concerning custody.
  - b. Factors in determining custody
  - c. Specialized visitation center for victims of domestic abuse
20. Domestic violence projects should receive additional state resources commensurate with advocates' increasing duties within the court system.

## PART VIII

### STATEWIDE IMPLEMENTATION PLAN

When the Task Force was established, our charge contained the expressed need to consider the Iowa court system's current response to the increasing number of domestic abuse cases and to recommend ways to make the system work more fairly and efficiently. This report represents a comprehensive effort to make that assessment and formulate those recommendations. However, many tasks remain to be done.

For each of the 76 recommendations in this report, there is a responsibility for action. This responsibility lies heavily with the court system. Examples include the leadership role envisioned for judges in Part III, the adoption of written protocols by clerks of court and the establishment of after-hour procedures by each judicial district. These are clearly areas where the Iowa Supreme Court can promote change.

**For each of the 76 recommendations in this report, there is a responsibility for action.**

**... an implementation phase must be approved and a coordinator must be appointed. . . an implementation council should be established**

Yet, the Task Force recognizes many of its recommendations cannot be implemented by the judicial branch alone. For example, this Report urges a host of legislative changes, ranging from expansion of the definition of domestic abuse to a presumption against granting custody to a parent determined by the court to have committed domestic abuse. The Task Force also acted on the charge involving community resources to recommend action by victim advocates, health professionals, clergy, business leaders and educators.

To effect change outside of the direct purview of the Iowa Supreme Court, the Task Force recommends that the court make a public pronouncement challenging the legislative and executive branches of government to help confront the scourge of domestic violence. The Task Force believes that it is necessary for all three branches of government to work together to implement the recommendations in this report and to truly address the needs of victims of family violence.

**... it is necessary for all three branches of government to work together to implement the recommendations in this report.**

Moreover, the Task Force strongly believes that to satisfy the charge given it, an implementation phase must be approved and a coordinator must be appointed to monitor the progress of the Task Force's recommendations. The Task Force also proposes that an implementation council be established to support the efforts of this coordinator and to stand ready to address any new domestic violence issues that might arise.

... domestic abuse is such a pervasive problem that more than legal intervention is necessary.

The Task Force proposes that the implementation period commence soon after this report is submitted to the Chief Justice and continue through the end of the 1995 legislative session. The implementation council should evaluate the need for continuing its existence beyond that time.

On the question of membership of the implementation council, the Task Force recognizes benefits both in maintaining some degree of continuity by retaining current Task Force members and in expanding participation to representatives from other constituencies. During our tenure, we have come to the conclusion that domestic abuse is such a pervasive problem that more than legal intervention is necessary. Police, prosecutors, clerks, judges and victim advocates cannot solve this problem alone. Real answers will be found only by total community involvement. We recommend inviting health professionals, educators, clergy, the defense bar, domestic abuse survivors, and business people to join the implementation council.

The Task Force noted with interest that during the 1994 session the General Assembly approved one million dollars for court technology and modernization in S.F. 413, including an earmarked portion of ten percent to fund methods to resolve domestic abuse cases. The Task Force discussed possible uses for that \$100,000 and decided to suggest this appropriation be directed toward any of the following six projects: (1) production and updating of the publication How to Protect Yourself From Domestic Abuse Without A Lawyer -- which is provided to pro se petitioners by clerks of court and advocates (Funding for approximately 8,000 copies has been provided for FY1994-1995 by funds from the Interest on Lawyers Trust Account Commission and the Iowa Coalition against Domestic Violence.); (2) production and distribution of a video informing petitioners what they can expect during the Chapter 236 process to be shown in shelters; (3) special training programs for law-trained magistrates and district associate judges if the General Assembly approves expanded jurisdiction for issuing temporary protective orders under Chapter 236; (4) contracting with victim service providers to assist domestic abuse petitioners, for example, with interpreters and advocates possibly housed in the courthouse; (5) equipping clerks of court with facsimile machines to improve judicial response to domestic abuse petitions; since the latter project would benefit the courts beyond the handling of domestic abuse cases, the Task Force believes the cost should be shared with special court funds; and (6) funding a domestic abuse coordinator position to enhance the leadership role of the courts in coordinating the courts' and communities' response to domestic abuse.

# FINAL REPORT

of the Supreme Court Task Force on

Courts' and Communities' Response to Domestic Abuse

## Appendix to the Report

### Table of Contents

Throughout the report, references have been made to the Appendix. Materials in this multi-volume ring binder set include original research data and documents prepared by the Task Force (such as transcripts of testimony and survey results), as well as background materials which the Task Force found especially useful. Complete sets of the Appendix are located at the

1. Iowa Supreme Court, Statehouse, Des Moines
2. Drake Law School Library, Des Moines
3. University of Iowa College of Law, Iowa City

The materials are organized to parallel the Parts of the report. Following is an itemized list.

#### PART I: Introduction

##### Task Force Charge

Order: In re Matter of the Appointment of the Supreme Court Task Force on Courts' and Communities' Response to Domestic Abuse, August 3, 1993.

Order: August 5, 1993 [Appointing Linda McGuire]

Order: November 23, 1993 [Appointing Laurie Schipper]

Order: February 4, 1994 [Appointing Mary Tabor]

##### Task Force Minutes

##### Testimony Taken Before the Task Force

Transcripts: December 15, 1993

Roxann Ryan, Deputy Attorney General of Iowa  
Beth Barnhill, Iowa Coalition Against Sexual Assault  
Kathy Ryman, Legal Aid Society of Story County  
Ruth Cooperrider, Citizens' Aide/Ombudsman  
Connie Bencke, Citizens' Aide/Ombudsman  
Carrie Fitzgerald, Victim Advocate/ACCESS, Ames  
Mary Ortega, Victim Advocate, Womens' Resource Center, Clinton  
Nancy Becker, Victim Advocate, Family Crisis Support Network, Atlantic  
Dorothy Ridle, Survivor  
Marge Carr, Survivor  
Witness Number Three, Survivor

Transcripts: January 12, 1994

Denver Dillard, Linn County Attorney  
William Owens, Monroe County Attorney  
Fred McCaw, Dubuque County Attorney  
Gary Kimes, Clarke County Attorney  
Connie Welu, Executive Director, Iowa County Attorneys Association  
Gary Verwers, Marion County Sheriffs' Department  
Curtis Ruby, Fort Dodge Police Department

Transcripts: March 8, 1994

Jerry Weiss, Clerk of Court, Polk County  
Marlene Nelson, Clerk of Court, Scott County  
Janet Harris, Trial Court Clerk III, Scott County  
Mary Jo Herrig, Clerk of Court, Sac County  
Eric Borseth, Attorney at Law, Des Moines  
Jane Schambow, Assistant Public Defender, Dubuque  
Judge Michael J. Streit, District Court, Lucas County  
Judge Robert A. Hutchinson, District Court, Polk County  
Judge Michael J. Newmeister, Associate District Court, Linn County  
Magistrate Steven K. Sandblom, Magistrate, Humboldt County

Transcripts: March 9, 1994

Jeff Krantz, Batterers' Education Program Facilitator  
Jean Clark, Batterers' Education Program Facilitator  
Dale Chell, Batterers' Education Program Facilitator  
Sally Kreamer, Batterers' Education Program Facilitator  
Tracy Bray, Batterers' Education Program Facilitator  
Colleen Reichardt, Child Protective Worker, DHS  
Mary Ellison, Child Protective Worker, DHS

Written testimony submitted:

Roxann M. Ryan  
Beth Barnhill  
Kathy P. Ryman  
Ruth H. Cooperrider and Connie L. Bencke  
Carrie Fitzgerald  
Denver Dillard (three-page case data only)  
Jerry L. Weiss  
Marlene Nelson  
Janet Harris  
Judge Robert Hutchinson  
Magistrate Steven Sandblom

Task Force Surveys & Summaries/Responses

County Attorney: instrument and results  
Clerk of Court: instrument and results  
District Court Administrators: instrument and results  
Victim Advocates: instrument and responses  
BEP participants: instrument, responses and summary  
BEP partners (victims) of participants: instrument, responses and summary

**PART II: Scope of Domestic Abuse**

Crime Victim Compensation Cases: Iowa Women Killed by their Male Partners Since 1990. Iowa Department of Justice, Crime Victims Assistance Division, Old Historical Building.

"The Problem", from *Rural Outreach Manual*, p. 5, Pennsylvania Coalition against Domestic Violence.

Kathryn Fahnestock, "Not in My County", excerpts from a Report on Rural Courts and Victims of Domestic Violence, *The Judges Journal*, Summer 1992.

"Rural Accessibility", from "Three-Year State Plan", West Virginia Coalition against Domestic Violence, 1991 - 1994.

"Rural Battered Women: Isolation", Committee against Domestic Abuse, Mankato, MN.

"Power and Control Wheel", Domestic Abuse Intervention Project, 206 West Fourth Street, Duluth MN 55806. (218) 722-4134.

"Equality Wheel", Domestic Abuse Intervention Project, 206 West Fourth Street, Duluth MN 55806. (218) 722-4134.

### PART III: The Leadership Role of the Court in Ending Domestic Abuse

Advisory Committee, Conrad N. Hilton Foundation, Model Code Project of The Family Violence Project, *Model Code on Domestic & Family Violence*, National Council of Juvenile and Family Court Judges (1994).

Scott County Domestic Violence Coalition, "Getting Started", (1994).

Judge Leonard P. Edwards, "Reducing Family Violence: The Role of the Family Violence Council", *Juvenile and Family Court Journal* (1992).

### PART IV A: Court Response/Criminal

Chris Carlson and Frank Nidey, "Mandatory Penalties, Victim Cooperation and Judicial Processing of Domestic Abuse Cases", unpublished paper (1994).

Casey G. Gwinn and Anne O'Dell, "Stopping the Violence: The Role of the Police Officer and the Prosecutor", 20 *W.St.U.L.Rev.* 297 (1993).

Iowa Department of Corrections, "1993 Batterers' Education Program Statistics".

Iowa Department of Corrections, "Summary of Development of Local Domestic Violence Coalitions", (1994).

Linda McGuire, "Model Prosecution Policy and Protocol: Excerpts from *Prosecution of Domestic Violence in Iowa: A Prosecution Manual*", Prosecuting Attorneys Training Council, (1990) and later revisions.

### PART IV B: Court Response/Civil

"Massachusetts Domestic Violence Registry: Developing a Coordinated Response by the Criminal Justice System", 14 *The Women's Advocate*, No. 5, September 1993.

Raina Fishbane, "Delaware's Central Statewide Registry for Orders of Protection from Abuse", Domestic Violence Coordinating Council, P.O. Box 2359, Wilmington, DE 19899. (302) 577-2684.

"How to Protect Yourself from Domestic Abuse Without a Lawyer", Iowa State Bar Association/Volunteer Lawyers Project/Pro Se Domestic Abuse Assistance Project, 610 Fleming Bldg., Des Moines, IA 50309.

Scott County Clerk of Court, Pro Se Domestic Abuse Petitions: Spanish and Vietnamese Language (1994).

## PART IV C: Court Response/Mediation

Letter from K. McCandless, Drake Law School Dispute Resolution Resource Center, July 20, 1994.

Barbara J. Hart, Esq., Memo to Academy of Family Mediators, July 25, 1994.

Maine Court Mediation Service, "Mediation in Cases of Domestic Abuse: Helpful Option or Unacceptable Risk?" January 1992.

Harrell, Adele, "Mediation and Domestic Violence", from *A Guide to Research and Family Violence*, The Urban Institute, 2100 M Street, N.W., Washington DC 20037.

"Report from the Toronto Forum on Woman Abuse and Mediation", June 1993.

## PART V: The Forgotten Victims: Children & Domestic Abuse

Nina Cummings and Andrea Mooney, "Child Protective Workers and Battered Women's Advocates: A Strategy for Family Violence Intervention", 11 Response No. 2 (1988).

Judge John Mullen, Summary of: Susan Schechter and Lisa Klee Mihaly, *Ending Violence against Women and Children in Massachusetts Families*, November 1992.

Synergy: The Newsletter of the Resource Center on Domestic Violence: Child Protection and Custody, Vol. 1, No. 1, National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, NV 89507. 1-800-527-3223.

Duluth MN Domestic Abuse Intervention Project, "The Visitation Center: A Program of the Domestic Abuse Intervention Project" (1994).

Ellen Pence, *Doing More Harm than Good? Some Cautions on Visitation Centers*, National Training Project, Duluth, MN.

101st U.S. Congress, 2d Session H. Cong. Res. 172 (1990).

## PART VI: The Role of Community and Court-Related Agencies

### The Religious Community

"When I Call for Help: Domestic Violence Against Women", 22 Origins: CNS Documentary Service No. 21, Nov. 5, 1992.

Letter from Rev. Jim Stiles.

### The Medical Community;

Family Violence Prevention Fund, 383 Rhode Island St., Suite 304, San Francisco, CA 94103-5133  
(415) 252-8900 FAX: (415) 252-8991.

Hyman, Ariella. "Mandatory Reporting of Domestic Violence by Health Care Providers: A Mis-guided Approach".

The National Health Initiative on Domestic Violence: An Executive Summary.

The Health Care Response to Domestic Violence fact sheet.

Iowa Medical Society, Sample Hospital Protocol for Domestic Abuse (1994).

"The Billion Dollar Epidemic", from *Network News*, Nevada Network against Domestic Violence, Spring 1992.

#### Youth Groups

Iowa State University Extension, "Domestic Abuse Teaching Materials", (1992).

### PART VII:           Statewide Implementation Plan

Gayle M. Turek, "How States Fund Domestic Violence Programs", Illinois General Assembly Legislative Research Unit and 1991 - 1993 update.